

BETWEEN:

ALEXANDER EWAN ARMSTRONG; GEORGE ARMSTRONG
& SON PTY. LIMITED; FINLAYSIDE PTY. LIMITED;
SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED;
GOULBURN ACCEPTANCE PTY. LIMITED; A. E. ARMSTRONG
PTY. LIMITED

Appellants (1st to 6th Defendants)

AND:

JOHN OSBORNE BOVILL; CLARE BARTON; TERENCE
BARTON; AGOSTON GONCZE; HOME HOLDINGS PTY.
LIMITED; ALLEBART PTY. LIMITED; and
ALLEBART INVESTMENTS PTY. LIMITED

Respondents (15th to 21st Defendants)

Term No. 25 of 1969

BETWEEN:

ALEXANDER BARTON

Appellant (Plaintiff)

AND:

ALEXANDER EWAN ARMSTRONG; GEORGE ARMSTRONG
& SON PTY. LIMITED; FINLAYSIDE PTY. LIMITED;
SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED;
GOULBURN ACCEPTANCE PTY. LIMITED; A. E. ARMSTRONG
PTY. LIMITED; LANDMARK (QUEENSLAND) PTY. LIMITED
(IN LIQUIDATION); PARADISE WATERS (SALES) PTY.
LIMITED; PARADISE WATERS LIMITED; GOONDOO PTY.
LIMITED; LANDMARK HOME UNITS PTY. LIMITED;
LANDMARK FINANCE PTY. LIMITED; LANDMARK HOUSING
& DEVELOPMENT PTY. LIMITED; LANDMARK CORPORATION
LIMITED; CLARE BARTON; TERENCE BARTON; AGOSTON
GONCZE; JOHN OSBORNE BOVILL; HOME HOLDINGS PTY.
LIMITED; ALLEBART PTY. LIMITED; ALLEBART
INVESTMENTS PTY. LIMITED

Respondents (1st to 21st Defendants)

APPEAL BOOK

VOLUME 3

SOLICITORS FOR THE APPELLANTS
(1st to 6th Defendants);

Dare, Reed, Martin & Grant
187 Macquarie Street,
SYDNEY.

SOLICITORS FOR THE RESPONDENTS
(15th to 21st Defendants)

McCaw, Johnson & Co.,
60 Pitt Street,
SYDNEY.

SOLICITORS FOR THE APPELLANT
(Plaintiff)

McCaw, Johnson & Co.,
60 Pitt Street,
SYDNEY.

SOLICITORS FOR THE RESPONDENTS
(1st to 6th Defendants)

Dare, Reed, Martin & Grant,
187 Macquarie Street,
SYDNEY.

SOLICITORS FOR THE RESPONDENTS
(7th, 9th, 10th & 13th Defendants)

Francis White, Barnes & McGuire,
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SYDNEY.

SOLICITORS FOR THE RESPONDENT
(14th Defendant)

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44 Martin Place,
SYDNEY.

**INSTITUTE OF ADVANCED
LEGAL STUDIES,
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LONDON,
W.C.1.**

IN THE SUPREME COURT }
OF NEW SOUTH WALES }
COURT OF APPEAL }

Term No. 25 of 1969

<u>BETWEEN:</u>	<u>ALEXANDER BARTON</u>	Appellant
<u>AND:</u>	<u>ALEXANDER EWAN ARMSTRONG</u>	First Respondent
<u>AND:</u>	<u>GEORGE ARMSTRONG & SON PTY. LIMITED</u>	Second Respondent
<u>AND:</u>	<u>FINLAYSIDE PTY. LIMITED</u>	Third Respondent
<u>AND:</u>	<u>SOUTHERN TABLELANDS FINANCE CO. PTY. LIMITED</u>	Fourth Respondent
<u>AND:</u>	<u>GOULBURN ACCEPTANCE PTY. LIMITED</u>	Fifth Respondent
<u>AND:</u>	<u>A.E. ARMSTRONG PTY. LIMITED</u>	Sixth Respondent
<u>AND:</u>	<u>LANDMARK (QUEENSLAND) PTY. LIMITED</u>	Seventh Respondent
<u>AND:</u>	<u>PARADISE WATERS (SALES) PTY. LIMITED</u>	Eighth Respondent
<u>AND:</u>	<u>PARADISE WATERS LIMITED</u>	Ninth Respondent
<u>AND:</u>	<u>GOONDOO PTY. LIMITED</u>	Tenth Respondent
<u>AND:</u>	<u>LANDMARK HOME HOLDINGS PTY. LIMITED</u>	Eleventh Respondent
<u>AND:</u>	<u>LANDMARK FINANCE PTY. LIMITED</u>	Twelfth Respondent
<u>AND:</u>	<u>LANDMARK HOUSING & DEVELOPMENT PTY. LIMITED (In Liquidation)</u>	Thirteenth Respondent
<u>AND:</u>	<u>LANDMARK CORPORATION LIMITED</u>	Fourteenth Respondent
<u>AND:</u>	<u>CLARE BARTON</u>	Fifteenth Respondent
<u>AND:</u>	<u>TERRENCE BARTON</u>	Sixteenth Respondent
<u>AND:</u>	<u>AGOSTON GONCZE</u>	Seventeenth Respondent
<u>AND:</u>	<u>JOHN OSBORNE BOVILL</u>	Eighteenth Respondent
<u>AND:</u>	<u>HOME HOLDINGS PTY. LIMITED</u>	Nineteenth Respondent
<u>AND:</u>	<u>ALLEBART PTY. LIMITED</u>	Twentieth Respondent
<u>AND:</u>	<u>ALLEBART INVESTMENTS PTY. LIMITED</u>	Twenty First Respondent

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BARTON v. ARMSTRONG & ORS.

SIXTEENTH DAY: THURSADY, 20TH JUNE, 1968.

(Philip Malouf & Co. called on subpoena duces tecum by Mr. Bainton. Mr. J.B. Harrington, 109 Elizabeth Street, appeared in answer to the subpoena. Mr. Harrington produced a copy of the subpoena and stated that he produced a document dated a day later than the latter referred to in the subpoena. This document was handed into the custody of the Court. Mr. Harrington stated that there was no objection to the document produced being seen by the parties to the litigation, nor was it required back as a matter of urgency. Excused).

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(Ezekiel Solomon recalled on subpoena duces tecum by Mr. Bainton. Mr. Solomon produced a further document in answer to the subpoena, and stated that there was no objection to the document so produced being seen by the parties to the litigation. Excused).

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MR. STAFF: I am not sure whether I have one or a number of documents before your Honour being tendered.

HIS HONOUR: Which document at the moment is the subject of the tender? I don't know that that is entirely clear.

MR. STAFF: The transcript seems to indicate all of them as being rejected.

30

HIS HONOUR: That is my recollection. I think you ought to re-tender one of them. I think you should formally retender one. I think you presented your argument after the documents had been rejected.

MR. STAFF: I retender m.f.i.18 to m.f.i.22 inclusive.

MR. GRUZMAN: If the tender is made complete by the addition of the document now produced we will not press our objection to the tender.

MR. STAFF: I do not propose to add another document to the documents I have tendered.

40

HIS HONOUR: The documents m.f.i.18, 19, 20, 21 and 22, and the Deed which is the counterpart of m.f.i.18 are tendered -

MR. STAFF: With respect, I do not tender the last document, and I would like the notes to indicate that.

HIS HONOUR: Mr. Gruzman, do you tender the last document?

MR. GRUZMAN. I tender it.

(m.f.i. 18-m.f.i.22 tendered and marked Exhibit 30).

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(Counterpart of Deed, m.f.i. 18, tendered and marked Exhibit "T").

HIS HONOUR: I will have it noted that the document, part of Exhibit 30, which was m.f.i.18 is the head deed pursuant to which six paragraphs six sub-paragraphs of para. 22 of the statement of defence of Southern Tablelands Finance Company relate. The remainder of Exhibit 30 comprises documents referred to in (b) (d) (e) and (f) of para. 22 of the statement of defence of Southern Tablelands Finance Co. 10

MR. STAFF: The mortgage is referred to in (c) of para. 22 of the statement of defence of Southern Tablelands Finance Co.

HIS HONOUR: Memorandum of Mortgage by Goondoo Pty. Limited over development lease No. 7 will be added to Exhibit 30. Exhibit 30 will now comprise six deeds.

(Request and receipt for loan of \$300,000 tendered and marked Exhibit 31).

(Statutory declaration of 18th January 1967, m.f.i. 9. tendered and marked Exhibit 32). 20

HIS HONOUR: At the close of the plaintiff's case Mr. Staff, who appears, inter alia, for the defendant, Goulburn Acceptance Pty. Ltd, moved for a decree in favour of that defendant, dismissing the suit as against that defendant. I deferred hearing argument upon that motion so as to enable both counsel to consider whether there was any authority indicating the course of practice to be followed in a case such as this - namely, where one of a large number of defendants moves for a decree in its favour at the end of the plaintiff's case. There does not appear to be any direct authority on the point. There is some analogy to be drawn from some types of proceedings at common law, although care must be exercised in drawing on the practice at common law for the purpose of determining the practice in this Court. On the whole, however, I am of the view that a motion such as this in the present case can more conveniently be determined at the end of all of the evidence when the whole of the cases for all of the parties are concluded. I accordingly defer further consideration of this motion until the point of time when all of the evidence is concluded. 30 40

(Mr. Smith called by Mr. Staff. An Application by Mr. Gruzman that, if it was intended to call the first defendant, his evidence should be given first was rejected by his Honour. An application by Mr. Gruzman that the first defendant should remain out of Court whilst Mr. Smith gave evidence was rejected by his Honour). 50

BRUCE HENRY SMITH

Sworn, examined, deposed:

(Mr. Staff requested that Mr. Armstrong and Mr. Grant leave the Court while Mr. Smith gave his evidence).

MR. BAINTON: Q. What is your full name? A. Bruce Henry Smith.

Q. You reside at 32 North Arm Road, Middle Cove?
A. Yes.

Q. Are you by profession a chartered accountant, and a partner in the firm of B.O. Smith & Son, carrying on business at 68 Pitt St. Sydney? A. Yes.

Q. Prior to the last month of December 1966 had you met Mr. Alexander Barton on any occasion? A. Yes. 10

Q. Can you tell us what the occasion was? A. Am I allowed to have access to my notes?

Q. I don't want you necessarily to be very exact on it, but was there an occasion? A. Yes, a number of occasions.

Q. Were they occasions on which you were working for him or any company by which he was employed, or were you on the other side? A. My initial meeting with Mr. Barton would have been roughly in May 1966, when he consulted me concerning the Chevron Hotel with Mr. Armstrong. I subsequently would have met Mr. Barton again on 14th December. 20

Q. In that earlier situation I think you were the receiver of the Chevron, and your discussions were with prospective purchasers? A. Yes.

Q. Prior to December 1966 had you met Mr. Alexander Ewan Armstrong on any occasion? A. Yes, on the same occasion. They both came into my office together.

Q. Was that the only time you saw him? A. Yes.

Q. Had you ever prior to December 1966 acted in any professional capacity for either Mr. Armstrong or any company in which you knew Mr. Armstrong to have any interest? A. No. One party from my office was approached for finance by Landmark round about that time - round about some time in May 1966. 30

Q. Apart from that had you had any professional dealings with either Mr. Barton or Mr. Armstrong?
A. No.

Q. Well now, were you consulted by Mr. Armstrong in relation - put it this way for the moment - in relation to Landmark matters generally? A. Yes. 40

Q. Are you able to tell me when Mr. Armstrong saw you initially about these matters? A. Yes. It would have been 11 o'clock on 8th December 1966.

Q. I think, Mr. Smith, you have a desk appointment pad of some sort? A. Yes.

Q. Have you brought it with you? A. Yes.

Q. I assume - perhaps I should not assume - that

you have looked at it recently for the purpose of refreshing your recollection as to the date and time of that initial interview? A. Yes.

HIS HONOUR: Have you any objection, Mr. Gruzman, to Mr. Smith referring to that in the witness box?

MR. GRUZMAN: Yes, at this stage.

MR. BAINTON: Q. Don't open any of these files of documents for the moment, if you don't mind. How long did the interview last on this first occasion? 10

A. On the first occasion it would have been from about 11 o'clock until 2 o'clock. I believe I would have left Mr. Armstrong in my office for approximately 20 minutes at one stage during that period.

Q. Are you able to say whether on the same day you saw Mr. Armstrong on any other occasion? A. Yes. Four o'clock in the afternoon with Mr. Grant. - Mr. Bob Grant, of Dare Reed Martin & Grant,

Q. Have you any recollection of the length of time occupied by that interview? A. No. It was not a very long one. Probably three quarters of an hour, or something of that nature. 20

Q. Did you that evening prepare some handwritten notes of the discussion you had had with Mr. Armstrong and subsequently with Mr. Armstrong and Mr. Grant? A. I believe on my recollection that I would have prepared those on the day of 8th December 1966 in between the first appointment with Mr. Armstrong and the second, and that those notes - they are zeroxed - at least they were discussed with Mr. Grant and Mr. Armstrong at 4 o'clock. 30

Q. You initially made some handwritten notes? A. Yes.

Q. Were any copies made of these notes? A. Yes.

Q. What sort of copies? A. Zerox copies.

Q. What did you do with the zerox copies you made on 8th December (Objected to: allowed).

Q. What did you do with the zeroxed copies you made of the notes you said you wrote out between the first and second interviews on 8th December 1966? 40

A. The notes that I made out on 8th December I tabled at the meeting with Mr. Grant and Mr. Armstrong, ~~and I had suggested two courses in these notes, one of which~~ (Objected to: by direction portion of answer indicated struck out).

Q. You had some notes. You say you tabled them at the following meeting? A. Yes.

Q. Was anything physically done with those notes at that meeting? A. Yes. There were two notes, with (1) and (2). (1) was - 50

Q. Please don't tell us anything about what was in the document. Was some writing put on it, or anything done to it?

MR. GRUZMAN: Would your Honour give me the benefit of a general objection to these notes and what was done to them?

HIS HONOUR: All of this evidence about these notes can be taken to be subject to your general objection that no reference whatever to these notes is admissible. If the contents are sought to be adduced then any particular objection to that must be taken specifically. I have allowed this evidence in anticipation that Mr. Bainton will, as he foreshadows, be able to demonstrate the relevance of admissibility. At this point of time I am not entirely satisfied that the evidence is admissible, but I think the convenient course is to proceed on the faith of Mr. Bainton's assurance that admissibility will be later demonstrated. 10 20

MR. BAINTON: Q. Someone wrote something, I think you said, at the second meeting? A. I don't think - I beg your pardon?

Q. Do you have your original handwritten notes that you made between these two meetings in any of these folders that you have with you. A. I have the original zerox of the original notes of 8th December.

Q. When was that zerox copy made? A. That day, and at the time of the meeting. At the time of the meeting with Mr. Grant and Mr. Armstrong. 30

Q. Was it then on your original handwriting, - on the original handwritten document - or the zerox copy that something was written at a subsequent meeting? A. It was on the original.

Q. On the original? A. Yes.

Q. Are you able to tell me where the original handwritten note is? A. No. I believe that Mr. Armstrong - it either went to Mr. Armstrong, or it has been lost. 40

Q. Would you mind taking out from the bundle the zerox copy you took at the time and identify it for me without reading it, if you can. Just produce that one, will you? A. Yes.

Q. That, you say, is a zerox copy of this original handwritten note made on 8th December? A. Yes.

(Zerox copy of note of 8th December 1966 m.f.i.23).

Q. Did you subsequently again see Mr. Armstrong on the same subject matter? A. Yes. 50

Q. When did you next see him? A. 2.15 p.m. on 9th December.

Q. With whom did you see him on that occasion?

A. I think Mr. Armstrong called at my office and we went up to see Mr. Staff at Mr. Staff's office. I think we went up with Mr. Grant.

Q. Yourself, Mr. Armstrong and Mr. Grant went to Mr. Staff's office? A. We reached Mr. Staff's office at 3 o'clock.

Q. Have you any recollection how long you were there? A. I think it would have been approximately an hour. 10

Q. After that discussion, were some letters written by anybody, including yourself? A. Yes, there was a letter written by Mr. Armstrong and a letter written by myself to the directors of Landmark Corporation.

Q. Well now, do you have a copy of the letter which you yourself wrote? A. Yes.

Q. Do you have a copy of the letter which Mr. Armstrong wrote? A. Yes. 20

MR. BAINTON: I call for the originals of two letters dated 9th December, each addressed to the managing director of Landmark Corporation Limited, one from Mr. Smith and the other from Mr. Armstrong.

MR. GRUZMAN: They are not produced.

MR. BAINTON: Q. Tell me if they are copies of the copies of two letters that were despatched on that day? A. Yes.

(Two letters of 9th December 1966 tendered and marked Exhibit 33). 30

Q. Mr. Smith, when did you next see Mr. Armstrong about the same general subject? A. On 13th December.

Q. Perhaps I should ask you, were you seeing him at this period about anything else at all? A. No.

Q. When he came to you on 13th December did he have any document with him? A. Yes.

Q. Did he leave that document or any copy of it with you? A. Yes, he gave me a copy of the document.

Q. Do you have that copy that he gave you with you? A. Yes. 40

Q. Would you mind producing that (document produced).

(Letter dated 12th December 1966 tendered and marked Exhibit 34).

Q. Have you any recollection of the length of time the discussion on 13th December took? A. No, I could not tell you how much time. It would be more than an hour. It could be a couple of hours.

Q. Was there anybody else at this discussion?

A. Not on 13th.

Q. Well now, did you receive any instructions to do anything on this occasion? A. Yes.

Q. Who did you receive them from? A. Mr. Armstrong.

Q. And did you make any note in your own handwriting of what the instructions were? A. Yes.

Q. When did you make that note? A. At the time of the conference. 10

Q. Do you have with you the note you then made? A. Yes.

Q. Would you mind producing that note and identifying it? (Note produced).

Q. What was the instruction you received from Mr. Armstrong? (Objected to).

HIS HONOUR: I am of the view that the terms of Mr. Smith's authority to negotiate the transaction in question are a relevant subject matter for evidence, and as those terms are stated to have been oral it is open to him to state the conversation in which he was authorised. 20

(Short adjournment).

MR. BAINTON: Q. I think I had got to the stage of asking you if at this discussion on, I think, 13th December you received any instructions. There was an objection to that. Would you mind answering that question at this stage just by yes or no, if it is possible? A. Yes. 30

Q. You did get some? A. Yes.

Q. Did you make a note of what they were? A. Yes.

Q. And is the document you produced a few moments ago that note? A. Yes.

Q. And when did you make it? A. At the time of the conference with Mr. Armstrong.

Q. Is it in your handwriting? A. Yes. (note shown to Mr. Gruzman, who stated that he objected to its tender, Tender pressed).

HIS HONOUR: This is yet another of the unusual questions of evidence which have arisen in this suit. The plaintiff's claim in the suit ultimately is that the first defendant coerced the plaintiff into signing the agreement of 17th January. It is common ground that in order to succeed on an allegation of this nature the plaintiff must establish an intention on the part of the first defendant to coerce the will of the plaintiff. The evidence now tendered is as to instructions given by the first defendant to Mr. Smith, it being foreshadowed that Mr. Smith in 40 50

fact carried on some at least of the negotiations on behalf of the first defendant with the plaintiff. This evidence is tendered as being admissible on the subject of whether the first defendant did in fact coerce the plaintiff, and particularly as to whether he intended to coerce the plaintiff. Mr. Gruzman has disclaimed any suggestion that this witness was a party to any intention to coerce in the sense relevant to this suit, the only intention in that regard relevant being the intention of the principal, namely, the first defendant. 10

I am of the view that in such circumstances it is an admissible subject of evidence to establish the terms of the instructions given by the first defendant to Mr. Smith pursuant to which instructions Mr. Smith carried out negotiations with the plaintiff, as well as, if it be sought to be proved, to admit evidence of the actual terms of the negotiations themselves. I shall accordingly, without requiring the plaintiff to take specific objection on each occasion, admit evidence of the terms of such instructions and variations of them from time to time, but any particular objections should of course, be taken in the ordinary way, and I should indicate that this ruling is only to be taken to extend to the actual instructions given to Mr. Smith, and not to discussions, advice or recommendations passing between him and Mr. Armstrong. 20

A further objection is taken that the document is not admissible under s. 14B, but it, having been identified by Mr. Smith as stating the terms of his instructions from Mr. Armstrong, and Mr. Smith being in the box as a witness. I am of the view that the document should be admitted pursuant to s. 14B. 30

(Instructions to B.H. Smith tendered and marked Exhibit 35).

MR. BAINTON: Q. Would you please refrain from answering the question I am going to ask you now until my friend has had a chance to object to it. Did the document that you made out accurately set out the instructions you received from Mr. Armstrong. (Objected to). 40

HIS HONOUR: Q. I understand your evidence, is to the effect that this document sets out your instructions?
A. Yes.

HIS HONOUR: I reject your question, Mr. Bainton, and my question can stand in lieu thereof.

MR. BAINTON: Q. Were you given any instructions to put anything that was not recorded on the note? (Objected to; rejected). 50

Q. Mr. Smith, after you had made that note which has now become Exhibit 35 did you have any zerox copies of it made? A. I don't recall.

Q. I don't mean within the last couple of weeks. I mean on 13th December or within the course of the next day or so thereafter? A. I don't recall with

regard to that document. That is a document -- an undated document which I consider was made on 13th, I don't think I did zerox that.

Q. Did you have any particular general custom or habit as to making copies of documents of the nature of Exhibit 35 at that stage? A. I am sorry, I may not have oorrectly answered that previous question. I think that I did make zerox copies of the notes of 8th December 1966 available to Mr. Armstrong, and Mr. Grant, and I could well have done the same in regard to this. I know that do not have any zerox copies in my notes of these particular notes. 10

Q. The first document you mentioned I think is one m.f.i.23. You are unable to say from your present recollection whether at the time you made a zerox copy of Exhibit 35? A. No, I cannot recall at the moment, but I would say that I probably did. 20

Q. Did you do anything about the instructions you had received on the 13th on that day, or subsequently? A. Yes.

Q. What did you do, and when did you do it? A. I telephoned Mr. Barton. I am not sure whether I telephoned the same day or the next day.

Q. Yes. A. I saw Mr. Barton on the 14th.

Q. Do you recall the telephone conversation you had, whether it was the 13th or the 14th? A. No. I would have endeavoured to get in touch with Mr. Barton on the 13th but whether I actually spoke to him on the 13th or the 14th I would not know at this point. I know I saw him at 1.30 on the 14th. 30

Q. If you spoke to him was it for any purpose beyond making an appointment, or have you no recollection at all now of the telephone conversation? A. Yes, I recall that I would have told him that I had been having a discussion with Mr. Armstrong and that he had asked me to endeavour to carry out discussions with him - could he see me. 40

Q. In response to that he did see you, you say, on 14th? A. Yes.

Q. Have you any recollection of where this interview took place? A. I believe to the best of my recollection that it was in my office.

Q. Again can you say what time of the day this interview commenced? A. Yes, at 1.30.

Q. Have you any recollection of how long it lasted? A. I would say longer than an hour.

Q. Well now, who was present at this discussion? A. Mr. Barton and myself. 50

Q. I want to ask you first of all did you make

notes at any time of the discussion you had with Mr. Barton on that occasion? A. Yes.

Q. When did you make them? A. I would have scribbled - I merely scribbled on my pad at the time of the discussion with Mr. Barton, but immediately after he left my office I would have put the correct notes down to record the meeting. I recorded my views of the discussion at the meeting.

Q. Do you have the document with you which are those notes? A. Yes. 10

Q. Would you mind producing that document?
A. I have the original document here, and also a zerox. There is a difference.

Q. I would like first of all to deal with the original that you have? A. Yes.

Q. Will you perhaps take that out of your file at the moment? A. Yes.

Q. It was made, you say, that day? A. Yes.

Q. And is it in your handwriting? A. Yes. 20

Q. Does it record the discussion you had with Mr. Barton. (Objected to: rejected).

Q. It is a note you made after the discussion with Mr. Barton? A. Yes.

Q. Did you have any copy of that note made on that date? A. copy of the note made? A. Yes.

Q. On the zerox machine? A. Yes.

Q. What did you do with that? Did you have a copy, or copies? A. Copies.

Q. What did you do with those copies? A. One of the copies would have been given to Mr. Armstrong. 30

Q. And any of the others? A. No. I would have retained and kept in my own files the zerox. There is a possibility there could have been another zerox that would have been given to Mr. Grant, who was not present, but there was not one given to Mr. Barton.

Q. The original first I would like to deal with?
A. Yes.

Q. I think there is a signature, or what I take to be a signature on it. Whose is that? A. That is my signature. 40

Q. When did you put that there? A. In the presence of Mr. Armstrong.

Q. Well then, did you put it there at the same time as you wrote the note, or subsequently? A. My recollection - this is going back a fair time - I think

I made notes out after Barton left me and before Mr. Armstrong came in. Mr. Armstrong saw me shortly after Mr. Barton.

Q. I will come back to Mr. Armstrong in a moment. There is also some writing on the back of this?

A. Yes.

Q. You saw Mr. Barton? A. Yes.

Q. After he left you you made out this note?

A. Yes.

10

Q. You subsequently saw Mr. Armstrong? A. Yes.

Q. The same day? A. Yes.

Q. Did you have your handwritten note physically with you when you saw Mr. Armstrong? A. Yes.

Q. Was it at that stage, or prior to that, that you put your signature on the note you had made?

A. Subsequent to that.

Q. Subsequent to which? A. I am sorry. Not when Mr. Armstrong first saw me, but later during the period of the conference.

20

Q. It was some time then on the same day? A. Yes.

Q. Sometime elapsed between writing out the note and signing it? A. Yes.

Q. There is some writing on the back of it, Mr. Smith. Can you tell me when that was put on there, and whether or not it relates to the same matter on the front? A. I am sorry, I can't. I have looked at that recently, and I can't recall when I put that on the back.

Q. Does it relate to the same matter on the front?

30

A. In general terms it related to Landmark matters, but I can't recall when I actually put it on the back.

Q. Is there any writing on the back of the sheet of paper which is part of the note which you made on 14th December after seeing Mr. Barton, or is it simply on the same piece of paper? A. It has to do with Landmark affairs, but I don't know when I actually recorded the note on the back.

(Front of document tendered: objected to; ruling on tender deferred).

40

Q. Mr. Smith, you told us that you had this interview with Mr. Barton commencing at about 1.30 on 14th December 1966? A. Yes.

Q. Would you give us to the best of your recollection the conversation that passed between you relating to matters on which you had been given instructions by Mr. Armstrong the preceding day. There were other matters discussed. I am not asking you about them. A. I said to Mr. Barton that Mr. Armstrong had consulted me regarding - (Objected to).

50

Q. Try and put it in the first person. "I said to Mr. Barton "Mr. Armstrong has consulted me...", and so on. A. I said to Mr. Barton "Mr. Armstrong has consulted me in regard to his position in Landmark Corporation. In the first instance Mr. Armstrong had thought that his correct step was to appoint me Receiver. However, after some discussion on the matter Mr. Armstrong agreed that the preferable course for all concerned would be for me to endeavour to negotiate a basis whereby Armstrong's interests in the Company were bought out and the money owing to his Companies was paid." Mr. Barton - I am sorry - I don't have to say exactly what Mr. Barton said, if he just used the word "yes", or something? 10

Q. Do your best to give us what you can recollect of what he said, or as close to it as you can. Perhaps in your own grammar, rather than his, if you find it easier that way? A. Mr. Barton would have said "I see." I replied, "I have been instructed by Mr. Armstrong to suggest that the terms of the settlement should be along the following lines." I would have read out the notes that I had. (Objected to). 20

HIS HONOUR: Q. Mr. Smith, as far as possible try and avoid using "I would have". If you have a recollection of it then say you do; if you do not have a recollection, I think it better not to reconstruct. Do you follow? A. Yes. I then related to Mr. Armstrong - 30

MR. BAINTON: Q. Mr. - A. Mr. Barton the suggested basis of settlement which were in those notes. (Objected to).

Q. What did you say to him, Mr. Smith, so far as you can remember? Perhaps I will withdraw that question, and put another one to you. Did you give Mr. Barton the notes (Objected to; rejected). A. I would have said to Mr. Barton - I am sorry, I said to Mr. Barton that Mr. Armstrong would like him to advise within 48 hours whether or not he could reach agreement on the following basis; first of all, that the \$400,000 owing on the second mortgage over Paradise Waters Limited be paid out; secondly, that \$175,000 be paid for the interest of the Armstrong Company in Paradise Waters Limited, and thirdly that the 300,000 shares in Landmark Corporation Ltd., owned by the Armstrong interests be bought for 60 cents a share. 40

Q. Anything else? A. Yes, quite a lot. I am sorry. 50

Q. I thought you had come to the end of telling us what you put to Mr. Barton that Mr. Armstrong was suggesting, or whatever the phrase was you used? A. Mr. Barton said he agreed in principle.

Q. Before you get onto Mr. Barton's reply, was there anything but those three matters, so far as you can recollect, which you then put to Mr. Barton as being what Mr. Armstrong was suggesting? A. No,

not at that point. Later on in the conversation, yes. That was my first statement to Mr. Barton.

Q. Yes. What did Mr. Barton say to you? A. He said "I agree that the best idea would be for us to negotiate. However, I consider that \$175,000 is too high a price for the interest in Paradise Waters Ltd."

Q. You were about to start telling us - you had started to tell us what Mr. Barton was saying to you, and the last I heard was something about the price for the Paradise Waters interest being too much? A. Yes. 10

MR. BAINTON: Do you remember where you were up to? Perhaps your preceding answer might be read.

(Answer to preceding question*read by court reporter).

MR. BAINTON: Q. Yes. A. "However, I would agree with a figure of \$100,000."

Q. Yes. A. I can only report to the best of my recollection Mr. Barton during the conversation also stated "I would be prepared to grant Mr. Armstrong's interests a number of options to acquire certain blocks of land of Paradise Waters Limited at a price below the list price." 20

Q. Yes. A. I then telephoned Mr. Armstrong - Mr. Barton was still with me - and related what - (Objected to).

Q. What did you say? A. I said to Mr. Armstrong my conversation just reported with Mr. Barton. (Objected to). 30

Q. You will have to go through it again, I am afraid, Mr. Smith. A. I said to Mr. Armstrong as follows: "Mr. Barton has agreed in principle that he is prepared to negotiate with you. He is not prepared to pay \$100,000 (sic) for Paradise Waters Limited. He has suggested that you be granted options to acquire a number of blocks of land on Paradise Waters Limited at a discount." Excuse me, may I look at these notes (Objected to). 40

Q. Do your best at the moment. You are dealing with the conversation on the telephone, Mr. Smith. Will you tell us if there was anything more than you can recollect? A. Mr. Armstrong replied that the suggested discount on the blocks of land did not mean anything. I turned back to Mr. Barton and suggested that he may - I said, "Mr. Armstrong considers the discount should be 40% off list price per block." Mr. Barton agreed - Mr. Barton replied "Yes, I will agree to that." 50

Q. Let me ask you this: At that stage was Mr. Armstrong still on the phone or had you hung up? A. Mr. Armstrong was still on the phone.

Q. Yes, A. I then continued the interview with Mr. Armstrong on the telephone and Mr. Barton in my office. Mr. Barton then said "There are a number of other matters that should be - that will need to be agreed to. Mr. Armstrong will have to make an agreement not to continue to make adverse comments against U.D.C. myself and the other directors of Landmark." My further recollection of his conversation was that Mr. Barton then stated he would let me know on Friday whether he would be able to reach a firm arrangement in line with the discussion. That would have been - 10

Q. Is there anything further you can recollect of what passed either between you and Mr. Barton wherever you were, or over the telephone, while Mr. Barton was there? A. I cannot just at this moment recollect.

Q. Was there any mention at all of repayment of any mortgagees? A. Yes. I am sorry. 20

Q. What was said about that. A. In my discussion with Mr. -

Q. Mr. Barton? A. - Mr. Barton. That the mortgage be repaid.

Q. What do you recall having said about it to him, or what did he say to you? A. This is on the 14th December?

Q. Yes, A. My recollection at the moment on that was that the mortgagees be repaid \$400,000 but he was not going to make any firm arrangement until the Friday. (Objected to). 30

Q. Can you recollect any other matters discussed with Mr. Barton on 14th December 1966 during this interview? A. No, not without looking at the notes.

MR. BAINTON: I seek leave for Mr. Smith to look at the notes he made.

MR. GRUZMAN: May I ask the witness some question on the voir dire?

HIS HONOUR: Yes.

MR. GRUZMAN: (On voir dire). Q. You told us you made some notes on a pad during the interview? 40

Q. I scribbled.

Q. Were the scribbles not notes? A. They would have been thrown away.

Q. I beg your pardon? A. They would have been thrown away.

Q. Just answer the question, please. Did you scribble notes? A. I scribbled notes.

Q. Of what was being said? A. I probably would have put - I usually memorise things - probably would 50

have just put down three or four words; three or four words on each point.

Q. These were notes which enabled you to memorise what had been said, is that the position? A. At the time of the interview with Mr. Barton?

Q. Yes. A. Yes.

Q. Is that right? A. Yes.

Q. Where are those notes now? A. After the interview with Mr. Barton I would have then written these notes which we have before us, and destroyed the scribble. 10

Q. You are prepared to swear you did destroy the scribble? A. Yes.

Q. What did you scribble on? A. Just an ordinary - I am sorry. You are asking me my recollection now of whether I did scribble at that particular interview. I am afraid I cannot recall. I would have - with a thing of this nature I would have written it down in a rough form. 20

Q. Can you swear that you did or did not scribble some notes? A. I would swear that I did.

Q. That you did? A. In this case.

Q. What on? A. On a piece of paper.

Q. Do you have a desk pad? A. Yes.

Q. What form does that take? A. It is a sort of pad that has this sized paper.

Q. Foolscap ruled paper? A. Yes.

Q. Do you say that is what you scribbled on? A. Yes. 30

Q. Do you have a recollection of destroying that document? A. Yes.

Q. For any particular reason? A. Because it was so untidy.

Q. I beg your pardon? A. Because it would have been so untidy.

HIS HONOUR: I am of the view that it is open to the witness to refresh his memory from the document that he prepared on the same 14th December, 1966.

MR. BAINTON: Q. Would you mind look at that note, Mr. Smith, please? 40

HIS HONOUR: For the purposes of identification this is the note which has been tendered earlier in Mr. Smith's evidence and upon which I have deferred ruling as to admissibility.

MR. BAINTON: Q. Having looked at that, do you

recollect any other matters discussed between yourself and Mr. Barton on 14th December at the meeting which began at round about 1.30? A. Yes. Any of the other matters that I have not mentioned on this piece of paper.

Q. Having looked at the list, will you tell us as best you can what conversation you had with Mr. Barton relating to these other matters? A. Mr. Barton said, "Mr. A.E. Armstrong is to resign as director of all companies." Mr. Barton also said "The 300 (sic) shares that the Armstrong interests have in Landmark Corporation-" 10

Q. How many shares? A. "300,000 shares, to be purchased at 60 cents each."

Q. Yes. A. And that a mortgage back to be given - would be given 3 years to pay for them. I then said - informed Mr. Armstrong -

HIS HONOUR: Q. You then said? A. I said to Mr. Armstrong that Mr. Barton would wish him - I said to Mr. Armstrong, "Mr. Barton will want you to resign as director. He will buy the shares for 60 cents each with a mortgage back provided he can have 3 years to pay, and interest-free terms." Mr. Armstrong replied "If he wants 3 years to pay for the shares they must be bought in the names of nine other people in equal parcels as well as himself, and the parcel holder will have to be acceptable to Mr. B.H. Smith." - "to you", I am sorry. "I am to be entitled to receive the current dividend, but not other dividends." 20 30

Q. Well now, what did you say, if anything, to Mr. Barton? A. I beg your pardon?

HIS HONOUR: Q. How did the conversation continue? A. I am speaking to Mr. Armstrong at the moment on the telephone.

MR. BAINTON: Q. Yes. A. Mr. Armstrong said, "I will come down and see you and discuss it further."

Q. Yes. A. So I said to Mr. Barton "I will telephone you back later today." Mr. Barton left. Mr. Armstrong came into my office - 40

Q. Before you deal with that there is one more matter on this. Having looked at the document, are you able to tell us whether there was any discussion about the mortgages with Mr. Barton, and, if there was, what you said to him and what he said to you about any mortgage? A. He said - there were two mortgages. The relationship of the mortgage on the shares purchased - there was to be a mortgage on the shares purchased. 50

Q. Yes. A. And the mortgage debt of \$400,000 was to be paid out, together with interest at 8% per annum as it accrued. That was the mortgage to the Armstrong companies on the Paradise Waters deal.

Q. Was there anything else at all that you can

recollect that you said to Mr. Barton or he said to you in the course of that conversation? In the course of that interview. A. He would have -

Q. If you don't mind, don't use that expression. If you don't recollect say so? A. I don't recall at that point of time anything further at that point of time.

Q. What do you mean by "at this point of time".
A. I will just say this - I am saying now why there is a little difficulty with this evidence is that whilst Mr. Armstrong was in my office I would be talking to Mr. Barton on the telephone and vice versa, and so that recollection is difficult.

10

HIS HONOUR: Q. When you used the phrase "at this point of time" you mean today, 20th June, 1968?
A. At this moment.

(Luncheon adjournment).

AT 2 p.m.

HIS HONOUR: Q. You are still on your former oath Mr. Smith? A. Yes.

20

(Front of document formerly tendered by Mr. Bainton, re-tendered under Section 14B).

HIS HONOUR: In my view the document is admissible under S. 14B.

(Record of negotiations of 14th December 1966 tendered and marked Exhibit 36. It is noted that the face of the document only is admitted).

MR. BAINTON: Q. Did you make any zerox copies of these notes? A. Yes.

30

Q. Will you tell me what you did with the copies that you so zeroxed, and when? A. I retained one.

Q. Yes. A. The zerox copy of the original I retained. I retained one, and would have handed - I am sorry, I handed one to Mr. Armstrong.

Q. When did you do this? A. On the same day, 14th December 1966, when Mr. Armstrong saw me.

Q. Well now, Mr. Armstrong did in fact see you on that day, may I take it, after your discussion with Mr. Barton? A. I reported earlier today my discussion with Mr. Barton, which was in person (Objected to).

40

Q. Did you actually see him, or was this done on the telephone? A. I saw Mr. Armstrong.

Q. After you had seen Mr. Armstrong did you have any further discussions, either in person or by telephone, with Mr. Barton on the same day? A. Yes.

Q. Did you see him again, or ring him up? A. After making out the notes I rang him up.

Q. Yes. A. I read the notes through to Mr. Barton.

Q. What are you referring to as "the notes"? A. It would have been the original notes that were tabled at the Court which was the last exhibit, except there are a few words on the right-hand side half-way down which were not in it at the time I first rang Mr. Barton.

Q. Can you tell us which of the words on the document were not in it when you rang Mr. Barton. 10

A. "And vice versa subject B.H.S. approvals."

HIS HONOUR: Q. When did you ring Mr. Barton?

A. Prior to Mr. Armstrong seeing me after I had written the notes out.

Q. That is on the 14th December? A. Yes.

MR. BAINTON: Q. This document, Exhibit 36, you say you read to him? A. I read that document to him, but at the time I read it to him it did not contain the words I have just mentioned.

Q. After you had done this what was said by either of you? A. I said to Mr. Barton "I would like to read out to you my understanding of our conversation earlier today". 20

Q. Yes. A. I then read out these notes. Mr. Barton replied, "Yes, I understand. I will let you know on Friday."

Q. Was anything more said between you then?

A. Not at that point of time.

Q. Did you make use of the Zerox copy of that note for any particular purpose yourself? A. Well, I have one of the original zerox copies of the notes that I made out in this file here. 30

Q. Is there anything on that that is not on the original? A. No.

Q. Would you perhaps produce the Zerox copy?

A. This is the zerox copy.

Q. I think there is some handwriting on it?

A. The handwriting is also on the original. It was written on this zerox and also written on the original afterwards. The original also has telephone numbers on it which are not on this. 40

Q. Were these matters written on written there on the same day, 14th? A. Yes.

(Zerox copy tendered; objected to).

HIS HONOUR: The copy which is tendered is not said to be objected to upon any ground other than the objections taken to the document, Exhibit 36, which I have already admitted. There are other grounds for objecting to this document and which would in my view, lead to it being rejected, but these other grounds are not taken, and the document is accordingly 50

regarded by plaintiff's counsel on exactly the same footing as Exhibit 36. This being so, the document is admitted in evidence and will be Exhibit 37.

(Copy record of negotiations, 14/12/66, admitted and marked Exhibit 37).

MR. BAINTON: Q. After the 14th when did you next either see or speak to Mr. Barton? A. I saw Mr. Barton on the 16th, at 9.30.

Q. Where? A. In my office.

10

Q. Are you able to say how long he was with you on that occasion? A. I can only say it would be more than an hour.

Q. I am sorry. A. More than an hour.

Q. Did he bring anything with him? A. Yes.

Q. Did he leave with you what he brought?
A. Yes.

Q. Do you still have it? A. Yes.

Q. Would you mind producing that? A. Yes (produced).

20

Q. You have handed me three documents. Are they the documents Mr. Barton brought to you and left with you? A. Yes.

Q. One has blue ink writing on it, and one has some green ink writing on it. Was any of that writing on those documents when Mr. Barton brought them to you? A. There was no writing on the cash summary, which is the first document you have. There was no writing on that. I believe the green ink was on.

30

Q. You think it was on? A. I don't recall.

Q. Would you mind telling us what Mr. Barton said to you on that occasion, and what you said to him?
A. Mr. Barton said he was not able to commit himself to a firm arrangement in terms of the discussions held on 14th December.

Q. Yes. A. "I have seen Mr. Honey and I thought he might have assisted the company."

Q. Yes. A. "I have here a cash forecast of the Company from December 1966 to February 1967".

40

Q. Yes. A. He then handed me this.

Q. That is the document which now has blue ink writing on it? A. Yes.

Q. Yes. A. "I would like you to put a proposal to Mr. Armstrong as follows: that the \$500,000 becomes payable on 30th April 1967; that the mortgage on the Paradise Waters Limited Estate is

released, and Mr. Armstrong's companies accept second mortgages on Paradise Towers Units - 17 Paradise Towers units - and Landmark House." (Objected to).

Q. Put all the documents you have in front of you underneath the folder.

HIS HONOUR: I think it might be as well, Mr. Smith, to put the other files back into your brief case for the moment, if you have it there. 10

WITNESS: I am sorry, I have lost track.

(Answer to last question on page 454 of transcript read by court reporter).

"In addition, at any time prior to April, 1967 the penthouse unit in Paradise Towers, which has a list price of \$80,000, can be acquired by Mr. Armstrong or Mr. Armstrong's companies, the consideration being credited against the liability of \$500,000. The previous arrangement in regard to the option to acquire blocks - 30 blocks of Paradise Waters at a 40% discount will apply, and the 300,000 Landmark shares will still be acquired by - will still be acquired for 60 cents a share." 20

MR. BAINTON: Q. Anything more that you can recollect? A. I cannot recollect anything more at the moment. I am sorry - I cannot say that - there was a conversation that lasted for more than an hour relative to these papers.

Q. I will come to those in a minute. You mentioned twice a sum of \$500,000. Was that described in any way. A. Yes. The \$500,000 represented - (Objected to). 30

HIS HONOUR: Mr. Smith, as far as possible will you recount anything you recollect that was said about the \$500,000.

MR. BAINTON: Q. Who said anything at all about \$500,000, and what did the person say? A. Mr. Barton said that the \$500,000, which represented \$400,000 owing on mortgage and the \$100,000 consideration for the 40% interest in Paradise Waters, would be paid on 30th April 1967. 40

Q. Yes, Do you recollect any other conversation at all? A. Not at the moment, I would have then said to Mr. Barton "I will let you know in due course. I will confer with Mr. Armstrong."

Q. Was any mention made in the course of the conversation about a rate of interest? A. I don't recall at the moment.

Q. You told me there was some discussion about the three documents that you still have in front of you. Will you tell me what you recollect of that discussion. (Objected to: allowed). 50

Q. There is some handwriting on the document headed "Landmark Corporation Cash Forecast".

A. Yes.

Q. Whose handwriting is it? A. Mr. Armstrong's.

Q. All of it? A. No. There are parts of the handwriting which are Mr. Armstrong's; there are other notes on the document which are my handwriting.

Q. Just confining yourself for the moment to the ones which are your handwriting, will you tell us when you made them? A. I believe that they were made either later that day - that was 16th December - or on 19th December. 10

Q. And those notes that are in the handwriting of Mr. Armstrong - will you tell us when they were made? A. They were made - (Objected to: rejected).

Q. The document you have now got in front of you that Mr. Barton brought in - has it ever left your possession? A. No.

Q. How did it come about that Mr. Armstrong was able to write in it? A. Mr. Armstrong came and saw me on 16th December. 20

Q. When did he write on the document? A. I had the document down on the table between us, and he then wrote on it.

Q. It was made on the same day that it was brought into you? A. Yes.

Q. Did you, either on the 16th or at any time afterwards, make notes of the conversation you had on the 16th with Mr. Barton? A. Yes. 30

Q. Do you have them with you? A. Yes.

Q. Are they in your briefcase? A. Yes.

Q. Would you mind getting them out for us?
A. In answer to your question, the nature of my conversation with Mr. Barton finished at where "Paradise Waters" finishes.

Q. On that document that you have now produced?
A. Yes.

Q. When did you make the note of this document down to the words "Paradise Waters". A. Immediately after speaking to Mr. Barton. 40

Q. When did you do the balance? When did you add the balance of the note? A. Whilst speaking to Mr. Armstrong.

Q. On which occasion? A. That same day.

Q. Whose signature appears on the bottom? Perhaps you had better look again? A. Mr. Armstrong's.

Q. What was the purpose of the writing on the

document below the words "Paradise Waters". A. I got Mr. Armstrong to sign because Mr. Barton had said - this is my recollection now - the purpose of the writing was - (Objected to).

Q. The question I put was, what was the purpose of adding the writing to the document below the words "Paradise Waters". (Objected to; allowed).

A. The writing where it relates to the finance of the Rozelle property and the other conditions under them were written because Mr. Armstrong did not agree with the matter contained above without these conditions being included. The signature of Mr. Armstrong was added because Mr. Barton had said to me that morning that Mr. Armstrong changes his mind every day - "Mr. Armstrong changes his mind a lot." So I thought it might help negotiations if I got Mr. Armstrong to sign it. 10

(Three documents brought by the plaintiff to B.H. Smith on 16/12/66 tendered and marked Exhibit 38). 20

(Document written by Mr. B.H. Smith on 16/12/66 tendered; objected to).

HIS HONOUR: In my view so much of the documents as purports to record matters discussed between Mr. Smith and Mr. Barton is admissible under s. 14B.

Q. In order to avoid any argument about where the line comes, Mr. Smith, if I give you a ruler and a red pencil would you rule a line across the document separating that which purports to record the substance of the discussion with Mr. Barton from that which purports to record what Mr. Armstrong said. A. Yes. 30

(Latter portion of document written by B.H. Smith on 16/12/66 tendered: objected to).

HIS HONOUR: I think the latter part of the document falls within the ruling I have given in regard to Exhibit 35.

(Document written by B.H. Smith on 16/12/66 admitted and marked Exhibit 39). 40

HIS HONOUR: I will have it noted that the upper portion above the red line concerns the discussion between Mr. Smith and Mr. Barton on 16th December; the portion below concerns the discussion between Mr. Smith and Mr. Armstrong on 16th December.

Q. Whose signature do you say that is in the margin of Exhibit 36? A. That is my signature.

MR. BAINTON: Q. Mr. Smith, you told us that this discussion with Mr. Barton took about an hour, as you recollect, and began about 9.30 in the morning? A. Yes. 50

Q. You said you had a discussion with Mr. Barton,

and you made a report about it, I take it?

A. Yes.

Q. Did you on the same day - I think you have already told us you did - see Mr. Armstrong?

A. Yes.

Q. He came to your office? A. Yes.

Q. Was there anyone with him when he came?

A. Not to my recollection.

Q. Do you recollect whether or not Mr. Armstrong brought with him any document at all? A. Yes. 10

Q. Do you have the document that Mr. Armstrong brought with him? A. Yes.

Q. Would you mind producing the document Mr. Armstrong brought with him (produced).

Q. Was this piece of paper just like this? A. Yes.

(Above document m.f.i.24).

Q. Did you have any further discussion on that day, whether in person or by phone, with Mr. Barton?

A. I believe it was either after I had seen Mr. Armstrong that day or on the 19th January - December. The 16th was a Friday. 20

Q. On the occasion that you say was either the Friday or the following Monday when you had an interview with Mr. Barton, was it face to face, or a telephone conversation? A. Face to face.

Q. Where did it occur? A. I ~~believe-it-was-in my-office.~~ (Objected to: answer struck out as indicated).

Q. Are you able to tell us approximately when and approximately the time it lasted? A. No. 30

HIS HONOUR: Q. Do you recollect where it was?

A. I am sorry, I don't remember whether it was at his office or our office.

Q. It is necessary to draw a distinction between recollection and reconstruction. Recollection you may give permissibly as evidence; reconstruction no, not unless asked for. Do you follow the distinction?

A. Yes.

MR. BAINTON: Q. Have you any recollection of where it took place? 40

HIS HONOUR: I think Mr. Smith has already said he is not sure.

MR. BAINTON: Q. What is your recollection of what was said on this occasion between yourself and Mr. Barton? A. I said to Mr. Barton that Mr. Armstrong was not prepared to accept the proposal he had put - "He has questioned your cash statement." I would have asked. (Objected to).

HIS HONOUR: So that you may again understand the distinction, Mr. Smith, reconstruction is not something which can permissibly be given. The use of the word "would" inevitably purports reconstruction, and that is the reason why there is constant objection. Recollection is admissible; reconstruction is not, so that that is the dividing point. If you cannot recollect, there is no need to try and reconstruct; if you can recollect then you are within admissible limits in saying so. 10

WITNESS: "Mr. Armstrong does not think the money will be there - will be available at 30th April." Do you think, Mr. Barton, it would help if I went down and saw U.D.C.?" Mr. Barton replied, "Yes, I think that would be a good idea." The only other recollection - that is my recollection of the meeting that day.

MR. BAINTON: Q. I think you said a moment ago "That is my recollection of the conversation that day". 20
A. Yes.

Q. Is there anything more that was said on that occasion between yourself and Mr. Barton that you can recollect? A. No.

Q. Well now, did you make a note on this occasion of your discussions with Mr. Barton? A. Not of my discussions. I made some alteration on the cash statement - the cash budget.

Q. That is the document which has now become part of Exhibit 38. A. And on 19th December I did make a note of my conversation with Mr. Barton. 30

Q. Have you got that note? A. Yes, I made that note on the 19th.

Q. Before I deal any further with that, you referred in that conversation to going to see someone at U.D.C. Corporation? A. Yes.

Q. Did you in fact do that? A. Yes.

Q. When did you do it? A. At 2.30 on the 19th.

Q. Have you any recollection whether the notes you have just produced was made before or after you went to see representatives of U.D.C. A. I am sorry - whether this is reconstruction or recollection I can't tell you. 40

Q. If you can't tell me, say so? A. I can't tell you.

(Document dated 19th December 1966 written by B.H. Smith tendered; objected to).

HIS HONOUR: Q. Mr. Smith, you say this document was prepared by you after you saw Mr. Barton on 19th December? A. No, I would have seen Mr. Barton either on the 16th or the 19th. It was on the 19th that I wrote these notes. I also wrote other notes on the 19th and this time - thinking about what I 50

just tendered - I believe these other notes probably should be tendered also, because they do include explanations given by Barton to the questions I asked him on the cash budget. I wrote those notes on the 19th - the Monday.

Q. You made all the notes on the 19th? A. Yes. I was recapitulating the position.

Q. I thought you said you saw Mr. Barton on the morning of the 19th? A. No, I saw Mr. Barton at 9.30 on the 16th. 10

Q. Yes. A. Subsequent to that I would have seen Mr. Armstrong.

Q. Yes. A. Subsequent to that either on the Friday or the Monday, I saw Mr. Barton.

Q. At all events, the sequence was on the 16th, and possibly the 19th, it was Barton you saw?
A. Yes.

Q. And Armstrong? A. Yes.

Q. And then Barton? A. Yes. 20

Q. And then the notes were prepared on the 19th.
A. Yes. These other notes would also include statements made at the relevant time with Mr. Barton.

HIS HONOUR: Mr. Bainton, insofar as that is a partial record I do not know whether you want to add to it the other documents, or whether you want me to rule on it separately.

MR. BAINTON: The other documents appear to me that they ought to be tendered separately.

HIS HONOUR: I am of the view that the document ought to be admitted. 30

(Document written by B.H. Smith, 19th December 1966, admitted and marked Exhibit 40).

MR. BAINTON: Q. You saw Mr. Barton in the morning of the 16th? A. Yes.

Q. You put that at 9.30? A. Yes.

Q. Later on that day you saw Mr. Armstrong?
A. Yes.

Q. You saw Mr. Barton again - either, you said, the 16th or the 19th? A. Yes. 40

Q. But after you saw Mr. Armstrong on the 16th, is that the sequence? A. Yes.

HIS HONOUR: Q. Mr. Smith, what I don't understand is this. The document, Exhibit 39, you say was prepared on 16th December. That is a Friday. It contains notes up the top of your discussion with Barton? A. Yes.

Q. And below the red line your discussion with Armstrong? A. That is right, yes.

Q. So that it was not completed on the 16th prior to you having seen both of them? A. No, because the bottom half was written when I saw Armstrong.

Q. The next thing that happened was that you saw Mr. Barton either later again on the 16th or Monday the 19th? A. That is right.

Q. And then you prepared - it was after you saw Mr. Barton you prepared this document which bears date 19th? A. Yes. 10

Q. Well now if you look at this document Exhibit 40, just above the figure "3", there is an entry which rather suggests you had seen or spoken to Mr. Armstrong again before preparing the document Exhibit 40. You see the note, "This was rejected by Armstrong." Do you follow? A. No, I don't agree, your Honour. This top part here. -

Q. Of Exhibit 39? A. Yes. This was rejected by Armstrong because he insisted on these other conditions. I think this purports to be it. 20

Q. In Exhibit 40 the note "This was rejected by Armstrong" is a note of what you actually told Mr. Barton when he put to you that proposition is it? A. Yes. I believe that this Number 2 represented this, but it was rejected by Armstrong.

Q. The note on Exhibit 40 "This was rejected by Armstrong" refers to Mr. Armstrong's rejection at the foot of Exhibit 39 of the proposition contained at the top of Exhibit 39? A. Yes. 30

Q. What I want to know is whether the note in Exhibit 40 "This was rejected by Armstrong" is a note of your having said that to Mr. Barton, or that a note merely for your own convenience? A. I did say that to Mr. Barton.

Q. I would like you to look at the matter appearing in Exhibit 40 under the figure "3" in a circle, and tell me if, having looked at it, you have further recollection of any discussion? A. No, I can't recall any further discussion except, as I explained to his Honour, 19th December I made these notes of where I considered the position stood from what Barton had proposed. 40

MR. BAINTON: Q. You indicated that on the 19th you went to U.D.C. A. Yes.

Q. Who did you see there? A. Mr. Honey.

Q. Have you any recollection of the time of day that you went to see Mr. Honey, or how long you spent there? A. 2.30 in the afternoon, Probably about a little over half an hour. 50

Q. Were there any other persons at this discussion? A. No.

Q. Did you make a note of the discussion? A. Yes.

Q. Again, a handwritten note? A. Yes.

Q. Do you have that in your file? A. Yes.

Q. Will you identify it please? A. Yes. (document produced).

Q. When did you make it? A. On the night of the 19th.

Q. Monday evening? A. Yes.

Q. Note made on 19th December m.f.i.25. 10

(m.f.i.25 tendered: objected: rejected).

Q. After returning from this discussion with Mr. Honey did you talk again on that day with anybody else about the subject matter of what you had discussed with Mr. Honey? A. I don't recall.

Q. This was the 19th. On that day did you see either Mr. Barton or Mr. Armstrong, or talk with either of them on the telephone? A. I have previously said I may have seen Mr. Barton on the 19th. 20

Q. I mean after you came back from U.D.C.? A. I don't recall.

Q. On the evening of the 19th did you prepare a handwritten assessment of the situation as you then saw it? A. Yes.

Q. Do you have that document with you? A. Yes.

Q. Will you produce that? A. Yes. (Produced).

Q. This is a document consisting of five pages of your handwriting, is it? A. Yes.

(Document of five pages m.f.i.26). 30

Q. Did you have any copies prepared of that?
A. Yes.

Q. What did you do with the copies you had taken?
A. They would have gone to Mr. Armstrong.

Q. When did you next either see or speak with anyone in connection with these matters? A. On the 20th.

Q. Who did you then see? A. I saw Mr. Armstrong.

Q. Can you tell us the time of the day at which you saw him, approximately? A. I don't recall. I have my diary here. I don't know if there is a diary note. 40

Q. You have no recollection without looking at your diary? A. Not without looking, no.

MR. BAINTON: I ask for leave for Mr. Smith to refresh his recollection from his diary.

HIS HONOUR: Q. You have a diary note made at the time? A. Yes, I have diaries here. But I also have it in that form.

HIS HONOUR: Mr. Gruzman, do you have any objection?

MR. GRUZMAN: No.

HIS HONOUR: You may look at your diary. Look at the original.

10

MR. BAINTON: Q. Tell us what page it is, and, having had a look at it tell us what time it was. A. Eleven o'clock on 20th December.

Q. Now, what is the page of the book you were looking at for that purpose?

HIS HONOUR: A. It is the day for 20th December 1966, is it? A. Yes.

MR. BAINTON: Q. Have you any recollection of how long the interview lasted on that occasion? A. No, not offhand.

20

Q. Who was there? Anybody apart from yourself and Mr. Armstrong? A. I don't recall at the moment.

Q. Did you give Mr. Armstrong anything? A. I gave him a zerox of these notes of 19th December.

Q. That is a Zerox of the document which has been m.f.i.26? A. Yes.

Q. On the 20th did you have any other discussions, either in person or by telephone, with either Mr. Barton or Mr. Armstrong about these matters? A. On the 20th, I don't recall, no.

30

Q. Well, with anybody else about these matters on the 29th? A. No, not that I can recollect.

Q. When did you next have any discussion concerning these matters with either Mr. Barton or Mr. Armstrong or anybody else? A. On 21st December.

Q. Who did you have a discussion with on that occasion? A. With Mr. Barton.

Q. Was this face to face, or by telephone? A. Both.

Q. Which was first? A. By telephone.

Q. What was said between you over the telephone in that conversation? A. Mr. Barton said, "Mr. Armstrong is calling a meeting of Paradise Waters, which is not in accordance with the discussions. I have Mr. Cec. Coleman with me, and he tells me that U.D.C. are making out documents of appointment of a Receiver."

40

Q. Yes. A. I replied "Would you like to come and see me?" Mr. Barton said, "yes". I said, "Will you

get Mr. Coleman to come with you?" So Mr. Coleman and Mr. Barton came to my office.

Q. Are you able to tell us approximately the time they came? A. No.

Q. Morning or afternoon? A. Morning, I think.

Q. Well now, having come to the office, what was said? A. I did make notes of the conversation on that day - the happenings of that day.

Q. Before you look at those will you give us the best of your recollection of what was said at this meeting with Mr. Barton and Mr. Coleman. A. Mr. Coleman said to me "I have heard that U.D.C. are going to put a Receiver in," and I replied, "Well, I believe that a successful negotiation could be concluded between the parties. Everybody concerned should do their best to see that the appointment does not occur." 10

Q. Yes. A. Now that is my recollection of the conversation with Mr. Coleman as a party. 20

Q. Do you mean Mr. Coleman then left, or did he remain, or what happened? A. I think he may have left. He could have left. I am sorry, to the best of my recollection I think he left. Mr. Barton then submitted a further proposal to me, saying that as far as Landmark were concerned they would sell him their 60% interest in Paradise Waters for \$150,000 ~~and then continued with further details of a proposal on that basis.~~ (Objected to: by direction portion indicated struck out.) 30

Q. Tell us what he said? A. Well, he said "The other part of the arrangement between us can be along similar lines as before." I am sorry. I am not sure. I think you should strike that out. I am trying to get a recollection of the conversation. I will leave it that I said - that Mr. Barton stated "Landmark Corporation will buy the 60% interest in Paradise Waters." I am sorry, Mr. Barton said "We will sell our 60% interest in Paradise Waters to Mr. Barton (sic) for \$150,000. If we come to an arrangement on this basis I think we can avoid U.D.C. proceeding for a Receivership". That is my recollection of the conversation at the time. 40

Q. Did you make a note of the conversations you had that day with Mr. Barton and Mr. Coleman?
A. Yes.

Q. When did you make it? A. On that day.

Q. Do you have it there? A. Yes.

Q. Again, it is handwritten? A. Yes.

Q. Will you produce that, please? A. Yes. 50

Q. That is a document consisting of two pages?

MR. BAINTON: I seek leave for Mr. Smith to refresh his recollection from that document.

MR. GRUZMAN: May I ask the witness some questions on the voir dire?

HIS HONOUR: Yes.

MR. GRUZMAN (On voir dire). Q. I don't quite follow when in relation to the conversation you wrote this document? A. Afterwards.

Q. Well, how long afterwards? A. Well, shortly afterwards. An hour or two afterwards.

Q. An hour or two afterwards. Did you have some notes at the time? A. No, I don't think so. Wait there. I am sorry, I could have. 10

Q. You don't know whether you did or you didn't. I vividly recall writing the first note - the first two or three lines there was when Mr. Barton rang me up, and I wrote them directly.

Q. The first two or three lines of the document were written while Mr. Barton was speaking to you, is that right? A. Yes.

Q. And the remainder of the document - A. I am sorry, not while he was speaking to me. Immediately after he was speaking to me on the telephone I wrote it down on the pad. 20

Q. You mean within a matter of a minute or two? A. Yes.

Q. You wrote that down on your pad? A. Yes.

Q. And that pad, or the papers in it, has now become this document? A. Yes.

Q. Then what did you do with the pad? A. It would just lie on the desk somewhere. 30

Q. Did you talk to anyone else after speaking to Mr. Barton? A. Yes.

Q. Who did you speak to? A. I usually have a number of pads. I usually have about four or five pads.

Q. After speaking to Mr. Barton on the telephone did you speak to anybody else in connection with this matter in respect of which notes appear on this document. (Objected to: rejected).

HIS HONOUR: I am satisfied that the document was contemporaneous. The witness may refresh his recollection from it. 40

MR. BAINTON: Q. I think perhaps you might read it first, and then, having read it, give us your recollection of the conversation with Mr. Barton? A. I cannot actually recall the exact conversations.

Q. As best you can, with the aid of what you have seen in that document? A. With this in front of me?

MR. BAINTON: I will tender the document.

Q. Perhaps, before I do that, on the second page there are two names and two numbers. Were they written there when the rest of the document was made out, or have they been added at some other time?

A. They would have been added afterwards.

MR. BAINTON: I will exclude them from the tender. I tender the document. (Objected to).

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HIS HONOUR: Q. Am I correct in my impression, Mr. Smith, that this was prepared as an accurate record of your conversation with Mr. Barton and Mr. Coleman, and later with Mr. Barton later on on 21st December 1966. A. Yes.

Q. With the exception of what Mr. Bainton has drawn your attention to on the second page? A. Yes.

HIS HONOUR: I am of the view that the document is admissible.

(Document written by B.H. Smith, 21st December 1966, tendered and marked Exhibit 41).

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MR. BAINTON: Q. Mr. Smith, did you make any copies of this document which is now Exhibit 41? A. That is the one dated 21st? I have no recollection of whether I made a copy or not. You mean at the time of course?

Q. Yes. I don't mean of recent days, but on the 21st or 22nd or thereabouts? A. I have no recollection.

Q. After this discussion with Mr. Barton did you have any discussions with anybody else? A. On 22nd December.

30

Q. I am sorry, before we come to the 22nd. On 21st? A. I have no recollection.

Q. Well then, on the 22nd did you have any discussion with anybody? A. Yes, I had a discussion with Mr. Armstrong.

Q. Can you tell us where this occurred, the time it occurred, and how long it took? A. In my office. May I refresh my memory. (Objected to: question withdrawn).

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Q. About how long was he there? Do you recollect that? A. I cannot recall offhand. I think it was - I can't recall offhand.

Q. You had a discussion with him, I take it? A. Oh yes.

Q. Did you either give or show him anything in the course of this discussion? A. I would have shown him - wait a second. I am just trying to recollect. I would have shown him the notes of 21st December. I would have shown him the notes of 21st December.

50

Q. What is your best recollection? A. To the best of my recollection I showed him the notes of 21st December.

Q. Who arranged this discussion between you and Mr. Armstrong? Have you any recollection of that?

A. Yes. I telephoned him.

Q. And asked him to come and see you? A. Yes.

Q. In the course of this discussion between you did Mr. Armstrong do anything, apart from speaking to you? A. He also had some notes of 22nd December.

10

Q. Did he bring them with him? A. Yes.

Q. Well now, was anything done with them? A. He handed them to me.

Q. Did you do anything with them? A. I still have them.

Q. You still have the notes, have you? A. Yes.

Q. Will you perhaps identify those for us, please?

A. Yes. (Notes produced).

Q. Did Mr. Armstrong say why he was giving you that document (Objected to: admitted).

20

Q. Did Mr. Armstrong say why he was giving you the document? A. Yes.

Q. What did he say? A. "Here is a suggested course which might prevent - which could prevent U.D.C. from putting in a Receiver."

Q. What were you to do about it? A. Mr. Grant was with him at the time.

Q. Yes. A. I said "I think it would be better for Mr. Grant -

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HIS HONOUR: Mr. Gruzman, I take it you want your objection to extend to all of this?

MR. GRUZMAN: Yes.

HIS HONOUR: Q. Mr. Smith, I am only prepared to admit so much as involved instructions Mr. Armstrong may have given to you for the conduct of negotiations - not advice or anterior discussions between yourself and Mr. Armstrong prior to his actually giving instructions. Do you follow the distinction? A. Yes.

40

Q. So far as possible will you keep that in mind when giving this conversation? It may be that the earlier part of the conversation ought to be omitted altogether.

HIS HONOUR: I will leave that to you, Mr. Bainton.

MR. BAINTON: Q. Mr. Armstrong gave you this piece of paper, and in effect said he would like you to

do something about what was written in it? A. No. He tabled the piece of paper. There was a suggestion he made to me - or discussion.

Q Without going into what was actually said, you gave him some advice about it, or said what you thought ought to happen? A. Yes.

Q. Did you in fact personally communicate what was on that piece of paper to anybody? A. No.

(Notes of 22nd December 1966 by Mr. Smith m.f.i.27). 10

Q. This was the 22nd. I think perhaps on reflection I would ask you to look at your appointment book for the 22nd and tell me if you can, what time it was Mr. Armstrong came to see you. I take it you will want to look at your entries for 22nd December 1966. A. Yes. It was 10 a.m. in the morning.

Q. Well now, did you have any other discussions on 22nd with any person concerning these matters you talked about earlier in the day with Mr. Armstrong? A. No. 20

Q. Did you have any further discussions at all with anyone concerning these matters before Christmas, after the one of the 22nd? A. I don't think so.

Q. I think you personally were not in Sydney between Christmas and New Year? A. No.

Q. When did you return to Sydney? A. I am not sure, but I was in Sydney on 3rd January.

MR. BAINTON: I will have the 1966 diary marked for identification. 30

HIS HONOUR: I don't think that that is necessary.

MR. GRUZMAN: May I look at the diary please?

HIS HONOUR: You can look without penalty at what he has refreshed his memory from, and those are the pages which Mr. Smith will flag. Mr. Smith, would you put a piece of paper at the opening of the pages at which you looked to refresh your recollection.

MR. BAINTON: Q. You say you were back in Sydney on 3rd January? A. Yes. 40

Q. I think that in fact was a Tuesday in 1967? A. Yes.

Q. Did you see or speak to anybody concerning these matters on that day? A. Yes.

Q. Who did you see? A. I saw Mr. Barton.

Q. Was this face to face? A. Yes.

Q. Can you tell us where you saw him, and when,

and for how long? A. I would have to refresh my memory by looking at the diary.

Q. I think you have your 1967 desk appointment book with you? A. Yes.

Q. Without looking at that can you remember the time at which you saw Mr. Barton? A. No.

MR. BAINTON: Might Mr. Smith be permitted to refresh his recollection from an entry of 3rd January in his 1967 book? 10

HIS HONOUR: Yes.

WITNESS: 2.30 on 3rd January I would have seen him at Landmark office.

MR. BAINTON: Q. Can you tell us how this interview came about? In other words, who arranged it? A. Well, the way matters were left before Christmas was that I was going out of Sydney ~~and when I came back I would get in touch with him I rang Mr. Barton.~~ (Objected to: by direction portion indicated struck out). 20

HIS HONOUR: Q. The question was who arranged this meeting of 3rd January? A. I would have. I telephoned Mr. Barton.

MR. BAINTON: Q. Why did you telephone Mr. Barton? (Objected to: rejected).

Q. Can you recollect what was said in the course of the telephone conversation with Mr. Barton on the 3rd January? A. "When would it be convenient. Mr. Barton, for us to get together?"

Q. What did he say? A. Mr. Barton said, "I will be available at 2.30. 30

Q. Yes. Any more said? A. No.

Q. How did you know where to go? A. I knew where his office was.

Q. You expected to have to go to his office? A. I see. I am sorry. Well naturally I said "I will come - "I said, "I will come down to your office."

Q. When you got there did you have a discussion with Mr. Barton? A. Yes. 40

Q. Were there any other people at this discussion? A. I cannot recall anybody else - just myself and Mr. Barton.

Q. Well now, how long did the discussion last, do you recollect? A. More than an hour.

Q. Did you, either at or subsequent to the discussion, make some notes of what was said? A. Yes.

Q. When did you make those notes? A. At the finish of that day.

Q. On the evening of that day? A. Yes.

Q. On the evening of 3rd January? A. Yes.

Q. Do you have them with you? A. Yes.

Q. Will you please produce them? A. These might not be originals. These might be zerox of the originals at the time.

Q. Produce for us, if you will, what records of that conversation you have got. (document produced).

Q. Before I deal any further with this document, can you tell me what happened to the original handwritten document? A. No. 10

Q. Can you tell me when that xerox copy of it was taken? A. I believe I wrote out these notes on the night of 3rd January and that I xeroxed them - I am sorry, I wrote them out on the same day as the interview. Having written them out I xeroxed the notes, and I would have seen Mr. Armstrong.

Q. Have you looked for the original handwritten document? A. I have not got it. 20

Q. You have looked for that, and you have not got it? A. Yes.

Q. The one in front of you, apart from being a xerox copy, has in fact got some handwriting on it? A. Yes.

Q. Whose handwriting is it? A. That is my handwriting.

Q. Can you tell me when it was put there? A. Yes when I discussed these notes with Mr. Armstrong.

Q. When was that? A. On the 3rd. 30

Q. On the same day? A. Yes.

Q. Perhaps you might turn that note right over so that you cannot read it. What was the conversation that you had on the 3rd with Mr. Barton, so far as you are able to remember?

MR. GRUZMAN: Might it be noted that the witnesses notes were before him in the witness box and he was reading them for some three minutes.

HIS HONOUR: It can be noted that he has had the notes before him in the witness box. Whether he read them or not I have no idea. 40

MR. BAINTON: Q. Did you read them, Mr. Smith? A. Not just then, no.

Q. What is your recollection of your discussion with Mr. Barton on 3rd January? A. This is when I went down to the Landmark office?

Q. Yes? A. I find it very difficult to recall. When I make notes out at the time, as I do here continually, I could quite easily reconstruct.

Q. I don't want you to do that. I want you to tell me what you can recollect, if you can recollect anything? A. I recollect one thing that I said to Mr. Barton. I said to Mr. Barton "One of the arrangements I have made with you - which I made with you before Christmas was that someone from our firm should investigate some of the records of Landmark Corporation before we come to any decision on whether we accept a directorship". Mr. Barton said, "Well, that is all right. That can start any time". I cannot recollect the other portions of the conversation. I know the sense and essence of them. I know that I discussed what is in these notes with Mr. Barton.

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HIS HONOUR: Q. You discussed with Mr. Barton?
A. What is recorded in these notes, yes.

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MR. BAINTON: Q. How long after this discussion did you make the notes? A. That same day.

(Document written by B.H. Smith on 3rd
January 1967 tendered; objected to;
admitted and marked exhibit 42)

(Witness stood down)

(Further hearing adjourned for mention on
Friday, 21st June, 1968.

BARTON v. ARMSTRONG & ORS.

SEVENTEENTH DAY: TUESDAY, 30TH JULY 1968

(Mr. Bainton announced the appearance of Mr. Goldstein with Messrs. Staff, Q.C., Bainton and Bruoe for the first to sixth defendants).

(Mr. Young announced an appearance for the eighteenth defendant, John Osborne Bovill). 10

(Mr. Bainton sought to move on a motion for release from undertakings).

HIS HONOUR: It is most inconvenient that I should permit the hearing of this suit to be interrupted at this stage to hear a motion seeking release from some of the undertakings which were given pending the final determination of the suit. Already the hearing has occupied a considerable time, and it is apparent that there remains a considerable volume of evidence yet to be adduced upon the main hearing. I am reluctant in the extreme to permit any interruption of the ordinary progress of the hearing of this suit on the ordinary suit days, that is to say, on Tuesdays, Wednesdays and Thursdays of each week. 20

Mr. Bainton presses upon me that the motion has been adjourned until today, and that it should be heard by reason of the prejudice to A.E. Armstrong Pty. Limited. I find it difficult to accept that this claim to prejudice is as strong as Mr. Bainton seeks to make out, and I have in mind in particular that I offered the parties an opportunity of the hearing proceeding during the recent law vacation. This offer was taken up by the plaintiff, who was anxious to proceed, but a vacation hearing was strongly opposed by the defendants for whom Mr. Bainton appears. It comes ill from them at this point of time to press that they are being prejudiced or inconvenienced by the interlocutory undertaking being further continued until the end of the hearing. I see no reason at all to take this motion out of the ordinary course of events. I shall adjourn it until Friday next, when it will take its place in the ordinary Friday motion list, but I think it improbable in the extreme that I shall be prepared to entertain the motion prior to the termination of the suit. It is quite obvious that a number of questions that Mr. Bainton seeks to agree on the motion are questions which must be decided at the end of the suit, and I see only the prospect of difficulty, complication and waste of time in attempting at this interlocutory stage to foreshadow what might be the final decision reached at the end of the suit. The motion will stand over to Friday next, with the rider that I regard it as improbable that I shall hear it prior to the end of the suit. 30 40 50

MR. BAINTON: There are seven motions.

HIS HONOUR: What I have just said was directed to the motion dated 20th June 1968. Are the other motions in similar terms?

MR. BAINTON: Yes.

HIS HONOUR: What I have just said should be taken as applying to all of the motions which are in similar terms to that dated 20th June 1968.

MR. BAINTON: I have been inaccurate. It is one motion, with seven respondents.

HIS HONOUR: The motions will stand over to 2nd August, 1968.

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(Mr. Young permitted to withdraw).

BRUCE HENRY SMITH

Sworn, examined, deposed:

MR. BAINTON: Q. (Exhibit 42 shown to witness). Do you have a copy of the document which became Exhibit 42, which I think is a note of yours of 3rd January 1967? Do you have a copy of that?
A. Yes.

MR. BAINTON: For convenience may Mr. Smith refer to that, instead of to the original?

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HIS HONOUR: Yes, Mr. Bainton, thank you. He can refer to that, and I will refer to this exhibit.

MR. BAINTON: Q. Do you have that? A. Yes.

Q. If I can remind you as to the stage that we have reached on the last occasion, you told us that after you came back from your Christmas-New Year vacation you got in touch with Mr. Barton, and you saw him, you said, at the Landmark office at 2.30 on 3rd January and there had a discussion with him, and on the evening of the 3rd January produced this note of what passed at that discussion. That is the stage we had reached when you were last giving evidence. A. I think I may have said that, but later in the questioning I corrected myself on the issue. I believe I wrote these notes out on 3rd January subsequent to seeing Mr. Barton, and that after writing the notes out in their existing form without alteration I telephoned Mr. Barton and read them over to him.

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Q. I stand corrected. You did say that. I want you to go back to the conversation you had with Mr. Barton prior to the making of this note, and tell me your recollection of the matters that you discussed? A. In my previous evidence I recall that I had said to Mr. Barton -

MR. GRUZMAN: I am not clear as to whether the witness is looking at his notes, or not.

HIS HONOUR: Yes, he is. Do you take exception to that course?

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MR. BAINTON: Q. Put your notes away, and tell us

what you can recollect of the conversation you had with Mr. Barton. A. I said to Mr. Barton that before consideration would be given to my being a director on the company I would need someone from my firm to carry out an investigation of the books and records.

Q. Yes. A. Mr. Barton replied, "You can start with that any time".

Q. Yes. A. I also now recall during that conversation that I said to Mr. Barton, "What we wish to do is to negotiate an arrangement that will be both satisfactory for Mr. Armstrong and satisfactory for Landmark and yourself. In this regard don't try and make the agreement too difficult. If you cannot pay the amount due as previously arranged, say on April 1967, make the time for payment in a year's time." 10

Q. This is what you said to Mr. Barton? A. Yes. That is additional recollection that I did not remember the last time I was in the box. On the other hand, I don't think I remember anything further on that particular day with Mr. Barton. 20

Q. This is the first discussion after the New Year-Christmas break? A. Yes.

Q. Do you remember anything at all, apart from what you have just told us, of this discussion now, without looking at your notes? A. He did say that once Mr. Armstrong was out of the company he was sure that U.D.C. would give the company finance. 30

Q. "He" is Mr. Barton? A. Mr. Barton said it to me.

Q. Anything else that you can remember? A. No.

Q. Do you remember at any other discussion about repaying the money which was then due? Was there any other discussion about that, on that day? Any mortgage debt? A. On that particular occasion?

Q. Yes? A. No.

Q. Do you recollect any discussion about the purchase or sale of shares in the Paradise Waters Companies? A. Well, I am endeavouring not to reconstruct. It could be reconstruction. 40

Q. Please don't do that. I want you to tell me anything you can now remember. Was that subject matter discussed on that day? A. I can remember, but I cannot recall the exact discussion.

Q. Tell us as best you can what you do remember of it. A. I would have spoken to Mr. Barton - I am sorry, Mr. Barton would have said to me, "In those circumstances the \$300,000 of the \$500,000, we will make payment in January 1968." 50

Q. What \$500,000 and what \$300,000 were you then

discussing? A. The \$500,000 representing \$400,000 mortgage and the \$100,000 for the consideration for the 40% interest in Paradise Waters.

Q. What was the \$300,000? A. It was proposed that a fresh mortgage would be taken of \$300,000. (Objected to).

Q. Who said what about \$300,000 so far as you can recollect? A. Well, Mr. Barton said that \$300,000 would be paid in January 1968. 10

Q. Did he say anything about who would pay it, or where it would come from, or anything else about it? A. Mr. Barton didn't, no. ~~You must appreciate Mr. Barton thought he would be able to pay it before that date.~~ (Objected to: by direction portion indicated struck out).

Q. What did he say about it? A. He said that by then Paradise Waters development will be further advanced.

Q. By when? A. By January 1968. 20

Q. Was anything said about the difference between those two figures - \$500,000 and \$300,000? A. Yes. \$200,000, he said, "We will pay that - \$60,000 by the transfer of the penthouse in Paradise Towers and \$140,000 in cash."

Q. In this conversation was any mention made of the interest? (Objected to).

HIS HONOUR: Q. You have told us now all that you can recall, without having your attention directed to specific topics, have you? A. Yes. 30

MR. BAINTON: Q. Was anything said about interest? A. I don't have now to report in the terms of the said what?

Q. If you can? A. I don't recall from memory now, except I know what is in this piece of paper which is turned upside down.

Q. Does your memory enable you to say whether anyone discussed interest? A. Yes, it was discussed.

Q. You can't tell us at the moment who said what about it from your memory? A. No. I think I previously said that what is in this piece of paper was said to me by Mr. Barton. 40

Q. Was anything said to you about securities for the remaining \$300,000 that you have spoken of? A. Yes.

Q. What was said about that? A. I have no recollection. It is in the notes before me.

Q. You have no independent recollection? No recollection independently of the note? A. No. 50

Q. Was anything said - do you recollect any discussion about options to purchase any blocks of land? A. Yes.

Q. What do you recall being said about that?

A. This is on the 3rd January?

Q. Yes, on 3rd January. What do you recall being said about that? A. Well, I remember what was in the notes here that was said on the options.

Q. Apart from the notes have you any independent recollection of the conversation? A. Yes. I know - I remember that Mr. Barton would have said - did say there would be a discount of 40% on the list prices on 30 blocks. 10

Q. I was asking you whether you recollected anything being said about the options. You told me that something was said about a number of blocks and the rate of discount? A. Yes.

Q. Anything else? Was there anything else said, that you can recall? A. This is in regard to options? 20

Q. Yes. Was there anything further said that you can recollect? A. Not specifically.

Q. Do you recall any discussion about the sale of any shares in the capital of Landmark? A. Yes.

Q. What do you recollect being said about that?
A. Mr. Barton said that the 300,000 shares in Landmark will be acquired by nine other parties and himself for 60¢ a share and that he would be given three years to pay, free of interest, the first instalment on January 1968. 30

Q. Was there any discussion about the price that you can recollect, apart from what you have just told us. A. I said that. I said 60¢.

Q. You told us 60¢. Was this figure discussed, or simply mentioned? A. No, it was stated.

Q. It was put as the price? A. Yes.

Q. At which the purchase would be made? A. Yes. Mr. Barton had previously agreed at that price before Christmas. 40

Q. Do you recollect any discussion about finance for the building at Rozelle? A. No, not on 3rd January.

Q. Have you any recollection whether there was only one or more than one way of going about dealing with this \$500,000, the subject of discussion? A. Yes. In regard to the \$300,000, which formed part of the \$500,000, it was to be secured by a second mortgage over Paradise Waters Limited.

Q. Well now, who suggested that? A. Mr. Barton. Or alternatively, he would offer security over Landmark House and Paradise Towers. 50

Q. Yes. What was said about that, so far as you can recollect? A. I don't recall at this stage.

Q. You cannot recall that? A. I don't recall it at this stage.

Q. Was there any discussion about any directors resigning? A. Yes.

Q. What was said about that? What was that discussion? A. Mr. Armstrong was to resign.

Q. Mr. Armstrong was to resign? A. Yes. 10

Q. Who said that? A. Mr. Barton.

Q. Well now, would you have a look now, please, at the note you made on 3rd January? A. Yes.

Q. I want to direct your attention in the first place to what is on p.1 against the figure "1" in a circle. A. Yes.

Q. There is a note about payments. Does that enable you to recall any further discussion?
A. "Cash promptly" was on that before when I did the original notes, and I added the "one week" in brackets on the instruction of Mr. Armstrong. 20

Q. What was said that caused you to write "cash promptly"? A. Mr. Barton said, "Cash Promptly".

Q. Will you look then at the note you have made about interest, and tell me if that enables you to recollect any further conversation? A. It appears that my recollection - it is very difficult to try and remember over this time. I see I have already given incorrect evidence about interest. I see it is $7\frac{1}{2}\%$, and not 8% which a moment ago was my recollection. On my original notes in the discussion subsequently with Mr. Armstrong on his instruction I put "X" in the left-hand margin and put " 12% per annum". 30

Q. That was something that did not arise out of discussion with Mr. Barton? A. No.

Q. Who suggested the interest rate of $7\frac{1}{2}\%$?
A. Mr. Barton.

Q. Does the rest of your note enable you to recollect any other discussion about the securities offered? A. Well, the security is quite clearly here. Alternative (A) a second charge over Landmark House, and alternative (B) was a second charge over Paradise Waters. 40

Q. Looking at alternative (A) for the moment, who provided you with the information relating to the sale price and the amount given for this mortgage? A. Mr. Barton.

Q. Will you look at the note you made about the option? A. Yes. 50

Q. Does it enable you to recollect any further matters put to you? A. Are you suggesting that I read this out?

Q. I would like you to read it to yourself in the first place, and tell me if that helps you to recollect the discussion you had? A. Looking at these notes, the suggestion by Mr. Barton was that there would be the option to buy any 30 blocks during the next two months for list price less 40% on the basis of 10% deposit and balance over five years, 7½% reducible; reducible at annual rates. Option to remain for further four months subject to prior sale, plus sale of shares by A.E.A. to nominees of Barton, \$180,000. 10

Q. You have got a note in the margin? A. There are alterations made to these notes which were not part of the conversation with Mr. Barton.

Q. Will you tell us when you made the alterations in the margin opposite to the note relating to the option on the 30 blocks? A. I believe I made these subsequent to seeing Mr. Barton and making these notes in the first place, at the time I saw Mr. Armstrong. 20

Q. Does the entry at the bottom of the first page relating to end finance on Rozelle enable you to recollect any discussion about that? A. I don't recall specifically, but as it is in the notes obviously it was discussed.

HIS HONOUR: Q. Mr. Smith, so that I may be clear, the 300,000 shares in brackets was added after you spoke to Mr. Armstrong? A. Yes. 30

Q. The note in the left-hand margin of \$10,000, with some half a dozen lines under it, and some other biro writing beside it, was all added later, too? A. Yes, it was all added later. That changed the exercise price on the blocks of land to 50% instead of 40%.

Q. Will you look for me at the original exhibit? I have put a little light red ring - 40

MR. BAINTON: Could that be deferred for a moment, until I finish on p.2? It may simplify if I finish with Mr. Smith on p.2 first.

HIS HONOUR: Yes.

MR. BAINTON: Q. Will you look at this second page against the figure "2" in a circle? Does that enable you to recollect a discussion with Mr. Barton? A. Yes. This was a further alternative that was put by Mr. Barton to me on that occasion, being that the settlement would be the transfer of the penthouse for \$60,000 and the acceptance of security over 16 units of Paradise Towers to cover \$190,000 of the remaining liability of \$440,000, the balance to be secured over the second charge on Landmark House. 50

Q. In this discussion who was to have the choice between these alternatives? A. Mr. Armstrong.

Q. I think you told us already your recollection of the matters appearing against the figure "3" in the circle? A. Yes.

Q. That Mr. Armstrong would be required to resign, and you would be appointed as Chairman of directors? A. Yes.

Q. You told us that after you made this note you rang Mr. Barton and read it over to him? A. Yes. 10

Q. Will you go through the note and tell us which of the things now on it were not there when you read it to Mr. Barton?

HIS HONOUR: He may be able to do this in a short way, by my showing him the exhibit around which I have put the red ring. Perhaps I can put it in leading terms.

Q. Apart from the matters with the light red ring around them - leaving out the bits with the light red ring around them, the remainder represents the form of the document as it was when you read it to Mr. Barton? A. Yes. 20

MR. BAINTON: Q. When did you read this over to Mr. Barton, so far as you can now recollect?
A. After writing out the notes. I went back to my office. I wrote the notes out and I read them back to Mr. Barton.

Q. Over the telephone? A. Yes.

Q. When you did that what, if anything, did Mr. Barton say? You told us you read this document other than the matters in the red circle over to Mr. Barton on the telephone? A. Yes. 30

Q. When had you finished doing that - (Objected to: disallowed).

HIS HONOUR: I think you should start from the beginning, Mr. Bainton

MR. BAINTON: Q. You rang Mr. Barton. Someone answered the phone. What did you say? A. "I would like to ask you to confirm my arrangement - my understanding of our discussion earlier today." 40

Q. Yes. A. "I will read out the notes."

Q. Yes. A. I then read out these notes.

Q. Yes. This was Mr. Barton you were speaking to? A. Yes, I was speaking to Mr. Barton. Mr. Barton replied, "Yes, I agree".

Q. Was there anything more said? A. "O.K." - I think it may have been "Mr. Barton", or "Alex" - I don't know which - "I will let you know".

- Q. You said that, you say? A. Yes.
- Q. And that was the end of the discussion, was it? A. Yes, that was the end of the discussion.
- Q. Well now, on the same day you told us you subsequently saw Mr. Armstrong? A. Yes.
- Q. You had a discussion with him? A. Yes.
- Q. And as a result of that discussion, was it, you made additions to this note, which is Exhibit 42? A. Yes. 10
- Q. Well now, having done that, did you get in touch with anybody else about it? A. I don't believe so on that day.
- Q. And on some subsequent occasion? A. Yes.
- Q. When was that? A. That was on the 4th January.
- Q. On 4th January? A. Yes.
- Q. Yes. Who did you see then? A. On 4th January I saw Mr. Armstrong again.
- Q. Yes. When was that? A. I would have to refer to my diary to know what time of the day that was. 20
- Q. Do you remember the time of the day without looking at your diary? A. It was late morning I believe. I would have to look it up. Do I look it up?
- Q. Yes. Please look up your entry for the 4th January. A. 12.15.
- Q. You had a discussion, I take it with Mr. Armstrong? A. Yes.
- Q. Did you have with you your copy of Exhibit 42? A. Yes. 30
- Q. That is, your note of 3rd January? A. Yes.
- Q. How many copies did you have? Did you have one copy, or more than one copy of it? A. More than one copy.
- Q. Did you do anything with any of the copies apart from your own? A. I can't recall.
- Q. Do you recall how long your discussion with Mr. Armstrong lasted? A. No. It took some time, because I wrote out some further notes on 4th January in the presence of Mr. Armstrong. 40
- Q. Have you got that note? A. Yes, I have.
- Q. Will you produce that? A. Yes. (Notes produced).
- Q. There are some initials on the bottom of the first and second page? A. Yes.

Q. Did you see them put there? Did you see those initials put there? A. Yes.

Q. Who put them there? A. Mr. Armstrong.

Q. Why did you make out this document and have Mr. Armstrong initial it? A. Because I wished this document or these notes to form the basis of the agreement between Landmark, Barton and Armstrong.

Q. And you had a discussion with Mr. Armstrong?
A. Yes on 4th January. 10

Q. On the 4th? A. Yes.

Q. At that discussion you had your note of the 3rd, which has now become Exhibit 42? A. Yes, that is right.

Q. Which is what Mr. Barton put to you in the discussion, subject to the matters in the red circle? A. Yes.

Q. On the 4th January you then had this discussion with Mr. Armstrong. A. Yes.

Q. Did you get some instructions from him to do something? A. Yes. 20

Q. What did he instruct you to do? A. To communicate with Mr. Barton and advise him of certain changes in regard to the proposal by Mr. Barton.

Q. Did you then write out the proposals Mr. Armstrong then put to you for you to put to Mr. Barton, and get him to initial it? A. Yes.

Q. Is that the document of three pages that you have just produced? A. Yes.

Q. Does it set out what you were then asked to put to Mr. Barton. A. Yes. There is an anomaly in this document. 30

Q. I want to direct your attention to the last page of it. I am sorry, there are four pages. The last two pages, which are a copy of the price list - A. I very vividly recall that the date "5th January" was put on by Mr. Armstrong, and I said to him, "It doesn't happen to be the 5th January", and I said, "Oh, it doesn't matter."

Q. That was put on the price list document on this morning of the 4th? A. Yes. I signed where he initialled the price list. 40

Q. Were the four pages put together, and did they remain together subsequently? A. Yes.

(Document tendered: objected to on a ground already canvassed: admitted. Document dated 4th January 1967 marked Exhibit 43).

HIS HONOUR: Q. There is a word I can't read on p. 2 in the margin. "Part", is it? A. "Part", yes.

MR. BAINTON: Q. Will you look at the first matter against the figure "1" in the circle? I can perhaps shorten this by asking you this question: Is there any difference between that and your understanding of what Mr. Barton had put to you on the previous day? (Objected to: rejected).

Q. Did you tell Mr. Armstrong what Mr. Barton had said to you the previous day about paying off the mortgage and buying the equity - (Objected to: rejected). 10

Q. Did you tell Mr. Armstrong of the discussion you had had on the preceding day with Mr. Barton regarding these two matters: discharge of the mortgage on the Paradise Waters Estate, which was \$400,000, and a proposal that Landmark should purchase shares in Paradise Waters Companies from Finlayside Pty. Limited for \$100,000? A. I think you must appreciate in negotiations of this kind Mr. Barton and I talked together and we would talk together in heiroglyphics sometimes, and not in legal terms, so I believe that the understanding between Barton and myself on the 3rd would have been different to the understanding of the parties - that is Armstrong and myself, on the 4th. To Mr. Barton, this Item No. 1 to him is virtually the same as Item No. 1 on the 3rd, because he would not go in to the finer points of mortgages or legal matters of property personally. 20

Q. What I want to draw your attention to is as to what differences there are in the proposals in Exhibit 42 and Exhibit 43, and who suggested the differences? A. Mr. Armstrong. 30

Q. For a start, is there any difference in the proposal, or so much of it as is against the figure "1" in Exhibit 43 from what Mr. Barton had put to you on the previous day - (Objected to).

Q. Is there any difference in what is against the figure "1" in the circle on Exhibit 43 from your understanding of what Mr. Barton had put to you on the previous day relating to these matters, the mortgage, and the shares in Paradise Waters? A. No. Within seven days. That is one week. 40

Q. I think you are looking at figure "2". I am referring to figure "1". That deals with discharging the mortgage and buying shares? A. Yes. That is the same. I am sorry.

Q. That is the same as was put to you by Mr. Barton on the previous day. (Objected to: rejected).

Q. I appreciate that there are difficulties in this. Bear with me for the moment. On 3rd January Mr. Barton had put something to you about paying off the mortgage and buying the Paradise Waters companies' shares? A. Yes. 50

Q. Is there any difference between what Mr. Barton

put to you about that on 3rd January and your understanding of it, and what you have written as your understanding of what Mr. Armstrong said on 4th January? A. I see. There is a difference in the interest rate - 12% instead of 7½%, yes. "One" and "2" on the 4th are the same as "1" on the 3rd.

Q. I think that may not be quite right, because I want to draw attention to what is in brackets against the word "penthouse" in Exhibit 43 - "furnished as is". A. Mr. Armstrong would have added that. 10

Q. That is something Mr. Armstrong brought up on the 4th? A. Yes.

Q. Underneath that "within 7 days". Is that something that Mr. Armstrong brought up on the 4th, too? A. Yes. I believe he brought that up on the 3rd.

Q. Whether it was on the 3rd or the 4th, it was after your discussion with Mr. Barton? A. Yes. 20

Q. The interest rate of 12% obviously differs from the interest rate of 7½%? A. Yes.

Q. Apart from these matters, what Mr. Armstrong authorised you to put on the 4th was the same as Mr. Barton put on the 3rd? A. Yes.

Q. And I think Mr. Barton had put three alternative methods of securing the \$300,000 which would remain due? A. That has been added. Mr. Armstrong added "plus guarantee from Landmark Corporation". 30

Q. Mr. Armstrong selected one of the proposed forms of security - namely, a second mortgage over the Paradise Waters project? A. He still wanted to maintain the alternatives.

Q. He wanted the guarantee from Landmark? A. Yes.

Q. That had not been discussed the previous day, is that the position? A. No.

Q. On 4th January you discussed with Mr. Armstrong the question of the option to buy blocks? A. Yes.

Q. I think there are several differences there, aren't there? A. Yes. The number of blocks was increased to 35 from 30, and the discount was to be 50% instead of 40%. 40

Q. I think the payment was to be made in cash on completion instead of over five years? A. Yes.

Q. And the time for the exercise of the option was specified particularly on the 4th January? A. Yes. 15th March.

Q. 1967? A. Yes.

Q. Were those changes in effect what Mr. Armstrong 50

wanted as distinct from what Mr. Barton proffered the preceding day? A. Yes. I am sorry. What could have easily happened, there could have been a conversation in between the time that Mr. Barton gave Mr. Armstrong - I am reconstructing on this point. This is a matter of reconstruction. Mr. Armstrong would not have been the one to limit the time for the exercise of the options. I know that was Mr. Barton. That must have arisen in a conversation with Mr. Barton subsequent to this. The statement I am now making is reconstruction. 10

Q. Do you recall the conversation, or are you assuming it must have happened? A. I recall the conversation, but I don't remember when it happened. In answer to the last question, I will say that these matters all were agreed to by Mr. Armstrong.

Q. The matter against "four" in the circle on Exhibit 43 relating to the end finance of Rozelle I think was precisely the same as entered the previous day? Precisely the same as the entry relating to that on Exhibit 42 on the previous day? A. Yes. 20

Q. Your note of the 4th January relating to the sale of 300,000 shares - are there differences in what Mr. Armstrong instructed you on the 4th as acceptable to him from what Mr. Barton had proffered on the 3rd? (Objected to: rejected).

Q. You made a note of what Mr. Armstrong instructed you was acceptable on the 4th? A. Yes. 30

Q. Does that differ from your understanding of what Mr. Barton said to you about this question? The question or the purchase of the shares in the 3rd? If there are any differences, what are they? A. The differences were that Mr. Barton on the 3rd just merely referred to the acquisition by various people of the shares of the Armstrong interests. When I came to sit down with Mr. Armstrong when I did these notes on the 4th I was endeavouring to define all the issues concerned in order that the lawyers could enter into legal agreements. 40

Q. Yes? A. Now the subject matter of note 5 on p.2 of the notes of 4th January would be Mr. Armstrong's views.

Q. There is no difference in price? A. No.

Q. No difference that there was to be a mortgage back over three years free of interest? A. I am sorry, in my notes of 3rd January there is merely a very short statement regarding the shares. 50

Q. I may be in error in my recollection, but I think when you were giving your evidence before without looking at your notes, you told us that they were to be sold at 60¢, to be paid for over three years free of interest? A. Yes, that is right. There was no change in that.

Q. Was anything said by Mr. Barton on the 3rd about any guarantee of payment at this price? A. I don't recall.

Q. Was it discussed between you and Mr. Armstrong on the 4th? A. Yes.

Q. To put it shortly, it was something Mr. Armstrong said that he would require? A. Yes.

Q. If others than Barton were to be purchasers of the shares? A. Yes. (Objected to: allowed). 10

Q. Was there any discussion between yourself and Mr. Barton on 3rd January, or any earlier date, that you in effect should be entitled to arbitrate upon or veto the people put forward as purchasers of the shares? (Objected to: rejected).

Q. On 3rd January in your discussion with Mr. Barton was anything said about - was anything said by either Mr. Barton or yourself as to who would buy the 300,000 shares which you were talking about? A. There was no party that was nominated. There was no person who was to be the transferee. Mr. Barton still had to establish who these ten people were, or nine other people were. 20

Q. When did the question of whether there would be one purchaser - (Objected to: rejected).

HIS HONOUR: Q. Mr. Smith, on 3rd January was there any discussion about who or how many people would purchase these 300,000 shares, and, if so, would you tell us what that discussion was, so far as you can recollect? A. No, I don't recollect on that specific date. 30

MR. BAINTON: Q. Will you look at Exhibit 36? You told us that that is the note you made on 14th December of your discussion with Mr. Barton? A. Yes. that is right.

Q. I want to draw your attention to the matters appearing under the figure "3" in the circle at the bottom, and tell me, with the aid of that, what was said on that day about the sale and purchase of shares in Landmark Corporation? A. Yes, that is right (sic). 40

Q. Tell us what was said? A. This is on the 3rd now, or on the 14th?

Q. No, on the 14th December for a start.
A. 300,000 shares -?

Q. Does the note set out your recollection of what was said? A. Yes.

Q. Who put forward the proposal in that note? If it was composite, tell us about it. A. It was composite. 50

Q. Can you remember the conversation without

the aid of your notes? A. On 14th December I had a conversation with Mr. Barton.

Q. I don't want to go right through it. I only want to know about the matters in the note I have just directed attention to. That is the proposal relating to the 300,000 shares.

HIS HONOUR: You may object to this if you wish, Mr. Gruzman.

Q. How did it come about that you noted in this note of 14th December, part of Exhibit 36, that the shares were to be split between Mr. Barton and nine other persons? 10

MR. GRUZMAN: I don't object.

HIS HONOUR: Are you agreeable to that, Mr. Bainton?

MR. BAINTON: Yes.

WITNESS: Mr. Barton had asked for terms to pay for the shares, and Mr. Armstrong had said that if he had terms the shares would have to be acquired by nine other parties, together with Mr. Barton - guaranteed by Mr. Barton. 20

MR. BAINTON: Q. What were the terms Mr. Barton had asked for? A. As here - three years to pay, interest-free. But then Armstrong was to be entitled to the dividend that had been declared but not paid.

Q. Was there any further discussion about any of these matters on 3rd January? A. This is a difficult part to me. When we talked on the subject we referred to the acquisition of shares on 3rd January. I know that. My recollection is that Mr. Barton would have said, "Well, it will be the same as before." There was no question of changing what had been suggested on 14th December between the parties. 30

Q. I think if you go to the 4th January, unless I am mistaken, there are two points, or two additional matters there - one, that the parcel holder or part parcel holder was to be acceptable to you as arbitrator? A. Yes.

Q. Whose proposal was that? A. I don't remember now. I think it must have been Armstrong's. It could have been Mr. Barton's on the previous day. 40

Q. There is an entry at the bottom that if the current dividend was not paid interest equivalent to it was to be paid at the end of the first year. Whose proposal was that? A. That was Mr. Armstrong's.

Q. Otherwise Mr. Armstrong's instructions of the 4th January are the same as the matters in your note of 14th December, Exhibit 36? A. Yes.

Q. Having got these instructions from Mr. Armstrong and the signature to it, what did you do about it? 50
A. I telephoned Mr. Barton.

Q. Yes? A. And I said that I had had a discussion with Mr. Armstrong, and as a result of the discussion I had made out notes of my understanding of how the negotiations were to be settled. I then read the notes out to him.

Q. This is the document, Exhibit 43, I take it?

A. That is the document of the 4th January. I said to him, "You understand that Mr. Armstrong has withdrawn his insistence that I become a director of the company? However, we will still proceed with the investigations, and let you know in due course." I said, "I have also obtained Mr. Armstrong's signature to the notes I have, and these notes will be sent to our solicitors."

10

Q. Yes? A. Mr. Barton said, "Yes, I agree with the arrangement between the parties, but you understand it is subject to the solicitors."

Q. Yes. Well now, was there anything more said in this conversation? A. I don't recall.

20

Q. When you read the document, Exhibit 43, to Mr. Barton, did he make any comment about it?

A. No.

Q. Did you have any further discussions with Mr. Barton then on 4th January? A. No.

Q. When did you next have any discussions with him, either face to face, or by telephone? When was your next discussion with Mr. Barton? A. On 10th January.

Q. You tell us that the next time you had any discussion with Mr. Barton was on 10th January?

A. Yes.

30

Q. Did you on 10th January, before this discussion with Mr. Barton, have a discussion with Mr. Armstrong?

A. Yes.

Q. When was that? Are you able to tell us when that was? A. That was on the 10th January.

Q. On 10th January? A. Yes.

Q. What time of the day, do you know? A. I can see in my diary.

40

Q. Do you have a diary note of it? A. Yes.

Q. Will you have a look in your diary? A. Yes.

Q. What time was it? A. 3 o'clock.

HIS HONOUR: Q. This was the next event in the sequence after the 4th January? A. Yes.

MR. BAINTON: Q. Did Mr. Armstrong come to see you? A. Yes.

Q. You had a talk in your office? A. Yes.

Q. Did he tell you something about this subject matter generally? A. Yes.

Q. Did you then ring Mr. Barton? A. Yes, I then rang Mr. Barton.

Q. What did you say to him? A. I said to Mr. Barton that Mr. Armstrong had said to me that you are not able to arrange for nine other parties and yourself to buy the shares and that you wish to substitute your family companies, although Mr. Bovill had agreed to take one-tenth of the shares. I told Mr. Barton "Mr. Armstrong has said that in those circumstances he wished to re-introduce the condition that B.H. Smith and another nominee of Mr. Smith become directors." 10

Q. Did you specify the other nominee? A. Mr. Hawley. I said, "As you know, Mr. Barton, we have not completed our investigations, and I would like you to arrange for the directors of Landmark to see me next Friday afternoon." 20

Q. What did Mr. Barton say to this? A. He said, "I will arrange for that."

WITNESS: Mr. Armstrong also - and I am talking to Mr. Barton - said that he wanted the contracts exchanged by Friday. Mr. Barton said, "That is not possible." I said, "I appreciate your point, but Mr. Armstrong wants some sort of evidence that you are going to go ahead. He has suggested that you pay a cheque for \$4000 which is to be held by me, and if you do not proceed it will not be refunded to you but will be offset against the expenses Mr. Armstrong incurred to date." 30

MR. BAINTON: Q. What did Mr. Barton say to that?
A. "Yes, I will do that".

Q. Was anything more said in this conversation?
A. No.

Q. Was this cheque ever forthcoming? A. Yes.

Q. When? A. Friday was the day when we had the directors meeting. It was the first thing on Monday morning that Mr. Barton gave me a cheque for \$4000 together with a short letter. 40

Q. That was on the Monday after this? A. It was the Monday after the day we are talking about, the 10th.

Q. The 10th was a Tuesday, the 13th was Friday and the 16th was the Monday? A. Yes.

Q. It was on the Monday that this happened?
A. Yes.

Q. Was there anything more said in this telephone conversation? A. Not that I can recall. 50

Q. You have told us on the 3rd January you said something to Mr. Barton about a member of your

staff going to Landmark to look at books and records? A. Yes.

Q. Was this done? A. Yes.

Q. When was this investigation commenced? A. It was commenced on 4th January. There was a condition imposed by Mr. Barton in regard to that investigation that any of the documents, any of the reports prepared were not ever to be used in any legal case.

Q. How far had the investigation progressed by the 10th January? A. It got to a fairly final stage. It was getting to a final stage on the 10th. I am sorry, it was getting to a final stage on the 13th. It had not at that stage been completed. 10

Q. Was any of the information extracted being made available which went on to Landmark or its offices? A. No.

Q. To Mr. Barton? A. No.

Q. After this discussion on the 10th when did you next speak to or see Mr. Barton? A. May I refer to my diary again? It was on the Friday. 20

Q. That is the 13th? A. Yes, it was at 4.15.

Q. What happened at 4.15 on the Friday? A. The other two directors, Mr. Cotter and Mr. Bovill were present and Mr. Hawley said to Mr. Barton and the other gentlemen - (interrupted).

Q. Before you give us the conversation so far as you are aware you met Mr. Bovill and Mr. Cotter prior to this? A. No, I do not think so. I stated to the gathering, to Mr. Barton and the others, that Mr. Hawley and I had still not made up our minds to be directors. There were two conditions which remained to be fulfilled. One was that the directors of the company call an extraordinary general meeting of the company to cancel out the dividend. I said if the company were to go into liquidation and the dividend were paid it was my view that the directors could be personally liable. I recall having referred to the section of the Act, which I do not know offhand. 30 40

Q. I stated the other condition not proved to me was that the United Dominion Corporation would advance the money to enable the continuancy of the development of Paradise Waters.

Q. Did any of those persons present say anything? A. Yes. Mr. Barton stated that in his view the dividend should be paid. He also stated that he was quite confident that after Mr. Armstrong was out of the company he would have no trouble getting the money from the United Dominion Corporation. I replied, "That's still has to be proved to Mr. Hawley and myself." 50

Q. Did Mr. Bovill and Mr. Cotter offer comments?

A. They would have made statements which I do not recall (Objected to: allowed).

Q. They had something to say? A. Yes.

Q. You cannot recollect what it was? A. I can reconstruct and say that they took a neutral course. The main conversation was between Mr. Barton and myself.

Q. Was anything more said at the discussion on Friday 13th? A. I think my parting words to the gathering were that I felt that the negotiations would be successfully completed. Just as Mr. Barton was leaving the room I said, "We are making progress with the investigations. Our staff are basing the sale price of Paradise Waters at \$10,000 a block and it is showing good profitability." Mr. Barton said, "We will get a lot more than that per block." 10

Q. Was the Paradise Waters project one of the companies' main assets at this stage, the Landmark group? A. It all depends on the word "assets". It was not the largest in value. They had the company finance debtors which were all secured and they had a little equity. The projects with the greatest potential profits was the Paradise Waters Projects. 20

Q. After that discussion did you have a discussion with Mr. Armstrong? A. Yes.

Q. Was that the same day? A. That night, the Friday night I rang Mr. Armstrong and I said, "On full reflection I do not feel that I would accept a position as a director on the board of Landmark. I still recommend to you to go ahead with the deal with me not being a director." Mr. Armstrong replied, "At this stage the carriage of the matter is in the hands of the solicitors and you should stay out of any further dealings." On the Sunday I rang Mr. Bob Grant and I advised him that Mr. Armstrong had withdrawn that condition, and that I would not be accepting the appointment. 30

Q. This is Friday 13th? A. Yes.

Q. When did you next see or speak with Mr. Barton? A. Early on Monday morning Mr. Barton called in to my office and he gave me a short letter with a cheque on it for \$4000. I said to Mr. Barton, "I will put this in my private safe and on the basis that the agreement proceeds I will hand it back to you." I did not take a copy of it or the cheque. 40

Q. You put it into your safe? A. Yes.

Q. When did you next see or speak with Mr. Barton? A. Could I refer to my diary?

Q. Yes? A. On the 18th at 9.30. 50

Q. What happened then? A. Prior to the meeting Mr. Barton rang me on the telephone and asked to see me. I said, "Yes." He came over at 9.30. I said to Mr. Barton, "Have you completed your

settlement?" He said, "yes". I said, "We have decided not to go on the board of Landmark and I advised Mr. Armstrong of this the previous Friday." He said, "Don't worry about that. What I would like to do is congratulate you. I think the deal is a miracle." I replied, "Well, Mr. Barton, I hope the company succeeds and it will become prosperous."

Q. Was anything more said on this occasion that you can recall? A. No. 10

Q. Did you have any other dealings in any way with Mr. Barton or Landmark? A. There were a couple of telephone conversations to Mr. Barton asking whether he had the balance sheets of his family companies. There was some condition in the agreements I had to fulfil. There was nothing of importance to the end of May or early June.

Q. What happened to the cheque and the letter? A. On the 18th, the last time I saw Mr. Barton on these transactions, I merely handed it back to him. 20

Q. Have you seen it since? A. No.

Q. In whose favour was the cheque? A. I do not remember. I think it was B.D. Smith & Sons but I do not remember.

Q. Did Mr. Barton come to see you again later in 1967, towards the middle of the year? A. Yes, around about June.

Q. What happened on that occasion? A. Ostensibly he came to see me in regard to his family companies. He advised me that there had been certain legal proceedings. They still had not refinanced Paradise Waters. I suggested that may be the Company required some form of scheme of arrangement. 30

Q. Was anything more said on this occasion? A. I cannot remember offhand. That would have been the start of the era where I spend a tremendous amount of time on the scheme of the arrangement, and I think it would be difficult to try and remember what was said at certain times. Most of the week was involved. 40

Q. This initial matter was followed by others. A. Yes.

Q. You were proposed as the scheme trustee? A. Yes.

Q. In connection with that did you have occasion to fly to Brisbane? A. Yes.

Q. Did anybody go with you? A. Yes, Mr. Barton.

Q. When was this occasion? A. I could look it up probably. It was in the month of June 1967. 50

Q. What was the purpose of this trip?

A. Mr. Kratzmann was threatening to wind up Landmark Housing and Development Pty. Limited.

Q. Who asked you to go to Brisbane? A. At this stage the company had given me instructions to be the scheme trustee. In discussions with Mr. Barton we both agreed it was desirable that we both saw Mr. Kratzmann. It was a sort of mutual decision.

Q. You saw Mr. Kratzmann in Brisbane? A. Yes.

Q. How long were you in Brisbane? A. I think we stayed overnight and came back on the first plane in the morning. 10

Q. Coming back in the plane were you having discussions at all with Mr. Barton? A. Yes, I will say this; both on the way to Brisbane and on the way back I was working and I had my work sheets working out the feasibility of the information particularly in relation to Kratzmann.

Q. Do you remember Mr. Barton saying anything to you about Mr. Armstrong? A. Yes. 20

Q. What did he say? A. He said "Mr. Armstrong employs gangsters. In fact, I know that he employed somebody to kill me".

Q. Have you ever heard that suggestion before? A. No.

Q. What else was said? A. He said that a man rang him up and he met him in a pub. He might have said in a hotel. The man said to him that he had been employed to kill him for a certain sum of money. However, if Mr. Barton paid this amount of money he would not kill him. "I then persuaded the man to go to the police station and he made a signed confession." 30

I was somewhat dumbfounded by the statement. I thought for a moment and I said, "Well, Mr. Barton, as I have said right through I am the trustee elect of the company and I do not think it is my province to take sides on the issues between you and Mr. Armstrong."

Q. Was anything more said in that discussion? A. No. 40

Q. Did Mr. Barton say on the trip back from Brisbane -

"...in early July 1967 when Bruce Henry Smith has been appointed to be the trustee elect of Landmark Corporation scheme of arrangement at his invitation I went with him to Brisbane to see Kratzmann, and on the air plane I told Mr. Smith that I think it is my duty now, because he has brought to the firm a scheme of arrangement, that he should know what really happened to me in 1966, and early 1967..." 50

Did Mr. Barton say that? A. I do not recall.

Q. Was this said:

"...I told him all about Mr. Armstrong's threats."

Was that said? A. No.

Q. Was this said:

"I told him about the visit to the C.I.B. and I told him the reason why I purchased the shares."

Did he say why he purchased the shares? A. No. 10
May I go back in my evidence? At the time Mr. Barton made the statement regarding Armstrong employing gangsters before I said, "I will not take sides" I said to Mr. Barton: "When was this?" He said, "Whilst negotiations were going on." That is all.

Q. Apart from that you say he did not say anything about why he purchased the shares? A. No.

Q. This was said -

"I told him the reason why I talked the company to enter into the agreement, and I told him in great detail that he should know what he is doing because I wanted to put the responsibility off my shoulders on to Mr. Smith's shoulders of this matter." 20

Was this said? A. No.

Q Was this said?

"Oh, Alex, you have no problem. You can claim duress." I told him, 'Yes I know that, but I don't dare.' 30

Q. Was there any such conversation as that?

A. No.

Q. Were you actively concerned with the proposed scheme arrangement for the greater part of the second half of 1967? A. Yes.

Q. Some time during that latter half did Mr. Barton speak to you again about a matter independently of the scheme of arrangement? A. I do not recall.

Q. Was there any discussion between you about any money owing to Mr. Armstrong at this stage? A. I believe that during the course of the half year I made a statement to Mr. Barton that the appropriate course would be for an extensive time to be granted for the payment of the money owing on the shares. 40

Q. What was said about this? A. Not very much.

Q. Was there any occasion during 1967 when Mr. Barton came and asked you to act for him in any matter or do anything for him, or words to that effect? A. It was a requirement of the contract

that I was to see his family companies' balance sheets. The requirement really was this: there was an onus on Mr. Barton to have a certificate signed by me. Mr. Barton would have seen me in relation to that, but Mr. Armstrong had not formally requested such a certificate.

Q. What stage of the year was that? A. I am a bit vague about that.

Q. Apart from that sort of matter was there any other occasion when Mr. Barton wanted you to do anything for him or see Mr. Armstrong or anything of that nature? A. I cannot recall specifically. There were so many matters on the scheme. There was a conversation some time after the creditors meeting. Mr. Kratzmann had said the day before the creditors meeting that if he were to receive \$130,000 for the claims he had against the company he would assign his claims. 10

Mr. Barton had suggested the formation of a company of which the shares would be owned by Mr. Armstrong's interest and his own, and I would be the trustee. This company would acquire the debt of Kratzmann and would also acquire the Armstrong shares, the shares being purchased by the various people, the Barton interests from the Armstrong interests as well as the existing shares that Mr. Barton's interests held. A certain amount of money was to go into the company, to be introduced into the company by Mr. Barton and Mr. Armstrong and Mr. Barton said that he would borrow another sum of money. 20 30

Q. Mr. Barton put this to you? A. Yes. I then conveyed this to Mr. Armstrong. He said, "Look, get it down on some paper so that we can consider it." I then made notes and had them typed. I have produced a lot of notes here but I do not have a copy of these notes.

HIS HONOUR: That was in December 1967? A. Yes.

MR. BAINTON: Q. Apart from that discussion were there any other discussions between yourself and Mr. Barton when he wanted you to do anything in relation to Mr. Armstrong? A. No. I have no recollection of any other occasion. 40

Q. I want to direct your attention to certain evidence given in the case.

"Q. At about this time or over this period - I am dealing now with the early part of January - I think you had mentioned that you had had some connection with Mr. Bruce Smith. Can you try and tell us over this period - say from the 7th to the 12th January - what communication you had with Mr. Bruce Smith? A. First Mr. Smith rung me, and he said that Mr. Armstrong - 50

Q. Are you going back now to the first interview? A. Yes.

Q. You mentioned that earlier. I would like you to come up to any conversation that took place at around this period whilst this problem was going on, or shortly before or shortly after you moved to the Wentworth Hotel? A. Yes. Mr. Smith rang me and said that Mr. Armstrong now also demanding option on 100 blocks of land at Paradise Waters Estate at Surfers Paradise in addition to his earlier demands."

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Q. Did you ever say anything to that effect to Mr. Barton? A. No.

Q. Was this said -

"... . . . I told him that it was out of the question first, and then he said "What about 50 blocks?" And I told him 'It is out of the question,' and then he said '35 blocks?'

Was there such a conversation between yourself and Mr. Barton? A. No, the original suggestion was made by Mr. Barton.

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Q. Was this said -

"I said to Smith, as I earlier told him, that I have no authority to agree with him on behalf of Landmark Corporation and I am only going as far as that to let him prepare some sort of head agreement that can be shown to me and Landmark advisers and finally the Board have to agree or disagree with anything that is in that document."

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Was there any such conversation as that at any time? A. Could you state that again?

Q. "I said to Smith, as I earlier told him, that I have no authority to agree with him on behalf of Landmark Corporation"

Was that said? A. At one stage he would have said that he had to consult his other directors.

Q. "I am only going as far as that to let him prepare some sort of head agreement that can be shown to me and Landmark advisers"

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Was this said? A. I have given evidence to say it was so. He said any agreement must be subject to the solicitors. That is how he expressed himself.

Q. "The Board have to agree or disagree with anything that is in that document."

Was anything to that effect said? A. In December?

Q. At any time? A. Yes, in December.

Q. Was there at any stage a conversation between you and Mr. Barton when all of the things I have just read to you were said, starting with 100 blocks 50 blocks, 35 blocks and so on? A. I find it very difficult to answer because there was some

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quibbling at times on the number, but the essence is that the options were first suggested by Mr. Barton. The number of blocks agreed and the discount agreed.

Q. I want to refer you to another passage. Mr. Barton said "May I continue?"

"Q. Yes. A. Mr. Smith rang me again and he said that Mr. Armstrong wants him to be appointed Chairman of Landmark Corporation Limited and also he wants Mr. Arthur Hawley to be appointed as a director of Landmark Corporation Limited. He said then that his instructions from Mr. Armstrong is such that then Mr. Armstrong will be satisfied that the share values of Landmark Corporation Limited can be maintained, and he also said that he is Chairman of Project Development Corporation Limited and director of other companies and he will be able to finance Paradise Waters Estate and other projects of Landmark Corporation Limited, and I said to him that it could be an idea, and this might restore the public confidence in Landmark Corporation."

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Did such a conversation occur between you and Mr. Barton? A. I certainly would not have had a conversation along the lines you have mentioned. I have given evidence of the position in relation to whether or not I would be a director of the company.

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Q. And relating to Mr. Hawley? A. Yes.

Q. What about the rest of it? Did you say to Mr. Barton that you were Chairman of Project Development Corporation Limited and a director of other companies, and that you would be able to finance the Paradise Waters Estate and other projects of the Landmark Corporation? A. No.

Q. Did Mr. Barton say to you "Such a proposal would be a good idea and it might restore public confidence in Landmark Corporation?" A. He could have said words to that effect. He wanted me to be the Chairman of the Company because he knew where I stood on the matter. I made it quite clear.

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Q. At p. 52 of the transcript I will read you a passage of evidence and ask you if the conversation occurred:

"Q. What did you tell Mr. Smith as to various propositions that had been put to you? A. First of all on 12th January 1967 Mr. Armstrong rung me at Landmark office and said 'You had better sign this agreement, or else,' and I told him I did not let myself be blackmailed into any agreement. Next day, on 13th January 1967, Bruce Smith rung me and he said he got instructions from Mr. Armstrong that the documents which is now getting - got finalised - have to be signed and exchange today - unless this is done the deal is off.' I told

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Mr. Smith 'I am not prepared to sign or exchange the document on behalf of myself, and also I am not prepared to advise my co-directors on behalf of Landmark Corporation to do so.' That was on the Friday."

Is that so? A. It is my recollection I said on the Wednesday to Mr. Barton that Mr. Armstrong said the contract had to be exchanged on the Friday. I also added to Mr. Barton "I understand this would be impossible" and I added the previous evidence I have given about the cheque. 10

Q. Did you say to Mr. Barton your instructions were that "If the contract was not signed by Friday the deal is off"? A. Yes, I think I would have. If the deal was off what was threatening was that Mr. Armstrong would take action against his securities by putting in a Receiver.

Q. Did Mr. Barton say to you "I am not prepared to sign or exchange the document on behalf of myself and also I am not prepared to advise my co-directors on behalf of Landmark Corporation to do so." 20

Was that on 13th January? A. This is where my recollection differs from Mr. Barton. My recollection is that this conversation was on the Wednesday. I recall him saying that the document had to be studied by the solicitors. He had two sets of solicitors acting for him; one personally and one for the company. It had to be looked at by the directors. In principle it was OK but the contracts were very complicated. 30

Q. Was there anything more than that regarding that type of conversation you recollect. A. Not that I recollect. I believe the conversation stated would have taken place, but my recollection is that it was Wednesday and not Friday, or words to that effect. I am sorry, as interpreted by me the statements of the conversation occurred on the Wednesday rather than the Friday, but they do not follow the exact words I said to Mr. Barton. 40

MR. GRUZMAN: Q. There was no conversation at all on the Friday? A. I do not recall.

MR. BAINTON: Q. Going now to p. 58 of the transcript, Mr. Barton was asked -

"Q. Perhaps you might think about discussions with Smith? A. During that negotiation with Mr. Smith I indicated to him that Landmark Company is not in a position to pay Mr. Armstrong \$400,000; and then Mr. Smith ask me if this mortgage can be reduced; and ask him how much deduction he propose. First he proposes \$200,000 and then he proposes \$100,000, and he ask me if he can incorporate these into the proposed agreement - proposed head of agreement which will be presented to me and to Landmark." 50

Did you ask Mr. Barton that? A. No, I do not recall. I can only recall the evidence I have given. This is just another person's interpretation.

Q. At p. 62 of the transcript, Mr. Barton was asked -

"Q. Just tell us what happened about that after the 18th January?"

and that is about Mr. Hawley and yourself going on the Board? 10

"A. I rang Mr. Smith on the 19th January 1967 at about nine o'clock in the morning and I asked him why he did not turn up to the Board meeting as he has been invited and he said he and Mr. Hawley have decided not to join the Board of Landmark Corporation Limited."

Was there any such conversation on the 19th January?

A. It was not on the 19th. There was a conversation on the 18th. 20

Q. Was it a conversation in which you were asked why you did not turn up at the Board meeting.

A. Mr. Barton just rang me and asked could he come and see me.

Q. When he got to see you did he ask you why you had not turned up? A. Words to that effect.

Q. What did he say, as far as you can recollect?

A. He started off by saying "We have completed the settling. You did not turn up at the meeting. I said "No there was no need for us to turn up at the meeting as Mr. Armstrong had withdrawn the condition that we become directors last Friday." Mr. Barton replied "That does not matter. I want to congratulate you. I think it is a miracle." 30

Q. This is the conversation you told us of earlier? A. Yes.

(Luncheon adjournment).

AT 2 P.M.

CROSS-EXAMINATION:

MR. BENNETT: Q. You were fairly closely concerned with the affairs of Landmark in the latter half of 1967? A. Yes. 40

Q. In what capacity were you concerned? A. I was the Trustee Elect of the scheme of arrangement which was being formulaed.

Q. In that capacity you were fully aware of the companies' financial situation? A. Yes.

Q. You have had a fairly close knowledge at all times during that period of its assets and liabilities and other financial affairs? A. Yes. 50

Q. In your view was the company solvent on the 30th June, 1967? (Objected to by Mr. Bainton; rejected).

Q. Did you see a balance sheet as at 30th June, 1967? A. Yes, I have statements of assets and liabilities as at the 30th June.

Q. Prepared by whom? A. By the company.

Q. In your view were those statements correct? A. There was a very difficult question that surrounded the whole of the Landmark Corporation in regard to the value of assets. The main project was Paradise Waters, and it was my belief - and it is still today - that if the development had proceeded the creditors would have been paid in full and there would have been something for the shareholders. If the Paradise Waters land had been sold in its existing form - I have been advised by real estate experts that its value was \$750,000 to \$1-million. 10 20

Q. That would not have been sufficient to pay the creditors as at the middle of 1967? A. If it was sold in that form, no.

Q. If the project had been maintained by the company the solvency of the company would have been contingent on the risks associated with that venture? A. Yes.

Q. Would you describe it as a risky venture? A. I still form the view that the development would have been viable. 30

Q. Is it the position that during the latter half of 1967 you were of the view that if the development was to proceed that the company was in control the whole time, that there would be sufficient funds to pay the creditors in full? A. Yes.

MR. BAINTON: Q. I think you have been appointed Receiver by Southern Tablelands Finance Company Pty. Limited of the Paradise Waters lands? A. Yes.

Q. As such Receiver you have in fact sold those lands? A. It all depends on your definition of "sale". We have entered into a contract of sale. 40

Q. It has been completed by transfer of the legal title? A. That is correct.

Q. To whom did you sell? A. To a nominee of Hooker Rext Pty. Ltd., one of their subsidiaries companies.

Q. The price you realised on the sale was not enough to discharge the encumbrances on the land? A. No. 50

MR. BENNETT: Q. Have the proceeds of that sale been paid to the --- A. No, the sale has not been completed.

Q. Where is it? A. With the consent of the purchaser on the short term market at interest.

Q. Deposit was paid to you? A. Yes, \$90,000.

Q. When is it anticipated that completion will take place? A. Anticipated or expected?

Q. Expected? A. In August, 1968.

HIS HONOUR: Q. How did it compare with Mr. Brett's opinion of values? A. I have the Zerox available here.

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MR. BAINTON: Q. What price did you get? A. \$900,000.

MR. GRUZMAN: Q. Could you clear up some aspects of the question about taking up the directorship in the company. Is it correct to say that a fee had been agreed upon as your fee as chairman of directors? A. I do not recall.

Q. Was there not a figure of \$4000 a year? A. I would not deny that. It could have been suggested.

Q. What was in contemplation was that you would be appointed chairman of the company at a fee of \$4000 a year? A. If I were appointed yes.

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Q. At the time of the discussion that was the proposal? A. If I had agreed to act, yes.

Q. The company was a public company with assets of the order of \$7-million? A. Yes.

Q. Do I take it that your problem in deciding whether or not to act lay in the question as to whether this would be a successful company or not? A. There were two aspects of it. One was that I would be able to get on with the other directors of the company, I had no intention of becoming a director and having conflict on the Board. The other would be that I could make a success of it, yes.

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Q. As to the first part you told us that Mr. Barton welcomed your appointment to the Board? A. He agreed to it. I would not say he welcomed it.

Q. He was quite happy for you to be on the Board? A. Not in the first instance.

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Q. He offered you \$4000 a year? A. He did not offer it. I think in discussion the fee came up and he said it would probably be that.

Q. Was he agreeable? A. I do not think he disagreed with it.

Q. As far as Mr. Barton was concerned he was prepared to meet your fee of \$4000 a year to be appointed Chairman? A. Yes.

Q. You had no personal difference of opinion with Mr. Barton? A. Yes.

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- Q. What was that? A. On 13th January.
- Q. What was that about? A. In regard to the dividend.
- Q. He was of the opinion that the dividend should be paid? A. Yes.
- Q. You were of the opinion it should not? A. Yes.
- Q. Apart from that you had no difference of opinion with Mr. Barton? A. Not at that time, no.
- Q. You were on christian name terms with each other? A. I am not sure at what stage we were on christian name terms. We were at a later time. 10
- Q. There was a friendly spirit between you? A. I would say it was not unfriendly.
- Q. The other directors were Mr. Cotter and Mr. Bovill? A. Yes.
- Q. You only met them on one or two occasions over the period of these negotiations? A. Yes.
- Q. There was no personal animosity of any kind between you and them, was there? A. The other two directors, I felt, were staunch supports of Mr. Barton. 20
- Q. There was no reason by way of personality why you could not become chairman of the Board? A. There could have been.
- Q. Are you suggesting to his Honour that you did not become chairman of the Board because of reasons of personality? A. I was a little unsure of myself, whether or not in the future I might have had a conflict with Mr. Barton. 30
- Q. Are you telling his Honour that you did not become chairman of the Board of Landmark because of reasons relating to personality? A. By reason of the doubts I had.
- Q. You are saying on your oath that you declined the chairmanship of this company because of doubts as to whether you could get on with the other directors? A. Doubts about whether I could get on with Mr. Barton. I thought I might have a conflict with him; I did not know. 40
- Q. Is that why you declined? A. There was also the position in regard to whether or not finance could be obtained from U.D.C.
- Q. That was the main reason? A. No, both reasons, not one with priority over the other.
- Q. Would not you agree the main reason, the only reason you have given in your evidence as to why you did not become chairman, was because of a doubt as to whether finance could be obtained from U.D.C.? (Objected to). 50

Q. Do you agree the only reason which you gave in your evidence-in-chief as to why you did not join the Board was because of the doubt as to whether finance could be obtained from U.D.C.?

A. It was one of the reasons.

Q. That was the only reason you gave in your evidence-in-chief? A. I do not think so.

Q. What other reason did you give in your evidence-in-chief? A. I think at the time I gave my evidence-in-chief, there were two of the subject matters discussed on Friday 13th January at the directors meeting. 10

Q. Apart from the question of the payment of the dividend and the question of finance being obtained from U.D.C. you gave no other reason in your evidence-in-chief as to why you did not join the Board as chairman? (Objected to: rejected).

Q. In relation to the question of the payment of the dividend, why did you believe that the dividend should not be paid? A. I knew that certain creditors were overdue. 20

Q. May one summarise your view by saying that you were of the opinion that it would be wrong to pay the dividend because of the poor financial position of the company? A. When you say "poor" I am not sure what you mean by that.

Q. Poor as opposed to good? A. I would regard it as a tight financial position rather than say it was a poor financial position. 30

Q. Did not you have in your mind at the time the possibility of liquidation of the company and the order against the directors to refund that dividend? A. If no finance could be obtained from the various projects that could have happened.

Q. Is it true to say that the reason you were opposed to the idea of paying the dividend was that you foresaw the possibility of this company going into liquidation and the directors being personally liable in respect of the moneys payable for that dividend? A. I do not think that is correct. 40

Q. Is not that what you have told us in your evidence-in-chief? A. No, I said it was my view that the dividend should not be paid in case the company should go into liquidation.

Q. What would happen then? A. There could be a personal liability on the part of the directors.

Q. I am asking you whether on 13th January when you expressed the view, stipulated as a condition, that the dividend should not be paid that you had in your mind the possibility that this company would go into liquidation and the directors would be personally liable? A. I have gone into other companies in equally difficult situations. 50

Q. Did you not on 13th January on the question of

the payment of the dividend have in your mind that this company could go into liquidation and the directors face personal liability? A. If they paid the dividend.

Q. That was in your mind? A. If they paid the dividend, yes. The dividend was quite a large sum of money in relation to the company's situation.

Q. A total of what? A. \$80,000.

Q. They had \$7-million worth of assets? A. Yes. 10

Q. You felt that the payment of that dividend of \$80,000 could put the company into liquidation?
A. It could because a lot of the liabilities were arranged liabilities the company had such as liabilities on the finance debtors, liabilities attached by securities on different assets, but the amount of unsecured liabilities was rather small. It was a question of judgment of which straw breaks the camel's back.

Q. The result of your investigation and the application of your judgment at that time was the payment out of \$80,000 to the shareholders could have resulted in the company going into liquidation? A. No. 20

Q. Is not that what you have said? A. No.

Q. That is exactly what you said in the last three minutes? A. My statement is that I did not think the dividend should be paid.

Q. Because the company could not afford to pay it? A. I think you are mixing degrees. There was a possibility that it might go into liquidation, but not necessarily. 30

Q. You, as a man of some expertise in these matters, formed the judgment that if that \$80,000 was taken out of the funds of the company and paid to the shareholders by way of dividends that the company might have gone into liquidation? A. No.

Q. I am not putting to you that your view was that the company would necessarily go into liquidation by reason of the payment, but it might have?
A. I said earlier an investigation was proceeding and still had not been completed at 12th January. Whilst there was a remote possibility that things might not have turned out still I felt the decision should be made not to pay the dividend. The company made a statement to the Stock Exchange that the dividend would be paid about a fortnight after the time I was speaking, and I was against it. 40

Q. You were against it on 13th January when the decision was made? A. I was against it on 13th January. 50

Q. I take it from what you have said that your view as to the viability of this company as a whole

was dependent on whether U.D.C. provided finance?

A. U.D.C. or some other financier.

Q. You told a meeting at which the other directors were present that U.D.C. would provide the finance?

A. Yes.

Q. You said that that had to be proved to you?

A. Yes.

Q. Your acceptance of this directorship depended on whether this finance was available? A. Yes.

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Q. You yourself had spoken to Mr. Honey at U.D.C.?

A. Yes.

Q. You had a conversation with him in December when he said he would appoint a Receiver? A. No.

Q. On 20th December? A. No.

Q. When did you have a conversation with Mr. Honey?

A. On the 19th December.

Q. What was that conversation? A. That it was already rejected; it was in the form of notes.

Q. What was the substance of it? A. Only to ask U.D.C. their attitude in regard to the Landmark Corporation.

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Q. Did you understand from Mr. Honey that they were going to appoint a Receiver? A. No.

Q. On 19th December? A. No.

Q. Did you understand you could obtain a firm commitment from U.D.C. that they would advance this money? A. Not at that stage.

Q. As at 13th January you were in doubt as to whether U.D.C. would advance the money? A. I was in doubt. ~~Mr. Batten was not.~~ (Answer struck out by direction).

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Q. As at the 13th January you were in doubt as to whether U.D.C. would advance the money? A. Yes, because I had nothing to prove that they would.

Q. Mr. Honey was a man with whom you had a conversation on this matter. A. Yes, a month before.

Q. You were at this stage the Chairman elect of the company? A. I had been invited to be the Chairman.

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Q. Your acceptance of the position depended on the attitude of U.D.C.? A. Yes.

Q. Did you telephone U.D.C.? A. No, not at this stage.

Q. Between 13th and 18th January did you speak to U.D.C.? A. No.

Q. When did you make the decision not to accept the chairmanship? A. I asked Armstrong to withdraw the condition that I go on the Board on 4th January. That was made clear to Mr. Barton. On 13th January I said to Mr. Barton "There are still a couple of outstanding matters before I would agree to accept the chairmanship". On the Friday night I thought it over and spent quite a bit of time dealing with the negotiations, and I decided to decline to take that position. I rang up Mr. Armstrong and asked him to withdraw that as a condition. 10

Q. You never spoke to Mr. Barton about it? A. No. I had raised the subject with Mr. Armstrong at the time and he said as the matter was in the hands of the solicitors that I should not at that time communicate with Mr. Barton. I also spoke to Mr. Grant on the Sunday and he also said that I should not talk to anybody in relation to it.

Q. You understood by those conversations that you were being asked by Mr. Armstrong and Mr. Grant to conceal from Mr. Barton the fact that you were not going on the Board? A. There was a condition being imposed by Mr. Armstrong, a condition which was withdrawn. The carriage of events was largely in the hands of the solicitors from the 4th January. 20

Q. You understood from those conversations that Mr. Armstrong and Mr. Grant were asking you to conceal from Mr. Barton the fact that you had decided not to go on the Board? A. No. 30

Q. What did you understand was the point of Mr. Armstrong asking you not to communicate with Mr. Barton? A. I had said to Mr. Barton that we had still not made up our minds to go on the Board on the Friday.

Q. What did you understand was the point of Mr. Armstrong asking you not to communicate further with Mr. Barton? A. That was fairly clear. The carriage of events was then in the hands of the solicitors. 40

Q. Did not you feel a personal obligation to Mr. Barton to say to him "I have decided not to take the chairmanship". A. I had personal instructions that I could only refer to the solicitor for Mr. Armstrong, the person for whom I was acting.

Q. If both Mr. Armstrong and his solicitor had not asked you not to communicate with Mr. Barton would not you tell him of your decision not to accept the chairmanship? A. I had not told him on the Friday I would. It was under consideration. 50

Q. Would not you have told him your decision unless you had been instructed not to do so? A. I was instructed not to communicate.

Q. It was for that reason you did not tell Mr. Barton of the decision not to accept the chairmanship? A. No. Negotiations took a great deal of

time, starting from about 3th December. From the 4th January the carriage was in the hands of the solicitors I thought I had made it clear that I had not accepted the directorship from Mr. Barton as there were still conditions on the Friday. On the 4th January the carriage was in the hands of the solicitors.

Q. I just want to ask you this: As at 13th January you felt that you were in doubt as to the position of U.D.C. That is correct, isn't it? 10

A. Yes. I didn't know. The discussion on 19th December did not involve any direct evidence that U.D.C. would not continue to finance.

Q. Or that they would? A. Or that they would.

Q. But you did know that they had indicated previously that they would not? You did know that early in December they had indicated that they would not? A. I only knew because there was a difference on the board of Landmark that they had withheld finance. 20

Q. And you knew over the Christmas period they had proposed to appoint a receiver? A. They threatened. My knowledge of this came on the 21st - they refrained from doing so, as they believed - this is what I was informed - that the differences between the parties would be resolved.

Q. So that - I won't ask you about intervening matters, but as at 13th January there was definitely a doubtful matter in your mind as to whether U.D.C. would provide finance? A. Not necessarily, because if you turn around and take the position where they threatened on 21st December to appoint a receiver, and then they refrained from doing so because they considered that the difference on the board will be resolved and Mr. Armstrong will be off the company - 30

Q. Didn't they also get further security, or are you not aware of that? A. I would not know. I think they took a third mortgage on Landmark House. That is only what I have been informed of since. 40

Q. You know that the reason they didn't appoint a receiver was because they were given a further security? A. I didn't know it until you said it. I know they had been given security.

Q. As at 13th January that was the position, wasn't it? In your view you were not prepared to accept the position with a company which was financially unstable, were you? A. I was a bit doubtful about it. 50

HIS HONOUR: Q. What was the answer? A. I was rather doubtful about it.

MR. GRUZMAN: Q. I will ask you the question again: you were not, on 13th January, prepared to accept the position of chairman of a company which in your

view was unstable, were you - financially unstable?

A. To answer generally, I decided I didn't want to be a director.

Q. And the reason was you believed this company was financially unstable, wasn't it? A. There were a lot of reasons.

Q. One of the reasons was that you believed the company was financially unstable? A. There was some doubt. 10

Q. And that doubt could have been resolved to your satisfaction by communicating with U.D.C.?

A. Not necessarily.

Q. You could have communicated with U.D.C. and gone a certain distance in the way to resolving your doubts? A. Supposing I had, I would have had no instructions from a client to do so. If U.D.C. didn't lend the money I would have been to blame. I would have been up for damages. It was not a straight forward position I was in. 20

Q. The fact is, I put it to you, you deliberately refrained from communicating with U.D.C. because you knew what the answer would be? A. I had no authority.

Q. You had no authority? A. No.

Q. Did you seek authority? A. Not at that point of time.

Q. At any point of time in January? A. No.

Q. All you had to do was to ask Mr. Barton wasn't it? A. ~~Mr. Barton was very optimistic.~~ (Objected to: by direction answer struck out as indicated). 30

Q. All you had to do was to ask Mr. Barton's authority to communicate with U.D.C. if you needed authority, didn't you? That is all you had to do to get authority, wasn't it? A. Yes.

Q. And you did not do so, did you? A. We were --

Q. You did not do so, did you? You can answer that Yes or No. You did not do so, did you? A. No.

Q. And the reason that you did not communicate with U.D.C. was that you knew that the answer would be that there would be no chance of getting this finance? A. No. 40

Q. Well, what was your reason? Will you tell us why you did not communicate with U.D.C. at this point of time? A. From this point of time, from 4th January onwards, a couple of people on my staff. -

Q. As at 13th January will you tell his Honour why you did not communicate with U.D.C. to resolve 50

your doubts one way or another? (Objected to: allowed).

Q. As at 13th January will you inform his Honour why you did not communicate with U.D.C. to resolve your doubts about their attitude? A. Because at all times the position in relation to acceptance of the directorship was based on the satisfactory conclusion to an investigation which was under way. We did not commence that investigation until 4th January, and we never finally completed it.

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Q. And that is a truthful answer as to why you did not ask U.D.C. on or about 13th January whether they were going to advance money or not, is that right? A. We didn't complete our investigations. That is correct.

Q. That is your truthful answer, is it? A. Yes.

MR. GRUZMAN: That is all I wish to ask at this stage.

RE-EXAMINATION

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MR. BAINTON: Q. You were asked amongst other things, the substance of a discussion you had with Mr. Honey, I think it was, of U.D.C. on 19th December 1966? A. Yes.

Q. I think you made a note of that discussion shortly afterwards, did you not, which was marked 25 for identification. You might perhaps have a look at it, and tell his Honour if that is that note? A. Yes.

(m.f.i.25 - Notes of meeting between B.H. Smith and Mr. Honey, 19/12/66, tendered and marked Exhibit 44).

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Q. You want to add something? A. On the decision not to become a director - I wanted to remove the condition that Armstrong had imposed if I did become a director, which I did on the Friday - (Objected to: rejected).

Q. There is one thing about this document, which is now Exhibit 44, that I want to ask you. A. Will I have a look at it?

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Q. Do you have a copy? A. Yes.

Q. What I want to ask you, when you are looking at it, is what the entry 3(o) relates to. A. I think I can tell you my recollection of what that is. When Mr. Armstrong was removed from the chairmanship of Landmark Corporation or Paradise Waters his second mortgage became due and payable. I believe this would be a reference to that issue.

Q. The second mortgage was to whom? A. One of the Armstrong companies.

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Q. The provision of finance from U.D.C. was discussed by you at some stage of the negotiations? Discussed with Mr. Barton, that is? A. Yes.

Q. Was this subject brought up on one occasion, or more than one occasion? A. It was brought up on more than one occasion.

Q. Are you able to say on how many occasions?

A. No, I can only say that it was brought up on more than one occasion.

Q. On any occasion did Mr. Barton say anything to you to indicate that he had any doubts about the matter? A. No.

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Q. Who first brought up the question of your taking or being appointed to the Board and becoming a director of Landmark Corporation? Who first brought up that question? A. Mr. Armstrong.

Q. Was that something that he wanted you to pass on to Mr. Barton? A. Yes.

Q. And did you? A. Yes.

Q. What was Mr. Barton's attitude to that when you first discussed it with him? A. I don't recall on the first occasion. Subsequently I know he was agreeable to it. Or appeared to be.

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Q. Were there further discussions about this aspect of the matter? A. Yes.

Q. Well now, would you just give us the chronological order of the further discussions as they took place, and tell us who you spoke to about it?

A. Well, on the meeting on 3rd January with Mr. Barton Mr. Barton and I together worked out the proposal by Barton to Armstrong on a basis of settlement which were the notes of 3rd January. Included in those notes was the condition - acceptance of the condition by Armstrong that B.H. Smith and Hawley join the board.

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Q. Yes. A. I know I would have told Mr. Barton on that occasion that we would not be prepared to join the board until a thorough investigation had been completed.

Q. Yes? A. Now, that is only the 3rd January, and investigations take some time.

Q. When did you next discuss this question, and who did you speak to about it? A. On 4th January I said to Mr. Armstrong that I would like him to withdraw the condition that I should be bound to be a director of the company.

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Q. Did he? A. He did, and I conveyed this to Mr. Barton.

Q. You said something to Mr. Barton. What did you say? A. I said to Mr. Barton, "These are the conditions which are acceptable to Mr. Armstrong," and I read my notes of the 4th January. I then said, "Mr. Armstrong has agreed to withdraw the condition that I be appointed to the board of

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Landmark. However, our investigation will proceed, and we don't want you to depend on what decision we finally make."

Q. When did you next talk about this subject matter, and with whom? A. On 10th January.

Q. Yes? A. On 10th January Mr. Armstrong saw me and advised that -

Q. He said something to you. What did he say?

A. He said that - He gave me the instructions to suggest to Mr. Barton that he would agree with the new transferees of the shares instead of being the nine nominees plus Barton provided that Smith and Hawley became directors of the Company. I said to Mr. Barton. "You know we have not made up our minds to be directors of the company." I said, "I don't know the directors. I suggest you try and get them together next Friday."

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Q. Was it on the Friday that you next discussed this with anybody? A. Yes, on the Friday, with Mr. Barton, Mr. Bovill and Mr. Cotter. I said that two outstanding conditions were still involved before we would accept directorship, one being whether U.D.C. would in fact lend money and re-finance, and the other one that I would want an extraordinary general meeting to be called to have the dividend cancelled out. We still have not completed our investigation.

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Q. It was on that night, I think you told us, that you reached the decision that you would not go on the board? A. This is all rather difficult. I am trying to do a recollection. The position was I became doubtful whether I would come on the board that Friday night, and I may have had doubts before. But I started to have real doubts on the Friday night, particularly having regard to the meeting at 4.15 in the afternoon. So I rang up Mr. Armstrong and I said, "Look, I am a little doubtful on the directorship - accepting the directorship. I want you to withdraw that condition from the settlement terms."

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Q. What did Mr. Armstrong say? A. Well to start with he would not, and I argued on the phone with him, and then he agreed. I said, "Well, I suppose I should advise the company". He said, "Oh no, it is in the hands of the solicitors now" - which it was.

Q. Did you discuss it again subsequently after that, apart from telling Mr. Grant or anybody else?

A. I spoke to Mr. Grant on the Sunday.

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Q. Then before that conversation did you discuss this subject matter with anybody else on any subsequent occasion? A. The only subsequent occasion was on 18th January when Mr. Barton came into the office.

(Witness retired).

ROBERT IAN GRANT

Sworn, examined, deposed:

TO MR. BAINTON: I am a solicitor of the Supreme Court of New South Wales and I reside at 34 Crows Nest Road, Wollstonecraft.

Q. You are a partner in the firm of Dare, Reed, Martin and Grant, of 187 Macquarie Street, Sydney?

A. Yes.

Q. I think you are the solicitor in these proceedings for the first, second, third, fourth, fifth and sixth defendants? A. Yes. 10

Q. I think you are a director - and have been since about 1964 - of this second, third, fourth, fifth and sixth defendants? A. That is right.

Q. And you have acted as solicitor for those companies for a number of years? A. Yes.

Q. I think you have also acted for some time as solicitor for the defendant, Landmark Corporation Limited? A. Yes. 20

Q. I think in point of fact you are a personal shareholder in that company? A. Yes.

Q. And I think your firm is a creditor in that company in respect of legal costs? A. Yes.

Q. I think you also on occasions acted as solicitor for the plaintiff Mr. Barton? A. Yes.

Q. But I think only in connection with transactions which were in some way or other involved with Mr. Armstrong or some company in which he had an interest, or Landmark Corporation, or one of the subsidiaries? A. Yes. 30

Q. You have not acted otherwise for him in any personal matters? A. No. Mr. Bowen was his personal solicitor.

Q. Peter Bowen, of Gaden, Bowen & Stewart?
A. Yes.

Q. Did you on 4th November 1966 write a letter to Messrs. - as they were then - Messrs. Gaden & Bowen, Solicitors? A. That is my recollection, yes. 40

Q. You were aware at that stage that that firm was then acting for Mr. Barton in respect of his personal matters? A. Yes.

Q. Do you have a copy of that letter in your file? A. I do.

Q. I think in point of fact you got a Zerox of the original which you asked Mr. Bowen to supply when you lost your own copy, is that right?
A. That is right.

Q. Well now, at the same time as that correspondence was being exchanged did you receive instructions on behalf of Finlayside Pty. Limited in a matter arising out of its relation with Landmark Corporation and the Paradise Waters companies?

A. Yes, I did.

Q. As a result of those instructions did you write a letter to the secretary of Paradise Waters (Sales) Pty. Limited? A. Yes.

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Q. Have you got a copy of that letter? A. Yes. (Produced).

Q. Before you caused that letter to be written did you seek, and receive the advice of counsel on the matters discussed in the letter? A. Yes.

(Copy letter dated 10th November 1966 tendered; objected to: admitted and marked Exhibit 45).

Q. Did you on the same day, on behalf of George Armstrong & Son Pty. Limited, write a letter to the secretary of Landmark Corporation? A. I did.

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Q. Have you got a copy of that letter? A. I have.

Q. And did you receive a reply, or two replies, to those letters, each of them dated 14th November 1966, from Messrs. Gaden, Bowen & Stewart? A. I did.

Q. Perhaps you might produce those three letters at this stage. A. Yes. (Produced).

(Letter dated 10th November 1966 and two letters dated 14th November 1966 tendered and admitted as part of Exhibit 45).

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MR. BAINTON: With my friend's concurrence, may it be noted that at a meeting of directors of Landmark on 14th November 1966 this resolution, *inter alia*, was passed:

"Resolved that Mr. A. Barton be and he is hereby authorised to instruct Messrs. Gaden, Bowen & Stewart, Solicitors, to act on behalf of this company, in matters relating to Paradise Waters (Sales) Pty. Limited, Paradise Waters Limited and Finlayside Pty. Limited."

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Q. Did you on 14th November write two further letters on the same subject matter to Gaden, Bowen & Stewart? A. Yes, I did.

(Two additional letters dated 14th November 1966 tendered: objected to: and admitted as part of Exhibit 45).

Q. On the following day did you cause proceedings to be commenced in this Court on behalf of George Armstrong & Sons Pty. Limited v Landmark Pty. Limited, and on behalf of Finlayside Pty. Limited v Landmark Limited, Paradise Waters (Sales) Pty. Limited and Paradise Waters Limited? A. Yes.

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(Originating summonses in respect of above proceedings tendered: admitted: and admitted as part of Exhibit 45)

Q. Did you on 17th November write a further letter to Messrs. Gaden, Bowen & Stewart? A. Yes, I did.

Q. On behalf of George Armstrong & Son Pty. Limited? A. Yes.

(Letter dated 17th November 1966 tendered: admitted as part of Exhibit 45).

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Q. Did you receive any denial to the matter set out in the second paragraph of that letter? A. Not from my recollection.

Q. Did you write a letter again on 18th November 1966 to Messrs. Gaden, Bowen & Stewart concerning a statement that was apparently made to the Stock Exchange? A. I did.

Q. Did you receive any reply to that letter?
A. No.

(Letter dated 18th November 1966 tendered: admitted as part of Exhibit 45).

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Q. After that, to preserve the chronology, there was a meeting at which Mr. Armstrong was removed from his position as chairman of the Landmark board? A. I believe so.

Q. And subsequent to that, on 21st November 1966, on the instructions of George Armstrong & Son Pty. Limited, did you write letters to Paradise Waters Limited, and Landmark Corporation Limited, and on behalf of Southern Tablelands Finance Co. Pty. Limited to Grosvenor Developments Pty. Limited?
A. I did.

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Q. For the record, who were Grosvenor Developments Pty. Limited? A. They were a subsidiary of Landmark, and owned a property called "Toft Monks". Southern Tablelands Finance held a second mortgage over that property.

(Three letters dated 21st November 1966 tendered and admitted as Exhibit 46).

Q. I think that you have Exhibit 28 in your hand at the moment. Did you, as a shareholder in Landmark get a copy of that? A. Yes, I did.

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Q. Did you on 25th November receive a letter of that date from Messrs. Allen, Allen & Hemsley?
A. Yes.

Q. Relating to the subject matters of the letters which have become Exhibit 46? A. Yes.

(Letter of 25th November 1966 tendered: admitted as part of Exhibit 46).

Q. Did you on 27th November at your home get a telegram? A. Yes.

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(Telegram dated 27th November 1966 tendered: objected to: admitted and marked Exhibit 47).

(Decretal order in the Finlaysia side suit tendered: objected to: admitted as part of Exhibit 45).

Q. Did you, immediately after that decree was made, go back to your office and write a letter to Allen, Allen & Hemsley, relating to this mortgage?

A. I think it may have been later on in the same day but it was on 7th December.

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(Letter of 7th December, 1966, reply of 12th December 1966 and draft deed tendered and marked Exhibit 48).

Q. Mr. Grant, after writing the letter - after receiving the letter of 12th December did you get a document from Mr. B.H. Smith? A. Yes, I did.

Q. Do you still have it? Is it a document in handwriting? A. Yes, it is in handwriting bearing dated 8/12/66.

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Q. Leave that one for the moment, Mr. Grant. It was a one-paged document that I had in mind. It was a single-paged document - a document on which you yourself have made some notes in your own handwriting? A. Yes.

Q. Will you produce that document? A. Yes.

Q. Are you able, by reason of any other documents - are you able to fix from the writing at the bottom of that document in your own handwriting the date on which you received this document? A. Yes, I am.

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Q. How are you able to fix it? A. On the date I received it I had a conference with Mr. Smith. The document was handed to me at the conference, and at the conference I think I was interrupted by somebody bringing down a letter to me which we had received from Allen, Allen & Hemsley. At the conclusion of the conference I took the letter and the document that I had been given by Mr. Smith up to Mr. Bainton's chambers, and he read the letter and I made some notes on that particular document concerning the reply, and that letter is dated the 12th - the letter in reply that I sent to Allen, Allen & Hemsley is dated 12th December.

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Q. Will you look at your letter of the 13th? I think you will find it is the 13th and not the 12th. Just check that -

HIS HONOUR: There is a note on the document which enables you to say that you received it on or before 13th December. A. On the date this letter was sent I went straight back to the office and dictated the letter. It was sent that day.

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(Copy notes dated (?) 13/12/66 tendered and marked Exhibit 49).

MR. BAINTON: Q. When did you put that entry at the top of the document? When you got it, or some time subsequent? A. Some time subsequent.

Q. Was there a letter which you wrote on 13th December 1966 to Allen, Allen & Hemsley, and a letter they wrote of the same date to your firm?

A. I wrote two letters to Allen, Allen & Hemsley on the 13th.

Q. Perhaps if you will put them in this sequence: 10
your letter commencing, "We acknowledge receipt of your letter ..." their reply, and your other letter of the 13th. In the fourth last line of the first page of the first letter there is a wrong date, isn't there? A. Yes, there is.

Q. While my friend is reading those letters you might get out two letters, each dated 14th December 1966, which you received from Allen, Allen & Hemsley?

A. Yes. (Produced).

(Three letters dated 13/12/66, two letters 20
dated 14/12/66 and draft deed tendered,
admitted as part of Exhibit 48).

Q. On 14th December did you have a discussion with Mr. Armstrong? A. I did.

Q. Have you, or did you when you had the discussion make a note of the subject matter of it?

A. I did.

Q. Do you have that note with you? A. Yes.

Q. Was it made while Mr. Armstrong was there, or shortly after? A. No, this note was - my re- 30
collection is that this was a phone call, in which he mentioned certain heads of agreement. I don't think they are complete. He mentioned them, and I made a note of it.

Q. That note is your note of what Mr. Armstrong had told you in this telephone conversation? A. Yes.

Q. Made at the time of the conversation? A. Yes.

(Solicitor's diary note, 14/12/66, tendered 40
and admitted as part of Exhibit 49).

Q. Did you receive from anybody on that day or any day after that another document in the handwriting of Mr. Smith? A. Yes, a document dated 14/12/66.

Q. Headed "negotiations with Mr. Barton?" A. Yes.

Q. Who brought that into you? A. My recollection is that this was given to me at Mr. Smith's office.

Q. I want to draw your attention to some of the handwriting on it which is obviously not Mr. Smith's. Do you see the bits I am referring to, at the top under the words "negotiations with Mr. Barton and underneath the little box on the right-hand side? 50
A. Yes.

Q. Whose handwriting is that? A. On the document that I have it is - it seems to be Mr. Smith's handwriting. But there was another document in which there were additions to it. I think they were in someone else's handwriting.

MR. BAINTON: With my friend's concurrence I hand Mr. Grant a document I have, and give his document back. It is yet another version.

WITNESS: Yes. The words "vice versa, subject B.H. Smith" are in Mr. Armstrong's handwriting. 10

MR. BAINTON: Q. What about the words up towards the top? A. "Answer" is in his handwriting, too, and the words that come through faintly under "negotiations with Mr. Barton" are also in his handwriting.

Q. By "his" you mean Mr. Armstrong's? A. Yes.

Q. Did a copy of the one you have now got in your hand come into your possession? That is the one with Mr. Armstrong's writing on it. Did a copy of that come into your possession? A. It did at one stage. 20

Q. Are you able to say when? A. No.

Q. The other two you have without Mr. Armstrong's writing on - can you say when you got them? A. Probably on 14th December. I think it was on the date of the document.

(Copy notes, 14/12/66, tendered: admitted and added as part of Exhibit 49).

Q. On 14th did you have any further discussion with Mr. Armstrong relating to these matters generally, and did you make any note of the conversation you had? A. I think it was at the conversation with Mr. Smith. I made some calculations as to what the proposal meant, and my calculations were Xeroxed, and the Xerox copy then had some further handwriting on it which Mr. Armstrong signed, and I wrote on to my original notes after they were xeroxed. The additions were put on the other xeroxes, and instead of Mr. Armstrong's signature I just wrote "A.E.A." on it. 30 40

Q. Do you have that document there which came into being in that fashion? A. Yes.

Q. What is the date on which that document was made out? A. 14th December.

Q. Does it set out your calculations resulting from the discussions you had had to that point of time with Mr. Armstrong and Mr. Smith? A. Yes.

(Document dated 14th December 1966 tendered; Mr. Gruzman requested that he be permitted to consider his attitude in relation to its admissibility over the adjournment). 50

(FURTHER HEARING ADJOURNED TO 10 A.M. WEDNESDAY, 31ST JULY, 1968).

BARTON -v- ARMSTRONG & ORS.

EIGHTEENTH DAY: WEDNESDAY, 31ST JULY, 1968.

ROBERT IAN GRANT

On former oath:

MR. BAINTON: I think at the adjournment my friend was considering a document which I had tendered.

MR. GRUZMAN: There is no objection to that document.

(Notes of R.I. Grant, 14/12/66, admitted as part of Exhibit 49). 10

HIS HONOUR: Q. This document is in your handwriting?
A. Yes.

MR. BAINTON: Q. Would you just take out your copy of that document? I would like to ask you a couple of things about it? A. I don't have the copies with me. They are in my files over here. (Documents produced).

Q. You said yesterday, as I understand it, that your recollection is that you made this note at a conversation with Mr. Smith? A. That is so. 20

Q. I think you said that the purpose of the note was to, as it were, reduce to terms of pounds, shillings and pence what the proposals you were discussing involved? A. Yes, that is right.

Q. Mr. Armstrong was present at this discussion, I take it? A. Yes, he was present.

Q. Some other copy of the document was signed by him? A. Yes.

Q. Was the document that has just been tendered compiled all in one go, or in bits and pieces? A. No, down to the figure of \$785,000 it was compiled in the first instance, and then on the copy that Mr. Armstrong had he wrote, in his own handwriting "A.E.A. to resign from all companies. A.B. remains on L.C.L. board," and dated it and signed it. 30

Q. Do you recollect why that addition was made to the copy? What brought about the adding of those words, do you recollect? A. I think Mr. Smith wanted to have something signed by Armstrong to show Barton to assist in negotiations. 40

Q. The document you have, you have added in your own handwriting what had been added to this one signed by Mr. Armstrong? A. Yes.

Q. The next thing that you did was to write to Allen Allen and Hemsley on 15th December?
A. Yes.

(Letter dated 15th December, 1966 tendered, admitted, and added to Exhibit 48).

Q. Did you on that same day prepare some notes as to what would be required to implement the discharge of the mortgage that had been discussed in correspondence, and other matters? A. Yes.

Q. What other matters were you concerned with at that stage? A. Matters that were implementing the conveyancing aspect of the proposals up to date. 10

Q. Do you have your original notes that you made of these matters? A. I have a carbon copy of typewritten notes.

Q. I am looking at one with a circle nearer the bottom with "less 40-percent" in it? A. Yes. That is my writing.

Q. That is your writing? A. Yes.

Q. Can you tell me when you prepared that document? A. I cannot precisely fix it. I think it is about 15th December. 20

Q. I think you had in fact, before you became aware that it may be required for evidence written "15th December" on top of it for your own information? A. Yes, that is right.

Q. That is not a contemporary note? A. No.

Q. Does that note then set out what you thought was necessary to implement the proposals at that point of time? A. Yes.

(Notes of R.I. Grant, 15/12/66, tendered and admitted as part of Exhibit 49). 30

Q. Did you then prepare a typewritten note of the documents that would be required for the implementation of the proposal at that stage? A. Yes, I did.

Q. Did you take a carbon copy of it? Did you take a carbon copy of that document? A. I did.

Q. Do you recollect what you did with the original? A. I think I gave the original to Mr. Armstrong.

Q. Do you have any recollection whether there was but one or more than one carbons? A. My recollection is that there was only one carbon, but there could have been more. 40

Q. What you set out in this document was your understanding of what, by way of conveyancing, was necessary to implement the proposal in the discussion? A. Yes, that is so.

Q. You prepared your understanding of what was required by way of conveyancing? A. Yes.

(Two copies of notes 16/12/66, tendered and admitted as part of Exhibit 49).

Q. (Document previously shown to witness returned to witness). Whose is that document? A. The handwritten portion is Mr. Armstrong's.

Q. I think the date, 16/12/66, on top of the carbon copy which you produced was not a contemporary date, but one which you put on at some time for your own guidance? A. Yes.

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Q. When did you next have anything to do with this matter, either by way of discussing it with anybody or by drawing documents? A. It was round about the 19th - either the 19th or 20th. I would not be certain as to the date, but it was on an occasion at Smith's office when a handwritten document of Smith's bearing date 19th was produced and discussed.

Q. Apart from seeing this handwritten document were there any Xerox copies of it at that discussion? A. Yes, there were.

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Q. Were you given one? Were you given a Xerox copy? A. Yes, I was given one.

Q. Did you use it to make some notes yourself? A. I did.

Q. Do you still have it? A. I have.

Q. Would you mind producing that and identifying it for us? A. These were the documents (produced).

Q. There were in fact two distinct bundles. Would you keep them separately? I would like to deal first with the one I now put on the top. I think to start with, on the back of p. 2 of that document there is some writing and a diagram. Whose writing is that? A. That is my writing.

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Q. What is it intended to do? A. Show diagrammatically the relationship of the various companies of the Landmark group concerned with the Paradise Waters project, and also to show the interest of Finlayside as a 40-percent shareholder in Paradise Waters (Sales).

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Q. Will you then look at p. 3? I think there are a number of notes in your handwriting, aren't there? A. Yes.

Q. What was the purpose of those notes? A. They were simply comments and notes on the securities offered.

Q. I think some appear to be notes of the discussions? A. Yes.

Q. Were they made by you at the time of this discussion on that copy that was handed to you in Mr. Smith's office? A. Yes.

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(Two copies of notes, 19/12/66, tendered and admitted as part of Exhibit 49).

Q. The other documents that you produced a moment ago that were handed to you on the same occasion - you produce those? A. Yes.

Q. You might tell me, if you can, whose handwriting is on the bottom one? A. I don't know the handwriting on that. I believe it to be that of Mr. King from Mr. Smith's office, or someone from Mr. Smith's office.

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MR. BAINTON: Perhaps I should exclude that one from the tender. If my friend wants it in I don't mind. Otherwise the document coincides with Exhibit 40. I had better be correct. It coincides with Exhibits 40 and 38, except that it does not bear the handwriting on other parts of Exhibit 38.

MR. GRUZMAN: I will not object to any of the documents, including the sheet of figures prepared in Mr. Smith's office.

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(Further notes, 19/12/66, tendered and admitted as part of Exhibit 49).

MR. BAINTON: Q. Well now, on the following day, Mr. Grant, for your own benefit did you sit down with a couple of sheets of paper and prepare a summary of the situation as you then saw it on instructions you had? A. I prepared a document which was related to the possibility of an alternative with U.D.C. continuing to finance the project with Mr. Armstrong in control of Landmark.

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Q. I am a day behind you at this stage, or in front - I am not sure. I am looking at the moment at two pages with the date "21st December 1966" at the top. I think you are looking at the one of 22nd December. A. Ones dated - yes, these are they.

Q. It is dated 21st December, 1966? Is that when you prepared? A. Yes, that is when I prepared it.

Q. Well, then, does it in fact set out the situation as you then saw it on your instructions, and the alternatives you considered to be available?
A. Yes.

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Q. Was it prepared simply for your own guidance, or were copies given to anyone else? A. I beg your pardon?

Q. Was this prepared simply for your own guidance, or were copies given to anyone else? A. I think basically it was prepared for my own guidance. I don't recollect having given any copies to anybody else, but I could have given a copy to Mr. Armstrong.

Q. While my friend is reading it I might perhaps ask you this short question: was the date at the top put there when you did it, or was it added subsequently? A. No, that was when I did it.

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Q. When you did it? A. Yes.

(Notes of R.I. Grant, 21/12/66, tendered and admitted as part of Exhibit 49).

Q. I think, Mr. Grant, on the second page there is a reference which reads "since J.S. left", I think that was Joseph Stewart, who was the former secretary, is that right? A. Yes.

HIS HONOUR: Q. What is "G. Pty. Limited?" A. Goondoo Pty. Limited.

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Q. Who is "W.S.B.?" A. William Sugden Beale.

MR. BAINTON: Q. On the 22nd did you learn something about an announced intention of U.D.C. Limited?
A. Yes, we were told that U.D.C., or I was told that U.D.C. was appointing a receiver for the Paradise Waters estate on that day.

Q. Do you recall who gave you that information?
A. Armstrong. Armstrong gave me that information.

Q. Having been told that, did you do anything?
A. Yes.

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Q. What did you do? A. I made an appointment with Malouf - Philip Malouf - who is the solicitor for U.D.C. The information was that Honey, the managing director of U.D.C., had gone to Brisbane that morning, and the purpose of the appointment with Malouf was to try and persuade U.D.C. to hold their hand in the appointment of a receiver to permit either Armstrong to come back into control, or the alternative proposals that were being discussed to come to fruition.

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Q. Before you went to see Mr. Malouf did you prepare some notes for your own guidance in your conversation with him? A. I did, yes.

Q. If I may step ahead for the moment, after you saw Mr. Malouf I think you attended a board meeting of Landmark Corporation? A. Yes, I did.

Q. Did you prepare some notes for the purpose of what you were proposing to say at that meeting?
A. Yes.

Q. Were both of these sets of notes prepared on 22nd December? A. They were.

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Q. Do you have them there? A. I do.

Q. I think there are matters on the top of the note of the 22nd that you prepared for the purpose of your discussion with Mr. Malouf that were just on the top of the page when you started? A. This one with "bank cheque, \$60,000" on it?

Q. Yes? A. They were notes after the conference I had, and the notes appearing further down were a more amplified form in order to clear my own

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mind before going down to Landmark. I think the top three lines were a telephone conversation.

Q. Was the page with these items at the top the first page you prepared? A. The one headed "A.E.A. proposal, 22/12/66" was the first one.

Q. And the one with "Bank cheque, \$60,000" was the second one? A. Yes.

Q. And they both have a date at the top. Was that something you put there when you made the note, or did you put it on subsequently? Did you put the date on when you made the note, or subsequently? 10
A. My recollection is at the time.

(Two pages of notes, R.I. Grant, 22/12/66, tendered and admitted as part of Exhibit 49).

Q. Do you have a copy of each of these documents?
A. Yes.

Q. I want to ask you a couple of things about them. At the bottom of the document headed "A.E.A. proposal, 22/12/66" there are some words in brackets relating to a s. 222 notice by Monier. When was that put there, and what is it intended to indicate? A. I think it was put there at the same time as the notes were made, and it indicated that Monier Concrete had issued a s. 222 notice. 20

Q. Against whom? A. They had issued a s. 222 notice against one of the companies within the Landmark group.

HIS HONOUR: I think it would be better, if you are going to the other topic, for Mr. Grant not to have this document, Mr. Bainton. 30

MR. BAINTON: Q. Perhaps you had better put it away, Mr. Grant. You went to Mr. Malouf's office and had a discussion with him? A. Yes, that is right.

Q. Did you then go to a meeting of the directors of Landmark Corporation Limited? A. Yes.

Q. Did anybody go with you? A. Armstrong went with me.

Q. Do you recollect who was at that meeting? 40
A. My recollection is that it was a full board - Barton, Cotter, and Bovill as well.

Q. Apart from the members of the Board do you recollect who was there? A. I think there was a representative from Allen Allen and Hemsley. Whether it was Mr. Coleman or Mr. Solomon I am not clear.

Q. Anyone else that you can remember? A. Mr. Bowen could have been there, but I don't recall.

Q. Did you take any documents with you when you went to that meeting? A. I had notes in my pocket, but I didn't use them. 50

Q. You didn't? A. No.

Q. Did you have anything to say at this meeting?

A. I told the meeting -

Q. Do your best to recollect what you said?

A. I informed the meeting - (Objected to).

Q. Try and tell us what you said, "I said..."

A. I said "Armstrong and I have just had a conference with Malouf", and U.D.C. were appointing a receiver. They had agreed to hold their hand until 2.30 p.m. I said that Armstrong wanted to put certain proposals to the meeting, and, broadly, they were that he would buy the penthouse for \$60,000 straight away.

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Q. Who put that? Did Mr. Armstrong put this, or did you put it on his behalf? A. I put it on his behalf.

Q. Yes? A. That this money would be available to pay U.D.C.

Q. Yes? A. I think I mentioned that - that U.D.C. was holding their hands to appoint a receiver until 2.30 at least, and probably they could be persuaded to withhold the appointment longer; the basis of this was that Barton resign as Chairman, Armstrong would take over control as Executive Director until the 21st of next month - January. This would give him an opportunity to find out whether the company was a viable company, and get access to information that had been denied to him, and that if he felt that the company was in a financially sound position and was worth investing further funds in he would be prepared to make further advances. I don't think I can take it any further than that.

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Q. Do you recall anything being said about any other appointments to the Board? A. Yes, there was some mention about Beale.

Q. Do you remember what was said about Mr. Beale? A. Beale being appointed. There may have been two nominees to be appointed.

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Q. Do you have any recollection of whether you said anything about this? A. Yes. I did the talking at that meeting.

Q. To the best of your recollection what did you say? A. That Armstrong wanted his nominees appointed to the Board. It would have been two, so that he, as Chairman, would have had the casting vote.

Q. Yes. Can you tell me why the 21st January, 1967 was referred to as the particular date?

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A. Probably because it was a month ahead, or close enough to a month ahead. It may have been at the end of a week. It was about a month, and probably the end of a week.

Q. Do you recollect whether anything was said as to what would happen after 21st January if these suggested investigations were successful or unsuccessful? A. U.D.C. could appoint a receiver at that point of time, and that they and everybody else could be satisfied that everything had been done to satisfy the company if everything that could have been done had been done.

Q. Was anything said, can you recollect, about the proposed constitution of the Board after 21st January? That is, the Board of Landmark? 10

A. There was something about Barton staying on as a Director for a period of some three to six months.

Q. Anything else at all that you can recollect?

A. I can't recollect anything, now.

Q. Did any member of the Board present at the meeting have anything to say about what you put?

A. Yes, I think Barton was the spokesman, and he said that he would make an advance of \$60,000 himself to the company to enable them to pay U.D.C. This was an essential part of U.D.C. with- 20
holding any further action; if this \$60,000 was paid that day then this postponement to the 21st would probably be acceptable. It was not a definite thing, but the probabilities were that it would be.

Q. Yes. Was there anything else? A. I think he also said that he was going up to see Malouf straight away. 30

Q. About the proposal generally that you had put, did any Director make any comment, or assent or dissent in regard to any aspect of it? A. Barton said that they were not acceptable to him. I think Bovill said something - I don't recall precisely - and my recollection is that then they formally moved, and the motion was rejected.

A. After the meeting did you make any note, do you recall, on the pieces of paper you had prepared about what had transpired at the meet- 40
ing? Did you make any notes of what had transpired at the meeting? A. I think on the second sheet of paper there may have been a note on the bottom.

MR. BAINTON: Perhaps at this stage Mr. Grant may be permitted to look at his copy?

HIS HONOUR: Yes.

WITNESS: The note I made was attended L.C.L. Board meeting. Not accepted. A.B. will advance \$60,000 to L.C.L. to pay U.D.C." 50

MR. BAINTON: Q. "Not accepted". What did that refer to? A. That referred to the fact that the proposals I put to the Board were not accepted.

Q. Did you next have anything to do with this

matter on 4th January? A. Yes. The Christmas vacation was coming up. There was nothing further that could be done. Smith was going to Western Australia, and the office closed until 4th January - either the 3rd or 4th. I think it was the 4th. I came back on, that day.

Q. What happened then on the 4th? A. Armstrong contacted me first, and said that there was a proposal that had been made; to come down to Smith's office at either 2.30 or three in the afternoon. I went down to Smith's office, and there were some handwritten notes of Smith's distributed. 10

Q. When you say distributed, were there Xerox copies handed out? A. Yes.

Q. Were you given one copy? A. I was.

Q. Did you use it to make some notes for your own purposes? A. I did.

Q. Do you have it there? A. Yes. 20

Q. Will you produce that, to start with?
A. Yes (produced).

(R.I. Grant's copy note, five pages, 4/1/67, tendered and marked Exhibit 50).

Q. Have you a copy of that? There are a couple of things I would like to ask you. Have you got a copy of that? A. Yes.

Q. I think at the bottom of the second page, or below the middle, there are some handwritten notes. Are they in your handwriting? A. Yes, they are. 30

Q. I would like to ask you particularly about the last one on that page. What is that a reference to? A. That is a reference to the names of the people who were going to buy Landmark shares.

Q. Did you at that stage, or, so far as you are aware, did any person present know who these people would have been? A. No.

Q. On the last page, I don't know whether it is accurate to describe it as initials or signature, almost at the bottom right-hand corner. Whose is it? A. Armstrong's. 40

Q. At the top there is the name of two solicitors written. In whose handwriting is that? A. That is Smith's.

Q. Have you any recollection of how long this conference lasted? A. Probably one to two hours.

Q. Did you during it, or perhaps at the end of it, receive any instructions? A. At the conclusion of it I received instructions to prepare documents as quickly as possible and to forward the documents to the solicitors concerned. 50

Q. Who were they? A. Bowen and Millar, of Allen Allen and Hemsley.

HIS HONOUR: Q. Who was present at this discussion?

A. Myself, Armstrong, Smith, I think Hawley could have been, and possibly even King, from Smith's office.

MR. BAINTON: Q. I think you and Mr. Armstrong were either the two, or in some cases, two of the three Directors of the second to sixth defendants inclusive? A. Yes.

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Q. Did you have discussions between yourselves, either with or without the third Director, relating to these proposals at any stage? A. Yes, we did.

Q. Did you set about preparing documents? A. I did.

Q. Did you make and keep diary notes of what you did, and the time you spent doing it? A. Yes.

Q. Do you have those notes? A. I have.

Q. Perhaps you might tell us when you commenced the task of preparing documents? A. Immediately after the conference at Smith's office concluded I gave some consideration to the problems and the form of the documents, and the following day I made notes from 9.00 a.m. to eleven; I dictated from eleven to one, and then -

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Q. I think perhaps one could sum it up by saying that you spent virtually the whole of the next day preparing documents? A. Yes.

Q. And I think your diary notes do record, do they not, the discussions and the length of time you spent on the preceding day, the 4th, at Mr. Smith's office? A. Yes.

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Q. You might perhaps, having looked at it, please tell us how long you were engaged there? A. 2.30 to 5.15.

Q. On the 5th, apart from drawing documents, did you have a conference with counsel about the matter generally? A. Yes.

Q. Did you then go ahead with the draft? A. Yes.

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Q. Well then, when was a set of documents available in typed form? A. On 6th January there was a draft - the first draft of the deed of 17th January.

Q. Was anything done with this on that day?
A. Yes. On that day I wrote to Gaden Bowen and Stewart and also to Allen Allen and Hemsley and forwarded for their consideration a copy of the draft deed. I also sent a copy to Mr. Staff at Muswellbrook, where he was at the time, and arranged to phone him the following week.

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HIS HONOUR: Q. Arranged what? A. I arranged to phone him on the following Monday.

MR. BAINTON: Q. What day of the week was this?

A. The 6th was the Friday, and the 9th was the following Monday.

Q. Your letters of 6th January to Gaden Bowen & Stewart and Allen Allen and Hemsley - do you have those? Have you copies of those letters? A. Yes.

Q. Have you prepared a sheet of notes of the events of 4th, 5th, and 6th January? A. Yes. 10

Q. Would you produce those? A. Yes (produced).

Q. When did you prepare these, can you tell us, Mr. Grant? A. At or about the time when they are dated. I think the first two notes - they were prepared mainly for costing, and the first two dates, the 4th and 5th, were probably prepared on the 5th, and the 6th does seem to have a different pen. It was probably prepared the next day.

(R.I. Grant's diary notes tendered, and admitted as part of Exhibit 50). 20

Q. I think on the 4th you had a discussion with Mr. Martin, did you not, of Philip Malouf and Company? A. Yes.

Q. Relating to what he then told you was the then intention of U.D.C.? A. Yes.

Q. And you recorded that in your diary note of 4th January? A. Yes.

HIS HONOUR: Q. What does "O/P" mean? A. "On phone".

MR. BAINTON: Q. Now, there are two letters of 6th January, to Allen Allen and Hemsley and Gaden Bowen & Stewart? A. Yes. 30

Q. While my friend is looking at them, I think what you did was to send the original type of draft deed to Mr. Staff, and a carbon to each of the firms of solicitors? A. Yes.

Q. And you have since received back from Mr. Staff the one you sent to him? A. Yes, that is right.

Q. The document you now have in your hand, apart from having typing on it, has pencil writing? A. Yes. 40

Q. Some of which is Mr. Staff's? A. Yes.

Q. He having written on it before he sent it back to you, I think? A. Yes.

Q. The other pencil writing is yours? A. Yes.

Q. Which you made some months later? A. Yes.

Q. The letters referred, apart from the draft deed, to drafts of the document referred to in para. 10 of the draft deed. Do you have copies of these drafts? A. Could I identify the particular document referred to?

Q. Have you another copy of the deed there?

A. No.

Q. I think if you look at the copy of the letter you wrote to Mr. Staff it might identify them for you? A. That paragraph 10 - 10

Q. I think there is a contract of sale, guarantee of mortgage, and a deed of covenant? A. Yes. I don't have those here. They are with my papers down behind the bar table.

Q. Do you recollect whether or not any alteration was ever made to them, or were they signed in the form in which they were originally drawn? A. I don't think this contract of sale, guarantee, etcetera - they certainly were not signed in the form originally drawn. 20

(Two letters of 6th January, 1967 and draft deed tendered and admitted as part of Exhibit 50).

Q. The pencil alterations that are in your handwriting I think were added in the course of preparing, weren't they, for the hearing of proceedings in April of last year, for the purpose of indicating what differences there were between that draft and the deed in the form in which it was executed on 17th January? A. Some were, and I think some were later. 30

Q. Some later? A. Yes.

Q. The pencil writings show the differences?

A. That is right.

Q. I think you located the documents that we were discussing immediately before the adjournment. That is those referred to in Clause 10 of the deed?

A. Yes.

Q. I think these documents related to the item in Mr. Smith's notes of 4th January which were simply headed "Ratification of and finance of Rozelle..." A. Yes. He also referred - those are also referred to in the last page of that document. 40

Q. Referred to in the fifth page of the documents you were given against the figure 2 in a circle?

A. Yes.

Q. Will you explain what the end finance of Rozelle involved, and how it came to be in question?

A. The end finance meant that when a purchaser wanted to buy one of the units Landmark Finance would provide the necessary finance by way of mortgage finance, and then not discount but sub-mortgage the mortgage with U.D.C., thereby creating a flow 50

of funds, and the approach that I had to this particular clause in the documentation was to simply enter into a contract there and then, whereby the building was sold to one of the companies within the Armstrong group on a deposit with a mortgage back which mortgage would be discounted. At that particular time, Landmark Housing and Development held the building in trust for another Armstrong company in any event, so the result would be there would be a considerable cash flow into the Armstrong group. This was within the terms of the notes that Smith gave me. I prepared documents on that basis. 10

HIS HONOUR: Q. Mr. Grant, is my impression correct, that this was beneficially an Armstrong property in any event? A. Yes.

Q. And all that was required was the mechanical co-operation of the Landmark companies to enable the particular Armstrong company concerned to have the best use of its beneficial interests? A. Yes. 20

MR. BAINTON: Q. And to provide finance for prospective purchasers of units in the building? A. That was an alternative.

HIS HONOUR: Q. That would be only for the benefit of the Armstrong beneficial owner, wouldn't it? A. Yes.

Q. The only reason it had to be brought into it was because legal title was in a Landmark company? A. Yes. 30

MR. BAINTON: Q. Tell me if I am right in what I say: the Landmark company had bought it, although it had not taken transfer of the legal title? A. Yes.

Q. It was a substantial block of units at Rozelle? A. Yes.

Q. The units being intended to be sold off on Strata title? A. Yes.

Q. Ability to offer finance to purchasers facilitates the sale, I take it? A. Yes.

Q. It was that finance to purchasers of units that this term was concerned primarily with? A. Yes. It was expressed in the alternative in the Smith document, and that was that it would be - if the purchaser of units was an Armstrong company that would be acceptable; it would be acceptable to that company purchasing the whole. If, on the other hand, it was a sale piecemeal, unit by unit, then the finance would be available for the purchasers of these units. Originally my draft deed was prepared on the basis of a transfer of the whole to one of the Armstrong companies. When we got down to discussing it on the solicitor level this was not acceptable, I think because the Landmark group simply could not get finance through U.D.C., and consequently the document was changed quite substantially so that it was simply a 40 50

covenant to provide finance on terms for the outside purchasers to whom units were sold. Para. 10 was completely changed, and this document became unnecessary.

MR. BAINTON: Q. Your paragraph 10, and a different paragraph substituted? A. Yes.

Q. Did this really add anything to what the earlier document provided, or not? A. No.

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Q. It didn't? A. No.

(Three documents mentioned in Clause 10 of the draft deed, tendered, and admitted as part of Exhibit 50).

Q. On Monday morning did you have a telephone conversation, I think with Mr. Staff about the draft which you had sent him for his consideration?
A. Yes, I did.

Q. You made diary notes of the things you did on Monday, the 9th, and Tuesday, Wednesday and Thursday of that week, did you? A. Yes, I did.

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Q. Do you have them there? A. Yes, I have them here.

Q. Perhaps you might identify that document to Mr. Staff? A. It is a document headed "9/1/66".

Q. On that day, I think in the morning you had a discussion with Mr. Staff, and with Mr. Armstrong, and concerned yourself with drafting some of the security documents for which your draft provided? For which your draft deed provided? A. Yes.

Q. In the afternoon did you have discussions with others? A. Yes.

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Q. That is Mr. Coleman of Allen Allen and Hemsley, and Mr. Bowen of Gaden Bowen and Stewart?
A. Yes.

Q. Did you make notes of that discussion at the time you were having it? A. Yes, I did.

Q. Do you have those notes? A. I have.

(Five sheets of diary notes, R.I. Grant, tendered and admitted as part of Exhibit 50).

Q. On the afternoon of the Monday you saw both Mr. Coleman and Mr. Bowen? A. Yes, that is right.

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Q. So far as your recollection goes did they come together, or separately, or how? A. No, they both came together.

Q. They came together? A. Yes.

Q. By appointment? A. By appointment.

Q. Can you recollect how the discussion between the three of you began? Perhaps I ought to ask you, was there anybody else present at the discussion?

A. No.

Q. How did the discussion begin? A. My recollection is that Bowen was in somewhat of a hurry, and he said that there was very little that he had an interest in at this particular stage. He did leave fairly early.

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Q. I think, if you look at this document which I show you, you have made some notes of what Mr. Bowen had to say about the matter. Will you perhaps look at those, and tell us what Mr. Bowen's comments were? A. His comments were that there would be no interest on any overdue payments in respect of the shares. The basis of the sale price of the shares was 20-cents per share at the end of 12-months, 20-cents at the end of two years, and 20-cents at the end of three years. There was nothing paid immediately. It was simply a long-term contract. His client would not agree to interest on overdue payments.

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Q. Who was his client, in your understanding?

A. I understood it to be Mr. Barton.

Q. Mr. Barton? A. I understood it to be Mr. Barton, or whoever the other purchasers that he was going to produce were.

Q. Yes? A. Secondly, that he would not provide a profit and loss account or balance sheet in respect of the three of his companies.

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Q. How did the three companies come into it at this stage? A. I don't think this note relates to the 9th - to this conversation on the 9th. I think that this note relates to a later conversation with Mr. Bowen. It is undated, but I don't think it relates to the first conversation.

Q. Well then, so far as you can recollect, what did you and Mr. Bowen discuss on the 9th January?

A. My recollection of that is that Bowen and I discussed very little, and that Bowen was only there for a short time, and he said that Coleman would represent him on any matters that had to be discussed on that occasion.

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Q. Would represent Mr. Bowen? A. Yes.

Q. Well then, would you come to the discussion you had with Mr. Coleman? A. My discussions with Coleman basically related to the draft document that is last exhibited - the last exhibit - and we went through paragraph by paragraph, and as we went along I made notes.

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Q. Yes? A. He drew my attention to the fact that - or I may have drawn his attention to the fact that Armstrong was not a Director. It would be him. He drew my attention to the fact that Armstrong was not a Director of Landmark Finance, so that the recital had to be modified.

Q. I think that figures 8 and 10 relate to purely drafting matters? 8 does, and 10 relates to the identity of a unit? A. Yes.

Q. So far as matters in clauses 2 and 4 are concerned, what was the subjective matter of discussion? Perhaps by way of introduction, I think you had drawn the draft on the basis that documents were to be signed under it in the form in which you were to draw? A. Yes.

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Q. What did Mr. Coleman have to say about that? A. He would not agree to that. He wanted all the terms of the security documents to be crystallised and agreed to prior to the deed being executed.

Q. Did you discuss between you what these various documents should contain and provide for? A. Yes, we did.

Q. On this occasion, or was it subsequently? A. No, on that occasion. He asked me what I had in mind as to a mortgage on Paradise Waters (Sales), and I told him in a form similar to the existing security that George Armstrong & Son held.

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Q. Did Mr. Coleman have anything to say about that? A. Yes. He objected to conditions concerning appointments to the Board.

Q. To save going to get this document, these were conditions which enabled a mortgagee in certain events to make an appointment to the Board? A. Yes.

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Q. In effect, Mr. Coleman said he would not agree to the incorporation of those conditions? A. Yes.

Q. What other discussions relating to the form of mortgages did you have? A. The references under (b) probably relate to objections that he had to clauses in the existing securities again, and that there was a requirement in regard to possible re-finance.

Q. Yes? A. And the Finlayside agreement, which was the profit-sharing agreement, was to be completely out, and there was some discussion as to partial releases. He suggested \$1000 and I did not consider \$1000 would give a mortgagee adequate security on a partial release.

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Q. Partial release on the sale of an allotment on the Paradise Waters Estate? A. Yes.

Q. I think there was also a discussion with Mr. Coleman that Mr. Coleman wanted a provision in the security documents relating to partial releases of a proposed mortgage over Landmark House? A. Yes.

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Q. That was discussed between you, and his

suggestion was \$3000, I take it, per unit sold in that building? A. Yes.

Q You have got an item against (6) and (7) "refer back to A.B.", which I take it means Mr. Barton? A. Yes.

Q. They relate to clauses (6) and (7) of the deed? That relates to clauses (6) and (7), doesn't it? A. Yes.

Q. And those are the clauses that relate to the option over the lots proposed to be granted in the Paradise Waters Estate? A. Yes. 10

Q. What did Mr. Coleman have to say about that? In effect I think he said, didn't he, that he wanted to refer them back to Mr. Barton for further instructions? A. Yes, he did.

Q. Or words to that effect? A. Yes.

Q. Relating to clause (8), which is the agreement to sell shares, what did Mr. Coleman have to say to you about that? A. He said that Barton wanted to take the whole of the shares himself, and have the right to appoint a nominee, and also that we warranted, or the vendor of the shares warranted that the shares be free from encumbrances. 20

Q. I think that the remaining entries on that page are details of conveyancing, aren't they? A. Substantially.

Q. Perhaps the one against the letters "C.C." may go beyond it. There is reference there to a price increase of five-percent-five-cents, I am sorry, if certain things happen or certain things don't happen - the non-payment of the dividend? A. Yes. If the dividend was paid prior to the 13th it was paid to the registered shareholder at the time, and the 13th was the proposed date for settlement, and if it was not paid the price would increase by five-cents. 30

Q. Whose suggestion was that? Did it come from you or Mr. Coleman? It came from Mr. Coleman? A. I think it was discussed. There was a question of when the dividend was going to be paid, and that was regarded as being reasonable between us. 40

Q. You then got to clause (9), which was a draft covenant to produce other purchasers. Mr. Coleman in effect, I take it, said that would be deleted if Mr. Barton became the purchaser of all of them? A. Yes.

Q. And then we come to clause (10). I think he indicated that clause (10) was not acceptable in the form in which you had drawn it? A. Yes. 50

Q. That is the Vista Court provisions? A. Yes.

Q. Clause (15) I think is perhaps the next one

that we should come to. It deals with the event of a receiver being appointed. What did he say about that? A. He said that his instructions were that if a receiver were appointed the whole proposals were finished.

Q. Clause (16) which in your draft related to voting, and resignations and appointments of directors - what did Mr. Coleman tell you about that?

A. It was only to apply in the event of Barton defaulting first of all in having \$140,000 in cash and being able to transfer the penthouse. Basically they were the two things said to be within his own control, and in the various other matters he was in the hands of third parties as to time.

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Q. In substance, he was only prepared to give these covenants in respect of matters that were under his control, and not matters that were under third party control? A. Yes.

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Q. I think you got around to discussing that would be the stamp duty, and matters of that nature? A. Yes.

Q. The remaining matters relate primarily to conveyancing details? A. Yes.

Q. Throughout that part of the discussion may I take it Mr. Bowen was not present? A. That is right.

Q. Did you then have a further discussion on the Tuesday? I think you spoke to Mr. Armstrong, and then to Mr. Smith, and between twelve and one you saw Mr. Bowen and Mr. Coleman, and again in the afternoon between two and 4.30? A. That's right.

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Q. Dealing first of all with Mr. Coleman, what, so far as you can recollect, did Mr. Bowen have to say? A. I don't recall the detail of the discussions with Bowen. They were very short. At some stage - I can't place when, but it would have certainly been before the date on which I was supplied with a number of names of purchasers - I think about the 12th - one of the discussions with Bowen on that occasion was in regard to these matters that are noted in this diary note. These matters were discussed, but as to the date I am not able to tell you.

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Q. That is the page headed "Bowen says"? A. Yes.

Q. Leaving for the moment what day it was, what were the things Mr. Bowen had to say about it?

A. First of all that there would not be any interest paid on any payments if they were not made on the due date. He said that we had our remedies under the mortgage documents ourselves by the principal falling due anyway, and that he was not prepared to provide a balance sheet and profit and loss account in respect of - I am not sure whether it was limited to company purchases or purchases

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generally, and thirdly, that he would not agree to the transfers to the mortgagee - registering the transfers back to the mortgagee unless there was some default in payment.

Q. So far as you can recollect and so far as your notes go, were there any other matters Mr. Bowen discussed with you relating to the draft of 4th January? A. No.

Q. 6th January? A. No.

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Q. Have you any recollection of the matters discussed between yourself and Mr. Coleman on Tuesday the 10th? A. They were basically related to the form of the security documents themselves, and by that time there had been prepared a document which was subsequently initialled by the solicitors, I think probably on the 17th, being the contract of loan and the various security documents that were annexed thereto. The contract was re-typed on two or three occasions perhaps, but the security documents were generally amended by hand and not re-typed, and it was relating to the amendments that were to be introduced into these security documents that our discussions centred on.

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Q. I think again on the 11th you saw Mr. Bowen for a short period of time in the afternoon? A. Yes.

Q. Have you any independent recollection of what you discussed? A. No.

Q. On Thursday the 12th I think you saw Mr. Bowen and Mr. Coleman during the morning? A. Yes, that is right.

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Q. I think you do have some separate notes relating to that discussion, do you not? A. Yes.

Q. Do you remember whether they came in, or spoke to you by phone? A. No, they spoke to me by phone.

Q. It might help your searches. This is the one I would like you to look for now (holding up document). I think you had it earlier? A. Yes.

Q. I think that is a note of matters that occurred on the 12th? A. It is more a summary of the situation as I saw it at twelve noon on the 12th.

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Q. Above that. I would like you to look at what is above that? A. Those are notes of the phone calls.

Q. Does that help you to recollect the discussion with Mr. Bowen on the Thursday? A. I had suggested, or at least I did not want the situation to arise where Barton appeared on the face of it to be the owner of these shares without any encumbrances on them at all, and it was from a security point of view or conveyancing point of view in my view not a good thing to have him in control of the company, and still registered as a shareholder, or his nominees registered as a shareholder, and I had suggested that the shares be registered in the name

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of a third party who could hold them as trustee so that we would have a better security than the one proposed.

Q. Did Mr. Bowen have anything to say about that? A. That note indicates to me that Bowen had informed me on the 12th that Mr. Barton would not agree to a trustee.

HIS HONOUR: Q. Mr. Bowen informed you what? A. That Mr. Barton would not agree to a trustee. 10

MR. BAINTON: Q. Did you ultimately give way on that point? A. I did.

Q. I think if I can direct your attention to another document -

MR. GRUZMAN: Do you propose to tender that document?

MR. BAINTON: No.

MR. GRUZMAN: The witness has refreshed his memory from that document, and I submit that I would be entitled to look at it.

HIS HONOUR: Yes. (Document handed to Mr. Gruzman). 20

MR. BAINTON: Q. Have you another copy of the document which has been dealt with? If you have a look at the entry right at the bottom of the page, with the letter "B" against it? A. Yes.

Q. Will you tell me what that refers to, and who raised the matter? A. That was raised by Coleman. I had provided for no - in the mortgage that upon default under any prior securities the principal became due.

Q. That related to security over the Paradise Waters Estate? A. Yes. 30

Q. Which was a mortgage first of all to United Dominions Corporation? A. Yes, that is right. And when it was realised that these existing securities - existing U.D.C. securities were in breach, and it was obviously not a clause that should be in the mortgage, I wanted the consent of U.D.C. to the fresh mortgage, and Coleman informed me that, in the terms of the notes here, that Barton said we would take the new securities subject to existing breaches of U.D.C. securities and further breach if consent was not obtained and securities given. 40

Q. At that stage George Armstrong & Son had a second mortgage over this land? A. That is right.

Q. Which was not - although overdue - subject of the matters you were then discussing with Mr. Coleman?
A. That is right.

Q. It was proposed that they be discharged, and a second mortgage granted to Southern Tablelands Finance? A. Yes. 50

Q. And what was being put to you, that it was to take its chances, as it were, in respect of the second mortgage if U.D.C. wanted to take any action about it? A. That is right.

Q. Was this a subject matter of discussion?

A. It was.

Q. You gave way on it ultimately? A. Well, we conceded the point.

Q. You conceded the point? A. Yes.

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Q. Will you look at your entry of 12th January, 1967 against 2.30 p.m. on another piece of paper. For a start, was that note made and dated on 12th January? A. Yes.

Q. Does it relate to a telephone conversation you had with Mr. Bowen? A. Yes.

Q. Would you tell us what the subject matter of that conversation was? A. Yes. It related to the release of Landmark shares that were going to be the subject of the mortgage back.

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Q. Yes? A. And whether shares could be released from the security.

Q. Yes. Who brought this matter up? A. That was Bowen.

Q. What did he want? A. He wanted to know whether, if he paid off a parcel of shares, they would be subject to the mortgage; in other words, made full payment of 60-cents per share, or 65-cents per share, as the case may be, whether these particular shares would be released.

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Q. If he paid for a parcel, less than the full number being bought, in full, could he get those released from the security? A. Yes.

Q. What else did he bring up? A. I think that was all on that point. I think that was all that Bowen brought up. The remainder relates to a conversation with Coleman.

Q. Tell us, then, what you discussed with Mr. Coleman? A. We were discussing the end finance for Vista Court.

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Q. May I take it you had not reached agreement on that point as at 2.30 - somewhere after 2.30 on the 12th January? A. Yes.

Q. Your next entry - "exchange tomorrow." What did that relate to? What did that entry relate to? A. Exchange of the deed that was subsequently exchanged on the 17th.

Q. What discussion did you have with Coleman about it on the 12th? A. The original target date was the 13th, and we were still working towards that target date.

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Q. Had anybody said to you at that stage that it would not be exchanged on the 13th? A. No.

Q. Well now, the next entry is "Final settlement Wednesday". What does that indicate? A. That it was going to be probably impossible to settle on Friday, and the following Wednesday would be a more suitable target date for settlement, being realistic in all the things that had to be done prior to settlement.

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Q. Does settlement relate to the exchange of the first deed, or dealing with all the other things under it? A. No, dealing with all the securities - the final consummation of all the contract.

Q. There is a reference to "insist consent Bank of New South Wales". What does that relate to? A. The Bank of New South Wales had some equitable charges, and their consent was subsequently obtained to the extent that they acknowledged that the new securities had priority, or probably the subject of the new securities was not to be the subject of their charges.

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HIS HONOUR: Q. Will you put that again, Mr. Grant?

A. The Bank of New South Wales had some equitable charges over assets in the Landmark group, and in conveyancing practice one usually gets an acknowledgement from the bank that particular assets are outside the charge, and this is accepted. It is probably a matter of practice rather than strict conveyancing principle. It is generally accepted. They acknowledged that the assets involved with these securities were outside their charge.

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MR. BAINTON: Q. There is some other writing on the piece of paper. There is something else written there. Does that writing refer to your conversation with Coleman, or to something else? A. No. it relates to the conversation with Coleman. It is probable that there were two conversations recorded in this note.

Q. What was said about "money in trust account"?

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A. That was that he had money in his trust account and that it was commercially unreal to be insisting on settlement on Friday when it could be - when the parties were obviously wanting to settle it and to consummate this arrangement, and by our insisting on Friday as the date it was simply commercially unreal.

Q. The last four lines towards the bottom - do they relate to a conversation with Mr. Coleman too? A. Yes. This was concerning a matter raised in relation to default in existing payments under the U.D.C. mortgage. Coleman mentioned then that so far as U.D.C. was concerned defaults were disputed, and that in fact under the existing U.D.C. securities no interest was payable at that point of time. It was accruing, but it was not liable under the securities to be paid at that time.

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Q. Does this mean that Mr. Coleman was saying that in effect U.D.C. was claiming there was interest due,

and Landmark was disputing it? A. No. He was saying that U.D.C. was claiming there was default, but Landmark was disputing that it was in default.

(One sheet of diary notes of R.I. Grant, 12/1/67, tendered and admitted as part of Exhibit 50).

Q. I think you have got another copy. Will you look at it. It is right in the middle of the page. It appears to read - there is an entry right in the middle of the page beginning "In exchange contracts...", and going on. I did not ask you what that was. Will you now tell us what that entry refers to? Perhaps you had better read it for a start, so that we all know what it says? A. "In exchange contracts. A.B. resigns as director by Friday week and consent of Bank of New South Wales". 10

HIS HONOUR: Q. Is that "and consent" or "including consent"? A. It is difficult to decipher my own writing. 20

MR. BAINTON: I think it refers really to the subject matter of clause (16) of the draft.

HIS HONOUR: If Mr. Grant has no immediate recollection we need not take time on it.

MR. BAINTON: Q. Does it bring anything to your mind at all, Mr. Grant, at the moment? A. I cannot recollect the context. This obviously relates to the provisions of the deed and the consent of the bank, but I cannot take it any further.

Q. On the same day, 12th January, were there convened and held, or was there convened and held a meeting of the directors of George Armstrong & Son Pty. Limited? A. Yes. 30

Q. I would like you to look at the minute of 12th January in the Minute Book, and tell me if that records correctly the persons present and the business conducted at that meeting? A. Yes, it does.

(Copy minute of George Armstrong & Son Pty. Limited, 12/1/67, tendered and admitted as part of Exhibit 50). 40

Q. It indicates it was done on the 12th, is that correct? A. Yes.

Q. On the same day were there held meetings of the directors of Finlayside Pty. Limited, A.E. Armstrong Pty. Limited, Goulburn Acceptance Pty. Limited, and Southern Tablelands Finance Co. Pty. Limited, also in each case for the purpose of authorising the execution of the documents which you had been concerned to have drawn? A. Yes.

HIS HONOUR: Q. Each of these meetings did in fact take place as a genuine flesh and blood meeting on the 12th? A. Yes. 50

(Copy minutes of 12th January, 1967 of the other four Armstrong companies tendered and admitted as part of Exhibit 50).

MR. BAINTON: Q. Why were these meetings held and resolutions passed on the 12th? A. In anticipation of the things being done by the 13th.

Q. Had anybody indicated at this stage that the transactions may not be completed on the 13th? A. Not at the time the meetings were held.

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HIS HONOUR: Q. I'm sorry. I did not hear that?
A. Not at the time the meetings were held.

MR. BAINTON: Q. Are you able to tell us what time of the day these meetings were held? A. I cannot offhand. I think it was fairly early in the morning.

Q. Where is the registered office of George Armstrong, Mr. Grant? A. 72 Pitt Street. Third floor, 72 Pitt Street.

Q. And are the other companies at the same place? A. They are all there.

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Q. Was there anything else that occurred on Thursday, the 12th? I don't think anything else did occur on the 12th? A. No.

Q. The next events were a discussion which you had on Friday morning with Mr. Smith and Mr. Armstrong, and subsequently in the afternoon I think you had a discussion with Mr. Solomon, of Allen Allen and Hemsley? A. Yes.

Q. For a start, was that on the telephone, or face to face? A. That was face to face.

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Q. How long did that conversation last? A. It lasted until about eight o'clock that night.

Q. When did it start? A. I think it was very late in the afternoon.

Q. Did you make any notes of it? A. Yes.

Q. Have you got those notes with you? A. Yes, I have.

Q. Will you look at the entry under Friday, 13th, for a start. I think your note shows that you spent the hours of 2.00 p.m. to 4.00 p.m. speaking to Mr. Solomon on the phone, and 5.30 p.m. to 8.00 p.m. in conference with him? A. That is right.

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Q. Is this a contemporary note? A. Yes.

Q. Well now, what were the matters that were discussed between yourself and Mr. Solomon?
A. Security documents, and the issues that were still outstanding.

Q. What were the issues still outstanding as at the afternoon of Friday, 13th January? A. I don't

recollect them independently. I may have some notes that can assist.

Q. Will you look and see if you have any notes which assist your recollection on that? If you look at a three page document it might help you?

A. Yes.

Q. That is a document beginning "A.E.A. requires agreement in principle". Have you got that? A. Yes, I have that.

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Q. This is a document that you prepared for your own guidance earlier in the week, wasn't it, setting out what in effect were matters in issue under the heading "major issues and minor issues"? A. Yes.

Q. As at the afternoon of Friday, the 13th, what were these matters that were still in issue? A. They were pretty well reduced to the minor issues.

Q. Were they principally matters of conveyancing draftsmanship? A. That is right.

Q. Was there anything of a substantive nature that was still outstanding as on the afternoon of Friday, 13th? A. When we completed our final discussions that evening we had reached agreement on all drafting.

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Q. On everything? A. Yes.

Q. When you started discussions with Mr. Solomon, were there any matters of substance still remaining to be agreed upon, or were they matters of draftsmanship and conveyancing? A. I think they were substantially drafting and conveyancing. Vista Court finance had pretty well been agreed to, and Smith had approved of the names of the purchasers of the shares, and I think we had settled on the amount of legal expenses that were to be paid under the document.

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Q. The note for the 13th seems to indicate that you had some discussion with Mr. Bowen. Will you just look at that? It is the third line from the top? A. Yes. Bowen wanted some changes in the mortgage of shares, and he was at that point of time at Moss Vale.

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Q. It was conveyed to you by Mr. Solomon, I take it? A. Yes.

Q. Were there any other matters, so far as you are aware of, that Mr. Bowen was still raising or was not satisfied about as at the afternoon of Friday, the 13th? A. At that stage I did not know what they were. At that stage he had not raised them with me, and the only -

Q. You didn't know what changes he wanted? A. No.

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Q. But apart from his wanting some changes, were there any other matters that Mr. Bowen was either unsatisfied about or not agreed upon? A. No.

(Luncheon adjournment).

AT TWO P.M.:

(One sheet diary notes R.I. Grant, 13/1/67, tendered and admitted as part of Exhibit 50).

(Three sheets of R.I. Grant's notes, prepared week commencing 9th January, 1967, tendered and admitted as Exhibit "U").

Q. Are you able to tell us when you prepared that document? A. With no more precision than during the week. Probably round about Wednesday or Thursday. 10

Q. Have you searched in the document to see whether there is any internal evidence of when you prepared it? A. Yes, I have.

Q. And that is the best you can do? A. Yes.

Q. Mr. Grant, you told us that on the 13th Mr. Solomon indicated to you that Mr. Bowen wanted some changes to the mortgages, but he was at Moss Vale. I think you made a note of that? (Objected to). 20

Q. Now, do you recollect anything else that Mr. Solomon told you in that conversation or in any other conversation on the same day, apart from conveyancing matters? A. I think basically the two matters outstanding at the conclusion of that day were the consent of the Bank of New South Wales being required, and Mr. Barton requiring a list of the documents that I wanted handed over on settlement. Basically he was saying that -

Q. Who was talking? A. Mr. Solomon said to me that Mr. Barton was concerned that Armstrong would not go through with the deal, and that at the last minute, having induced Barton to sign this agreement, there would be some trick or demand as to a document that should be required on settlement so that it would force him not to settle, and the consequences of the default provisions in the deed would have to be applied against Barton, and thereby causing Barton to resign, and the other consequential things. 30 40

Q. What precisely was it that Mr. Solomon asked you to provide? A. He asked me to provide a list of the documents that I required to be handed over on settlement.

Q. Did you provide such a list? A. I did.

Q. When did you do that? A. I think I gave it to him on the following Monday.

Q. Have you retained a copy of the document you prepared and handed to Mr. Solomon? A. My recollection is that I prepared a document myself for my own information, or had prepared at that point of time a document, and that I wrote him a letter on 50

the following Monday setting out the list of the documents that I required on settlement.

Q. Is that a letter of 16th January, 1967?

A. I think it was the 16th January.

Q. Will you look and see if you have a copy of that letter there? A. Yes, I have a letter of 17th January, which is the letter.

Q. If I may interrupt you, you have one of the 16th, because I have a copy of it? A. Yes, I have a letter of the 16th. 10

Q. I think that has got a list of some twenty documents that you would require to be handed over on settlement? A. Yes.

(Letter dated 16th January, 1967, tendered and admitted as part of Exhibit 50).

HIS HONOUR: Q. Mr. Grant, you referred just a moment ago to Mr. Solomon requiring the consent of the Bank of New South Wales? A. We required the consent.

Q. You were requiring the consent? A. Yes. 20

Q. May I take it that by that you refer to this acknowledgement by the bank that the assets being dealt with were not covered by its security?

A. Yes. We subsequently got that on settlement.

Q. By "consent" you mean "acknowledgement"?

A. Yes, acknowledgement.

Q. I want to know that I am following it. I am not carping. It is that document from the bank that you mentioned earlier in your evidence today?

A. Yes. 30

MR. BAINTON: Q. This was written on the Monday? A. Yes.

Q. Did you on that day have any discussion at all with Mr. Armstrong? A. I was discussing matters with Mr. Armstrong daily,

Q. Did he on 16th January give any instructions as to what was to be done or not to be done so far as he was concerned at that stage? A. Yes. I have no specific recollection of any matter independently of notes.

Q. I beg your pardon? A. I have no specific recollection independently of notes. 40

Q. Have you got any note of any discussion with Mr. Armstrong? I don't think you have in fact, Mr. Grant? A. No.

Q. Did you write a further letter then on 17th January to Messrs. Allen Allen and Hemsley? A. Yes.

Q. Do you have a copy of that letter? A. I do.

Q. Whilst this is being looked at, did you on

the same day write to Messrs. Gaden Bowen & Stewart?

A. Yes, about that time I did.

Q. Have you got a copy of that letter? A. Yes.

(Copy letter 17/1/67 and copy letter 17/1/67
tendered and admitted as part of Exhibit 50).

Q. The letter you wrote to Messrs. Allen Allen
and Hemsley begins "We refer to the various trans-
actions..." Had there been a previous discussion
which you were then confirming? A. Yes.

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Q. With whom had you had that discussion? A.
Mr. Solomon.

Q. When was it that you had that discussion?
That day? A. I don't recollect the specific dis-
cussion, but it would have been on that day.

Q. I think you have several pages of notes you
took of various discussions you had relating to
this matter on that date - 17th? A. Yes.

Q. Are they notes you made during the day of
events that occurred? A. They are.

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Q. Will you perhaps produce those, and identify
them for a start? There are at least three pages
of them? A. Yes. These are the three pages.

Q. I will ask you this for a start: on 17th
January, 1967, were you able to devote any time
to any other matter, or did you spend all day on
these? A. No, I spent the whole day on this. It
was consuming the whole day.

Q. Can you tell us, with the aid of looking at
your notes, what you did and the sequence in which
things occurred that day? A. First of all I had a
phone call from Armstrong, querying why this con-
sent of the Bank of New South Wales was required.

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Q. You explained that to him, did you? A. Yes.

Q. Yes? A. There was a phone call from Bowen
referring to paragraph (5) of one of the documents
I had sent him, saying there had been a misunder-
standing concerning the paragraph: that it was easy
to see how it arose. There were a couple of matters
outstanding, and whatever they were we resolved them
in that phone conversation.

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Q. Yes? A. I spoke to Smith, reporting to him
what the situation was, and then there was a phone
call from Armstrong, saying that Smith might not
be prepared to act as Chairman.

Q. Yes? A. There was another phone call from
Armstrong in effect saying that he was giving Barton
control of Landmark for \$200,000 which was virtually
cash - \$140,000, plus the penthouse, which was cash
coming into the group, and he thought Smith was
craw-fishing, and he wanted to consider the situation.

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Q. Yes? A. There was a telephone conversation with Solomon, who said that Patterson was looking at the conveyancing documents, and they were currently being checked.

Q. Yes? A. There was a phone call from Armstrong, which resulted in a conference with Armstrong, Smith, and some others from twelve o'clock to two o'clock.

Q. What was the subject matter of the discussion in that conference. A. It was basically related to the delays in settlement and whether in fact there was going to be a settlement. 10

Q. Yes? A. Then I was checking some documents.

Q. If I can lead you a bit, you spoke to Mr. King, and reported to Armstrong again, and you had a discussion with Solomon, and more with Armstrong, and more with King about the matter during the day. Is that right? A. Yes, that is right.

Q. How did the events of the day end up? A. Well, Solomon had been - the arrangement was that Solomon was to come around some time during the afternoon to go through final matters, and he and Patterson came around at about five o'clock eventually. They came around at about five o'clock, and we finally settled whatever matters outstanding were then outstanding, and the documents - the deed of 17th January was exchanged, but exchanged on an escrow basis, and there is the document I have here which was written out by Mr. Solomon, setting out the terms of the escrow, and in effect unless certain things happened at a later point of time the exchange was not a proper delivery of the document. 20 30

(Escrow agreement dated 17/1/67, signed by E. Solomon, tendered and admitted as part of Exhibit 50).

Q. Will you tell us how the provisions of clause (2) of that agreement came about? A. Could I look at clause (2)? Can I have a look at clause (2)?

HIS HONOUR: Q. Clause (2) deals with the shares of Goncze? A. The position was the Goncze was Barton's father-in-law, and he was named as one of the purchasers, and had been approved as such by Smith. He was away on vacation, or unavailable, at any rate, and there was another document either prepared or to be prepared which meant that if he signed and took the shares within a fortnight that would be sufficient compliance with the agreement. 40

MR. BAINTON: Q. Who brought his absence, or wherever he was, up at the discussion? A. It would have been -Solomon would have done that. 50

Q. The three pages of notes that you have - do they set out the conversations you had, and, where there are any more details in them, are they an accurate note of what was said to you, and the matters you discussed on Friday, 17th (sic)? A. Yes, they are.

(Three sheets diary notes, R.I. Grant, 17/1/67, tendered and admitted as part of Exhibit 50).

HIS HONOUR: Q. Do you see the line underneath "Smith
craw-fishing"? There is "wanting to consider sit".
What does "sit" stand for? A. That is short for
"situation".

MR. BAINTON: Q. Did you write two letters on 18th
January, 1867, to Allen Allen and Hemsley relating
to aspects of this matter? A. Yes.

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(Two letters dated 18/1/67 tendered and
admitted as part of Exhibit 50).

HIS HONOUR: I shall add to Exhibit 50 two letters,
18/1/67 and I will go back and deal with this now.

Exhibit 50 will also have sub-letters and I
will insert these on to the top left hand corner,
this being the sequence in which the documents
have come in. The note will, in each instance be
one, perhaps, the top right hand corner in red pencil.

50A R.I. Grant, copy notes 4/1/67, five pages. 20

50B R.I. Grant's diary notes 4/1/67, one page.

50C and 50D are two letters of 6th January
1967.

50E the draft deed.

50F are the four sheets of diary notes,
R.I. Grant.

50G is the sheet which was added to make the
fifth sheet with the preceding four sheets of
diary notes, R.I. Grant.

50H one sheet, diary notes are R.I. Grant,
12/1/1967. 30

50J five sets of copy minutes.

50K one sheet diary notes R.I. Grant, 13/1/66
(sic.)

50L letter, 16/1/67.

50M letter, 17/1/66 (sic).

50N letter, 17/1/67.

50O Escrow agreement, 17/1/67.

50P three sheets diary notes, R.I. Grant
17/1/67.

50Q letter 18/1/67. 40

50R letter 18/1/67.

That is as far as exhibit 50 has gone and in
that sequence I have inserted Exhibit "U", the docu-
ment Mr. Gruzman tendered, at its appropriate
chronological place.

MR. BAINTON: Q. On 12th January the defendant companies being the second and the fifth defendants respectively authorised the placing of the common seal on the document in the form it then was? A. Yes.

Q. Was a copy of it by those companies sealed at that stage? A. My recollection is the copy was sealed there and then at the meeting and there were two things that related to the document that existed then, the escrow agreement, being from the Goncze Aspect of it -- 10

Q. We may be at cross purposes. 12th January. That is nearly a week beforehand? A. Yes.

Q. All companies, George Armstrong, A.E. Armstrong and the other companies in that group, each held a meeting of directors resolving to put their common seal on the form of agreement you had prepared?

A. That is so.

A. Did those companies seal a copy of it at that stage? A. Yes. 20

A. After 12th January there were some alterations made to the document as a result of discussions between yourself and Mr. Coleman, Solomon or Bowen, or one or more of them? A. Yes.

Q. Was the document that had been sealed, in fact, altered? A. Only by the additions in handwriting to the document.

Q. I think on 18th January too those companies held a further meeting, did they not ratifying the alterations and authorising the placing of the common seal on the documents, that were to be exchanged later on that day, the 18th? A. I do not think authorised the resealing of them; it was a ratification and confirmation resolution. 30

Q. And authorising the fixing of the common seal to the documental under the main deed? A. Yes.

Q. Was an arrangement made at some stage on the 18th for a settlement? A. Yes.

Q. What was the time and place of the appointment? A. My recollection is that the time was 4 p.m. It was certainly about that, late in the afternoon and as I say I think it was 4 p.m. The place was down at Landmark office in the board room. 40

Q. This was, you say, about 4 p.m.? A. Yes.

Q. At Landmark's office? A. Yes.

Q. I take it you went down? A. I did.

Q. Did anybody go with you? A. No, I went down armed with a power of attorney for Armstrong. I was appointed as his alternate director for all the companies and I think I had proxies as well in case they were needed but there was no occasion for Armstrong to go down to these meetings. 50

Q. Was this done because he could not go, or by design? A. No, it was done by design.

Q. Who else was there? When the business was conducted? A. There were the other directors of Landmark.

Q. That is Mr. Barton, Mr. Bovill and Mr. Cotter?
A. There was Mr. Solomon, Coleman and I think Patterson from Allen, Allen and Hemsley and I think Bowen was there from Gaden and Bowen.

10

Q. What about the Company secretary? Was he there too? A. Yes, he was there too.

Q. Did you have with you the documents that you needed to hand over? A. I did.

Q. Did others who came to the meeting have with them other documents including ones you required on settlement? A. Yes.

Q. Did somebody produce and hand to you a draft of the proposed minutes of the meeting of Landmark Corporation Limited which was to be held that afternoon? A. Yes.

20

Q. Were they discussed amongst those present and some alterations made to them? A. Yes, they were.

Q. Have you the document handed to you, as altered? A. I have.

(Tendered draft produced at this stage and without objection marked Exhibit 50S, draft minutes of meetings).

Q. Initially what happened was you, for those you were representing there, and I think Mr. Solomon for those he was representing, sat down and worked out among you your documents and got everything ready to be dealt with and exchanged? A. Yes.

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Q. How long did it take you to do this? A. It was getting pretty close to 6 o'clock by the time this was finished. It may even have been a little later but six-ish was the earliest.

Q. There were quite a lot of documents? A. Yes.

Q. Were cheques to be exchanged? A. Yes, there were.

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Q. When you got everything sorted out and in order what happened at the meeting? A. We had already exchanged things into two heaps. There was the heap I was to get and the heap the other side were to get provided all the resolutions were passed. The Directors' meetings, as necessary to consummate the whole thing were then held successively and at the conclusion of that the directors meeting finished, and we the solicitors were left sorting out, including signing receipts for documents. Some have to be amended, and doing the general washing-up after a transaction like this.

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Q. When you got to that stage what time was it? A. It was getting on towards eight o'clock by the time we had finished. Between half-seven and eight o'clock, true time.

Q. Did you make some remark at that stage?

A. The document itself did provide for a settlement to be prepared by six o'clock and sometime earlier in anticipation of this advance I had put back my watch, I think a couple of hours or an hour and a half or something like that so that physically by looking at the watch the documents were complied with.

10

Q. I think clause 16 of the agreement did provide for completion by six? A. Yes.

Q. The fact is it was physically impossible to do it? A. Yes.

Q. So, let us assume it is not quite six o'clock?

A. Yes.

Q. So the transaction was then completed by the exchange of all necessary documents? A. Yes.

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(Mr. Gruzman asked Mr. Bainton not to lead).

A. After you made this remark what did you do and what did others do? A. After we had got together our bundles of documents we had agreed the matter was settled and I then left. On the way down, the directors had already gone into Mr. Barton's office, which adjoins the Board Room and I knocked at the door and went inside and wished everybody good luck. I was a shareholder in the company and the family companies, and there had been quite a reasonable relationship between us up until then and then Mr. Barton walked out with me and he said, "Now we have got rid of Armstrong nothing will stop us. Very glad you did not have him here. It would have saved - by not having him here it would have saved unpleasantness," and mentioned something about being paid the dividend and being able to pay my firm's costs which were outstanding at that stage and then we parted.

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40

Q. You parted bearing the documents that were to be handed to you I take it? A. Yes, I did.

(Mr. Bainton asked for Exhibit 32).

Q. While that is being looked for you do have copies of the various documents handed over in settlement of the transaction and, if asked for you can produce them? A. I have, yes.

Q. (Document shown to witness). Is that a statutory declaration? A. Yes, it was handed over on settlement.

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Q. Is that the one relating, or including the term that there was no winding-up petition pending? A. Yes.

Q. Who prepared that? A. I prepared it.

Q. Was it one of the ones you prepared for handing over and getting back on settlement? A. Yes.

Q. After you prepared it who did you give it to?
A. It was sent around to Allens with other documents.

CROSS-EXAMINATION

(Mr. Gruzman asked that his cross-examination of this witness be deferred as it was almost impossible to cross-examine Mr. Grant because there are areas of his evidence which will be irrelevant so far as he (Mr. Gruzman) is concerned, unless and until there is some denial by Mr. Armstrong of the main allegations). (Mr. Gruzman addressed further). 10

(His Honour directed Mr. Gruzman to proceed with his cross-examination and reserved Mr. Gruzman's right to cross-examine this witness further at a later stage if he so wished). 20

MR. GRUZMAN: Q. When did you first ascertain that Mr. -- I withdraw that.

Did you ever ascertain that Mr. Barton alleged that he had been subjected to threats of death at some time during the latter part of 1966 and early 1967? A. The first time I had any knowledge of this allegation was when the affidavit was read in this court during the hearing of this suit, the suit concerning the schemes of arrangement. 30

Q. In other words are we dealing then with a date somewhere towards the middle of January of 1968? A. I think it was about the 8th or 9th.

Q. 9th January 1968? A. Yes.

Q. That was the very first you knew of anything, at that time? A. Yes.

Q. There had never been any discussion of any such matter with you by anybody? A. That is correct.

Q. Do you know Frederick Hume? A. I do.

Q. In what circumstances do you know him? A. I knew him, or I first met him at Surfers Paradise when he was up there doing some work for Landmark. 40

Q. Do you --by the way -- do you visit Mr. Armstrong's home? A. I do.

Q. Frequently? A. Frequently would not be the word, but occasionally.

Q. How often? A. Two or three times a year.

Q. As a guest? A. As a guest.

Q. On a social basis? A. Yes.

Q. How many times have you met Mr. Hume? A. Since these proceedings commenced, on several occasions. Prior to these proceedings, probably two or three times.

Q. And prior to the proceedings commencing was the first time you met him at Surfers Paradise?

A. Yes.

Q. What were the subsequent occasions? A. They were non-specific occasions. They were quite casual occasions.

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Q. Such as? Could you help us? A. I think the -- yes -- we act for an insurance company that has litigation in which he sometimes acts as an interpreter and for these occasions he has been to our office. That is a possibility. I am afraid I cannot be specific.

Q. What insurance company is that? A. The New India Insurance.

Q. Is that a company associated with Mr. Armstrong M.L.A.? A. No.

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Q. So you have an independent knowledge of Mr. Hume, or acquaintanceship with Mr. Hume, if I can call it such, from his work as an interpreter, as opposed to his connection with Mr. Armstrong?

A. Yes. (Question objected to, specifically the last part of the question).

HIS HONOUR: The last part of the question, "as opposed to his connection with Mr. Armstrong" is rejected from the question but the rest of the question and answer may stand.

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MR. GRUZMAN: Q. Your other knowledge of him was his connection with Landmark? A. Yes.

Q. During the year 1967 was there ever any discussion between you and Mr. Armstrong about Hume? A. I suppose there would have been in a non-specific sort of a way but I have no specific recollection of any discussion.

Q. I do not quite follow what you mean by "in a non-specific way." A. Well I was aware of the fact that Hume was a good tennis player and Armstrong is a good tennis player and they do play together. Just how -- but I have no specific recollection of Hume's name coming up or being discussed.

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Q. Have you met Hume at Armstrong's home?

A. I do not think so.

Q. Have you some doubt about that? A. I cannot remember any occasion when I have met him there.

Q. Do you think it is possible? A. I would say possible but unlikely.

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Q. Have you met Mr. Hume and Mr. Armstrong

together on any social occasion? A. I have no recollection of this.

Q. Is that possible? A. I do not think so.

Q. You do not exclude the possibility? A. I do not exclude it but I think it most unlikely.

Q. Do I understand that you and Mr. Armstrong are personal friends or merely solicitor and client?

A. A combination of both. There is a personal, friendly relationship between myself and his family and himself. 10

Q. Tell us how did it come about that this discussion about Mr. Hume arose? A. At Surfers Paradise?

Q. No. As a result of which you knew that they played tennis together? A. Yes, I think that probably came up at Surfers.

Q. Who told you that? A. I cannot -- probably Armstrong.

Q. He introduced Mr. Hume to you and told you he was my tennis -- A. I do not think it was a case of any formal discussion. Occasionally Hume had dinner there with us. 20

Q. Hume had dinner with you and Mr. Armstrong at Surfers Paradise? A. Yes.

MR. BAINTON: I think Mr. Grant added something.

WITNESS: I think Mr. Barton may have been there too.

MR. GRUZMAN: Q. Where was this? In Armstrong's unit, or hotel, or --- A. Probably at the hotel.

Q. Do you exclude the possibility that that occurred at Mr. Armstrong's unit? A. Yes. I do not think he had a unit there at that stage. 30

Q. You say it occurred at the hotel? A. Yes.

Q. Have you a clear recollection of Mr. Barton being present? A. He was there when I first met Hume.

Q. I am speaking of the occasion when you say you had dinner with Mr. Armstrong and Mr. Hume. Do you say you had a clear recollection of Mr. Barton being present? A. No, I quite frankly, do not - At that time I was spending quite a deal of time at Surfers and Hume was simply one of the people who were there associated with Landmark. 40

Q. When did you see Hume next? A. I simply do not know.

Q. Did you -prior to 9th January, 1968 are you prepared to say positively whether or not you had any discussion with Mr. Armstrong about Mr. Hume?

A. Yes, I could have, but it made no impression on me.

Q. When you say you might have do you mean by that that sometime after the Surfers Paradise period and prior to January of 1968 you may have had some such discussion? A. This could be.

Q. Is it possible that during the year 1967 you had some discussion with Mr. Armstrong about Hume?

A. It is possible.

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Q. At any time did Mr. Armstrong tell you that Mr. Hume had been interviewed by the C.I.B.? A. No.

Q. At any time did Mr. Armstrong tell you that it had been alleged that Hume had been employed by him to engage gangsters? A. No.

Q. At any time -- (interrupted).

(His Honour informed Mr. Gruzman that he did not know whether it was encumbered upon him to interrupt at this point of time but his Honour indicated that this touched on matters which might well be the subject of professional privilege).

20

Q. How often during the year 1967 would you have seen Mr. Armstrong? A. I simply do not know.

Q. Would it be fair to say innumerable occasions?
A. Certainly on many occasions.

Q. As far as you know are you Mr. Armstrong's only solicitor? A. As far as I am aware, yes.

Q. I think you - I withdraw that - At any time, prior to 9th January 1968 did Mr. Armstrong inform you, that allegations have been made that he had tried to have Mr. Barton killed or committed some such action? A. No.

30

Q. Was that ever a topic of discussion between you? A. Never said.

Q. During the period when the annual general meeting of Landmark occurred and each - you were aware were you not that each of the two men were claiming and trying to get control of the company during that period? A. Yes.

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Q. Which was a period when you were in close contact with Mr. Armstrong were you not? A. I was.

Q. And on a friendly basis as well as a solicitor-client basis? A. I was.

Q. At any time then did Mr. Armstrong tell you that these allegations which I have described had been made? A. No.

Q. What about Mr. Hume? I want to come to him. You say you saw him in connection with a Landmark matter at Surfers Paradise you have told us that

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there may have been other discussions about him with Mr. Armstrong subsequently (No answer).

Q. You have also told us that you used him, if I understand you correctly, as an interpreter in your capacity as solicitor for this insurance company? A. No. I did not say that. (Objected to as not said).

Q. I am sorry. If I have it wrongly please correct me. (No answer).

10

HIS HONOUR: The question is withdrawn?

MR. GRUZMAN: The question is withdrawn.

Q. Just tell us again in what capacity, under what arrangement, you came into contact with Mr. Hume whilst you were acting for the insurance company that you mentioned? (Objected to: question withdrawn).

Q. Do you act for an insurance company called The India --

HIS HONOUR: The New India.

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MR. GRUZMAN: Q. - The New India Insurance Company Limited? A. My firm does.

Q. Do you personally do their work? A. No.

Q. You do not do it? A. No.

Q. Do you ever see Mr. Hume in connection with that company. A. He has been in the office.

Q. Had you ever seen him? A. I have seen him.

Q. Is there some other partner of your firm who normally deals with Mr. Hume in that connection? A. In what connection?

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Q. In connection with the New India Insurance Company? A. Neither New India nor my firm employ Hume. Hume appears very often for -interpreting for plaintiffs and it is in that context that he has occasion to come to our office occasionally.

Q. The question I asked was whether you or some other partner in your firm was the person who Hume had seen? What would be the answer to that question? A. Someone else in the firm.

Q. Someone else? A. Yes.

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Q. Who is that? A. Miss Mulligan.

Q. Is she a partner or a clerk? A. A clerk.

Q. Who would be the principal of the firm who would be dealing with such matters? A. Martin.

Q. Mr. Martin? A. Yes.

Q. On how many occasions would you say? I am not asking you to answer of your own knowledge but from what you have heard - has Mr. Hume attended your office (Objected to: rejected).

Q. Have you spoken to Mr. Hume when he has been at the office? A. I have said "good day" to him.

Q. You have. That is based on what, the one occasion you met him at Surfers Paradise, is it? 10
A. I would say so, yes.

Q. I want to get it clear. Apart from seeing him once at Surfers Paradise, seeing him at Surfers Paradise over that period, you have never seen him except in the office; is that correct? A. I have no specific recollection of having seen him.

Q. You have already told us your views on that. In the office, do I understand you to say, he has never been to see you? A. That is correct. Since - he certainly has since these proceedings. 20

Q. But up to 9th January 1968 he has never been to the office to see you? A. I cannot remember any occasion.

Q. Do you think it is possible he has been to the office to see you prior to 9th January 1968?
A. I am not excluding the possibility but I think it most unlikely.

Q. Please, sir. You realise that this matter could be of some importance in your mind don't you?
A. This is a - there have been serious allegations made. 30

Q. Have you given careful consideration to trying to search your mind or your records to see whether you could find out whether Mr. Hume had been to see you prior to January 1968 in the office? A. No, I certainly have not.

Q. You have not? A. No.

Q. I suppose you would be able to give that matter full detailed consideration before the next occasion on which you come -- 40

HIS HONOUR: What are you asking Mr. Grant to do?

MR. GRUZMAN: Q. Mr. Grant will you prior to any further cross-examination on this subject carefully consider and look at such records as you may have available and ascertain whether you interviewed Mr. Hume in your office between June 1966 and January 1968 (No answer).

HIS HONOUR: I do not want to interfere unduly but I do not think it altogether fair to ask that of a witness who may have voluminous files and lots of clients and put him under the obligation of going back and searching through files. I am quite prepared to acquiesce in your asking Mr. Grant to think about 50

it overnight but to leave him in a general position, if he is conscientious, and no doubt he is he will probably have to look through every office record he has.

MR. GRUZMAN: You have heard what his Honour indicated. This is the position is it not; you have never interviewed Mr. Hume in connection with an insurance company matter, have you? A. No.

Q. So that if you ever interviewed Mr. Hume during this period it was about some matter in which he was not acting as interpreter? A. Yes, that would be so. 10

Q. And the possibility is, in your mind, that you did so interview him during that period, isn't it? (Objected to). A. No, I do not exclude the possibility but I have no specific recollection and I think it unlikely.

Q. Look, was Hume a client of yours? A. No.

Q. If you interviewed Hume yourself having in mind what you have said it must have been in connection with some matter associated with Landmark and Mr. Armstrong, wasn't it? A. Yes. (Objected to: allowed). 20

HIS HONOUR: The witness has answered it in any event.

(Mr. Bainton addressed).

HIS HONOUR: I do not think it is an unfair question. The answer can stand.

MR. GRUZMAN: Q. Now applying your mind to it here in the witness box can you tell us what are the - on what possible matters you interviewed Mr. Hume in connection with an Armstrong or Landmark matter during that period (Objected to. Question rejected). 30

Q. Having in mind the relationship which existed between you and Mr. Armstrong you would have expected, would you not, that if allegations that Mr. Armstrong had tried to get Mr. Barton killed had been made against Mr. Armstrong that he would consult you about it (Objected to: allowed). (No answer).

Q. You would have expected that, wouldn't you? 40
A. I would.

Q. If an allegation had been made against the man who was an employee -- I withdraw that, -- an agent of Landmark and an associate on personal terms of Mr. Armstrong that he had, in effect, conspired with Mr. Armstrong to have Mr. Barton killed, you would have expected to be consulted about that? (Objected to. rejected).

Q. To the best of your knowledge did Mr. Armstrong have any solicitor whom he consulted other than yourself and members of your firm between July 1966 and the present date? A. So far as I am aware, no. 50

Q. In your firm you were the person he consulted? A. That is correct.

Q. Having in mind the relationship which existed between yourself and Mr. Armstrong you would have expected, would you not, that if an allegation had been made that he conspired with Frederick Hume to kill somebody that you would have been consulted about that? (Objected to). (No answer).

Q. By Mr. Armstrong (Mr. Bainton indicated he still objected). 10

Q. Having in mind the relationship which existed between yourself and Mr. Armstrong you would have expected, would you not, that if Armstrong had been aware that an allegation that he conspired with Mr. Hume to have Mr. Barton killed (had been made) that he would have consulted you about it? (Objected to: allowed).

Q. You would have expected that wouldn't you?
A. Yes, if Armstrong had been made aware of any such allegation I feel sure he would have consulted me. 20

Q. Are you able to tell his Honour whether any of the occasions in which you saw Mr. Hume in your office, or the office of your firm, whether any of these occasions were subsequent to January of 1967 and prior to January of 1968? A. At this stage, no.

Q. Is there any way that you could check on that?
A. I could certainly check. I do not know how conclusive the check would be. 30

Q. What steps would you take? A. Diaries.

Q. Why, would there be an entry - an entry in your diary do you mean? A. Yes.

Q. You think there is possibly an entry in your diary relating to Mr. Hume during that period?
A. I simply do not know. I do not exclude the possibility.

Q. You are a solicitor of very substantial experience, are you not? A. Of some experience, yes. 40

Q. You were telling us that you may have been consulted by Mr. Hume during the period of twelve months which I have mentioned and you cannot tell his Honour whether you were or whether you were not, is that right or wrong? A. You were using the word "consulted". I have already said that I have not acted for Mr. Hume. "Consultation to me connotes a solicitor-client relationship.

Q. Let us exclude that. Are you telling his Honour that you are unable to say one way or the other whether during the period of twelve months which I mentioned you interviewed Mr. Hume? A. No. That is not what I am saying. I am saying that I have no recollection of it. 50

Q. I know you have said that. Are you saying you have already told us that it is possible that you did see him? A. I do not exclude the possibility, yes.

Q. So it is possible that you did, you say, and it is possible that you did not? A. Yes.

Q. So what it amounts to is this - that you are unable to tell this court whether during the period of twelve months from January 1967 and ending on 8th January 1968 you interviewed Mr. Hume in your office? A. No. I am not saying that. 10

Q. Look, it is possible you did so and it is possible you did not do so, isn't it? A. That is correct.

Q. That means you cannot tell the court positively whether you did or you did not? A. I cannot at this moment of time.

Q. Does the answer to the question depend on an examination of your diary? A. This could be. 20

Q. What do you mean, it could be? Does it mean that if there is an entry in your diary you will answer the questions Yes and did interview him during that period; is that right? A. That would be so.

Q. And if there is no entry will you answer the questions No? A. It would lead me to a greater probability of No but by the same token diary techniques - if people come along without an appointment, as is possible, then it need not necessarily have been caught up in the diary machinery. If there is an appointment it certainly would have been. 30

Q. Do you charge Mr. Armstrong for every time he consults you? A. No.

Q. I suppose one of the purposes at least of your diary entries is as a basis of your proper method of charging? (No answer).

Q. So that if you interviewed somebody on behalf of Mr. Armstrong personally, it is possible that you would not make a diary entry is it not? A. This is so. 40

Q. So it follows from that if Mr. Armstrong had asked you to see Hume your diary might show nothing about it? A. Yes, this is possible.

Q. I hesitate to do so but I suggest to you that you should be in a position at this moment to say positively to the court whether or not you interviewed Hume during that period of 12 months. (Mr. Bainton indicated that if this was a question he objected to it. Allowed). A. I cannot say positively. I can only do my best. 50

Q. I suppose it must have come as a shock to you

to know that there were in the records of the C.I.B. a signed statement in which it was alleged that Mr. Armstrong through Mr. Hume had hired gangsters, a gangster, to kill Mr. Barton. (Objected to: rejected).

(Mr. Gruzman asked for documents produced by Mr. Hume on subpoena duces tecum and believed these included a diary and account book).

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Q. You have told us that since 9th January 1968 you have interviewed Mr. Hume in connection with this case? A. Yes, I have.

Q. Were you --I would withdraw that, (Pause). Were you responsible for the preparation of an affidavit by Mr. Hume (Objected to if the question means in connection with this case).

Q. In connection with this case (No answer). (Objected to on the ground of professional privileges. Allowed. His Honour directed Mr. Gruzman to put the question again).

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Q. Were you responsible for the preparation of an affidavit by Mr. Hume? A. Yes, I think that is correct.

Q. In that affidavit did Mr. Hume swear to the effect that Barton had employed -- (Objected to). --Vojinovic -- (Objected to whatever the rest of the question is. Rejected).

(Mr. Gruzman indicated to his Honour a document which came into his possession, or into the court's possession in the notebook, the book here produced by Mr. Hume, and asked if he may have this marked for identification).

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HIS HONOUR: I will have all marked together; the documents produced by Mr. Hume.

MR. GRUZMAN: It is an affidavit of 10th February 1968 sworn by Frederick Hume.

(Mr. Gruzman placed this document back where it came from in a book).

HIS HONOUR: The documents produced by Mr. Hume on subpoena duces tecum will be m.f.i. 29.

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MR. GRUZMAN: Your Honour this illustrates the problems we have. I do not propose to cross-examine Mr. Grant any further at this stage.

(Mr. Bainton indicated he did not wish to re-examine but assumed Mr. Gruzman may be asking for leave to cross-examine further at a later stage and supposed that technically Mr. Grant is still in cross-examination. He added that obviously it was necessary that he talk to Mr. Grant about aspects of this case).

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MR. GRUZMAN: I raise no objection on that ground, insofar as it is within my province.

(Witness stood down).

RICHARD EDWARD LENDRUM
Sworn, examined as under:

MR. BAINTON: Q. Is your full name Richard Edward Lendrum? A. Yes.

Q. Do you live at 4 Bangar Close, Killarney Heights? A. Yes.

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Q. Are you a Detective Inspector of Police and at present are you Chief of Staff of the Criminal Investigation Branch? A. Yes.

Q. In January 1967 what was your position in the police force? A. A detective inspector in what we term No. 4 Sub-District in the Metropolitan Police District.

Q. For how long have you been a police officer?
A. 32 years plus some previous experience as an apprentice.

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Q. Were you on duty on the morning of Sunday 8th January 1967? A. Yes.

Q. What office were you filling at that stage?
A. I was the weekend duty officer at the Criminal Investigation Branch so far as the Metropolitan Police District was concerned.

Q. Does that mean you were the senior officer there? A. Yes.

Q. Did you receive a phone call from somebody; I think Mr. Alec Muir? A. Yes.

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Q. As a result of that did you later that morning interview certain people? A. Yes.

Q. Did you make notes of the interview as it was progressing? A. Yes.

Q. Do you recollect the people who came down to see you? A. Yes.

Q. Who were they? A. Mr. Muir who was then a Q.C. Mr. Miller, solicitor, Mr. Barton senior and his son.

Q. I think you had known Mr. Alec Muir for many years personally? A. Yes. We had known each other for many years.

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Q. I think you said you did keep a record of the conversations that took place? A. Yes. It was not a verbatim note. I took some notes which I have here with me.

Q. Before we come to that you told me some people who were present who came. Were other officers of

police other than yourself present when this discussion went on? A. Yes, Det. Sgt. M.J. Wild; Det. Const. Follington were brought into the interview by me.

Q. Do you recollect who opened this discussion and what was said, independently of looking at your note book? Are you able to tell us how the discussion opened and what was said? A. Mr. Muir greeted me and I introduced him to the police officers and he introduced me to Mr. Miller and the two Mr. Bartons.

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Q. Who was the Mr. Miller identified as being?
A. I understood him to be a solicitor watching Mr. Barton's interests.

Q. Would you tell us your recollection of what was said? A. My recollection now of what was said would be very hazy without reference to my notes but I can tell the court in substance what was said.

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HIS HONOUR: Do you have any objection to the witness referring to his notes Mr. Gruzman.

MR. GRUZMAN: Yes.

HIS HONOUR: You do.

MR. GRUZMAN: Yes.

MR. BAINTON: I propose to tender the notes under s. 14(b) of the Evidence Act. At present some of them are in shorthand. Perhaps I will do that right now.

Q. Would you perhaps identify them, the pages of the book containing the notes you took at the time?
A. The pages are not numbered.

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HIS HONOUR: Q. They are not numbered? A. No sir, I might add that this is just a rough notebook that I keep of day to day notes. It is not an official book in the police department.

Q. Could you perhaps put a marker where they start and where they end? (Marker furnished and witness complied).

MR. BAINTON: Q. So that we may know clearly what that is it is a book which contains, as I understand it, the notes you made of what you were being told in this discussion but they are not a complete verbatim record? A. They contain some notes of what I was told. They are certainly not a verbatim record of the interview.

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Q. But what they do record took place at the interview? A. Yes.

(Tendered notes without objection).

MR. GRUZMAN: I think there has been a transcript prepared.

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MR. BAINTON: Q. Do you know of any transcript?
(No answer).

HIS HONOUR: Just a minute Mr. Bainton. I have not ruled on this tender.

The note book of Detective Inspector Lendrum will be admitted and marked Exhibit 51; the exhibit will be 9 pages from the notebook of Detective Inspector Lendrum.

MR. BAINTON: Q. Are you aware of any transcript of that? A. I am not too clear on whether I transcribed those notes. I know I sent them to Police Headquarters. Whether they were transcribed there or whether I transcribed them before they went - but I am inclined to agree with Mr. Gruzman that there is a transcript of them somewhere. I am not sure, your Honour whether I made the transcript or whether it was made at Police Headquarters. 10

MR. GRUZMAN: It is in court.

HIS HONOUR: There is apparently here amongst the documents produced on subpoena duces tecum a photostat of the notes and what at all events purports to be a transcript with initials that look like Mr. Lendrum's initials. 20

WITNESS: If I saw the document I think I could recognise it.

HIS HONOUR: I will pass them down. They can be shown.

You have no objection to them being shown to Mr. Lendrum, Mr. Gruzman? 30

MR. GRUZMAN: No your Honour.

HIS HONOUR: If the photostat is a photostat of the book then I can release the original book to your custody and retain the photostat.

WITNESS: Thank you your Honour.

MR. BAINTON: Q. Would you have a look at these documents and tell me firstly if those which are obviously photostats from shorthand are a copy of what is in your book and if the other typescript is a transcript (shown)? A. I will recognise my initials on this document. 40

Q. That is the transcript then, is it? A. This is the transcript of the notes, yes. Yes your Honour that is a transcript of my notes and this is a Xerox copy of the actual notes themselves.

HIS HONOUR: (To witness). Would you make sure there are nine pages there? (Witness counted the pages).

I take it Mr. Bainton you have no objection to my releasing the original book back?

MR. BAINTON: No your Honour. 50

HIS HONOUR: Mr. Gruzman; have you?

MR. GRUZMAN: No your Honour.

WITNESS: Yes your Honour, nine pages.

HIS HONOUR: I shall substitute as Exhibit 51 a copy of notes, nine pages from the notebook of Detective Inspector Lendrum and then you may keep your original book inspector.

WITNESS: Thank you.

(Tendered transcript and added to tender without objection.) 10

HIS HONOUR: I will add to Exhibit 51, "and transcript."

(Documents shown to Mr. Gruzman).

(Mr. Bainton asked for access to the second copy for the purpose of making a copy. His Honour repeated his earlier direction that none of the documents were to be taken from the court for copying without a specific direction). 20

HIS HONOUR: Q. I take it there is nothing in the notes or the transcript which is in any way confidential or ought not be disclosed? There is nothing which, in the public interests, ought not to be disclosed regarding police methods or anything of that sort? A. No sir. As far as these gentlemen are concerned there is nothing there that would do any harm.

HIS HONOUR: You may take the copy.

(His Honour directed that this document may be copied). 30

WITNESS: Could I ask your Honour something?

HIS HONOUR: Yes.

WITNESS: I would like to have permission to read my diary in connection with this matter. I have not seen it for some months. It was taken off me and sent to police headquarters in February. If I am to assist the court at all I feel I should read it. This is a diary I kept in January last year and it is in the possession of your Associate I understand. 40

HIS HONOUR: Mr. Gruzman that seems to be a reasonable request on Mr. Lendrum's part.

(Mr. Gruzman addressed).

HIS HONOUR: I think Mr. Lendrum should see his diary.

(His Honour granted the witness leave to inspect his diary and asked him to confine his attention to his own diary).

WITNESS: Yes. I am not interested in anybody else's. I am interested in my movements that day.

(His Honour spoke with counsel about the method he had adopted of grouping certain documents and spoke further of certain letters and of the minute book).

(Mr. Gruzman told his Honour that he had given Mr. Grant notice, in his capacity as Secretary or Director of some finance company that they required subpoenas served some months ago to be answered today and suggested that perhaps this could be dealt with at 10 o'clock tomorrow morning).

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HIS HONOUR: It is sufficient to deal with it tomorrow morning at ten o'clock, Mr. Bainton.

(Further hearing adjourned to 10 a.m. on Thursday, 1st August, 1968).

IN EQUITY

No. 23 of 1968.

CORAM: STREET J.

BARTON -v- ARMSTRONG & ORS.

NINETEENTH DAY: THURSDAY, 1ST AUGUST, 1968.

MR. BAINTON: There was some mention of a subpoena yesterday afternoon. I understand from my instructing solicitor that the one I have in my hand is the one he was asked to answer. I would seek to move to set it aside, and I would seek to tender it.

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(Subpoena m.f.i. "30".)

HIS HONOUR: Application is made by Southern Tablelands Finance Co. Pty. Limited to set aside a subpoena duces tecum that has been served upon it on behalf of the plaintiff, requiring it "to produce all records relating to any transaction or proposed transactions in or about the Cooma, Jindabyne or Snowy Mountains area at any time". In my view a subpoena cast in such wide terms as this is ex facie too wide, and it should be set aside. There may, as Mr. Gruzman has pressed upon me, be but one, or two or perhaps no transaction falling within these broad terms, but that does not necessarily establish the validity of a subpoena. A subpoena may be too wide, and hence liable to be set aside if it is shown by the evidence to involve an undue burden upon the party subpoenaed, or, alternatively, if the subpoena can be seen on its face to be cast in terms too general to justify the process of the Court being made available to compel production.

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This subpoena falls within the latter category. I understand from Mr. Gruzman's argument that it is sought to probe a particular transaction or series of transactions that gave rise to a payment of money being made by cheque by Southern Tablelands Finance Co. Pty. Limited to one Frederick Hume. As at present advised I see no reason why a subpoena to produce documents could not with validity be framed so as to require production of the documents that may be sought in regard to that transaction. This, however, is an aspect that may be the subject of further argument if and when a fresh subpoena is issued. I make the observation regarding the prospect of issuing a fresh subpoena at this stage by reason of the fact that it does not seem to me that the plaintiff is necessarily confronted with an impossible task in being more specific in identifying the documents that he seeks to have produced.

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I order that the subpoena duces tecum m.f.i. 30 be set aside. It will be returned to the custody of counsel for Southern Tablelands Finance Co. Pty. Limited.

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RICHARD EDWARD LENDRUM

On former oath:

HIS HONOUR: Q. You are still on oath, Detective Inspector Lendrum. A. Yes.

MR. BAINTON: Q. You told us yesterday that there were three police officers present at this discussion, yourself, Sgt. Wild and Constable Follington?

A. Yes.

Q. And four other people - Mr. Alec Muir, whom you did know, Mr. Millar, Mr. Barton Snr. and his son? A. Yes.

Q. Had you, so far as you are aware, previously met Mr. Millar? A. I beg your pardon?

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Q. Had you previously met Mr. Millar, so far as you are aware? A. No.

Q. And had you, so far as you are aware, previously at any time met Mr. Barton Snr. or his son? A. No.

Q. Were all of the people present at this discussion in the one room throughout the discussion? A. Yes.

Q. Whose room was it? A. Superintendent Blissett's office.

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Q. What size office, roughly? A. About half the size of this Court room. Almost half the size of this Court room.

Q. Were there facilities for people to sit? A. Yes.

Q. Would anybody in the room have any difficulty hearing what was being said or going on? A. I don't think so. That would depend on their hearing. I suppose.

HIS HONOUR: Q. That would be about 20 feet by 20 feet? A. Yes. It is quite a large office.

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MR. BAINTON: Q. It was a Sunday morning? A. Yes.

Q. Is it reasonably quiet there on Sunday morning? A. Yes.

Q. You made notes, but not a complete record? A. That is right.

Q. What was it you set out to note? A. The important features of the interview.

Q. Well now, do you recollect who, after the introductions, commenced the interview? A. Yes. Mr. Millar.

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MR. BAINTON: Well now, perhaps the quickest way of dealing with this is for Mr. Lendrum - I think he has his book with him - if he can go through the transcript - I can go through the transcript with him, and ask him to tell us who said what part. I will exhaust his recollection, if Mr. Gruzman wants me to.

HIS HONOUR: It would probably be preferable if Mr. Lendrum had the transcript rather than the shorthand notes. (Copy of part of Exhibit 51 handed to witness).

MR. BAINTON: Q. First of all you have noted that you were told that Mr. Alexander Barton received threats on his life. Do you recall who said that?
A. It is my recollection that Mr. Millar said that. In the presence of Mr. Barton, of course.

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Q. You have noted that two men approached Mr. Barton Senior for a large sum of money and that they claimed that they had been engaged to take his life, and they would make disclosures if money was paid. Who was it who said that? A. So far as I am aware it was Mr. Millar.

HIS HONOUR: It would save time, Mr. Bainton, if you asked Mr. Lendrum to mark with a red pencil in the margin everything Mr. Millar said, rather than to go through every word. If you are about to embark on it piece by piece I think that would be quicker.

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Are you agreeable to that course, Mr. Gruzman?

MR. GRUZMAN: Yes.

HIS HONOUR: You want Det. Insp. Lendrum to mark with a red pencil line down the margin such portions of this transcript as record matters spoken by Mr. Millar?

MR. BAINTON: Yes.

Q. Will you do that? A. Yes. I think I have marked all those portions of the interview that were noted by me which, so far as my recollection serves me, were matters mentioned by Mr. Millar. There are some matters that I have not marked about which I am not sure just who mentioned them.

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HIS HONOUR: I shall have added to Exhibit 51 the copy of the transcript which has just been marked.

(Copy of transcript marked by Det. Insp. Lendrum admitted as part of Exhibit 51).

MR. BAINTON: Q. Is this the position, Mr. Lendrum, that the passages in the transcript of your notes against which you have placed a red line were said to you, on your present recollection, by Mr. Millar?
A. Yes.

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Q. The other matters in the transcript were either spoken by someone else or possibly Mr. Millar - you are unable to be sure of that?

A. Yes. Some of the matters were mentioned by Mr. Barton, particularly relating to incidents....

Q. I will come in a moment to those. A.... of his physical contact with the person.

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Q. Was there anybody other than Mr. Millar or Mr. Barton who provided information to you? A. Not that I can recollect.

Q. I would like you to look in the first place at the fourth last paragraph on the first page. You recall there that you were told - and you have put a red line against it, so I take it you were told by Mr. Millar - that on Wednesday last, the 4th, representatives of Armstrong, Mr. Smith and Mr. Barton personally reached what appeared to be an agreement subject to documentation to be prepared by Armstrong's lawyers and submitted to Millar's firm, and these documents were in fact submitted to the firm at 5 p.m. on Friday? A. I see that there, yes. 10

Q. Well now - A. Should I read my note?

HIS HONOUR: Q. Does your note confirm what is in the transcript? If you would be good enough to read out your note? A. My note reads "On Wednesday last, 4.1.67, representatives of Armstrong (B.A. Smith, Chartered Accountant) and Mr. Barton personally reached what appeared to be an agreement subject to documentation to be prepared by Armstrong's lawyers and submitted to Millar's firm and they were in fact submitted to the firm 5 p.m. Friday." 20

MR. BAINTON: Q. When you were given that information did Mr. Barton say anything at all to your recollection? A. I cannot recall now Mr. Barton making any statement at that stage of the interview. 30

Q. Had he made a statement disagreeing with it would you have recorded it? A. I believe I would have, yes.

Q. Well now, on the second last paragraph of that page, in the second last paragraph, the copy I have is in quotation marks, as follows. It begins "I told him I did not see anybody unless he tells me his name and address and what he wants to talk about". Will you tell us, please, who gave you that piece of information, and in what context? A. Mr. Barton said that. Those were his words. 40

Q. I think you have there written down verbatim what he said? A. Yes.

Q. What was he telling you about? A. He was telling me what he had told the man on the telephone - the man who contacted him at his home.

Q. That is the man referred to in the paragraph preceding that one? A. Yes.

Q. On the next page there is a paragraph beginning "Barton said he would be prepared to see the man at his home," and so on? A. Yes. 50

Q. Who was it who gave you that information?
A. I believe it would have been Mr. Barton, but I am not sure.

Q. You are not sure? A. No.

Q. And then the paragraph two down, beginning "Waited three-quarters of an hour and nobody turned up...", and so on. Who gave you that information?

A. It is my recollection that Mr. Barton was talking at that stage.

Q. At that stage? A. Yes.

Q. And the paragraph following it - "Drove car slowly, and saw man....". A. Yes. The same thing applies. It is my recollection that Mr. Barton was telling me what transpired at King's Cross. Telling us. 10

Q. And a little further down, the paragraph beginning "My group has been commissioned....". Who told you that, and in what context? A. Mr. Barton said that.

Q. What was he telling you there? A. He was telling us what he alleged was said to him by this man at King's Cross. 20

Q. Is that paragraph a verbatim note of what Mr. Barton was telling you that the man at King's Cross had said to him? A. I would like to refer to my notes before I answer that.

Q. Please do. A. It would not be a verbatim note of everything Mr. Barton said, but it would be a verbatim note of the crux of what he said - the serious aspect of the message he claimed he was getting from this man - someone wanted him killed for £5,000.

MR. GRUZMAN: May I look at what the Inspector is looking at? 30

HIS HONOUR: Yes.

MR. GRUZMAN: Q. Where is that? A. There, (indicating).

Q. There are no inverted commas around it?

A. No.

MR. BAINTON: Q. Do you have any recollection of the length of time spent at this interview? A. Well, they got to the C.I.B. at 11.30 and I left the C.I.B. at 1 p.m. Probably half an hour. 40

Q. After the interview, did you give any instruction to any police officer to do anything?

A. Yes. I told Det. Const. Follington to go to Mr. Barton's home.

Q. That day? A. Yes. Immediately.

Q. Did you then in the afternoon receive a telephone call from Const. Follington? A. Yes.

Q. Where were you when Const. Follington rang you? A. At the C.I.B.

Q. At the C.I.B.? A. Yes.

Q. I think after that you got in touch with your superior officer? A. Yes. Before that I had communicated with Mr. Wright at 2 p.m. He was the Acting Assistant Commissioner. I telephoned him at his home and had told him about the complaint made by Mr. Barton.

Q. Later in the afternoon did you see Mr. Barton again? A. Yes.

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Q. At what time, and in what circumstances?
A. I saw him when I arrived back at the C.I.B. about 7.40 p.m.

Q. Where did you see him on that occasion, and who was present? A. I saw him in Mr. Blissett's office.

Q. Yes. A. For about half an hour.

Q. Was there anybody else there? A. I believe his son was with him. If I refer to my diary I can perhaps answer that more fully.

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Q. Would you please do so? A. Yes, I saw he and his son.

Q. The transcript, part of Exhibit 51, contains a note of some matters below the notation "8 p.m." Who gave you that information? A. Either Mr. Barton or his son.

Q. Well now, when did Mr. Barton leave on that evening, and in what circumstances did he go?
A. He left the C.I.B. at 8.15 p.m.

Q. Yes? A. After I had told him that it was likely that Det. Sgt. Wild and Det. Follington would be some time in their interview with Vojinovic. I advised him to go home.

30

Q. Did you have any further conversation with him that you can recollect before he went? A. Nothing of import.

Q. Have you, so far as you are aware, ever since that evening until you came to Court, again see Mr. Barton? A. No.

Q. Or his son? A. Not to my recollection. I never interviewed them again, and had no reason to see either of them again.

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Q. Inspector Lendrum, I propose to read you some of the evidence Mr. Barton gave in this case when he was setting out what he alleged took place at this interview. On p.40 of the transcript, in the middle of the page, Mr. Barton was asked: "Did you go to an office where Supt. Lendrum was?", and Mr. Barton answered this way: "Mr. Muir, Q.C., went to Mr. Lendrum and he called us in to a big office - I think it was the office of Mr. Blissett who was

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the head of the C.I.B. then - and Mr. Lendrum called in Sgt. Wild and Det. Follington and ask me what it is all about. First Fred Millar introduced him with himself - he said that he knew Mr. Armstrong very well, he had been on the Board with Mr. Armstrong in Australian Factors Limited and he said that he knew this is a serious matter because he has been threatened by Mr. Armstrong himself.

Q. Did Mr. Millar say that? A. Say what? 10

Q. That Mr. Millar knew "this is a serious matter because he has been threatened by Mr. Armstrong himself?" A. No.

Q. Mr. Barton then goes on "Then I told Mr. Lendrum what happened on Saturday afternoon, from three o'clock onwards till I left the man at the Rex Hotel, and then he said 'This is a serious matter and we have to organise the dogs and we have to catch that man.' I asked him what 'the dogs' mean and he said the men is all different disguises, the policemen in all different disguises will be on the spot, and he then said that Det. Follington should come with me to my home and wait for the telephone call from the man who called himself Alec." 20

Now, did you say to Mr. Barton "This is a serious matter and we have to organise the dogs and we have to catch that man", and did Mr. Barton ask you "What do the dogs mean?", and did you say "The men is all different disguises, the policemen in all different disguises will be on the spot", or words to that effect or any of it at all? A. I would probably have said "This is a serious matter". I had no conversation with Mr. Barton about dogs or policemen appearing in different fashions or being in different places. 30

Q. Was there any talk about men being in different disguises? A. No. I had no conversation along these lines with Mr. Barton.

Q. Did you inform him that you proposed to send Det. Follington to his home with him? A. Yes. 40

Q. Mr. Barton also said (at the bottom of p.40) that at one o'clock at his home the man called Alec rang, and he gave a conversation that he says he had with him, and then he was asked this question: "Just before you go on from that conversation, I would like you just to think whether anything else was said in that conversation". He answered "Oh yes. Alec said that I should bring £500 with me and I has been instructed by Mr. Lendrum and Follington again that I should promise him that I bring the money with me, and I told him I would have the money with me." 50

Did you at any time either instruct or advise or suggest to Mr. Barton that he should promise this man Alec money? A. Most decidedly not. I had no conversation with Mr. Barton about paying money to anybody or taking money with him to anybody.

Q. Would that be a course, as Inspector of Police, you would in any circumstances advise a man to follow? A. No, it would not be proper in these circumstances to suggest it to him.

HIS HONOUR: I don't follow that. What is put here - and I will read it again - "I has been instructed by Mr. Lendrum and Follington again that I should promise him" - that is this man Alec - "that I would bring the money with me." Why do you say under no circumstances would you have thought it proper to advise someone to promise someone threatening him to bring money with him? I don't follow what is wrong - what you feel is wrong with that as advice? A. Mr. Barton was complaining that his life was being threatened, and we had made no contact with anybody at the time I saw Mr. Barton. If a situation arose in which it would be desirable for money to be taken anywhere by Mr. Barton for the purpose possibly of obtaining evidence that would be a matter I would discuss with Mr. Blissett. He would discuss that with Mr. Allan, and Mr. Barton certainly would not be asked to provide the money, or to tell anybody on the telephone that he would bring the money, without the matter having been discussed, and it had not been discussed. That is all I am saying at this stage. But if a situation had arisen in which it was desirable to produce money, then it would have been produced from another source.

Q. I don't for the moment follow why you draw no distinction between promising this man Vojinovic that money would be brought, which seems to me to fall into one category, and in fact telling Mr. Barton to take money, which I recognise as falling into quite a different category. Do you regard a suggestion that Barton promised to take money as being in the same category as Barton in fact being told to take money? Do you follow the two different concepts? A. I think I follow what is in your mind. It would not be improper for Mr. Barton to suggest over the 'phone to someone who contacted him that he might take money.

Q. That does not seem to me to involve the same consideration as telling Barton to take money? A. I agree with your Honour there. I do not suggest - perhaps I did from my previous reply imply this, but I do not suggest it would be wrong for Mr. Barton to suggest to a caller that he might bring money for the purpose of leading him on.

Q. That is what I would have thought. A. I had no conversation with him about it. That is what I am trying to make clear.

MR. BAINTON: Q. At the bottom of p.41 Mr. Barton has this to say about his call to the C.I.B. on the evening of the 8th January.

I will read you the answer he gave to introduce it. Mr. Barton said "I am not sure. I have been met there and they say that Det. Sgt. Wild and

Follington is already dealing with Alec and I should wait and he find out what is happening. I was waiting with Inspector Lendrum and he was talking to me in general things. He ask me if I know a solicitor called Tibor Bodor who is also of Hungarian origin and he was a police translator." He was asked "This is just polite conversation?" and he answered "Just conversation."

At the bottom of the page Mr. Barton had this to say: "And about half an hour's time Mr. Lendrum told me that he now go inside and find out how far they got, and he spent about ten minutes inside and came out and told me that Alec has admitted everything in the same line as my allegations has been made this morning." His Honour asked "Is that what Inspector Lendrum said?" and Mr. Barton replied "Yes, exactly what he said". He was asked "Will you say it again, what Inspector Lendrum said to you?" and he answered "Mr. Lendrum said to me that Alec has admitted everything in the line as my allegations has been made this morning, and then he said that I am in danger, I have to be very careful I don't expose myself, and he also told me that they will let Alec go on next morning, because that is the only way how they are going to lead them to the principals, and Mr. Lendrum brought up the question of money again. He said he had no objection if I want to see this man has been caught fast, that to help the C.I.B., I give some money to the C.I.B. He said it is entirely up to me. He said they has not got the facilities of this nature, but might help the case or might not - it is up to me if I do it or not. He also said if I want to know further what happened, I should come to the C.I.B. next morning and I talk to Mr. Wild."

His Honour asked "Did he mean to leave some bank notes there to be passed over?" and Mr. Barton answered "No. He just was referring to the fact that they are going to let Alec go to lead them into the principals, and he said he has no objection if I give money to the C.I.B. to use it for the purpose that it was given to Alec, help him to have money till these men are caught." His Honour asked "That is money to be passed over to Alec", and Mr. Barton answered "To be passed on to Alec, yes. But he told me quite clearly that I don't need to do it. It is entirely up to my decision, if I wanted to do it or not."

Having read you that, Inspector Lendrum, I propose to go back to the beginning of it and ask you about each part of it. Now, was there a time reached in your polite conversation, or whatever you may like to describe it as, with Mr. Barton, when you said you would go inside and find out in effect how matters were going? A. Yes.

Q. Did you do that? A. Yes.

Q. How far away from where you and Mr. Barton were having this conversation was the interview taking place? A. I went from one corner of the building

to another side of the building some distance away. It would take me about, I suppose, almost half a minute - three quarters of a minute, perhaps - to walk from where I was with Mr. Barton to where Follington and Wild were with Vojinovic.

Q. You did this? A. Yes.

Q. You had a discussion with one or other of these officers? A. I saw Det. Sgt. Wild, yes.

Q. And you came back? A. Yes.

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Q. How long, so far as you can recollect, were you away? A. A matter of minutes. Certainly not ten minutes.

Q. When you came back, did you say anything to Mr. Barton? A. Yes.

Q. What did you say to him? A. I told him they were interviewing Vojinovic; that they would be some time with him, and there would be no purpose in he and his son remaining at the C.I.B., because I did not know what time they would be finished their interview with Vojinovic, and I advised him to go home.

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Q. Did you say this, or anything to this effect, "Alec has admitted everything in the same lines as my allegations has been made this morning"? Or perhaps, to put it to you another way, did you tell him that Vojinovic had admitted having done those things that you were told about that morning?

A. No, I did not say that to him.

Q. Anything at all to that effect? A. I would have said to him that "Vojinovic is making a statement about the matter", but I did not disclose to Mr. Barton what attitude Vojinovic was then taking.

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Q. Did you know yourself? A. Sergeant Wild would have said something to me about the trend of the interview, but just what he said at that stage is very hazy in my mind. I did not read what he was taking from him. He would have said something to the effect that he was talking to him about the matter, and "I will be a long time with him."

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Q. Did you say to Mr. Barton this, or anything to this effect, that he, Mr. Barton, was in danger, and that he had to be careful that he didn't expose himself? A. No, I would not say that to a man, and then ask him to leave. I mean, I would be putting fear into his mind. I did not say it.

Q. Did you say to him words to that effect that "they", meaning, I take it, the police, "will let Alec go on next morning because that is the only way how they are going to lead them to the principals" or anything to that effect? A. I did not say that they would let him go next morning, because I did not know when he would leave.

50

Q. You did not know whether he would leave, or not? A. I beg your pardon?

Q. Did you know whether he would leave? A. No, I didn't know whether he would leave, or whether he was wanted for some other offence by the police. Sgt. Wild would be bound to make these inquiries before he was released, and I didn't know what the position was.

Q. Did you say anything to Barton to the effect that letting him go was the only way that the police could be led to his principals? A. I could have said something along these lines to him, that this man might be the means by which we would be able to make contact with the others who he claimed was involved. Just what I said I could not recall now. 10

Q. Did you bring up, either again or at all, the question of money, and did you say that you had no objection, if Mr. Barton wanted to see this man caught fast, that, to help the C.I.B., Mr. Barton should give some money to the C.I.B.; that it was entirely up to him whether he did or not? A. No, I did not discuss Mr. Barton paying money to anybody, or producing money, and I certainly did not suggest to him at any time that he should produce money at the C.I.B. or to the C.I.B. 20

Q. Did you say to him this, or anything to this effect that the police have not got facilities of that nature - meaning, I take it, facilities for providing money to assist in catching? A. No, I did not say that to him. The fact is that we have the facilities, and utilise them from time to time. 30

Q. Did you say to him this, or anything to this effect, that if he wanted to know - that if he, Mr. Barton, wanted to know further what happened, that he should come to the C.I.B. next morning, and talk to Mr. Wild? A. I cannot recall saying that to him. I would have made some observation about contact with Sgt. Wild tomorrow. Just what that was - I would not say that you had better come to the C.I.B. tomorrow, because I would not know whether Wild would be there for a start. I would be putting the man to inconvenience, perhaps. I probably told him that he would be contacted by 'phone. 40

Q. Inspector Lendrum, at p.237 of the transcript, in Mr. Barton's answer to the sixth question, he said, among other things, this, that he had been promised protection by the C.I.B., and the C.I.B. had said that they would protect him whatever happened. Have you any personal knowledge of any such thing having been said to Mr. Barton at any time? A. Not in those words, but I would have reassured Mr. Barton that if this matter was as serious as he was saying we would do everything in our power to have it thoroughly investigated and see that no harm came to him. I would certainly have said that to him. 50

Q. This would have been on Sunday, 8th, you would have said that to him? A. Yes.

Q. On p.245 of the transcript, Inspector Lendrum, in reply to the 8th question he was asked on that page, Mr. Barton had this to say: "I treated Const. Follington as a contact man between myself and the C.I.B., designated by Mr. Lendrum, who said to me that he is a very good man; studying to be a barrister, and I had all reason to believe that he is a proper person."

Did you tell Mr. Barton that Follington was studying to be a barrister? A. No. 10

Q. Was he? A. Not to my knowledge. I might have told him he was a good man, and it could well be that he took it that he was a contact man from my action in sending him to his home.

Q. I am really wanting to direct your attention to the statement that you told Mr. Barton that Const. Follington was studying to be a barrister?
A. I beg your pardon?

Q. I was really wanting to direct your attention to the statement of Mr. Barton that you told him that Const. Follington was studying to be a barrister? A. No, I never told him that. 20

Q. I think, Inspector Lendrum, you are aware that Mr. Barton, in the course of giving his evidence in this case, and elsewhere, has alleged that in January 1967, a report was made by police officers of an interview with a man, Frederick Hume?
A. Yes.

Q. Have you ever seen such a record of interview? A. No. 30

Q. Have you made inquiries yourself as to whether such a record of interview was taken? A. Yes.

Q. What was the result of your inquiries?
A. Negative.

Q. What do you mean by that? A. I was informed by Sgt. Wild that no record was made of his interview in 1967 with Frederick Hume.

Q. Had there been one, would you expect to have seen it at about the time it was taken? A. No. 40

Q. It would not normally have come to you?
A. No.

MR. GRUZMAN: May it be noted that the witness paused for many seconds before answering the question?

HIS HONOUR: Paused for a few seconds.

WITNESS: I paused for a few seconds because I would have expected to see it in February this year. That is why I paused.

MR. BAINTON: Q. Mr. Barton gave some evidence as to what he said he recollected having seen - a document 50

that he claimed was a record of interview taken in January 1967 from Frederick Hume, and I want to read you something of what Mr. Barton said he saw. This is at p. 491, about two-thirds of the way down the page. This is what appears in the transcript: "On the next page, - p.4 - close to the middle of the top half, 'Q. What you mean by saying that Mr. Armstrong is a bad man? A. He do a lot of illegal things. For example, he is buying stolen jewellery. 10
Q. What he does with his stolen jewellery? A. He keeps it in his house. Q. You know where he keeps it? A. Yes. Q. Where he keeps it? A. I can draw you a sketch as best I can', or 'I will draw you a sketch as best I can.' Then a sketch appeared - the full length of the size of paper, about five-inch length and showing certain rooms and an 'x' on the sketch." And then Mr. Barton goes on to another matter. Now in January 1967, Inspector Lendrum, was this man Frederick Hume known to Police Officers? 20
A. Yes.

Q. In what circumstances? What record did they have of him, if any, and what regard did they have for him? A. Who?

HIS HONOUR: I don't think that is a fair question to put to Det. Insp. Lendrum. You can ask him what his view was. I don't think it is fair to ask him for a corporate view.

MR. BAINTON: Q. You knew of Frederick Hume? 30
A. Yes.

Q. What was your belief as to his character and his veracity and the type of man he was? A. I believed him to be a man of good character. I had met him. He was a licensed private inquiry agent who had been complimented by the Commissioner of Police for assisting the Police Department on more than one occasion.

Q. Over what period of time to your knowledge? 40
A. I could not tell you that, but I had met him on an occasion about two to three years before that through another detective at the C.I.B., with whom he was in contact, and whom he had assisted.

Q. To your knowledge was Frederick Hume known to other Police Officers?

HIS HONOUR: Mr. Bainton, this is an unusual line of evidence for you to be leading in chief. This man Hume is not here or represented here to defend himself against allegations referable to his character. Without objection you have led a line of evidence which I should have rejected out of hand 50
had it been objected to. That, of course, opens up cross-examination of this witness by Mr. Gruzman of matters to the discredit of Hume in circumstances that are simply very unusual.

MR. BAINTON: I am not directly concerned to establish this man Hume's character.

HIS HONOUR: You have tendered evidence of it and I will have to admit cross-examination in it. As I say, it is a most unusual way in which to lead evidence. I want to make sure that you are aware of what seems to me at the moment to be the consequence of tendering this evidence in chief. It has not been objected to; it is open to Mr. Gruzman to cross-examine on it.

MR. BAINTON: He may.

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HIS HONOUR: It is not objected to. I want to make sure you are aware of what the consequences may be.

MR. BAINTON: Q. To your knowledge was Frederick Hume in January 1967 known by the senior police officers? A. I don't know. He was known to at least one detective sergeant whom I knew.

Q. I want to ask you this: if a man such as the person you have just described was a man known or believed to have that character in January 1967 made to a senior police officer a statement that he knew where stolen jewellery could be found, told him what it was and where it was, and said it was in the house of a Member of Parliament, what action would have been taken? A. Well, whoever he told it to would be duty-bound to tell the Superintendent at the C.I.B., who would no doubt tell the Commissioner of Police, who would issue some directions as to what action was to be taken, and this would depend on the extent of the information available from the informer.

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Q. When inquiries were made when this allegation was put forward that there was a record of interview taken in January 1967, were inquiries made to elicit whether or not this allegation I have just mentioned to you was put to the senior police officers or the Commissioner? A. I don't quite follow you there.

Q. You have told us, I think, that if an allegation of the nature I had read out to you had in fact been made and recorded by Frederick Hume in 1967 it would have been referred to senior officers? A. Yes.

40

Q. Was any such allegation referred to senior officers or to the Commissioner? A. It was not referred to me. I don't know whether it was referred to Mr. Blissett. He certainly did not tell me it had been. And I don't know if it was referred to the Commissioner of Police.

Q. If it were, there would be a readily available record of it, I take it? A. I don't know if it would be readily available. I don't think -

50

Q. I don't mean that anyone could go and get it, but if a subpoena was served on the Commissioner to produce documents relating to this it would be available, wouldn't it -

HIS HONOUR: Mr. Bainton, this is going further than you can fairly go, isn't it?

Q. Do you feel able to answer the question?

A. No. I don't know whether it would be available, or able to be found.

HIS HONOUR: I reject the question.

CROSS-EXAMINATION:

MR. GRUZMAN: Q. Mr. Lendrum, you were asked some questions about Mr. Hume. A. Yes. 10

Q. Your knowledge of him is as a police informer, isn't it? Did you say "No"? A. No, I did not. As a matter of fact, I was concerned in Mr. Hume's interests whether this should be recorded by the press or published by the press.

HIS HONOUR: Mr. Gruzman, this is a most unusual situation that has developed here. Mr. Bainton has led evidence in chief which is relevant to Hume's character. I should have thought myself that unless Hume becomes a witness in this case that evidence cannot be put in that way regarding his character. If he is a witness, of course, he is subject to cross-examination. But the evidence has been tendered against him. I drew Mr. Bainton's attention to the unusual course he was following. The evidence went in without objection, and I feel difficulty now in limiting cross-examination on it, but I don't know that it is going to assist in the slightest degree in my deciding the case. If Hume is called as a witness, then, of course, very different circumstances might arise. 20 30

MR. GRUZMAN: My friend has seen fit to put before your Honour Hume's character, and we propose to show, so far as we can, what Hume's character is, and we also propose to show, from other cross-examination of this witness, other motives which might appear as to why this document - this allegation was disregarded.

HIS HONOUR: The latter aspect is a different inquiry. I am concerned really as a matter of fairness in regard to this man Hume - that in his absence he may have his reputation subjected to favourable and unfavourable evidence by reason of the defendant having led evidence which went in, advisedly no doubt on your part, and was led advisedly by Mr. Bainton. 40

MR. GRUZMAN: We believe it is proper that your Honour should have the character of Hume. When my friend led that evidence, I deliberately did not object. If your Honour thought it proper that the other witness' name should be put, in other words no restriction put on the press - it is really a matter for your Honour, and I should not really comment one way or another. 50

HIS HONOUR: Mr. Bainton, you have brought this situation about. What have you got to say about it?

MR. BAINTON: If the information I have is accurate, Mr. Hume's character will suffer no harm.

HIS HONOUR: If the information Mr. Gruzman seeks to adduce goes to the length that Mr. Gruzman apparently intends to pursue it, it may suffer harm.

MR. BAINTON: It may.

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HIS HONOUR: It is hardly fair that a person who is not a party to the litigation should be placed in that position.

MR. BAINTON: It seemed to me to be of some probable advantage to the case of the defendant to show that if this sort of statement had been made action would have been taken on it because of the weight that would have been attributed to it. If the result is as your Honour contemplates, I would be the first to regret it. I don't think there is anything more I can say on it.

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HIS HONOUR: Mr. Bainton, it is a most invidious position for this man Hume to be placed in. He is not a witness at the moment. I do not feel that I am entitled to inquire whether he is to be called as a witness, and yet he is subjected to an attack on his character in his absence by reason of the defendant having led evidence favourable to his character.

MR. BAINTON: The evidence I led - and I think I was careful - was what belief Inspector Lendrum had about him and -

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MR. GRUZMAN: I may be able to assist everybody. This situation arises because of the peculiar or unusual way in which the case for the defence is being conducted. In the circumstances I will seek leave to defer cross-examination of this witness until events have gone further, and both Mr. Armstrong and Mr. Hume have or have not been called as witnesses.

HIS HONOUR: Thank you, Mr. Gruzman. That is a course which at the moment I think I should accede to.

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MR. BAINTON: On this point.

HIS HONOUR: I think I should accede to it in its entirety. It is the defendant who has created the situation, I have a strong view about the undesirability, as a general matter of public interest, of limiting the publicity that should attend any Court proceedings; justice should never be administered behind closed doors. I think, as the defendant has created this situation, I am strongly minded to accede to the application.

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MR. BAINTON: It is a course I would not wish to oppose on this question; but on any other matter there can be no reason for postponing the cross-examination.

HIS HONOUR: I am satisfied that the defendant has created this unfortunate situation in circumstances which were no doubt of importance in the presentation of the defendant's case, but which nevertheless were quite clearly such as to render foreseeable the unsatisfactory situation that has now developed. It seems to me that the application made by Mr. Gruzman to defer cross-examination of this witness is the best practicable solution, and I intend to accede to it.

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Do you wish to take the cross-examination any further at this stage, Mr. Gruzman?

MR. GRUZMAN: No.

HIS HONOUR: I shall defer any further proceedings on the cross-examination of Detective Inspector Lendrum.

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(Witness stood down.)

MAURICE JAMES WILD

Sworn, examined as under:

TO MR. BAINTON: My full name is Maurice James Wild, and I am a Detective Sergeant of Police.

Q. I think you are at the moment the officer in charge of the Consorting Squad? A. Yes.

Q. In January 1967, what was your position in the Police Force? A. I was second in charge of the Safebreaking Squad.

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Q. How long have you been in the Police Force?
A. 28 years.

Q. On 8th January 1967 were you on duty at the C.I.B.? A. Yes.

Q. What were the duties you were to perform that day? What was the nature of them? A. It was Sunday morning, and I was on duty - rostered duty - for the particular weekend on the Safebreaking Squad.

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Q. Well now, were you called in by another police officer for the purpose of being present at an interview that had been arranged? A. Yes. Det. Insp. Lendrum contacted me in my office, and asked me to come to the Superintendent's office.

Q. Did you go? A. I did, yes.

Q. When you got there who did you find in the office? A. There was Inspector Lendrum, Mr. Alexander Barton, his son -

R.E. Lendrum, xx,
stood down

712. M.J. Wild, x

Q. Yes? A. Mr. Millar, a solicitor, and Mr. Alec Muir, Q.C.

Q. Yes? A. And Det. Follington accompanied me there to that office.

Q. Had you previously known any of these people other than the police officers? A. I knew Mr. Alec Muir.

Q. Did you know any of the others? A. No, I didn't know the others.

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Q. Did you take a note of the events of that discussion? A. Not the whole of the events. I took some notes.

Q. What did you aim to do with the notes you took? A. I took notes of what was transpiring at the conversation in shorthand. I am not sufficiently fast with my shorthand to take it verbatim of what the whole of the matter is that transpired there.

Q. What parts did you endeavour to get down?
A. The salient facts. I took them on a pad which was on the Superintendent's table.

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Q. Do you still have that? A. Those notes have been produced here, Mr. Bainton.

Q. Was there a transcription produced? A. I made a transcript of those notes.

Q. When did you do that? A. I think on 14th February 1968.

Q. (Documents handed to witness). Are they those?
A. Yes, those are the notes I took at the time, and this is the transcript I later prepared.

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Q. It accurately transcribes your shorthand notes? A. Yes.

(Notes of Det. Sgt. Wild, and a transcript, tendered and admitted as Exhibit 52.)

Q. Mr. Wild, who began the conversation that you made notes of? A. Mr. Millar, the solicitor.

Q. Was he the only person who spoke, or did others? A. No, Mr. Barton spoke. Senior, that is.

40

Q. Are you able to tell us which of the matters that found their way into your notes were said by Mr. Millar, and which by Mr. Barton? A. My recollection of it, your Honour, is that Mr. Millar discussed the business aspects, which are recorded in the note, and Mr. Barton described his meeting with a man named Alec in the notes.

Q. Would that be as much as you can tell us about it? A. Yes. My notes were not, as I said,

a full verbatim account of the interview; I was only taking notes that I thought may have been important.

Q. Well, I think you have a note to the effect - you have a note relating to the conversation that is claimed to have taken place with another director of Landmark Corporation, Mr. Bovill? A. Yes, that appears on p.5.

Q. Who gave you the information that you there recorded? A. Mr. Millar. 10

Q. You have there a sentence to the effect that it had been said to Mr. Bovill to the effect that people could be hired in Sydney for £2,000 to bump off other people? A. Yes.

Q. Then that is followed by a sentence "not taken seriously"? A. That is right. That is Mr. Millar talking.

MR. BAINTON: Q. Do you recollect what Mr. Millar actually said about that? A. Only that he said - you can see it is not taken in question and answer - before that, "A. Had a conversation with another director of Landmark named J.O. Bovill, that people could be hired in Sydney £2000 to bump off other people. Not taken seriously" and in parenthesis I have "Bovill accountant in Sydney". So it would only be what was being said by Mr. Millar but not taken in his actual words. 20

Q. When Mr. Millar said whatever it was that caused you to record that it was not taken seriously did Mr. Barton have anything to say that you recollect? A. No, I do not recollect Mr. Barton saying anything at that juncture. 30

Q. Had he disagreed, do you think you would have recorded it? A. I feel certain I would have.

Q. You have a further note that you were told that Mr. Millar had been at a meeting of directors, which I take it to be of Landmark, said to be on 23rd December? A. That is on p.6.

Q. It appeared, I think, that Landmark would fail, and "B" I take it was Mr. Barton? A. Mr. Barton, yes. 40

Q. "- soon prevented this", and I think your note goes on to this effect. "There had been some discussion between representatives of Mr. Barton and Mr. Armstrong", is it? A. Yes, "A" refers to Mr. Armstrong.

Q. "- regarding a compromise which resulted in a discussion last Wednesday in which an agreement -". I might ask you if you would tell me what you recollect having been said about that? (Objected to). 50

Q. Would you read the note out and tell us your recollection of what you were told? A. "Millar

arrived 23/12/66 and a meeting of directors held at 12" - I have "mn" then and I do not know whether it should be "md"-and a breach occurred and it appeared that Landmark would fail. "B" soon prevented this and there has been some discussion between representatives "B" and "A" regarding a compromise which resulted in a discussion last Wednesday in which an agreement which was purported to be a compromise" - then on p.7: "Last Wednesday 4/1/67 that B.H. Smith, representative of "A" and Mr. Barton reached an agreement subject to being legally documented. Documents were prepared and submitted to Mr. Mulen." My writing is bad. It may be Mr. Millar. "- on Friday last." Then it goes on. I feel that is where Mr. Barton commenced his narrative, or my notes record a narrative of what Mr. Barton told me. 10

Q. What you have read out is what Mr. Millar told you? A. Mr. Millar discussed the business side. 20

Q. When Mr. Millar was talking about this discussion last Wednesday, the delivery of documents to him, did Mr. Barton have anything to say? A. No, not to my recollection.

Q. Had he disagreed with what Mr. Millar said would you have noted it? A. I would have no doubt noted it.

Q. Do you recollect how long the interview lasted on this Sunday morning? A. I would say about 30 minutes. I don't think it lasted much longer - about 30 minutes. 30

Q. Did you have any further meeting or discussion with Mr. Barton on that same Sunday? A. On the same Sunday, yes.

Q. When did you next either speak to him or see him? A. I saw him about 7.10 p.m. on the Sunday night, outside the Darlington Police Station.

Q. Was that by arrangement? A. Yes.

Q. Who made the arrangement? A. Detective Follington. He had accompanied Mr. Barton from the C.I.B. following this meeting in the morning. 40

Q. When you saw Mr. Barton in the evening was he alone or were there other people present? A. No, he was alone and Follington joined us outside the police station.

Q. Did you have any conversation with Mr. Barton on this evening? A. Yes.

Q. Would you tell us what you said to him and what he said to you? A. It would only be my recollection. I have no contemporaneous notes regarding it. It would be pure recollection. 50

Q. As best you can do from your recollection?

A. I said to Mr. Barton "This fellow Alec is to meet you outside St. Vincent's Hospital, is that right?" He said, "Yes." I said, "Well I will get Follington to go down near the hospital. You go in your own car and I will drive a police car down near the scene." Mr. Barton said to me, "I have £500 that I want to give to Alec for what he has done for me", and I said, "Under no circumstances are you to give this man any money." He said, "he is helping me." I said, "You are not to give this man any money because I feel that that is his object in meeting you." He said, "All right" to that, and we later drove down, or he left the scene in his own car. Follington walked, and I drove a police car around into Victoria Street. 10

Q. How long did it take you to get around into Victoria Street? A. Oh, a very short time. I was there, I would say, about 20 past 7, in a position near the Hospice for the Dying in Victoria Street. 20

Q. When you arrived there did you see any of the people you previously mentioned? A. Yes. Follington was standing over near St. Vincent's Hospital and then I saw Mr. Barton's car parked, I would say, 200 yards down in front of where I was, in front of the hospital.

Q. Did you sit in your car and watch what was happening? A. Yes, I watched Follington.

Q. What did you see happen? A. About 7.30 p.m. Follington walked across the road and I then drove down to the position where Mr. Barton's car was, and Follington had with him a man, and he got into the back of the car, the man that was with Follington. 30

Q. When you say "He had a man with him". A. He was standing with a man on the footpath and Mr. Barton was also there.

Q. Did you have any conversation at that stage with either Constable Follington, Mr. Barton or this man? A. No, the man got into the back of the car and Follington got in and Follington spoke to me in the car. 40

Q. Where did you go? A. We then drove to the C.I.B. in Campbell Street.

Q. When you say "we drove", who did? A. I drove with Follington and the man who had been standing on the footpath.

Q. In the police car? A. Yes.

Q. When you got to the C.I.B. what happened? A. I went with Follington and the man to the Safe Squad room and I there had a conversation with this man and I obtained from him a record of an interview I had with him. Follington typed it and I questioned the man Vojinovic. 50

Q. Who was present while this was occurring?

A. Follington and myself, and the man named Vojinovic.

Q. Would you look at the document which is now open in front of you? (Exhibit "D" shown). A. Yes, that is the record of interview.

Q. Would you describe to me just how that was taken? A. I asked the man Vojinovic the questions, he replied to the, the whole, questions and answers, were typed by Detective Follington. 10

Q. Where were the three of you either sitting or standing, or whatever you were doing? A. Vojinovic was sitting at one side of a table, Follington at the other, and I was behind Follington watching what was being typed on the typewriter.

Q. You were the one putting the questions?

A. I was putting the questions.

Q. Were you observing what was typed as you put the questions? A. Yes, I do that especially so that I can know when to start the next question. 20

Q. When an answer was given did you see that answer typed? A. I did.

Q. When that was taken may I take it the next question was put? A. That is correct.

Q. Does that document accurately set out what you asked and the answers that were received?

A. Yes.

Q. When you had finished this process of questions and answers what was done? A. I handed the whole of it to Vojinovic and he read it through and signed each page of the transcript. 30

Q. How long did it take him to read it through?

A. It would take him at least - I would say, your Honour, it took him about half an hour to read it. It was completed at 9.55 and it would take him until about 10.30 to read it through and to sign all the pages that he did sign.

Q. At any stage after you started this did any other police officer come into the room? A. Yes, Mr. Lendrum came in at one juncture while the transcript was being typed. 40

Q. How many times did he come in? A. Only once.

Q. Have you any recollection of what stage the interview had reached when he did? A. No, I do not. I know he did come in whilst the record of interview was being typed.

Q. How many copies of it were made at the time it was being typed? A. I think an original and 50

three copies. Follington prepared the typing material in the typewriter and it is usual to type an original and three copies.

Q. When it was finished who took custody of the copies? A. I took them all

Q. What did you do with them? A. I put them in a folder which Follington had prepared for me.

Q. Would you know that folder if you saw it again? A. Yes, it is a brown envelope-type folder. 10
It has "Barton-Armstrong" or "Barton v. Armstrong", something of that kind on it.

Q. Is that it? (Exhibit "Q" shown). A. Yes, that is the folder.

Q. When you put these things into that folder what did you do with the folder? A. I placed it in my locker.

Q. What sort of thing is this locker? A. At that juncture I had two lockers, one of which is a 6 foot steel locker, I think about 20 inches square, 20
and another locker which was a 6 foot wide locker, 6 foot wide, 6 foot high, two opening type doors, Brownbuilt type locker, and I placed it in the larger of the two lockers.

Q. Does it in fact lock or has it just got doors on it? A. Oh no, it locks.

Q. It is kept locked? A. Yes. They are steel lockers supplied to all detectives, and at that juncture on the Safebreaking Squad each detective was supplied with a small type locker and each pair 30
supplied with a larger one.

Q. When you say "each pair", it is customary -
A. It is customary for detectives to work in pairs.

Q. Did you have somebody you were normally working with at that stage? A. No, my regular workmate was on annual leave, Detective Whelan.

Q. Were you on duty on the following morning, the Monday? A. 9th, yes.

Q. Did you on that day see any of the people you had seen on the previous day? A. Yes, I saw the man Vojinovic. 40

Q. When did you see him and in what circumstances?
A. Vojinovic rang me at the office and asked to see me, and by appointment I met him near the City Bowling Club in College Street, Sydney.

Q. What did Vojinovic have to say to you on that morning? A. I had a discussion with Vojinovic regarding the facts of the previous night. He was most anxious and he said to me, "How much money do you think I will get out of this?" I said, "I don't 50

think you will get any money out of it." Do I have to give it verbatim, your Honour? It is very difficult at this juncture.

HIS HONOUR: As best you can. If you cannot give it verbatim you can give the substance.

WITNESS: I can give the substance of the conversations.

MR. GRUZMAN: I ask the witness give it verbatim as far as possible.

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HIS HONOUR: Q. As far as possible. Where you are not able to recall the exact words, then to the best of your recollection, the substance.

WITNESS: His main object was - (Objected to).

MR. BAINTON: Q. I think you personally formed some conclusions or beliefs after this conversation, did you not? A. I did, yes.

Q. That is what you cannot tell us. Just tell us what the conversation was? A. I certainly did not have a conversation with him regarding my beliefs or my conclusions I reached.

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Q. I want you to tell us, if you can, what he said to you.

MR. GRUZMAN: Q. The question is the conversation.

WITNESS: Your Honour, there was quite a lot of conversation I had with that man that morning.

MR. BAINTON: Q. How long were you talking to him? A. I would say I was with him about 20 minutes in a car.

HIS HONOUR: If you cannot recollect the words, the substance of what was said, but omitting any opinions.

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MR. GRUZMAN: I would like the witness to say positively if he is unable to repeat the conversation.

WITNESS: Your Honour, I am unable to repeat the conversation. It is a very long time ago. I never made any notes of my conversation with him. The actual crux of the conversation I cannot recall, but I can recall my opinions of what I formed by seeing him.

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MR. BAINTON: Q. If you cannot remember what was said - A. I know he discussed money, how much he was likely to obtain from Mr. Barton for his information. Your Honour, I cannot take the actual conversation further.

HIS HONOUR: Q. What part of the day did this occur? A. This was in the morning. My diary is there. I could give the actual time from that. I see my diary on the desk there.

HIS HONOUR: Very well, you may look at that.
(Handed to witness).

WITNESS: At 11 a.m. I went to the city and saw this man, on 9th January.

MR. GRUZMAN: I take it the witness was then looking at the other entries in his diary.

WITNESS: I am only looking at the date of the 9th.

MR. BAINTON: Q. Did you on that same day, 9th, after the completion of that discussion you just mentioned, see any of the people you had seen on the preceding day? A. Yes, later on the same day Vojinovic again rang me at the C.I.B. and I saw him, at his instigation, near the Potts Point Post Office. 10

Q. Can you tell us when you saw him there?

A. It was in the afternoon, I think.

Q. Do you have a note of it in your diary?

A. Yes, I have.

Q. Would you please look at your diary and tell us. 20

HIS HONOUR: Just look at the time and then close the diary.

WITNESS: At 2.40 p.m. I left the C.I.B.

MR. BAINTON: Q. That would be, I suppose, a short time after that? A. I drove straight to Greenknowe Avenue.

Q. Did you then have another discussion with him?

A. I had another discussion with this man.

Q. Who was present on that occasion? A. I was on my own with him. 30

Q. How long were you there? A. I would say about 20 minutes. May be a little longer on this occasion.

Q. Would you tell us what the conversation was you had on that occasion with Vojinovic? A. Yes. I can give you the same type of thing. Vojinovic said to me, "You know about the shooting in Kellett Street a few days ago?" I said, "Yes." He said, "There was one man caught, and I know who the other man is". I said, "What is his name?" He said, "His name is Muki." I said, "Where is he now?" He then went on to recount that the man Muki had been helped by some people in Kings Cross after being shot, but had now left to go to Brisbane with the man Momo he had referred to in his record of interview on 8th January, for treatment there by a New Australian doctor. I said to Vojinovic, "How did he live?" and he told me, or said to me that he got a quid here and there. 40

HIS HONOUR: Q. "He", being Vojinovic? A. "He" 50

being Vojinovic, yes sir I said, "I suspect that you are committing crimes." He admitted that he lived - (Objected to). He said, "Yes." I said, "What sort of crime do you commit?" He said, "I can't tell you that." I said, "I think that you would know a fair bit of what happens around the Cross, Alec, and I think you could help me." He said, "I'll think about whether I'll help you". I said, "What did you do before you came to Australia?" He said, "I escaped from Yugoslavia and I went to Europe." I said, "How did you live there?" He said, "I went to Holland and Germany and I did a bit of smuggling in those countries." I said, "And where did you come from to Australia?" He said, "I came from Austria." I said, "How did you live in Austria?" He said, "There is an arrangement there for the Croatian or the Serbian to give any Yugoslavs money if they are broke, but they would only give you a few shillings." I said, "Was it enough to live on?" He said, "No, but I used to go to places and I see what the Serbian and Croatian people do there and I got something on them and I got more money from them." I said, "Do you mean you were blackmailing them?" He said, "Well, I got money from them." I said, "It sounds to me as if you were actually blackmailing them." That was the text of the conversation had with him on that occasion. 10 20

MR. BAINTON: Q. At the conclusion of this, what did you do? A. I returned to the C.I.B. 30

Q. By this time had you personally formed an opinion of this man Vojinovic? A. I had indeed.

Q. When you got back to the C.I.B. what did you do? A. I spoke to Detective Superintendent Blissett, the officer in charge of the Criminal Investigation Branch, in connection with this matter.

Q. Did you pass on your opinion to him? A. I did.

Q. What did you say? (Objected to; rejected). 40

Q. On the same day did you see anybody else that you had seen the previous day? A. On the 9th?

Q. Yes? A. Did I see anyone?

Q. Apart from police officers did you see any of the people who had been present at the interview on the Sunday morning? A. No.

Q. Particularly did you at any time on the Monday see Mr. Barton? A. No I did not.

Q. When did you next do anything at all in relation to the matters that you had commenced on the Sunday morning? A. On the morning of the 11th Mr. Barton Senior and Junior came to the C.I.B. and I saw them there. 50

Q. What happened on that occasion? Can you tell us the time from your recollection? A. May I refer to this diary.

HIS HONOUR: Yes. Again just look at the time.

WITNESS: At 9.30 a.m. on Wednesday, 11th.

MR. BAINTON: Q. Who was present on this occasion?

A. Mr. Barton Senior and Junior and Detective Follington. Follington was there for a while and then he left.

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Q. What was said at this discussion? A. Mr. Barton said - and again this is only the text - I cannot give it verbatim - "How are things going?" I said, "We have interveiwed the man Vojinovic or the man Alec and obtained a record of interview with him", and I then went to another room and I obtained that record of interview which was in my room.

Q. Where was it? A. It was in my locker in my own room. Mr. Barton said, "Have you seen the man Hume or Momo?" I said, "No, I have not interviewed them as yet." He said, "I am worried about what is going on". I said, "I don't feel that you should worry, because I feel that this man Alec has told you this story with the sole purpose of obtaining money from you." He said, "I am still worried about it." He then said to me, "How do I get, or can I get a pistol?" I said, "I feel that you do not need a pistol, but the procedure there is to go to your licensing sergeant at/or near where you live, and make application to obtain a pistol licence." He said, "What about a rifle?" I said, "It is not necessary to have a licence for a rifle, but again I do not think that you have any cause for worry, and I certainly do not advise you to obtain a pistol." I said, "I will ring the licensing sergeant for you at Chatswood and explain the position to him if you wish." I made a telephone call but I did not speak to the licensing sergeant, and I said to Mr. Barton, "If you wish to persevere with an application for a pistol licence it will be necessary for you to go to Chatswood Police Station and see the licensing sergeant there." That was the text of the conversation I had with Mr. Barton.

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Q. Was there any discussion of money in this conversation? A. Yes, I am sorry, there was. Mr. Barton said, "I still want to pay Alec money for what he told me", and I said, "You should not under any circumstances pay this man money, because I feel that this is his only object in coming to you in the first place."

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Q. Do you remember anything more discussed on this occasion? A. No, I cannot.

Q. Were the names of any other people mentioned?

A. The names of Hume and Momo were mentioned. I have deposed to that earlier.

Q. Anybody else? A. I can't recall.

Q. Was Mr. Armstrong mentioned by anybody?

A. Mr. Barton, when he told me that he was worried, or when he said, "I am still worried about this matter", and I replied that I felt he should have no worry, said, "Well, the agreement will be signed on the 18th and it will be all over", but I do not recall whether he actually mentioned Mr. Armstrong.

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Q. This was on the 11th? A. That is correct.

Q. Did you see on the 11th any of the other people that were present on the Sunday morning, other than police officers? A. Yes. I again saw Vojinovic on the 11th.

Q. How did that come about? A. He rang me at the C.I.B.

Q. Where did you see him? A. I saw him near Potts Point Police Station.

HIS HONOUR: Q. Potts Point Police Station?

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A. Potts Point Post Office.

MR. BAINTON: Q. What time? A. May I again refer to the diary?

HIS HONOUR: Yes.

WITNESS: At 12 noon I went to King's Cross.

MR. BAINTON: Q. Who was present on that occasion?

A. I was on my own with Vojinovic.

Q. What did you say to Vojinovic and what did he say to you? A. Vojinovic said to me, "I have got to appear at Central on the 16th. Will that have to go on that day?" I said, "I am not the officer in charge of that matter, and that is purely a matter between you and he should you want a remand." There was other conversation regarding his appearance at Court.

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Q. Can you remember what it was, and if you can, tell us, please? A. Vojinovic said to me, "How long do you think I will get for this one?" I said, "It is only a committal matter. Are you pleading guilty to the charge?" He said, "Yes." I said, "Well, then, you will have to be committed for sentence and I have no idea what you are likely to get." Vojinovic then said "How much do you think Mr. Barton will pay me?" I said, "I have advised him to give you nothing." He said, "I tried to phone him." I said, "Did you get in touch with Mr. Barton?" He said, "No, I couldn't get him." That, I think, is about the context of the conversation I had with him on that occasion.

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Q. Did you either see or speak any further on the 11th January to any of the people who had been

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at this interview on the Sunday morning - again other than police officers? A. No.

Q. Had you made any further or other reports to your superiors since the one you have told us about a few moments ago? A. What, between the 9th and the 11th?

Q. Yes? A. No, I would say not.

Q. When next did you do anything or speak to anyone in relation to the matters that were commenced on the Sunday morning? A. On 18th January 1967 I interviewed a man named Frederick Hume at the Criminal Investigation Branch. 10

Q. Did you arrange that interview? A. Through Detective Follington I did. I asked Follington to make arrangements for him to come in and see me.

Q. He came in? A. He came in at 11 o'clock on the 18th.

Q. You spoke with him? A. I did.

Q. How long was he there? A. I would say about 20 minutes. 20

Q. Did you make any written record of anything that occurred in that interview? A. There are some notes in my official handbook, but I did not record the whole of the conversation I had with him.

Q. When you say there are some notes in your official notebook, are they in longhand or shorthand? A. I think some are in longhand and some in shorthand.

Q. Did you ever transcribe them? A. No. 30

Q. Did anybody else? A. No.

Q. Did you ask anybody to sign them? A. No.

Q. Did you, apart from that conversation, interview Frederick Hume in connection with this matter? A. No, never.

Q. Did you interview anybody else at all in connection with the matter? A. Yes, on 19th January at 3 p.m. I interviewed a man named Momoclic - I think that is how he spells his Christian name - Ziric is his surname. 40

Q. Where did that interview take place? A. At the Criminal Investigation Branch.

Q. Was this by arrangement? A. Yes, I asked Hume to arrange that interview.

Q. As a result of that request this man came in, did he? A. He did.

Q. How long was he there? A. I would say a quarter of an hour.

Q. You had a discussion with him? A. I had a discussion with him. I recorded his name in my official notebook, but I do not think there any any notes there. I would have to see the notebook.

Q. Was there anything in the nature of a written record? A. No, there was no written record made.

Q. Did you at any time interview anybody else in connection with this matter that began on the Sunday morning? A. No.

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Q. By this stage had you formed an opinion on the matters that you were investigating arising out of Sunday morning? A. Yes.

Q. Did you report your opinion to anyone? A. Yes.

Q. Who did you report it to? A. I spoke to both Mr. Lendrum and to Superintendent Blissett.

Q. In writing? A. No, not in writing; verbally.

HIS HONOUR: Q. Do you mean on the 19th or before?

A. No, about the 19th, having interviewed Ziric.

Q. It must have been the 19th or thereafter?

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A. Yes, thereafter.

Q. Not before? A. No, not before then. I also contacted Mr. Alec Muir by telephone.

MR. BAINTON: Q. I think you have known Mr. Muir for a number of years? A. I have. Many years.

Q. Did you tell him the opinion you had formed?

A. Yes.

Q. Did you interview anybody else at all in connection with this matter? A. No, not at that juncture. Later in the year I interviewed Mr. Gruzman.

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Q. I meant at that juncture? A. No.

Q. When did you next hear anything about Vojinovic?

A. After 27th January; I do not know the exact date, I received a letter from a Detective Mengler of the Victorian Police. His name may be "Mingler".

Q. This concerned Vojinovic? A. This concerned Vojinovic.

Q. Have you see that policeman in Sydney since this case started? A. Yes.

Q. Where did you see him? A. I saw him at this Court.

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Q. When? A. On 14th and 15th May.

Q. Apart from the letter from Detective Mengler have you had any other dealings since say the end of January 1967 with Vojinovic? A. No, I saw Vojinovic at this Court, but I have had no dealings with him.

- Q. You told us 11th January 1967 you saw Mr. Barton at the C.I.B.? A. That is correct.
- Q. Where did you next see him? A. Mr. Barton?
- Q. Mr. Barton Senior? A. On 22nd December 1967.
- Q. Where was that? A. At Mr. Gruzman's chambers.
- Q. In the interim had you spoken to him on the telephone at all in connection with anything?
A. Never.
- Q. What about Mr. Barton Junior? Had you seen or spoken with him at all since 11th January 1967? 10
A. I have not seen him since then.
- Q. Have you spoken to him? A. No, I have not spoken to him.
- Q. You mentioned a date in December you saw Mr. Barton again? A. 22nd December.
- Q. On that occasion were you interviewed by his legal advisers? A. I was.
- Q. That was the next time you saw him? A. Yes. Mr. Barton was not present at the interview but I saw him there. 20
- Q. You saw him before the interview? A. I saw him in a room, and he was asked to leave when I walked in.
- Q. Since then did you see him at all before this matter was in Court? A. I have only seen him at the Court. I have not spoken to him.
- Q. I want to read you some evidence Mr. Barton gave in this case, and I want you to listen to it. At p.40 Mr. Barton gave some evidence concerning this interview at the C.I.B. on the morning of Sunday 8th January. Mr. Barton was asked, "Did you go to an office ... by Mr. Armstrong himself." Did Mr. Millar say that? A. No. 30
- Q. Mr. Barton then continued: "Then I told Mr. Lendrum what happened ... from the man who called himself Alec". Did Mr. Lendrum say "This is a serious matter and we have to organise the dogs and we have to catch that man"? A. No, there was no mention of shadows. "Dogs" is a vernacular for "shadows". 40
- Q. Any mention of them in discussion? A. No.
- Q. Anything to that effect? A. No.
- Q. On p.42 Mr. Barton said: "Next morning" - and he is speaking there of the morning after this first interview, that is the morning of the 9th-" I went to the C.I.B. and I see ... I read Alec's statement what he made"? A. First, your Honour, I did not see Mr. Barton on the morning following the 8th, which would be the 9th. 50

Q. Did you at any time say to him words to this effect, that Alec admitted everything and that the police let him go last night or any night, or anything to that effect? A. I did not interview him on the 9th.

Q. Did you at any time say to him that this man Alec or Vojinovic had admitted everything and he had been let go? A. On 11th January when I saw Mr. Barton I told him that we had obtained a record of interview from Vojinovic and that he had been let go, he had not been charged with anything. 10

Q. Did you at any time, ever, ask Mr. Barton if he was prepared to give money" to pass it over to Alec, till he doing the service for the C.I.B.", or any reason? A. Never at any juncture. I advised him strongly against paying the man.

Q. Did Mr. Barton every produce \$400 or any sum at all and put it on your desk? A. Never.

Q. Did you at any time show him a copy of the interview that had been taken from Vojinovic on the evening of the 8th January? A. He could have seen it, but I did not show it to him. I was referring to it on the morning of the 11th. 20

Q. You had brought it out? A. Yes.

Q. Did you at any time hand it to him and tell him he could read it? A. No.

Q. So far as you are aware, at any rate in January 1967, did he ever read a copy? A. Not in January. Not on 11th January and - 30

Q. Did you at any time in January give him a copy of it to read? A. No.

Q. At p.45 Mr. Barton was asked these questions and gave these answers: "What else did you do ... Detective Follington will assist us to purchase a rifle". Did you on 11th January or at any time advise Mr. Barton to buy a rifle? A. I did not advise him. As I have deposed earlier, there was a discussion regarding a pistol and also a rifle, but I never advised him to purchase either as I felt that neither were necessary. 40

Q. Did you tell him that Detective Follington would assist him to purchase a rifle? A. No, I did not.

Q. You told us of the locker you had. Do you keep it locked? A. Yes.

Q. Did Constable Follington have a key to it? A. No.

Q. Could he have got a copy of this record of interview out of your locker without a key, short of breaking into the locker? A. Oh, it would be 50

possible, I would say. It could be done. There is a spare key of all lockers kept by the officer in charge of each squad and I do not think it would be terribly difficult to obtain a key to someone's locker.

Q. On the Sunday evening you have told us you met Mr. Barton on the footpath outside the Darlington Police Station? A. Yes.

Q. How long were you there talking to him, do you think? A. Oh, only a couple of minutes. The appointment was for 7.30 with this man and I wanted to be in the position before he arrived. 10

Q. The place of appointment was where? A. Near the corner of Victoria and Burton Streets, Darlington.

Q. That is the appointment with the man we now know as Vojinovic, but where had the arrangement been to meet Mr. Barton? A. Outside the Darlington Police Station. 20

Q. Later that evening were you able to see from where you were when Constable Follington came across the road and approached this man? A. I could only see Follington walk across the road. I could not see what he actually did, because there were many vehicles between me and -

Q. Were you able to see what he did when he got to the other side? A. No, I could not see.

(Luncheon adjournment).

AT 2 P.M. 30

MR. BAINTON: Q. I was reading to you some evidence Mr. Barton gave and I propose to read some more, this time from p.208: "You told us in your evidence in chief that on the following day ... and he counted it." What do you say to that? A. Nothing like that took place. I did not see Mr. Barton on 9th January and there was certainly no money given to me.

Q. At any time? A. At any time.

Q. On p.209 Mr. Barton was asked these questions and gave these answers: "I put it to you when you told Sergeant Wild ... until I got to the C.I.B." This is Sunday the 8th. "I put it to you that conversation took place ... as directed by the C.I.B." A. That is not correct. I spoke to Mr. Barton outside the Darlington Police Station and the question of £500 was discussed there, on the night of the 8th. 40

Q. At p.215 these are questions being put to Mr. Barton: "I put it to you on the morning of 11th January in company with Constable Follington ... just the opposite."? A. As the questions were put there, I did say that to Mr. Barton. 50

MR. BAINTON: Q. Did you say anything to the opposite at all? A. No.

Q. On the next page, at the top, this is following immediately on what I have just read to you, "It was then you ... purchase again". Did you ring the Chatswood Police Station to get the licence in a hurry or tell him you had? A. I rang the Chatswood Police Station to speak to the licensing sergeant if I could raise him. I did not speak to him. I did not advise Mr. Barton to obtain a pistol. I thought it was, and I told him then I thought it was unnecessary. 10

Q. "Then I put it to you that Sgt. Wild told you ..."? A. I did advise him strongly against it.

Q. "He recommended you get a pistol ... gun"?
A. I did not recommend he get any firearm.

Q. Did you make any sort of a recommendation?
A. None at all. I told him the legalities regarding the obtaining of a pistol and what was necessary. 20

Q. The next question, again to Mr. Barton, "Did he say anything about his views on getting a pistol ... a pistol licence"? A. That is not correct.

Q. Do you leave your locker unlocked at any time?
A. There have been occasions that I have left my keys in it. Yes, but it is not my regular practice to leave it unlocked. By inadvertence I may have left my keys in it on occasions.

Q. At p.237 Mr. Barton gives this evidence. He was asked "You decided, didn't you, on that day" - this I think is 13th January - "that because of what you thought ... all the time". Did you say anything to that effect to Mr. Barton? A. No. I have never suggested anything along those lines. 30

Q. I want to deal now with some matters that Mr. Vojinovic gave evidence about. At p.272 Mr. Vojinovic was asked these questions at about the middle of the page: "Did you receive any money in connection with this matter ... C.I.B." Then over the page the question is repeated. Did you at any time give money to Vojinovic? A. Never. 40

Q. Again, at p.308 my friend Mr. Gruzman was re-examining Mr. Vojinovic and he asked him these questions and he received these answers, this is right at the bottom of the page: "Mr. Staff asked you a number of question ... correct." Did you have such a conversation? A. Not at the C.I.B. I had a conversation regarding the man Muki, starting from the beginning of that set of questions there was a conversation regarding Muki, the man who had been shot. That was at Macleay Street or Greenknowe Avenue at least. There was no conversation regarding Novak because Vojinovic on 8th January claimed that he did not know who Momo was other 50

than he was a man who lived around King's Cross and drove a car around King's Cross. He told me he did not know his proper name. That is contained in the record of interview with Vojinovic.

Q. Apart from the reference to Muki in what I read to you, you say the balance of that just did not occur? A. It did not occur, no, except there are portions of those series of questions which are included in the record of interview as to the identity of Momo. There was no separate conversation regarding that. 10

Q. Vojinovic also gave this evidence and I am about to read from p.313 "I was asking you about ... is that what you said? A. Yes." Did that interview take place that way? A. No, the interview was by way of a record of interview, a typewritten record of interview which was commenced at 7.55 p.m. and concluded at 7.55 p.m.

Q. Particularly I read you another answer again, and I want you to comment on it. "In the discussion we have earlier Det. Sgt. Wild ... I am not sure if Wild did it himself." A. That is not correct. I knew very little. All I knew was what I had obtained in the interview in the morning on the Sunday. 20

MR. GRUZMAN: I ask that this cross-examination be deferred on the same basis as the previous witness. The same considerations apply.

HIS HONOUR: I think you should cross-examine Sgt. Wild, Mr. Gruzman subject only to the qualification that I have already indicated of a right to cross-examine further if Mr. Armstrong gives evidence. 30

CROSS-EXAMINATION:

MR. GRUZMAN: Q. I want you to correct me if what I put to you is wrong. Up until 8th January 1967, you had never heard of Mr. Barton, or Mr. Armstrong? A. That is correct. I had never heard of them.

Q. You are sure about it? A. Quite positive.

Q. Is Const. Whelan your partner? A. He was at that juncture. He was away on annual leave at that time. 40

Q. To your knowledge had Const. Whelan attended at Landmark offices? A. I would say no. I have no knowledge of him ever attending there.

Q. Do you know that certain police officers came to Landmark offices in about November 1966? A. No, I do not know. I do not think it would be Whelan, because I was working with Whelan in 1966.

Q. On 8th January you knew nothing about the parties? A. No, not a thing. 50

Q. What you did know was that Mr. Muir, Q.C.,

attended with a well known solicitor, and certain people, and made a complaint, is that right? A. I was present at the complaint, yes.

Q. The complaint was one which you were ordered to investigate? A. Yes.

Q. It was your duty to investigate the complaint, is that right? A. Yes.

Q. How would you describe in technical terms, in terms of crimes the complaint that was made to you? A. What, my feelings on it, or - 10

Q. No. If you had to prepare a charge sheet on the basis of the complaint that was made, what would be the charge which arose out of that complaint? A. If it were correct -

Q. Assuming it was a complaint which led to a charge being preferred? A. It would be a conspiracy to murder if it were correct.

Q. The complaint that was made to you was a complaint which, in technical terms, was a conspiracy to murder? A. Yes. 20

Q. I suppose it would be one of the most serious crimes that could be alleged? A. Yes.

Q. And one which required very thorough investigation? A. Yes.

Q. The charge or the complaint that was laid in the presence of Mr. Muir, Q.C., now his Honour Judge Muir, who was known and respected by you? A. Exactly.

Q. You were present when Inspector Lendrum - when the complaint was made - ? A. Yes. 30

Q. There was nothing in the terms of the complaint which caused you to doubt that this was a serious charge of conspiracy to murder? A. I disagree with that. My interpretation of it -

Q. Just one second. Will you tell his Honour - (Objected to; allowed) You have told us that your interpretation of the legal effect of the complaint was conspiracy to murder? A. If correct, yes.

Q. Will you tell his Honour what was said by anybody in the presence of Inspector Lendrum which caused you to doubt that this was a valid complaint? A. There was nothing said to cause me to doubt that it was a valid complaint. 40

Q. And you were then directed to investigate that complaint? A. Yes.

HIS HONOUR: Q. Was there any other circumstance, and if there was do not tell me what it was, that caused you to doubt that it was a valid complaint? A. Yes.

MR. GRUZMAN: Q. This is dealing with the time of the making of the complaint in Inspector Lendrum's office? A. Yes.

Q. Will you tell his Honour what it was that caused you in Inspector Lendrum's office to doubt that this was a valid complaint? A. Not by the parties making the complaint.

Q. I want you to be very careful. You told his Honour there was something which at the time caused you to doubt it was a valid complaint. The time was at the time when the complaint was being made in Inspector Lendrum's office. You tell his Honour now what occurred in Inspector Lendrum's office which caused you to doubt that this was a valid complaint? A. I felt that this was an attempt by a man to obtain money from a businessman by some types of threats or to cause him some fright. They were my feelings on it that day. 10

Q. How would you describe that feeling of yours in terms of crimes. Is it permitted in the State of New South Wales to your knowledge for a man to endeavour to obtain money from another man by threats? A. It is not permitted. It is an offence. 20

Q. What is the legal crime which forbids such conduct? A. Demanding money with menaces.

Q. So that your view at the time of the making of the complaint - correct me if I am wrong, was that Vojinovic was guilty of demanding money with menaces? A. Certainly I could not say that he was guilty at that juncture. 30

Q. Was not that your view? A. That was in my mind.

Q. So that you thought at the time, if I understand you correctly, that there was a valid complaint emerging from the statements made in Inspector Lendrum's office of demanding money with menaces? A. No, I had an open mind at that juncture. Persons had come to the office making a complaint. In my view it is not right to make up your mind immediately on every complaint which comes to the C.I.B. 40

Q. We were talking about whether complaints were valid or not valid? A. Every complaint is not valid.

Q. You say a complaint is not valid, do you, until it has been proved in Court? A. No. There are many persons who are charged who are acquitted. The complaint might be quite valid.

Q. Could we put it this way: I want you to be clear on what I am putting - that as a result of what was said to you, in your presence, in Inspector Lendrum's office, it was clear that the complaint was either of conspiracy to murder or demanding money with menaces? A. It could have been either. 50

Q. And the particular menaces involved in the demanding money with menaces were a threat of death?
A. Yes.

Q. And I suppose next to conspiracy to murder there could not be a more serious complaint than one of demanding money with a menace of a threat of death? A. I do not know. It is a very serious complaint I agree.

Q. So in your mind you were investigating one or other of those complaints? A. Yes. 10

Q. I suppose that at the time of the making of the complaint you believed that the man may never be captured? A. Vojinovic?

Q. Yes. A. He was to ring Mr. Barton again and it was quite foreseeable that he would be interviewed.

Q. The man might have got suspicious and not done anything more about it, might he not? A. Had the occasion arisen no doubt inquiries would have been made to locate him. 20

Q. Mr. Barton could not tell you very much about him, could he? A. Very little.

Q. So that at the time of the making of the complaint the possibility of that man actually being in your office within the near future was very much in the air, was it not? A. Unless he kept an appointment, very much in the air.

Q. It was in the interests of justice that the man should be caught, was it not? A. Interviewed, yes. 30

Q. He had to be caught to be interviewed, did he not? A. I interview lots of people that I do not catch.

Q. You did not think you could ring up this man and he would come and tell you all about it, did you? A. He may.

Q. That is your honest view? A. My honest view.

Q. Did you discuss with Mr. Barton what should be said on the telephone? A. No, just that Follington was to go there and if possible make an appointment. 40

Q. Do I understand that it had been Follington's job as your partner in this matter to do all in his power to see that the man was captured? A. Yes.

Q. If on the telephone the man were told that he would get no money and he was going to be caught if possible, you would not expect him to keep the appointment, would you? A. I do not know. I cannot answer for Vojinovic. I do not know.

Q. Is that a serious answer? A. Yes. 50

Q. I would hesitate to remind you that you are on oath? A. I appreciate that.

Q. I will repeat the question. As a police sergeant of 28 years' experience do you say that you would have expected Vojinovic to keep the appointment if Mr. Barton had said to him on the telephone "You are getting no money. I am having the police there to catch you". A. I would say that Vojinovic would not have kept the appointment, had he known the police were going to be there. The question of money I do not think had arisen. 10

Q. Was it not your view throughout that Vojinovic wanted money? A. After interviewing him, it was.

Q. Had you not been told in the beginning that Vojinovic wanted money? A. No. I do not think that was in the first interview that Vojinovic wanted money.

Q. You have told us your views on that. Let us take it a step further. Vojinovic was eventually captured? A. Yes. 20

Q. When interviewed he made a statement? A. Yes.

Q. That statement provided evidence against Vojinovic, did it not? A. For what.

Q. I am asking you, that statement, as a Police Officer, you know provides evidence against the man who makes it, does it not? A. There are statements made which might be exculpated. To me this did not provide any evidence of any offence Vojinovic might have committed. 30

Q. That is your opinion? A. Yes, that is my opinion.

Q. Having in mind what you had been told by Mr. Barton, and having in mind that one of the possible charges was a charge against Vojinovic of demanding money with menaces I would like you to listen to these statements - ? A. I am listening.

Q. From Vojinovic's record of interview and tell me whether this provided no evidence to support such a charge. Vojinovic said to you, did he not, in the course of this statement, "Did you ask Mr. Barton for £500 ... justice". Did you not regard that as an admission that he had asked for £500? A. I think money was mentioned before that. 40

Q. Did you not regard that as an admission by Vojinovic that he had asked Mr. Barton for £500? A. Yes, he did ask Mr. Barton for £500.

Q. Prior to that, had Vojinovic told you that he had said to Hume, referring to Armstrong, "He wants you really bad ... cash for it"? A. That was his answer, yes. 50

Q. So there was no doubt on Vojinovic's own

admission that he went to Mr. Barton and told him that he had been commissioned to kill Barton?

A. He told him, yes.

Q. And secondly, he asked him for £500? A. He did, yes.

Q. Did you think that provided no evidence at all, no evidence against Vojinovic? A. Insufficient evidence.

Q. In your police investigations, do you accept the evidence of the accused as being the only evidence? A. No. 10

Q. Your principal evidence comes from the complainant, does it not, the person who has complained? A. Ordinarily, yes.

Q. Having got these admissions on the crucial matters from Vojinovic, did it not occur to you to get a detailed statement from Mr. Barton? A. No, I did not get a detailed statement from Mr. Barton.

Q. So you do not know to this day what Mr. Barton would have told you about Vojinovic's demands, do you? A. No. 20

Q. And is that the way you investigated this serious charge? A. Yes, it is.

Q. Is that in accordance with proper police procedure? A. Yes.

Q. What - never to get a statement from a person who is making a complaint, that money is being demanded from them by menaces? A. In this instance I did not think it necessary. 30

Q. Having at that point of time where you had the statement from Vojinovic containing those admissions, why did you not think it necessary to get a detailed statement from Mr. Barton? A. Because reading it in its entirety, I felt that Mr. Barton had put himself in a position of offering the money to Vojinovic more than him demanding it from Mr. Barton.

Q. Was not your job to ask Mr. Barton about it? A. I did not ask him.

Q. But was it not your job to ask him? A. I do not think so, no. 40

Q. You accepted the word of this accused person and never even checked it with the man who was making the complaint? A. I did not check it, no.

Q. If in fact Vojinovic had not been telling the truth and no one had commissioned him to kill, would his statement have provided no evidence of any other criminal charge? A. His statement?

Q. Yes. A. It could have, yes.

Q. What charge? A. It could have been a charge against Vojinovic of accusing Hume and Momo of an intent to commit a crime or of creating a public mischief.

Q. Or even simpler, of obtaining money by false pretence? A. That didn't occur to me.

Q. Didn't occur to you? A. No.

Q. There is no doubt that he tried to get money from Mr. Barton? A. I agree with you.

10

Q. He either did it by truthful statements or untruthful statements? A. Yes.

Q. If they were true they were menaces? A. Yes.

Q. And if they were untrue they were false pretences? A. Yes. False pretences could have taken - could have applied there, yes.

Q. This has only just occurred to you? A. No. I didn't think of it at the time, I can assure you.

Q. It has only just occurred to you that Vojinovic could conceivably have been guilty of seeking to obtain money by false pretences? A. Yes.

20

Q. Is this how you usually investigate complaints of this nature? A. Yes, Mr. Gruzman.

Q. That is your usual methods? A. Yes.

Q. It would not have anything to do with the fact that Mr. Armstrong was an M.L.C., would it?
A. None whatsoever.

Q. Vojinovic made a statement, and in his statement he named names, didn't he? A. Yes.

Q. One of the names was that of the man whom he said immediately employed him. That was Momo.

30

A. Attempted to employ him, yes. Momo.

Q. The man who put directly to him the proposition that he should be a party to killing Barton?

A. Momo, yes.

Q. Well, did you try to find Momo? A. Yes. I interviewed Momo.

Q. The question was did you try to find him?

A. I didn't know who he was at that juncture.

Q. Did you ask Vojinovic who he was? A. Yes.

40

Q. Well, didn't it appear strange to you that Vojinovic didn't know who he was? A. It turned out to be most strange, because he did know who he was.

Q. Did that make you to think that Vojinovic had told you a lie. A. Yes.

Q. Did you ever tax Vojinovic with that? A. I have never seen Vojinovic since.

Q. Come sir. You saw Vojinovic on a number of occasions after you made this interview? A. Yes, but after seeing Momo and finding out who he was I never saw Vojinovic again.

Q. You hold it against Vojinovic that he told you a lie? A. No, I don't hold that against him.

Q. You don't hold it against him? A. No. 10

Q. But isn't it one of the factors that he told you a lie when he said he did not know who Momo was? A. It is a lie on his part.

Q. You are the one who is telling the lie, isn't it? A. I have not told a lie, Mr. Gruzman.

Q. Did Momo tell you this in his statement -

HIS HONOUR: Mr. Gruzman, I don't think it is open to you just to put a bald allegation of that sort and not go on with it. If you are suggesting something is - 20

MR. GRUZMAN: I am just coming to that now.

Q. Did you ask Vojinovic this question: "Do you know where Momo lives?" A. I did.

Q. You asked him that? A. Yes.

Q. And what did he answer? A. "Somewhere in Bayswater Road."

Q. It is not true to say that Vojinovic said that he did not know where Momo lives, is it? A. I don't think you said "lives". I think you said "who he was". 30

Q. You asked him the question: "Do you know where Momo lives?" and he said "In Bayswater Road, about 50 yards down past the hotel, on the left-hand side. He is always there. His car is always parked there." A. That is right.

Q. So that you knew in the course of checking Vojinovic's statement exactly where to find Momo? A. It is not in Bayswater Road.

Q. Are you saying as a police officer that from that description, and having a man there who could take you there, that you were unable to find Momo? A. I never tried. 40

Q. Thank you. Is that part of your usual investigation? A. The description -

Q. Is that part of your unusual method of investigation? A. Yes, Mr. Gruzman.

Q. With the man who is said to have immediately

hired someone to kill a man, and you knew where he was, and you didn't even try to find him? A. I didn't know where he was.

Q. Did you ask Vojinovic to take you there?
A. No.

Q. Vojinovic was being co-operative at that stage, wasn't he? A. He was, yes.

Q. And you have no doubt that if you had asked him to take you to Momo he would have? A. He may have attempted to, yes. 10

Q. And you never even asked him? A. No.

Q. And I suppose one of the matters that would have been important to an investigating officer like yourself when a charge is made that a man is either demanding money with menaces or conspiring to kill would be to find out whether he is the sort of man who might do that sort of thing? A. The complainant or the accused?

Q. The accused. A. Yes. 20

Q. Did you get out his record? A. I did.

Q. That night? A. Yes.

Q. Was there anything about his record which would lead you to doubt the possibility that he could be implicated in a thing like that? A. I don't think he had ever been charged with anything like that before.

Q. You mean he had not been charged with either conspiracy to murder or with demanding money with menaces? A. Yes, that is right. 30

Q. The question I asked you was whether there was anything in his record which would cause you to doubt whether he would be the type of man who could be involved in a matter of this nature? A. I could not answer that, Mr. Gruzman. I don't know what the man would do.

Q. That is the answer, is it? A. Yes.

Q. He was the sort of man who, to your knowledge, could have been involved in a conspiracy to murder?
A. I did not answer that way. 40

Q. What would you have needed to make you suspicious that Vojinovic was the type of man who could be involved in an affair of this kind? A. That he was an assailant; that he had convictions for the type of offence. He has convictions for dishonesty.

Q. Is this the position, that if a charge is made against a man that he has demanded money with menaces you do not take the matter any further unless he has previously been charged with a crime of the same type?
A. No. I am guided by circumstances then, and his record. 50

- Q. Well look, sir, having in mind his offences for dishonesty, that did nothing to cause you to doubt that he could be involved in this, did it?
- A. It is not his modus operandi. He has offences for breaking, entering and stealing, and illegally using cars. He has one for a concealable firearm.
- Q. A concealable firearm? A. Yes.
- Q. You had knowledge of this sort, that this man had previously carried a gun? A. Well, he had a conviction for it in Queensland, I think. 10
- Q. Have you any doubt whether the conviction is right? A. No, I have no doubt.
- Q. So that you knew on the night of 8th January that the man who had been captured had previously carried a gun? A. Yes.
- Q. And he had been sentenced to 12 months' imprisonment on that offence, hadn't he? A. I don't recall. 20
- Q. You don't recall that? A. No.
- Q. Have you any doubt about it? A. No.
- Q. From the fact that you don't recall it one would gather, would one, that you do not regard it as important? Would one gather correctly that you did not regard it as important that this man spend 12 months in prison? A. On the contrary I just don't recall the man's conviction.
- Q. You don't seem to pay very much attention to it, if you don't remember it now. A. I knew that he had a conviction, but I didn't know the length of his sentence. I don't recall the length of his sentence. 30
- Q. Anyway, you would now recall, I suppose, that you knew on the night of 8th January, that Vojinovic had served 12 months' imprisonment on a charge of carrying a gun? A. Yes.
- Q. Would not you have thought at that time that a man who had convictions for breaking entering and stealing and also for carrying a gun might be the sort of man who would demand money with menaces? A. He could be, yes. 40
- Q. I take it, then, you were not concerned at that stage, from what you have said, to see Momo very quickly? A. I wanted to see him, but I did not know where to locate him at that juncture.
- Q. All you had to do was to ask Vojinovic to take you there? A. It might have been possible.
- Q. That didn't occur to you? A. No.
- Q. It sort of escaped you? A. Yes.

Q. By the way, you knew Frederick Hume, did you?
A. I had never met Hume.

Q. Did you know him by reputation? A. I did not know him by reputation even.

Q. So that so far as you were concerned, Hume would be - if he was involved in this - another man of the same class? A. If he had been, yes.

Q. Did you ask to see Hume? A. Did I ask who?

Q. Vojinovic. A. No, I didn't ask Vojinovic. 10

Q. Well, what did you do? What did you do on the Sunday night when Vojinovic made this statement and you had to investigate charges either extremely serious or just serious? What did you do? A. On the Sunday night?

Q. Yes. A. Well, it was at that time eleven o'clock, and I went home.

Q. You went home? A. Yes.

Q. Well, next morning was Monday morning, was it? A. Yes. 20

Q. What did you do then? A. I had discussions with Follington - Detective Follington, - who knew Hume, or knew of Hume. I was busily engaged during that week in connection with another shooting affray, and I was investigating, to the best of my ability, both offences.

Q. When did Follington first tell you that he knew Hume? A. He told me on the Sunday night.

Q. I thought you told us before that you knew nothing of Hume on the Sunday night? A. No. Prior 30 to the 8th I had never heard of Hume.

Q. Prior to the 8th you had never heard of Barton or Armstrong either? A. That is so.

Q. On the 8th you knew that Hume was involved?
A. Yes.

Q. And Follington knew Fred Hume? A. Yes.

Q. And Hume, of course, was a well known police informer? A. I do not describe him as that.

Q. Are you telling his Honour that you don't know Hume to be a well-known police informer? A. I know 40 that Hume is a man who has assisted the Police on a number of occasions.

Q. I don't know whether we are playing on words. I won't hold you to it if we are. I want you to agree with me, if it is the truth, that you know that Hume is a police informer? A. That is not my interpretation of Hume.

Q. Well, as a result of this case have you made it your business to find out all of Hume's activities on behalf of the police? A. No, not the actual cases. I know that he has assisted the police on a number of occasions.

Q. When you say "assisted the police", what is your understanding of that? A. That he had assisted in the apprehension of offenders who committed crime.

10

Q. By giving information about it? Giving information about them? A. Yes.

Q. Or by informing on them? A. I think there is a difference, Mr. Gruzman.

Q. There is a difference, is there? A. I think so.

Q. In your mind to give information to the police which leads to the arrest of persons is different to informing? A. Yes.

Q. Well, did you feel it necessary to go into the matter to find out the sort of assistance that had been given? A. No, I never actually checked the actual assistance he had rendered.

20

Q. Did you speak to Det. England? A. Det. Sgt. England, yes.

Q. He was a man to whom Hume gave a lot of information, was he? A. Yes.

Q. And in fact Hume, - England put in a report to the Police Department about Hume? A. Yes.

Q. And you have seen that report, haven't you? A. No. I understand it was produced, but I didn't see it, Mr. Gruzman.

30

Q. But Det. Sgt. England, I suppose, told you at the time of assistance that Hume had given? A. Assisted him to clear up crime.

Q. And did so by informing the police of the identity of people who had committed crimes in the past? A. Yes.

Q. In other words, what you would regard as an ordinary informer? A. Yes, he has assisted the police.

40

Q. In that way? A. Yes.

Q. As an informer? -

HIS HONOUR: Mr. Gruzman, I don't think that is getting anywhere. You are seeking to put a coloured phrase that does not seem to carry it any further.

MR. GRUZMAN: I won't take it any further.

Q. I suppose the fact that Hume had assisted the police to your knowledge had some effect on you?

A. It did, yes.

Q. What effect did that have on you? A. It had the effect that from my conversations with Sgt. England this man was a man of good repute.

Q. Good repute? A. Yes.

Q. And therefore I suppose you would what? Not suspect him of being involved? A. Not consider it likely that he would be involved. 10

Q. In activities of this kind? A. Yes.

Q. Did that have an effect on your investigations? A. No. No.

Q. No effect? A. No. I questioned Hume very thoroughly.

Q. Very thoroughly? A. Yes.

Q. Made careful notes of it all? A. I made no notes.

Q. That is your normal method of investigating, is it? A. Not entirely Mr. Gruzman, no. I sometimes make notes; I sometimes don't. 20

Q. Look, sir, if you are examining a man suspected of being involved in a conspiracy to murder would not you regard it as your duty to make careful notes of what he said? A. I did not in this case.

Q. If you are interviewing a man suspected of being involved in a conspiracy to murder, would not you regard it as your duty to make careful notes of what he said? (Objected to; allowed). 30

HIS HONOUR: Sergeant Wild, you understand this is a hypothetical question.

WITNESS: I appreciate that.

MR. GRUZMAN: Q. If you are interviewing somebody suspected of being involved in a conspiracy to murder would not you regard it as your duty to take careful notes of what he said? A. If I suspected him, yes.

Q. And on the statement of Vojinovic you had reason to suspect Hume, didn't you? A. I had some reason, yes. 40

Q. And you took no notes at all? A. I didn't

Q. You say? A. I didn't.

Q. That is contrary to your duty, isn't it?

A. Oh no.

Q. Look, sir, you have already told us that if

you are interviewing a man suspected of conspiracy - being involved in a conspiracy to murder - you take careful notes. That is your duty, isn't it?

A. I am not directed to do so, Mr. Gruzman.

Q. You told us that was your duty. Do you wish to resile from that now? A. I don't think you mentioned "duty".

Q. I did mention duty. Do you wish to say you would not, as a matter of duty, take notes? A. I am not obliged to take notes. 10

Q. You say you have got no duty to do so? A. No duty at all.

Q. And your practice - is it your practice to take notes of a suspect - a man suspected of being involved in a serious crime? A. On some occasions, yes.

Q. But it is purely left to chance, is it?

A. Purely left to my own discretion.

Q. Do I understand that it is purely chance? 20

A. I don't quite gather your meaning of "chance".

Q. Is there any rule or logic which you follow in exercising that discretion? A. There is no rule, no.

Q. It is just how you happen to feel at the moment, whether you happen to take notes or not?

A. Guided by circumstances.

Q. You regarded Hume, you say, as a man of good character? A. Yes.

Q. Because he had assisted the police? A. No, not only that. 30

Q. What was the other reason? A. He is a private inquiry agent. He is a licensed pistol holder, and for both of these licences it is necessary for him to have his character examined, and it is necessary for him to make an application in open Court for the first licence.

Q. Would you regard a man who had used an alias as a man of good character? A. It all depends on the circumstances there. 40

Q. Sometimes people use an alias, and they are in your view of perfectly good character? A. I think there are quite a number of reputable persons who on occasions use an alias.

Q. Different people have different standards?

A. Yes, exactly.

Q. And your standard is that people who on occasions use false names are of good character?

A. I am sure persons who are very reputable have used other names on occasions. 50

Q. What about a man who is fingerprinted under an alias? A. Fingerprinted?

Q. Would that alter your conception of his character? A. Fingerprinted for what?

Q. It is important to you to know, is it, what he was fingerprinted for? A. When persons make applications for certain licences they are fingerprinted. When I make application to join the Police Force I am fingerprinted. 10

Q. Supposing a man is fingerprinted in connection with an offence under an alias? Do you still say he is a man of good character? A. If he is charged with an offence I would say no. If he is convicted of an offence.

Q. Tell me, what investigations did you make about Frederick Hume? A. I inquired mainly from Det. Sgt. England.

Q. And England said words to this effect "He gives me information. Lay off him?" A. No. 20

Q. What did England say? A. He said that he was a man of good repute; that he had a licence, and I assumed from that that he was a man of good repute.

Q. Did you check to see if his fingerprints were on file? A. Yes.

Q. And were they? A. No.

Q. They are not on file? A. No.

Q. You swear to that? A. I have not found his fingerprints. I checked that. 30

Q. Did you consider checking under a different name? A. Had I known I might have checked it. I checked under another name for him.

Q. I beg your pardon? A. I checked under another name.

Q. What names did you check? A. Haristy and Hume.

Q. Your information was that he had never been fingerprinted for any offence? A. Yes, that is right.

Q. Then did you make that inquiry? A. Next morning, on the 9th. 40

Q. On the 9th? A. Yes.

Q. From the Fingerprint Section? A. Yes.

Q. In what form is that inquiry made? Is it verbal or written? A. No. You go and check the cards yourself.

- Q. You personally checked? A. That is right.
- Q. What names did you check under? A. I checked under the name of Hume.
- Q. Frederick Hume? A. Yes.
- Q. And what else? A. That was all I checked at that juncture.
- Q. I thought you told me you checked Haristy?
A. I later found that he changed his name by deed poll from Haristy, and I checked for that. 10
- Q. When was that? When did you do that? A. It would be some time this year that I checked that.
- Q. Some time this year? A. Yes. I didn't know he had changed his name by deed poll.
- Q. What you are telling his Honour now is that on the morning of 9th January 1967, you personally checked the fingerprint records of the C.I.B. under the name of Frederick Hume and found no entry?
A. Found no entry, no.
- Q. If a man had been charged under the name of Barry John Smith, for example, would there be any cross-check? In other words, if a man by the name of Frederick Hume had been charged under the name of Barry John Smith, would there be any cross-check?
A. You would have to know his correct name to check with the alias, and - 20
- HIS HONOUR: If you are asked any questions, Detective Sergeant, which you feel may involve an undesirable disclosure of police procedures I would like you to be good enough to tell me. 30
- WITNESS: Thank-you, your Honour.
- MR. GRUZMAN: Q. By the way, on 8th January did you make inquiries from Vojinovic about the motor car that was involved? I am sorry, I will withdraw that. Did you make some inquiries from Vojinovic about a motor car? A. He mentioned a motor car that Momo was driving. That is the only reference to a motor car.
- Q. What motor car was that? A. He said it was a grey Falcon that looked like a police car in his record of interview. 40
- Q. Did you get any more details of that? A. No. He had no more details.
- Q. Did you subsequently make some inquiries about that motor car? A. Make some inquiries?
- Q. About the motor car? A. Only after Vojinovic had been charged with stealing a motor car in Melbourne in January - 24th, I think it was. I made some inquiries about the motor car, yes.

Q. Well, prior to interviewing Hume had you any knowledge about this motor car? A. None whatsoever.

Q. Is your notebook in Court? A. Yes, it is in Court.

Q. (Approaching witness with note book): On 18th January you interviewed Momo, didn't you? A. No. On the 18th I interviewed - no, this is the 18th. I interviewed Hume, and he told me who Momo was; he told me the number of the car; and told me who Muki was, and there is Frederick Hume. 10

Q. Would you read out to the Court the whole of your notes about your interview with Hume, please?

A. This is my interview with Hume?

Q. Yes. (Objected to; rejected.)

(Notes of witness tendered; objected to; tender not pressed.)

MR. BAINTON: Q. At this stage I would like to renew my application to look at the police documents - documents produced by the police officers or by the Police Department. 20

HIS HONOUR: So far as this document records an interview with any of the parties or individuals mentioned, or anything relevant to this suit, I think it is open to you to see it. There is a photostat of it here. I will not give a blanket ruling, but, if you wish, I will go through the documents produced from the Commissioner and Police Officers and see which ones are available. You may certainly see the relevant portion of this book. 30

MR. GRUZMAN: Q. Perhaps I might go back for a moment. On the 8th January this was the position, that you had a complaint by Mr. Barton; you had a record of interview by Vojinovic? A. Yes.

Q. In the record of interview Vojinovic had alleged in substance that he had been employed by Momo through Hume for Armstrong to kill Barton?

A. Approached by, yes, in that line.

Q. Now, will you just tell his Honour what would be your normal method of investigating a matter of that kind, and when you would do it? A. From the - 40

Q. From Sunday night, 8th January. A complaint is made of conspiring to murder by responsible people in the presence of a Queen's Counsel to a Superintendent of the C.I.B. - the senior man on duty - and the persons involved are all named. Now, what is your normal method of investigating that?

HIS HONOUR: Mr. Gruzman, you said "Superintendent". I take it you mean the senior officer on duty? 50

MR. GRUZMAN: Yes.

WITNESS: I would do what I did then. I would interview persons to see if I felt that the complaint was genuine, and whether there was sufficient substance to vindicate or substantiate the charge.

Q. MR. GRUZMAN: What time did you come on duty on the Monday? A. Eight o'clock I generally arrive.

Q. Eight o'clock? A. Yes.

Q. Would your normal procedure have been to interview on Monday morning, Hume, Momo and Armstrong? 10
A. If the opportunity presented itself, yes.

Q. Well, I want you to tell exactly to his Honour what efforts you made first of all to interview Hume on Monday? A. I did not make any efforts to interview Hume on Monday.

Q. But you have just told his Honour that your normal method of investigating a charge at this time would be to interview, inter alia, Hume on the Monday? A. If possible, yes.

Q. And yet you tell us you made no efforts to interview Hume on the Monday? A. No, I didn't 20

Q. Well, what was there that either prevented you or led you not to seek to interview Hume on the Monday? A. I wanted to find out something of Hume's background.

Q. You had found that out on the Sunday night?
A. Not in its entirety.

Q. You knew he was a man who assisted the police on the Sunday night, didn't you? Follington told you that? A. Yes. That he had assisted the Police. 30

Q. Did you want to find out how much he had assisted the Police? A. I wanted to find out more about him. Follington didn't know much about him.

Q. And that is what prevented you from interviewing him on the Monday? A. I don't recall what I did on the Monday. I know I was engaged on another shooting affray early in the week of that week. No, it would have been - it was some couple of days after, I think, the shooting.

Q. A couple of days after? A. Yes. I am not sure of that. 40

Q. On the Monday you had nothing to do, had you?
A. I don't know. I just can't answer that.

Q. Well, is Detective Sgt. England there? Is he a Detective Sergeant in this station? Where was Det. Sgt. England stationed? A. At the C.I.B.

Q. At the C.I.B.? A. Yes.

Q. In an adjoining room? A. He works on general duties. I don't know exactly what room he works in.

Q. Did you take immediate steps to approach Det. Sgt. England? A. I looked for England, but I don't think I found him on the Monday. I am not sure whether I saw him on the Monday, or not.

Q. You don't know whether you did or did not?
A. No, I don't

Q. Of course, if you had found him then you would have had no further reason for not interviewing Hume, would you? A. Only possibly the time, Mr. Gruzman. You are not allocated to one particular inquiry all the time. 10

Q. In the C.I.B., assuming it was a valid complaint of conspiracy to murder, you have already told us that it is, I think you said, one of the most serious crimes of which complaint can be made?
A. That is right.

Q. Didn't you feel an urgent necessity to get to the bottom of this immediately? A. One feels that, Mr. Gruzman, but it is a matter of time, and what duties are allocated to you. 20

Q. Is this the position, that the reason that you did not interview Hume on the Monday was not because you could not find his background but because you did not have time? A. I don't know which it was that I didn't interview Hume on the Monday, but I didn't interview Hume on the Monday, but I didn't locate Hume. - I did not interview him until 18th January.

Q. Was Hume hiding from you? A. No, not to my knowledge. 30

Q. He is a perfectly respectable man in your view?
A. So far as I know.

Q. A licensed pistol holder; a licensed private inquiry agent? A. Yes.

Q. In the 'phone book? A. I don't know whether he is in the 'phone book. I have looked and I could not find him.

Q. How did you eventually find him? A. Follington found his 'phone number and got him for me. 40

Q. What? On the 18th? A. He made arrangements to see me on the 18th.

Q. When had Follington been instructed to find Hume? A. It would be within a couple of days following the 8th.

Q. That is the best you can do? A. That is the best I can tell you.

Q. Well, what about Mr. Armstrong? When did you interview him? A. I never interviewed Mr. Armstrong

Q. Here was a charge laid in the presence of a Queen's Counsel to the senior man at the C.I.B. at the time? A. Complaint. No charge.

Q. A complaint or charge laid in the presence of a Queen's Counsel to the senior man on duty at the C.I.B., alleging that Armstrong was conspiring or had conspired to murder, and you had other evidence of it. (Objected to; rejected.)

Q. You regarded the charge that was laid - 10

HIS HONOUR: Mr. Gruzman, Det. Sgt. Wild corrected you a moment ago, and said it was not a charge - it was a complaint.

MR. GRUZMAN: Q. - a complaint that was laid as involving Mr. Armstrong in an alleged conspiracy to murder Mr. Barton, didn't you? A. The first part? What was the first part of the question?

Q. You regarded the complaint - ? A. As one hypothesis.

Q. As a complaint in which Mr. Barton in effect charged Mr. Armstrong with being involved in a conspiracy to murder? (Objected to; rejected). 20

Q. The complaint that was made in your presence on that Sunday morning in your mind was a complaint made by Mr. Barton that Mr. Armstrong had conspired with other people to murder him? A. No.

Q. You never understood that? A. I understand that. The complaint that Mr. Barton made that morning was that a man had been ringing him regarding this. 30

Q. Well, after you had interviewed Vojinovic and got his written statement, there was evidence which, if believed, involved the possibility that Mr. Armstrong was involved in a conspiracy to murder Mr. Barton? A. Possibility, yes.

Q. Now, the man who had made the original complaint was a man who, as far as you knew, was a man of good character? A. Yes.

Q. The complaint had been made by people of high standing to the highest officer on duty at the time at the C.I.B.? A. Yes. 40

Q. The original complaint had been borne out to the extent that the man Vojinovic had been captured? A. Had been interviewed, yes.

Q. And had made a record of interview naming Armstrong as one of the people involved in his employment? A. Oh, I don't think that.

Q. You don't think that? A. No. Vojinovic is a man who said that Momo had approached him. Surely he could not speak for Mr. Armstrong or Hume. Vojinovic had never been spoken to by Mr. Armstrong or by Hume in connection with this matter. 50

Q. Well, is this the position, Sergeant, that as a member of the Police Force of this State you would not even interview somebody unless you had evidence that they are guilty? A. Oh, that is incorrect.

Q. That is incorrect? A. Yes, incorrect.

Q. Let us go back. You had a statement by Vojinovic in which he claimed that Armstrong was the instigator of the threat to kill Barton?

A. Yes, he claimed that. (Objected to; allowed). 10

Q. In fact, you had asked Vojinovic this question: "Did the man Momo discuss with you who the person was that was to be killed?" and he answered "Yes, well he said this fellow must have been in trouble with the other fellow. They are both rich, and one wants to kill the other, and he said one of the fellows is Chairman in the company and the other fellow did something to him to get him put off, and he got the job. He said you must know this fellow, because he was in the paper, and that he is a big man in a good position. His name is Armstrong, and the fellow to be killed is Mr. Barton." A. That was his answer, yes. 20

Q. You would not have expected, would you, that if a man like Mr. Armstrong had in fact conspired to kill Mr. Barton that he would have dealt with a little criminal like Vojinovic directly, would you?

A. I don't know. I really don't know what happens in men's mind, and who they will deal with.

Q. Look, sir, you are a senior police officer, aren't you? A. I am, yes. 30

Q. Don't you know about contracts to kill?

A. I have heard of them, yes.

Q. You know that it is not unusual in the city of Sydney that a man can be killed by contract?

A. Well, I think it would be hard to say yes to that remark, Mr. Gruzman, because I don't think there have been many convictions in connection with this matter.

Q. Because convictions are very hard to get, aren't they? A. Yes, they are. 40

Q. And that is because as a senior police officer you have some knowledge of the way in which a man would cover his tracks if he was involved in a thing like that, haven't you? A. I would expect him to cover his tracks, yes.

Q. What you would expect is that the man who was paying the money would never have any direct contact with the person who was to do the job? A. I cannot answer that. 50

Q. Are you seriously telling his Honour in this Court that it is not within your knowledge and experience that if a man with money was prepared to

pay to have a person killed, that he would avoid all direct contact with the killer? A. This is purely hypothetical, isn't it?

Q. Is it hypothetical? A. I think it is hypothetical. I don't know. If a man is prepared to hire someone to kill, he is obviously --- his mind is not working in a normal manner, so I don't know what he would do or who he would approach or who he would see.

10

Q. Are not you aware that in this city purely for financial reasons men have been killed? A. It is suspected, yes.

Q. That is, that somebody has paid to have a man killed? A. I would say that it has been suspected that men have done this.

Q. The problem is that it cannot be proved?
A. Very difficult to prove.

Q. Why is it difficult to prove? A. A man in that position is most unlikely to admit his complicity.

20

Q. How would such a thing in your experience be arranged? A. How do you mean?

Q. How would a man who wanted someone killed in your experience arrange it? (Objected to; rejected.)

Q. If you are asked to investigate a killing where such a thing is suspected you would anticipate great difficulty in getting back to the principal, by evidence, wouldn't you? A. If investigating it, yes.

30

Q. And that is because you know, as a matter of experience, the principal would avoid direct contact with the killer? A. I cannot answer that. It is too hypothetical for me.

Q. It would be your belief, Sergeant, that if a man was engaging a killer to kill, that he would avoid direct contact with the killer? A. I would think that any intermediary he had would be as guilty as the actual killer, so I don't see how he could avoid any direct action with the killer, if he engages someone to do it.

40

Q. It would be your belief, wouldn't it, that a person who wanted someone killed would go, if possible, through a number of intermediaries to make it more difficult to get evidence against him?
A. It would be difficult, I think, to find a number of intermediaries to go through to organise such an event.

Q. But if it were possible, it would be your belief that a man would engage a number of intermediaries, to remove him as far as possible from direct contact with the killer? A. Well, I would. yes.

50

Q. You would? A. Yes.

Q. And isn't that the very sort of situation which Vojinovic's statement suggested to you?

A. No, it seemed rather foolish to me that a man would engage a man - another man - to kill, who in turn engaged a third person, who in turn engaged a fourth person. It just seems a train of events which to me does not make the soundest reasoning.

10

Q. Is not this just what you have told us that you would do if you were planning to kill someone?

A. That I would do?

Q. Yes. A. Well then, how does the third intermediary know who I am?

Q. That is the point, you see. You would try to avoid that if it was possible, wouldn't you?

A. I would, most certainly.

Q. And, of course, if your first intermediary -

HIS HONOUR: Mr. Gruzman, I don't find this a very attractive proposition you are putting to Det. Sgt. Wild.

20

MR. GRUZMAN: Q. For the first intermediary it is obvious that there would be chosen, in your belief, someone who could be trusted? A. Yes.

Q. That would be somebody who had some connection with the criminal world, but who obviously you could trust, or who one felt one could trust?

A. It would have to be someone who knew someone, yes.

30

Q. Now Hume, of course, was a man who did have a connection in the criminal world, didn't he?

A. Yes.

Q. And a man who, you would believe, would know people like Momo and Vojinovic, and obviously did know them? A. Yes.

Q. Now if there also came to your knowledge that Hume was a social companion of Mr. Armstrong, would he not, in your belief, fill the bill as an intermediary? (Objected to; rejected.)

40

Q. See, you were investigating this complaint of conspiracy to murder? A. Yes.

Q. And we have already heard how intermediaries might be thought to figure in such a matter?

A. Yes.

Q. And you have told us that Hume was a man who in your opinion would have a knowledge of the criminal world? A. Yes.

Q. Now, did you go further, and investigate

Hume's connection with Mr. Armstrong? A. No. I asked Hume his connection with Mr. Armstrong.

Q. And what did he say? A. He told me that he knew him socially.

Q. Socially? A. Yes.

Q. Well, did he tell you he played tennis with him? A. Yes.

Q. Did he tell you he had done jobs for him?
A. He told me he had worked for Landmark, but not for Mr. Armstrong personally. 10

Q. Did he tell you he had been paid money?
A. I assume he had been. When he told me he had been employed by Landmark Corporation I assumed they had paid him.

Q. Didn't it occur to you that you had now established that Hume had a social connection with Mr. Armstrong; some financial connection with his companies, and a connection with the criminal world. I suppose those facts occurred to you? A. Yes. 20

Q. And you knew that Mr. Barton claimed that Mr. Armstrong had hired was threatening to kill him?

A. No, that Vojinovic told Mr. Barton that Mr. Armstrong was going to kill him. Not directly from -

Q. You knew from his complaint that Mr. Barton was having most serious trouble with Mr. Armstrong?

A. There was obviously some financial trouble.

Q. You knew that Bovill had been told that fellows could be bumped off for £2,000? A. I didn't know that. It was told to me by Mr. Millar. 30

Q. And then you had Vojinovic's statement which involved Mr. Armstrong? A. Mentioned him, yes.

Q. And Mr. Hume? A. Yes.

Q. Didn't those facts, all put together, lead you to at least ask Mr. Armstrong whether he had had anything to do with it? A. I had interviewed Hume and Ziric. They had denied completely their complicity in this matter, and I felt that an interview with Mr. Armstrong was not necessary because of those denials by Hume and Ziric of their complicity. 40

Q. Did you go so far as to write down these denials? A. No, I didn't.

Q. So far as your records go - written records - there never was a denial by Hume or Ziric, was there? A. There was to me, though. Written, no.

Q. I will ask you the question again. So far as your written records go, whether in notebooks,

M.J. Wild, xx

diaries, statements, or elsewhere, there never was any denial by either Hume or Ziric, was there?

A. There is no written record, no.

(Witness stood down).

(Further hearing adjourned to 10 a.m. on Wednesday, 7th August, 1968).

MR. BAINTON: Before the cross-examination resumes, there is one matter in the transcript - I don't suggest it is the only one - at p.580, in the answer to the sixth question. It is recorded as "I have never met Hume". That should be "I had never met Hume". 10

HIS HONOUR: The answer to the fifth question on p.580, the word "have" will be altered to "had".

MR. BAINTON: Your Honour granted my friend leave to defer the cross-examination of Inspector Lendrum as I understood it on the basis that it might not be fair in the circumstances to permit it, as it would involve questions relating to Hume's character in the circumstances as they then existed. Cross-examination has been directed to Sgt. Wild on that issue in pp. 580-584. I would submit in the light of that cross-examination your Honour might see fit to reconsider the decision that the cross-examination in respect of Lendrum be deferred. 20

HIS HONOUR: I don't think I would be prepared to reconsider that. I gave that ruling at the time, and I think I shall adhere to it.

(Commissioner of Police called on subpoena duces tecum by Mr. Gruzman. Keith Murdoch, a Sergeant of Police attached to the Fingerprint Section, of the Criminal Investigation Branch, Sydney, appeared in answer to the subpoena. Sgt. Murdoch produced a copy of the subpoena and documents in accordance with the terms of the subpoena. Sgt. Murdoch stated that the documents produced were confidential records of the Police Department, and that it was sought that his Honour should look at the documents before permitting anyone else to see them. He stated that there was no objection to the documents being made available for inspection if so allowed by the Court, nor were the documents required back as a matter of urgency.) 30 40

HIS HONOUR: I will not rule on the documents, Mr. Gruzman, until you reach the point where you wish to see them.

MR. GRUZMAN: I make the application now that I be permitted to inspect the documents.

HIS HONOUR: I have examined the documents. You may see them Mr. Gruzman. 50

MR. BAINTON: After my friend has seen them, may I see them?

HIS HONOUR: Yes.

MR. GRUZMAN: I wonder if I might recall Sgt. Murdoch on his subpoena?

HIS HONOUR: Do you want to interpose him as a witness?

MR. GRUZMAN: No. I want to examine him on his call on the subpoena duces tecum.

KEITH MURDOCH
On voir dire:

MR. GRUZMAN: Q. What is your full name? A. Keith 10
Murdoch.

Q. You are a Sergeant of Police attached to the Fingerprint Section of the Criminal Investigation Branch? A. Yes.

Q. And you are present at this Court in response to a subpoena duces tecum served on the Commissioner of Police which called for the production of ---

HIS HONOUR: Mr. Gruzman, as I have said, I am concerned that the reputation of strangers to the litigation should not be unnecessarily gone into 20
in these proceedings.

MR. GRUZMAN: I will not mention the name at this stage.

Q. You are answering a subpoena which called on the Commissioner to produce all fingerprints and photographic records of a certain man? A. Yes.

Q. And the only document which you produce to the Court is this document which I now show you?
A. Yes.

Q. Do you say that is the only document in exist- 30
ence which is in compliance with that subpoena?
A. This is a copy of the convictions relating to this person.

Q. The subpoena called for fingerprints and photographic records of this man. Does that document comprise the whole of the fingerprint and photographic records of this man? A. This document comprises the whole of the record supported by fingerprints of this person.

Q. I show you a document - a photostat copy of 40
a document. Do you recognise that as a photostat copy - look at both pages of it - of official police records? A. Yes, this is correct.

Q. Of what official police record is that a copy? A. Of the records filed at the Fingerprint Section of Barry John Smith.

Q. Does it refer also in about six or eight places to the name of the person in respect of whom the subpoena was issued? A. Yes, it does, but these are not supported by the fingerprints. 50

Q. I beg your pardon? A. These inquiries where this person has made application for various licences are not supported by fingerprints.

Q. Does not the document show that the person was fingerprinted in connection with certain matters? (Objected to; allowed).

Q. Have a look at the third entry under the headings "name and address, date of arrest, etc." Have a look at the third entry under the headings, "Name and address, date of arrest", etc., and tell me whether you still say that the person in respect of whom the subpoena was issued has not got a reference to his fingerprints on that document? A. Yes, he has. I am not denying this. 10

Q. I beg your pardon? A. I am not denying this.

Q. So that the position is that this official police record shows a reference to the fingerprints of the person in respect of whom the subpoena was issued? A. Yes. 20

Q. And that document was not produced? A. We cannot produce these fingerprints in relation to this particular entry.

Q. Is this the position, that a person could have fingerprints on record at the C.I.B. under two different names? A. Yes.

Q. And if he is arrested - I beg your pardon. I am sorry, Not on record. Perhaps if I can explain it this way? 30

HIS HONOUR: Sgt. Murdoch, I think I should say this, that if you are concerned that any of these questions may involve in your answers any disclosures of what ought, in the public interest, to be retained as information confidential to police matters, would you please say so?

WITNESS: Yes. Thank-you, your Honour.

HIS HONOUR: I don't want you to regard yourself as obliged to answer any question which might disclose matters of system or police procedures which should not be made available. 40

WITNESS: It is a matter of system, but I feel it is in order to explain it. A person can be fingerprinted on two occasions and use a different name on each occasion, but his fingerprints remain unaltered. The second occasion should lead the fingerprint expert back to the original set of fingerprints retained at the Fingerprint Section. Now, in relation to this matter, this person was fingerprinted as an applicant for employment with the Commonwealth Police. These fingerprints are not retained at the Fingerprint Section after checking. They are returned to the Commonwealth Police or, in other circumstances, they are returned to the owner of the fingerprints. 50

MR. GRUZMAN: Q. This document shows - this document from your records shows that a man was arrested under the name "X" and his fingerprints were taken? A. Yes.

Q. It also shows that he was - perhaps I may have the document - it also shows that that arrest took place in 1956. (Objected to; allowed).

Q. As a matter of system, if a man is arrested in 1956 under one name and arrested in 1959 under a second name and the Department is notified that in 1961 under a third name his fingerprints were taken, and are identical with the other two - ? A. Yes. 10

Q. - and assuming all these matters come to the attention of the Fingerprint Section of the C.I.B., let us assume that under the third name he also makes a number of applications which are recorded in the Fingerprint Section on this file - this fingerprint record - is this the position, that forever after the Police Department cannot, by knowing the third name, by any system of cross-reference find out that he was fingerprinted under two different names as well? Is that the position? A. I don't quite understand the last part of your question. Two different names? 20

Q. Yes. A. Yes.

Q. That is the position, is it? A. It does not matter whether a person is fingerprinted under six different names; it will refer back to the original name of that person by his fingerprints. 30

Q. Is not that what happened in this case? Does not this document show that in 1956 he was fingerprinted under one name, and in 1959 under a second name - the same fingerprints? A. Yes.

Q. In 1961 you received official notification that he had been fingerprinted for a specific purpose which you mentioned under a third name, having the same fingerprints? A. Yes.

Q. And thereafter the record shows that under that third name there are about six entries or seven entries of various applications which he made? A. Yes. 40

Q. Is this the position, that thereafter you can never - by looking at the records under the third name it will never lead you back to the first names? A. No. It will.

Q. It will? A. Yes.

Q. I ask you, then, why you did not, in answer to the subpoena under the third name, produce the documents relating to the first two names? A. Well, I cannot answer it any further than what I have already done so and with the document that I have 50

produced. There are further details of this person's record, such as various addresses and perhaps, in some instances, birth places or dates of birth, but from my experience the practice in the past has been to produce the criminal history only, together with photographs and alias names. Further information can be produced if it is required.

Q. But the real question I am asking you is when you were asked to produce fingerprint and photographic records under the third name, why didn't you produce this photostat document which I have shown to you? A. I cannot answer that, only that I have never produced that information in the past. 10

Q. Tell me, having a third name only, if one looks at the record it would lead you to this photostat copy which I show you, wouldn't it? A. Third name only?

Q. Yes. A. Which name is that? 20

Q. The name of Frederick Hume? A. Yes.

Q. Well now, if his Honour so directs, will you leave the Court and produce a full answer to the subpoena?

HIS HONOUR: Mr. Gruzman, you ought to be more specific as to what you are asking Sgt. Murdoch to produce. For example, I would not feel disposed to require the production of whatever may be the original fingerprint itself. I do not know in what form that is kept, but there is no purpose whatever in that being produced. I think there is no reason why you should not state with some particularity the documents which would fall within the general terms of that subpoena. 30

MR. GRUZMAN: Q. This document of which you have seen the photostat - that is one document which exists, but what other documents would exist in the records related to that document? -

HIS HONOUR: That is, falling within the scope of the subpoena? 40

MR. GRUZMAN: Q. Falling within the general scope of fingerprints and photographic records of that man. A. A copy of the document you have in your hand, plus fingerprints, but his Honour said there would be no purpose at this stage in producing ---

Q. Would there be photographs? A. No photographs.

Q. So that the document is this document of which we have a photostat copy? A. Yes.

Q. Can you produce your official records? Can you produce from the official records a photostat, if it is convenient, of the official police record corresponding to this document? A. Yes. 50

K. Murdoch, x
on voir dire

HIS HONOUR: Mr. Bainton, I don't think you have the right to ask any questions. Do you seek leave?

MR. BAINTON: No.

(Witness left the Court to produce further documents.)

MAURICE JAMES WILD

On former oath:

MR. GRUZMAN: Q. Sgt. Wild, you were present in Court while Sgt. Murdoch answered some questions? 10
A. Yes, I was.

HIS HONOUR: The question asked of Sgt. Murdoch, I should remind you, Mr. Gruzman, are not evidence in the suit. The questions asked and the answers given by him are not evidence in the suit.

MR. GRUZMAN: Q. Sgt. Wild, I suppose you would agree, as a senior detective, that if a man is fingerprinted under various names the whole object of the fingerprints is that any name will lead you to that person? A. That is correct. 20

Q. And if the man Hume had had his fingerprints taken for whatever purpose in 1956 under one name, in 1959 under another name, and in 1961 under a third name, you would expect to obtain these fingerprints by looking under any of the three names?
A. I do, yes.

Q. Do you still maintain that you searched the records of the Police Department under the name "Frederick Hume" and were unable to find any records? A. That is correct. I searched myself and could not find the name Hume - Frederick Hume. I also searched under the name of Frederick Haristy. 30

Q. And found nothing? A. Nothing.

Q. Will you have a look at this document (shown to witness). You may assume that this is a photostat copy of the official fingerprint - Police fingerprint record of the man Hume under the name Barry John Smith and under the name Charles Haristy. You may assume that is a copy of the official police records. A. Yes, I assume that. 40

Q. What is your explanation as to how you could have searched the records and not found anything about the name Hume or Haristy? A. First, as I stated, I searched in the name of Frederick Hume, and I could not find a card under the name of "Hume". I searched under the name of a man named Frederick Haristy, which I was told was his name. I see it is Zeliper, I think it is Haristy.

Q. And that is how you came to miss out? A. I didn't find it, Mr. Gruzman. 50

K. Murdoch, x
on voir dire,
stood down.

760. M.J. Wild, rec'd, xx

Q. You start looking under surnames, do you?

A. I looked under "Hume" yes.

Q. And then you looked under "Haristy"? A. Yes.

Q. And is it because you looked - is this what you are telling his Honour - that because you looked under Haristy, instead of "Harasty" that is why you did not find an entry relating to "Harasty"?

A. That is correct.

Q. So that you are seriously saying that because the fourth letter of the surname which you looked for - you looked for "i" instead of "a" as the fourth letter, and therefore you never found this man's record? A. I am seriously saying I did not find this record. 10

Q. Just stick to my question, please. Are you seriously telling his Honour that because, and only because, in searching the records you had the fourth letter of the surname as "i" instead of "a", that therefore you did not find this man's record? 20

A. That is correct.

Q. You have had what, 28 years' experience in the Force? A. I have.

Q. What is your present position? A. I am Sergeant in Charge of the Consorting Squad.

Q. Sergeant in Charge of the Consorting Squad?

A. Yes.

Q. I suppose it is part of your daily work to look at fingerprint records of particular persons?

A. It is, yes. 30

Q. I think you also - by the way, I suppose you would agree now that it was unfortunate that you did not find this record? A. Well, I certainly would have given the fact that I had found it had I found it.

Q. It might have altered your thinking on the matter, might it not? A. No, I don't think so, Mr. Gruzman.

Q. I thought you told the Court that you regarded Frederick Hume as a man of good character? A. I do still. 40

Q. The fact that he was fingerprinted, for whatever reason, under an assumed name - would not that cause you to have some doubts as to his character?

A. It all depends on what he was fingerprinted for.

Q. Well, you are firmly of the view, I think you mentioned the other day, that perfectly reputable people use assumed names? A. They do, yes.

HIS HONOUR: Mr. Gruzman, I don't think you ought 50

to labour under any feeling of restriction in putting to Sgt. Wild the facts you have in the document. I am not requiring you to do that. Whether Mr. Bainton wishes to at a later time, or not, is a matter for him, but I do not want you to feel restricted.

MR. GRUZMAN: I would like to come to another matter for the moment.

HIS HONOUR: Are you going to come back at a later stage and put this? There has been such an aura of suspicion created in regard to assumed names and fingerprints that in many ways it may be better to have it out. 10

MR. GRUZMAN: Q. In 1956 Frederick Hume was charged with being found in a common gaming house, and was charged under the name of Barry John Smith? A. Yes.

Q. In 1960 he was charged under the name of Zelimir Harasty with driving in a speed dangerous, and other motor offences, and at the same time his fingerprint records showed that he had made application to join the Commonwealth Police, and had made various other applications for licences subsequently under the name of Frederick Hume? A. Yes. 20

Q. Now I understood you to say, Sergeant, that you were too busy in the early days of the week following the arrest of Vojinovic to interview Hume, Momo or Armstrong? A. I did not arrest Vojinovic. After my interview with Vojinovic I saw Vojinovic on two occasions the next day. 30

Q. I think I expressed it "after the arrest of Vojinovic". Vojinovic was arrested, wasn't he?
A. He was not charged with anything.

Q. I know. But he was arrested, wasn't he?
A. In my opinion he was not arrested. He accompanied us to the C.I.B., and then he left the C.I.B.

Q. How did he come to leave the C.I.B.? A. How did he leave?

Q. Yes. A. On foot, so far as I know. 40

Q. Are you prepared to swear that? A. So far as I know he left on foot.

Q. Det. Follington drove him to his home, didn't he? A. Not to my knowledge. I drove away on my own. I don't know whether Follington drove him there.

Q. You told us before that you were too busy on Monday, Tuesday and Wednesday to interview the people involved? (Objected to; question withdrawn). 50

Q. Do you tell the Court that you did not have

time to interview the persons involved in this investigation? A. I do not suggest that I was ever too busy. I was busy.

Q. Did the state of your work have any effect on your decision to interview or not to interview persons involved in the Barton matter? A. I would have to look at my diary, your Honour, to know exactly what I was doing at that particular time.

Q. What is your recollection? A. My recollection 10 is that I was - that I would be busy at and about that time, yes.

Q. And that would have an effect on whether -
A. That would have - ?

Q. - an effect on whether or not you interviewed these people? A. I was making inquiries about them, but I did not interview them until as I have deposed to.

Q. What you told the Court on Thursday was - you were asked, on p.580 of the transcript, "Q. Well, 20 next morning was Monday morning, was it?", and your answer was "Yes". You were asked, "What did you do then?", and your answer "I had discussions with Follington - Det. Follington - who knew Hume, or knew of Hume. I was busily engaged during that week in connection with another shooting affray, and I was investigating, to the best of my ability, both offences." A. That is right.

Q. Is that right? A. Yes.

Q. Are you suggesting that the state of your 30 work was such that it affected your decision whether to seek out Hume, Momo or Armstrong for the purpose of interviews? A. No.

Q. It is in your diary that you record your movements, isn't it? A. Yes.

Q. And you are required under Police Regulations to record in the diary all that you do? A. Yes. It is your movements.

Q. Now, let us take Sunday. Let us turn to your 40 diary for the Monday.

HIS HONOUR: Mr. Gruzman, the only part of the diary made available to be perused, according to the ruling I have given thus far, were those parts that related to the events in the history of this litigation. If you want to look at later parts in that week they are not available to you within the existing liberty I have given you. The 10th, 11th, 12th and so on would not, on the present terms of the limitation I have imposed on inspecting these documents, be properly the subject of inspection. 50 You may seek to see them now.

MR. GRUZMAN: I would ask to seek leave to see the

diary in respect of the whole period from the 8th to the 17th.

HIS HONOUR: Obviously in the diary between those dates there are entries relating to matters that have nothing whatever to do with this contest. I am disposed to allow you to see the diary for that period, but on the very strict understanding that anything you may read in it which does not relate either to the issue you are probing at the moment or to any of the substantive issues in the case is not in any way referred to.

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MR. GRUZMAN: Q. (Approaching witness): This diary, p.68, records the whole of your movements for Monday, 9th January? A. My movement in and out of the office on 9th January. I certainly have not recorded there all the telephone calls and every person I saw at the C.I.B.

Q. The position is you may have seen other people at the C.I.B., on Monday, 9th January, who are not recorded there? A. Oh, I see hundreds of people every day at the C.I.B., and I don't record that I see them.

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Q. You may have seen Frederick Hume on that day?
A. I did not see Frederick Hume on that day.

Q. Even if you had seen Frederick Hume your diary might not have recorded it? A. Had I seen Frederick Hume or anyone associated with this inquiry it would have been recorded in the diary.

Q. But you may have seen hundreds of people that you didn't put down? A. There are many people at the C.I.B. that I see each day that I do not record seeing them.

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Q. I want to see how much work you had to do on 9th January. I will go through this. When we come to something that has nothing to do with this case I will find some phrase to cover it. Just stop me if I go beyond those matters. You came on duty when? What time did you arrive? A. About 8 a.m.

Q. 8 a.m.? A. Yes.

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Q. You perused some reports? A. Shall I read it to you?

Q. You read it, omitting those matters which do not relate to this case. A. That don't relate to it?

Q. Matters that don't relate to it. When you come to matter not related to this case indicate it to me, and we will find some phrase to cover it. A. "Monday, 9th. On duty C.I. Branch at 8 a.m. Perused crime reports and wrote diary and saw members of the Special Branch." - that is in connection with another matter. "Then at office of re. Safe Squad inquiries and awaiting call from informant until 11 a.m."

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Q. That is Vojinovic, is it? A. That is Vojinovic.

Q. From 8 o'clock to 11 o'clock on Monday morning, this is what you did. You came to the office, had a look at some crime reports, wrote your diary and saw some members of the Special Branch concerning another matter? A. Yes, that is right.

Q. And then you waited for Vojinovic's call until 11 a.m.? A. On Monday morning, with the Safe Squad inquiries, there could have been inquiries; men to delegate to attend to certain inquiries; wireless messages marked off to Safe Breaking Squad for attention; correspondence marked off to Safe Squad for attention, records to be attended to, etc. 10

Q. Of all the things you did, one you found important to write down was that you waited until 11 a.m. for Vojinovic to ring? A. I did, yes.

Q. Yes. A. "Then to the city and saw the informant."

Q. As soon as Vojinovic rang you went and saw him? A. I did, yes. 20

Q. And you didn't get back until 1 p.m.? A. Yes, that is right.

Q. Then you had lunch until two o'clock? A. Yes.

Q. And you were inside until 2.40? A. Yes.

Q. And then to King's Cross? A. And again saw the informant, yes.

Q. "Re. Barton inquiry". That is Vojinovic?
A. Yes.

Q. Back to the office, and then you saw Supt. Blissett? A. Yes. 30

Q. And then you contacted the Brisbane C.I.B.?
A. Yes.

Q. "and No. 3 Detective re. the alleged shooting of an offender fleeing from a robbery at King's Cross." A. Yes.

Q. "Then inside and checked at Fingerprint and M/O sections re. this matter, and off duty at 6 p.m."
A. Yes.

Q. And they were the whole of the entries for Monday, 9th January? A. Yes. 40

Q. It is fair to say that you spent practically the whole of the Monday on the Armstrong-Barton matter, isn't it? A. Only my two interviews with Vojinovic.

Q. You told his Honour on Thursday that you were busily engaged investigating a shooting affray as well as this matter? A. "Later in the week" I think you will find I said, Mr. Gruzman.

HIS HONOUR: That is my recollection.

MR. GRUZMAN: Q. This was after that that you said "later in the week"? A. I don't think so. I think I answered it quite -

Q. "I was busily engaged during that week in connection with another shooting affray, and I was investigating to the best of my ability both offences"? A. Yes, that is right.

Q. You certainly had nothing to do with any shooting affray on the Monday? A. That is right. 10

Q. The other matter that you referred to was a bombing - and not a shooting? A. It was a bombing, yes.

Q. In connection with the bombing you consulted the special squad? A. I went to the Special Branch, yes.

Q. And so far as your records go practically the whole of the rest of that Monday was spent on the Barton-Armstrong matter? A. My two interviews with Vojinovic took up quite a part of the day, yes. 20

Q. Just to get it clear, you waited - according to your book, you waited until 11 a.m. for his phone call? A. Yes.

Q. At 11 a.m.? A. I was not only sitting waiting for a phone call.

Q. That is the impression the book gives? A. I have indicated what I would be doing.

Q. But so far as your book is concerned that is what you wrote, that you waited until 11 a.m. for the phone call from Vojinovic? A. Yes. 30

Q. When the phone call came you went out and you were with him until one o'clock? A. I came back to the office at one o'clock. I was not with him all the time.

Q. According to your book, you did nothing else between 11 and 1, except proceed to Vojinovic, talk to him and return? A. Yes.

Q. From one o'clock to two, you had lunch? A. Yes. 40

Q. You stayed in until 2.40? A. Yes.

Q. At 2.40 you again went out to see Vojinovic? A. Yes.

Q. Then he gave you some information. You came back, spoke to Supt. Blissett, telephoned Brisbane, and then had a look at the fingerprints? A. Yes.

Q. And that was the end of your day? A. Yes. I knocked off at six o'clock that night.

Q. So from 8 a.m. to 6 p.m., according to your book, practically every bit of your working time that day was spent on this Barton-Armstrong matter?

A. Well, I disagree when you say practically the whole day.

Q. Look, I know you want to say something else.

A. No, I don't want to say anything else.

Q. According to your book that is what happened, isn't it?

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HIS HONOUR: I think the book speaks for itself, Mr. Gruzman.

MR. GRUZMAN: Q. The whole object of the book is so that your superior officers in the police department will know what you have been doing during the day? A. Yes.

Q. Now, let us take the next day. According to your book - ? A. Tuesday.

Q. On the Tuesday, you came to work again at eight o'clock? A. Yes.

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Q. You again looked at the crime reports and wireless logs and then you went to King's Cross?

A. Yes.

Q. What did you go to King's Cross for? A. I was searching for Sellers, and I wanted to see Vojinovic again.

Q. You were searching for Vojinovic? A. Yes.

Q. You came to your office and had a look at the reports? A. Yes.

Q. You went to the Cross to look for another man? 30

A. Yes.

Q. That man had nothing to do with this case?

A. Nothing.

Q. Another man, and Alexander Vojinovic? A. Yes.

Q. But you could not locate them? A. Yes.

Q. You did not get back until 12.30 p.m.? A. Yes.

Q. And inside duties to 1 p.m.? A. Yes.

Q. And then you had lunch until two o'clock and then you went to the Special Branch? A. To the Special Branch, and "Arrangements re. Police to visit certain parts of the State; inquiries concerning the bombing of the Yugoslav Consulate".

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Q. Then what? A. "Then inside re. Safe Squad inquiries to 5.30 p.m. and then off duty."

Q. That was the whole of your movements on the

Tuesday? They were the whole of your movements on the Tuesday? A. Yes.

Q. You would not suggest for one moment first of all that on that Monday and Tuesday you were not deeply interested in the Barton-Armstrong investigation? A. That I was not deeply interested?

Q. Yes. A. I was interested, yes.

Q. Very interested? A. Yes.

Q. It is fair to say that it took almost the whole or a substantial part, anyway, of these two days? A. Yes, I was interested in it, Mr. Gruzman. 10

Q. You had no problem getting information from Vojinovic? A. In connection with which?

Q. In connection with any matter? A. No.

Q. He was talking freely, wasn't he? A. He was, yes.

Q. And you wanted to interview Momo? A. Yes.

Q. And Vojinovic gave you information - you told Vojinovic that you wanted to find Momo? A. Yes. 20

Q. You told him that in the morning, I suppose? A. I told him I wanted to see Momo, yes.

Q. And Vojinovic then went out to see if he could locate him? A. He did, yes.

Q. And Vojinovic then got information that Momo was going to Brisbane, taking a man who was wanted by the police in connection with a shooting matter? A. That is so.

Q. And that Momo was driving this man to Brisbane? A. Momo had taken him to Brisbane, yes. 30

Q. Momo had taken him to Brisbane? A. Yes.

Q. And you then decided that this matter was sufficiently important to endeavour to catch Momo in the car taking this man to Brisbane? A. To catch the man, too, who had been shot.

Q. For that purpose, you got the authority of Supt. Blissett? A. I spoke to Supt. Blissett, yes.

Q. And you got his authority to ring Brisbane and to tell the police up there what was happening? A. I do not need his authority to ring Brisbane. I rang Brisbane myself. 40

Q. You spoke to Supt. Blissett about it? A. Yes.

Q. And told him what you were going to do? A. Yes.

Q. And he approved? A. Yes. He approved, yes.

Q. And then in fact you rang Brisbane? A. I did, yes.

Q. But the trap didn't come off? A. He was not located.

Q. He was not located? A. No.

Q. In the meantime you were very busy - very interested to know what Hume would say, weren't you?

A. I was, yes.

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Q. You knew where to locate Hume, didn't you?

A. I could have located Hume, yes. I imagine so.

Q. You only had to look up the phone book, didn't you? A. I don't think he is in the phone book.

Q. Are you prepared to swear to that? A. No, I am not prepared to swear to it. I don't think he is in the phone book.

Q. Are you prepared to swear that you looked at the phone book at that time for the purpose of seeing Hume's number? A. No, I am not.

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Q. You knew where Hume was, didn't you? A. I didn't actually.

Q. You spoke to - ? A. I knew how I could locate him, yes.

Q. Look, you spoke to England, Det. Sgt. England, about it, didn't you? A. I did, yes.

Q. And Sgt. England was able to tell you where he was if you wanted to know, wasn't he? A. England could have located him for me, yes.

Q. And I put it to you that you did between Monday and Tuesday locate Hume and speak to him?

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A. No, I didn't

Q. And that you got him in and got a statement from him? A. I didn't.

Q. Now, Sgt. Wild, I suggest to you that you had an interview with Hume at the C.I.B., some time during that Monday and Tuesday, and that you asked Hume whether he knew Vojinovic? A. I did not see him on the Monday or Tuesday.

Q. And he said "No"? A. I didn't see him.

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Q. I am just going to see if we can refresh your memory on this. Did you every ask him that question?

A. Did I - ?

Q. Did you ever ask - ? A. Which question is that?

Q. Did you ever say to Frederick Hume "Do you know a Yugoslav named Alec Vojinovic?" A. Yes.

Q. What did he answer? A. He said that he knew him by name.

Q. Did you show to Hume a photograph? A. I did, yes.

Q. Of him? A. Yes.

Q. And did you say "Do you know this man?" A. Yes.

Q. And what did he say? A. He said "Yes, that is the man. I know him from around the Cross. I think he is a safe breaker." 10

Q. "And at the Kellett Club"? A. No, I don't think the Kellett Club was ever mentioned.

Q. Did you ask him how many times he had seen this man? A. No.

Q. And did you ask him "What do you know about him?" A. When I showed him the photograph he told me that he was a criminal, and he said, "I think he is a safe breaker."

Q. I put it to you that what he said was "He is a bad criminal and hangs around with criminals mostly at the Kellett Club?" A. No. The Kellett Club was not mentioned. 20

Q. Did you say to him "Have you seen him with Momo"? A. No.

Q. Did the name "Momo" come up in your discussion with Hume? A. Yes.

Q. I put it to you that what you said was "Have you seen him with Momo?". What do you say was the conversation when Momo's name was mentioned? A. I said to Hume "Do you know a man named Momo?". He said "Yes." I said, "What would his right name be?", and he said "Michael Ziric". 30

Q. Yes? A. That was -

Q. What else was said? A. I said, "What type of a man is Momo?". He said "He has been in a bit of trouble, but his Probation Officer asked me to help him." I asked him, or I said to him, "Have you ever employed this man Momo?". He said "Yes, he worked for me at Surfer's Paradise."

Q. Yes? A. I said "Where is Momo now?". He said "He is in Sydney. He went to Melbourne last week with Vojinovic, and Vojinovic stole the car - my car - in Melbourne." I said, "When did Momo come back?". He said, "He came back yesterday, and told me that Vojinovic had stolen my car." I cannot recall anything else respecting Momo in the conversation. 40

Q. Didn't you ask him whether he had employed Momo to find someone to kill Barton? A. I am sorry. I did, yes. 50

Q. You did? A. Yes.

Q. Just tell us your conversation on that? A. I said, "Vojinovic has alleged that he was approached by Momo to kill a man named Mr. Barton and that a Mr. Armstrong had seen you to commit this crime." Hume said, "I have never spoken to Momo about killing Mr. Barton or anyone else, and Mr. Armstrong has never spoken to me about killing Mr. Barton or anyone else."

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Q. What else did you say? A. At this conversation?

Q. Yes. (Objected to; argument ensued).

HIS HONOUR: The plaintiff has alleged that early in the week following 7th January he was shown at the C.I.B. a document which purported to be a record of interview with Frederick Hume. This evidence was admitted, when tendered by the plaintiff, as evidence of the matters present to his mind at the critical date when the agreement under challenge was signed, namely, 17th January. There is a direct issue between the parties as to whether any record of interview with Frederick Hume existed either early in the week following 7th January, or, indeed, at any time. Sgt. Wild has been called by the defendants principally for the purpose of giving evidence to the effect that not only was there no record of interview with Hume in existence at the time Mr. Barton claims to have seen it, but that, indeed, he did not interview Hume until 18th January. Sgt. Wild's evidence has been challenged by Mr. Gruzman, who is seeking to establish that there was in truth such a record of interview in existence. Mr. Gruzman now seeks to obtain from Sgt. Wild the terms of the conversation that took place, according to Sgt. Wild's evidence, between him and Hume on 18th January. It is contended that the terms of the conversation could have probative value in relation to the question of whether or not such a record of interview as Mr. Barton refers to did exist at the time he claims. It is put by Mr. Gruzman that if the terms of the conversation that he seeks to elicit from Sgt. Wild are seen to correspond either proximately or precisely with what Mr. Barton claims to have seen in the document then this may furnish an element relevant on the probabilities in determining this factual issue.

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It seems to me that it is open Mr. Gruzman to put to Sgt. Wild the specific terms of that which Mr. Barton says he read in the document, that is to say, to put to Sgt. Wild in effect what is claimed to have been the record of this interview, if it took place, and, if this be an admissible procedure in cross-examination, I am of the view that it is also admissible for Mr. Gruzman to put the more general question to Sgt. Wild - namely, what was the content of the discussion that he had with Mr. Hume. The question of the date of the discussion and whether it was reduced to writing are, of course, associated questions which may

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in some degree be affected by the evidence given of the contents of the conversation. Whether the conversation will ultimately have any probative weight can only be determined when it is seen what the evidence is and how it may or may not correspond with what Mr. Barton claims to have seen. I am accordingly of the view that the evidence should be admitted.

(Question and answer marked + on p.604 read by Court Reporter.) 10

MR. GRUZMAN: Q. What was said next? A. I said to Hume, "I understand you are a private inquiry agent and licensed pistol holder?". He said "Yes". I said, "I understand you know Det. Sgt. England very well." He said, "Yes, I have known him for many years, and I have helped him on occasions." Then there was conversation continued along the lines I have already given. I said, "What do you say regarding the allegations made by Vojinovic?". 20 He said "Vojinovic is a liar and he would be cranky with me because of what I have done to his friends, and he could see a way to do me some harm and get some money for himself." I said "How would Vojinovic know of the activities of Mr. Barton and Mr. Armstrong?". He said, "Well, he knows Momo, and Momo worked for me in Surfer's Paradise, and he could have told him about them." I said "Is there anything else you can tell me about this man Vojinovic, or about Momo?" He said, "No, but if I find out 30 anything I will let you know." I said, "Will you be seeing Momo?". He said "Yes." I said, "Would you tell him that I would like to interview him?". He said "I will get in touch with him and tell him to contact you.

That, your Honour, is the context of the conversation I had with Hume. Whether those are the exact phraseology - it is a long while ago, and I have had no reason to have recorded my conversation with him, and I have not done so. 40

Q. What? Up to today? A. I have never done it.

Q. Up to today? A. Up to today.

Q. What you gave from the witness box now is your recollection of the conversation which took place 18 months ago, unaided by any notes of any kind made at any time? A. I have typed a report for the information of the Commissioner with my recollections, but not in the first person of conversations.

Q. And that report was typed when? A. I typed one on 29th March of this year, and the other on 1st May of this year. 50

Q. Tell me, did you mention the name of Alexander Barton to Hume? A. Yes.

Q. In what context? What was said about that?
A. I said, "Do you know a man named Alexander

Barton?". He said "Yes, he is a director of Landmark." I said, "Have you ever done any work for Mr. Barton?". He said, "Yes, I was engaged to repossess some machinery in Queensland." I said "Who engaged you to do this work?". He said "I was contacted by Mr. Armstrong, but I did the work under the direction of Mr. Barton, who was in Queensland at the time.

Q. Did you ask Hume anything about Mr. Armstrong? 10
A. Yes.

Q. What did you say? A. I said, "Do you know a man named Alexander Armstrong?" He said "Yes. I know him socially. I play tennis with him. He is also a director of Landmark." I said, "Have you ever done any work for Mr. Armstrong?". He said, "No, only the work at Surfer's Paradise".

Q. Anything else? A. No.

Q. Did you ask him if he knew of any reason why Mr. Armstrong would want to harm Mr. Barton? A. No. 20
He told me that - or he said that he had never been approached by Mr. Armstrong to do any harm to Mr. Barton or to any other person.

(Witness stood down whilst Sgt. Murdoch made further answer from the floor of the Court on the subpoena duces tecum served on the Commissioner of Police. Sgt. Murdoch informed his Honour that the additional documents produced in answer to the subpoena were regarded as having the same confidential aspect as the documents produced earlier in the morning. 30

His Honour ruled that the documents may be seen by counsel and solicitors for the parties, and released Sgt. Murdoch from further attendance.)

MAURICE JAMES WILD

On former oath:

MR. GRUZMAN: Q. Just before I go back to the other matter, I would like to get this point cleared up while Sgt. Murdoch is still in Court. The fingerprint records are kept in steel cabinets, are they not? A. That is correct. 40

Q. And it is not practicable - not reasonably practicable to actually bring the cabinets to Court, is it? A. It would be completely impracticable.

Q. I just want you to assist his Honour, if you would, by describing these cabinets, and what is in them. This is the position, isn't it, that each fingerprint record -

HIS HONOUR: This is subject again to the general indication I have given both to Sgt. Wild and to Sgt. Murdoch - 50

M.J. Wild, xx
stood down
further x.

MR. GRUZMAN: It will not transgress any possible public interest.

Q. Each card is approximately 10 by 8, or the size of the photostat? A. The size of the photostat, yes.

Q. And the system is that these cards are - there are steel rails which go through which hold the cards? A. Yes, there are many cards kept in each.

Q. About 2,500 cards in each? A. I don't know the number, but there are quite a large amount.

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Q. And where the card has the actual record of the man, that card is in a position so that the name shows as a visual index on the top? A. Yes.

Q. And if an alias has been used there is inserted in the proper alphabetical position in the same index a blank card with the name of the alias, and a reference to the fingerprint record? A. Reference back to the original name, yes.

Q. So that you would assume - or I will put it this way, the system is that if Frederick Hume used that name, and had been fingerprinted under other names, the system requires that the name of "Frederick Hume" should appear in its proper alphabetical place in the index, with a reference to Barry John Smith? A. That is right.

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Q. And you say that you searched in the proper alphabetical place for the name Frederick Hume, and found nothing? A. I did, yes.

Q. There are only two possibilities as to how that could have occurred. One is that the system had not operated properly? A. Yes.

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Q. In the case of Frederick Hume. A. Yes.

Q. And the other is that you had so inexpertly searched the system that you never saw the name "Frederick Hume?" A. I didn't see the name "Frederick Hume". I searched, but I could not find it.

Q. Well, Sergeant, I would like to ask you now these questions. I put to you that amongst other things which were said between you and Hume, whenever it took place, these questions and answers occurred. (Objected to: admitted on the basis of his Honour's ruling on p. 604-5 of the transcript).

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Q. Did you ask "Do you know a Yugoslav named Alexander Vojinovic?" In fact, you did ask him that? A. I did ask that, yes.

Q. You say he answered "Yes"? A. He answered "I have heard of him".

Q. He answered "I have heard of him?" A. Yes.

Q. I put it to you that he answered "No"? A. No, that is not correct He said "I have heard of him".

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Q. Well, I put it to you that you questioned him, and said "I now show you a photograph of that man. Do you know this man?" A. I did show him a photograph, yes.

Q. Well, why did you show him a photograph of him if there was no question but that he was familiar with the man - ? A. He said he had seen -

Q. - by name? A. He said he had seen him but had never spoken to him, and to convince myself who it was I showed him a photograph.

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Q. Where did you get this photograph? A. From the Photographic Section.

Q. And then, having shown him the photograph, and asked him "Do you know this man -"

MR. GRUZMAN: I am sorry, has your Honour a copy of this?

HIS HONOUR: No.

MR. GRUZMAN: Q. I am referring to Exhibit 29. Did he answer "Oh yes, I have seen him around the Cross and at the Kellett Club"? A. He never mentioned the Kellett Club. He said "He hangs around the Cross. He is a criminal, and I think he is a safe-breaker".

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Q. Did you ask him this question: "How many times have you seen this man?", and did he answer "A few times, when I was looking for somebody"? A. No, I don't recall that.

Q. Did you ask him "What do you know about him?" and did he answer "He is a bad criminal, and he hangs around with criminals mostly at the Kellett Club". A. No. My previous answer - he said "He is a criminal, and I think he is a safe-breaker." The Kellett Club to my mind was never mentioned, Mr. Gruzman.

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Q. What is the Kellett Club? A. Oh, it is a - it was a club in existence then. It is not now in existence.

Q. Is it a place where criminals -

HIS HONOUR: I think this is getting too far afield, Mr. Gruzman.

40

MR. GRUZMAN: Q. Did you ask him "Have you seen him with Momo?" A. No.

Q. And did he answer "Yes, but I told Momo to keep away from him"? A. No, that was never said.

Q. Was anything like that ever said? A. I can't recall anything of an association with Momo and Vojinovic.

Q. Are you telling his Honour that he denied that

he knew of any association between Momo and Vojinovic? A. I didn't say that, Mr. Gruzman.

Q. Well, did you ask him "Have you seen him with Momo?" A. I don't recall having asked him that.

Q. It is a question you may have asked? A. I may have, but I don't recall.

Q. Did he answer "Yes, but I told Momo to keep away from him"? A. No, there was never any suggestion of him telling Momo what to do, no. 10

Q. I think you told us earlier today that there was some reference to Momo's Probation Officer?
A. That is right.

Q. I suppose if a man is on probation, his Probation Officer would require him not to associate with criminals? A. I think it would be part of his probation.

Q. Anyway, you say nothing like that was said?
A. No. 20

Q. Did you ask what Momo's real name was?
A. I did.

Q. And did he reply "Michael Ziric"? A. Yes.

MR. GRUZMAN Q. Did you ask "Does he have another name that he uses?" A. Who is this referring to?

Q. Momo. A. No, he only told me his name was Michael Ziric.

Q. Did he say "I don't think so. I would know if he did have." A. No, that was not said.

Q. Did you ask "Have you ever employed or hired Momo?" A. Yes. 30

Q. Did he answer "Yes, I wanted to help him as a friend, and used him many times in my work as a private investigator, to help me." A. No, not in its entirety. He said he had employed him at Surfers Paradise, and had been asked by his probation officer to assist him.

Q. Did you ask "What do you mean by 'Help him'?" And did he say "You know, with little simple things, following people and reporting to me"? A. No. 40

Q. Nothing like that was said? A. No, nothing like that.

Q. Did you ask him "Could you find Momo in a hurry for us?" A. I asked him could he find Momo for me.

Q. Did he say "Yes, I can bring him here within 24 hours"? A. No. He said, "I will get him to contact you".

Q. Are you prepared to deny he said "Yes, I can bring him here within 24 hours"? A. Twenty-four hours was never mentioned.

Q. Later did you ask "Do you know Alexander Barton of Landmark Corporation? A. Yes.

Q. Did he answer "Yes, I did a job for him at Surfers Paradise"? A. That is correct.

Q. Did you ask "What kind of a job?" and did he answer "Barton and Armstrong's company had a problem with a contractor and I was hired by Mr. Barton to take possession of some machinery". A. In essence he went there to take possession of some machinery. He told me that. 10

Q. Did you say "You previously named a man Armstrong; is that Alexander Armstrong, M.L.C."? A. I asked him did he know Mr. Armstrong.

Q. What do you say he said in answer to that? A. He said, "Yes, I know him socially, I play tennis with him". 20

Q. Did he answer the first question "Yes", and did you say "How well do you know him?" and did he answer "He is my friend and my best client". A. No.

Q. Did you question him and say "What do you mean by 'he is my friend'?" A. No.

Q. And did he answer "You know, I am with him a lot socially, and I play tennis with him". A. He told me he knew him socially and played tennis with him. 30

Q. Did you ask him how often he had seen him? A. No.

Q. Did he answer, "Two or three times a week when he is in Sydney" A. No.

Q. Did you ask him "What do you mean by 'He is my best client'?" A. No, I didn't.

Q. Did he answer "He gives me a lot of investigating to do, and I earn good money from him". A. No.

Q. Did you ask him "What do you mean 'good money'?" A. No, I did not. 40

Q. Did he say "I always give him big bills and he always pays", A. No.

Q. Did you question him "How much money have you got from him lately," and did he answer "I don't remember, but not much". A. No, I never asked him.

Q. Did you subsequently say to him "Allegations have been made that Alexander Armstrong hired you to employ criminals to kill Alexander Barton. These are very serious allegations. What do you say to that?" A. Words to that effect, yes, I asked him. 50

Q. Did he answer "I hired Momo and his friend to follow Mr. Barton, and if the opportunity arose just to do him over a bit. You know, to frighten him and to tell him there was more to come". A. No, he denied the allegations.

Q. Did you question him "What friend of Momo do you mean?" and did he answer "Alec. You just showed me his photograph". A. No, he did not.

Q. Later on did you ask him "What do you mean by saying Armstrong is a bad man"? A. No, I did not. 10

Q. Did he answer, "He does a lot of illegal things. For example, he buys stolen jewellery"? A. No, he never told me that.

Q. Did you ask "What does he do with the stolen jewellery?" and did he answer "He hides it in his house". A. No.

Q. Did you question him "Do you know where he hides it?" and did he answer, "Yes" A. No, I did not ask him and he did not answer that. 20

Q. Did you say, "Where does he hide it?" and did he say, "I will draw you a sketch as best I can." A. No.

Q. Did he then draw a sketch? A. He did not.

Q. Did you ask him "Why did Armstrong want to harm Barton in the way you have admitted?" A. No, I did not.

Q. Did he answer, "Armstrong was the Chairman of a big company and Barton pushed him out. Armstrong wanted to get even with him and get his position back"? A. No. 30

Q. Did you question him "For how long did you and your men follow Barton?" and did he answer, "From about the end of October till now?" A. No, I did not.

Q. Whenever this interview took place, was it not important to you to record Hume's answers? A. I did not do it.

Q. I would be very grateful if you would answer the questions. Whenever this interview took place, was it not important to you to record these questions and answers? A. No. 40

Q. You have already told us that the charges that have been made amounted to an allegation of conspiracy to murder on the one hand, or demanding money with menaces on the other. A. That is correct.

Q. You have already told us of the difficulties that you would anticipate getting in proving a case of conspiracy to murder. A. Yes. 50

Q. And here you were interviewing the man whom you regarded as a likely go-between if such a conspiracy had taken place? A. If such a conspiracy, yes.

Q. Didn't you think it was your duty to have recorded everything that he said? A. I did not do it, no.

Q. Who was present, do you say when the interview took place? A. I was on my own. 10

Q. Did you think that it was desirable that you should be alone with a man from whom you were seeking admissions of conspiracy to murder? A. Yes, I can interview a man under those circumstances.

Q. Is it not your experience that if admissions had been made and the man had been charged, that he may have denied making the admissions? A. He may have, yes.

Q. Is that not the reason why Police in a police investigation have two police making the interview as far as possible? A. If it is at all possible, yes. 20

Q. Was there any particular reason at any time why there could be nobody present for this interview with Hume? A. No.

Q. Would you explain to his Honour what motivated you in having this interview with Hume alone? A. I do not think I had any special motivation. It was just that he arrived there and I was on my own, and I interviewed him.

Q. Were you not expecting him? A. Yes, I expected him during the afternoon. 30

Q. There was no problem about arranging for someone to be there, was there? A. I could have got someone, yes.

Q. Indeed, is not this the sort of case where proper police investigation may have required a secret overhearing of this conversation? A. No, I do not agree with that.

Q. Here you were interviewing a man on what you have described as a most serious charge, and which you regarded as extremely difficult to prove. A. Yes. (Objected to; rejected). 40

Q. You were interviewing a man in respect of what you regarded as an extremely serious complaint weren't you? A. Yes, if the facts had been true, yes.

Q. And a complaint which you would have regarded as extremely difficult to establish in court? A. Yes.

Q. Wouldn't those circumstances have required that a record of that interview be made, whether by tape recorder, by witnesses or otherwise? A. No. 50

Q. Will you agree with me that normal police

investigation would have required that some record be made of that interview? A. Not in every instance, no.

Q. Please answer the question. A. I have answered it.

Q. Will you not agree with me that normal police investigation would have required that some record be made of that interview? A. No.

Q. I put it to you that on the Monday or the Tuesday of the 8th or 9th of January this was in your mind an extremely serious investigation that you were making. A. Yes. 10

Q. And that you got Hume in and interviewed him? A. I did not interview Hume till the 18th.

Q. And when you got this record of interview, you realised you had a document which was dynamite. A. That is not true. I never interviewed him until the 18th and there was no record of interview made. 20

Q. And you realised this was a document which would have or could have serious criminal consequences? A. There was no such document.

Q. Well, you will agree, won't you, if a document such as the one I have just read to you existed --- (interrupted). A. That is a little different.

Q. It would have carried to your mind the conviction that that document might result in serious criminal consequences. A. If such a document existed. 30

Q. When was it you saw Det. Sgt. England? A. I saw him on I would say two or three occasions during that week. Det. England is a man who works at the C.I.B. that I see regularly.

Q. When did you see Det. Sgt. England about Hume? A. I think on the Tuesday; that would be the 10th, the first time I saw him.

Q. What time of the day was that? A. I see him quite regularly. It would be very difficult for me to say when I saw a particular man who works in the same building as I do, particularly 20 months ago. 40

Q. Why did you see Det. Sgt. England about Hume? A. Because I was told Det. Sgt. England knew him well.

Q. Tell us your discussion with Det. Sgt. England about Hume. (Objected to; not pressed at this stage).

Q. I just want to go back a little bit. When Vojinovic was brought into the C.I.B., he was searched, wasn't he? A. Searched?

Q. Yes. A. I did not search him. 50

Q. He was searched in your presence in the C.I.B., wasn't he? A. I did not search him but it would be quite possible that he was. I do not know whether he was searched or not.

Q. Do you know what he was carrying? A. No, I don't.

Q. Are you telling his Honour when you are having a lengthy interview with a man who may be facing very serious charges, that you do not know what he had in his pockets? A. I do not know what he had in his pockets. 10

Q. I put it to you that you do know that he was carrying a document with him? A. I do not recall it.

Q. A document with a list of names and addresses? A. No, I do not recall such a document.

Q. I put it to you that you were told that this was a document which he had received from Momo and contained names and addresses of robberies proposed by Hume. A. That is incorrect. 20

Q. I put it to you that on this document were only names and addresses. A. I do not know of any such document.

Q. And that you obtained from Vojinovic information about the robberies which had occurred, or were to occur, at those addresses? A. No, that is completely incorrect.

MR. BAINTON: If my friend proposes to ask any more questions on this line, I would object.

HIS HONOUR: I will wait until the next one is asked. 30

MR. GRUZMAN: Q. I put it to you that one of the addresses --- (interrupted).

HIS HONOUR: Do you object to this, Mr. Bainton?

MR. BAINTON: Yes.

MR. GRUZMAN: Perhaps I will lead it another way.

Q. You arranged for Vojinovic's home to be searched, didn't you? A. I did.

Q. What was the result of the search? A. A small suitcase was brought to the C.I.B. 40

Q. During the course of the interview? A. This was after the interview concluded.

Q. You regarded this as a pretty serious matter didn't you? A. Yes.

Q. Was there a discussion with Vojinovic about this suitcase? A. Yes.

Q. Was that recorded in the interview? A. No.

Q. There was a lot of discussion that took place that was not recorded in the interview, wasn't there? A. No.

Q. You are not seriously telling his Honour there was recorded in the document which is the record of interview everything that was said between you and Vojinovic that night, are you? A. During the course of the interview, everything was recorded there. I had a discussion with him after the interview, regarding another matter. 10

Q. What about before the interview? A. No. The interview commenced at 7.55.

Q. You say he walked into this room with you and Det. Follington, and immediately sat down, and the first words that were said are the words that appear in this record of interview? A. I asked him his full name, and then went to the fingerprint section and checked his record, and then came back.

Q. Was there no conversation with him -- (interrupted). A. No, that was the conversation I commenced with him at 7.55 p.m. 20

Q. Did you go to the fingerprint section before commencing the record of interview? A. Yes.

Q. You knew his name then, did you not? A. I did. I asked him his name.

Q. There was no point in asking him his name after the record of interview started, was there? A. I always include it in the record of interview. It is my practice. 30

Q. Are you seriously asking us to accept there was no preliminary conversation with Vojinovic about these matters before the formal taking of the record of interview? A. None whatsoever.

Q. I put it to you that there was a substantial discussion between you and Vojinovic about the matter generally, and he told you his version of the matter and that it was after that discussion that you made up this record of interview? A. No, I did not. That is the record of interview taken, of the questions and answers at the time. 40

Q. You say not another word was spoken in that room on that night apart from asking his name, until after the conclusion of the record of interview, do you? A. That is correct.

Q. And the interview took place over what time? A. Between 7.55 and 9.55.

Q. Exactly two hours? A. Yes.

Q. And those are the whole of the words that were spoken in that period of two hours? A. I spoke to Inspector Lendrum, but that is not in that record of interview. That is the whole of the conversation I had with Vojinovic. 50

Q. These pages, these six pages, mixed single and double typing, comprise every word said by yourself or Vojinovic, or Follington, one would think. A. Yes.

Q. During that period of two hours? A. That is correct.

Q. Let me take it a little bit further. There is no doubt on Vojinovic's evidence he was a pretty bad man, is there? On his own evidence? A. On his what? 10

Q. On his own record of interview? A. What do you mean "bad"?

Q. It is not exactly the right thing to try and get money from a man by telling him people are trying to kill him, is it? A. No, it is not.

Q. You knew him as a criminal, and a man who carried a gun, did you not? A. I did, yes.

Q. And you never asked Mr. Barton for a detailed record of his allegations against Vojinovic? A. No. 20

Q. And you let Vojinovic go? A. I did.

Q. I put it to you, not only let him go, but arranged with Det. Follington, to drive him home?
A. No, I did not.

Q. There is no doubt when Vojinovic left, he left on the understanding there would be further communication between you and him, is there? A. Yes.

Q. There is no doubt that he left upon the basis that he was going to assist the police, is there?
A. Yes. 30

A. And there is no doubt that he was going to assist the police to lead them to the criminals?
A. Which criminals?

Q. Whatever criminals were involved? A. In which?

Q. Perhaps I will do the questioning. A. I think that is a little bit unfair.

HIS HONOUR: The questions were not quite straightforward questions, Mr. Gruzman.

MR. GRUZMAN: I agree.

Q. Vojinovic was released on the basis that he was going to communicate with you wasn't he? A. Yes. 40

Q. What do you say he was going to communicate to you? A. I did not believe Vojinovic.

Q. Would you please answer the question? What do you tell his Honour that you expected Vojinovic to communicate with you about? A. I told him to contact me, and I would interview him again, and he said he would prefer to see me away from the office.

Q. You were at that time and still are, a senior detective, aren't you? A. Yes.

Q. What was the justification for interviewing Vojinovic away from the office? A. I have every justification for interviewing people away from the office.

Q. Why, in this particular case? A. It was at his request.

Q. But this man was a man whom you have no reason to assist, did you? A. To assist? 10

Q. Yes. A. I was thinking of the future regarding Vojinovic.

Q. What future? A. Vojinovic may have been able to assist.

Q. In what respect? A. Your Honour, I certainly would not like the Press to write up what I thought a man might assist the Police Department on.

Q. Come, come now. ---

HIS HONOUR: I thought you had put this to the Sergeant before Mr. Gruzman. 20

MR. GRUZMAN: This is a new version. This is a complete departure.

Q. You are suggesting it was your understanding that Vojinovic in the future, about matters unrelated to Barton and Armstrong, could assist, are you?

A. Not would have, but could have.

Q. This was implicit in your answer, was it?

A. Yes.

Q. That is the first time you have mentioned that, is not it? A. I do not think I have been asked. 30

Q. Is that the reason why you say you agreed to interview Vojinovic away from the C.I.B.? A. That is one of the reasons.

Q. What was the other? A. His own request for me to interview him away from the office.

Q. Do you usually interview a criminal who you may have to charge, with a serious offence, away from the C.I.B., just because he requests it?

A. I had no intention at that juncture of charging him with any serious offence. 40

A. And at this stage you had not interviewed anybody? A. No.

Q. Not Hume? A. No.

Q. Not Momo? Not Armstrong? A. No.

Q. You had only heard his story? A. Yes.

Q. You had not taken a detailed interview with Barton? A. That is right.

Q. Did you think it was perhaps undesirable in a case such as this you should have interviewed him at Kings Cross, and not at the C.I.B.? A. No, I did not think it was undesirable.

Q. Some question of money had arisen, had not it? A. Only Mr. Barton mentioned money.

Q. Didn't you understand Vojinovic was going to help the police in this particular matter of Armstrong and Barton? A. I do not think Vojinovic knew he was going to be interviewed until 7.30 on the Sunday night, the 8th. 10

Q. After the interview, was it not your understanding that Vojinovic would be assisting the police in their investigations in the Armstrong and Barton matter? A. I think Vojinovic was trying to do the best he could for himself at that juncture. 20

Q. Please answer the question. After the interview with Vojinovic on the Sunday night, was it not your understanding Vojinovic was going to assist the police in their investigations in the matter of Armstrong and Barton? A. No.

Q. You never understood that at all? A. No.

Q. Is this what you say, when Vojinovic left the C.I.B. on the Sunday night, as far as you were concerned, that was the end of it? A. No, he told me he would ring me. 30

Q. What about? A. I think his main concern was what money he might get from Mr. Barton.

Q. You are a policeman, are you not? A. Yes.

Q. Is it not your job to prevent criminals getting money by criminal activities? A. I think Mr. Barton --- (interrupted).

Q. Is not that your job? A. Yes.

Q. Why would you act as a go-between between Vojinovic and Mr. Barton when it was your understanding that Vojinovic would be trying to get money from Mr. Barton? A. I was never a go-between between Mr. Barton and Vojinovic. 40

Q. You have just told us it was your understanding Vojinovic was going to try and get money from Mr. Barton haven't you? A. That is what I think his whole object was.

Q. Yet you arranged personally to contact him?
A. Yes, I see many criminals.

Q. And you in fact personally interviewed him at Kings Cross, away from the C.I.B.? A. Yes. 50

Q. Did not you think in the case of a criminal who was trying to get money from someone who had complained to you, that was an undesirable course?

A. No, I do not think it undesirable.

Q. Don't you think it put you in an invidious position. A. No.

Q. Is not this what happened, that Vojinovic made it clear he would assist the Police to lead them to Armstrong, Hume and Momo? A. No, that is not my impression. 10

Q. Did you ask Vojinovic would he assist the police to get to the ringleaders of this plot? A. No.

Q. Did it not occur to you at the time that it would be a proper course to ask Vojinovic to assist the police to get to the truth of the matter? A. Had I believed Vojinovic, yes.

Q. Without qualification, I would be glad if you would answer the question. Did it or didn't it occur to you at the time it would be a proper course to ask Vojinovic to assist the police to get to the truth of the matter? A. No. 20

Q. It did not occur to you? A. No.

Q. That is a lie, is it not? A. It is not a lie.

Q. The arrangement with Vojinovic was he was to be released upon the basis that he would assist the Police, wasn't it? A. That is not true.

Q. And that is why it was arranged he would contact you? A. No, that is not the reason. 30

Q. And that is why you sat in the office till 11 o'clock, waiting for the phone call. A. I was doing other work.

Q. That is why you wrote in the book "Waiting in office, waiting on phone call, from informer". A. That is what I was doing.

Q. You wrote that in the police notebook, didn't you? A. Yes.

Q. Informant about what? A. He was the informant.

Q. About what? A. He could have been an informant. He had told us the story on the previous evening regarding the matter, and he could have been an informant, and I usually refer throughout my notebook if I go to see someone, as an informant. I do not name them. 40

Q. Informant about what? A. I cannot answer that, I do not know what you mean.

Q. Don't you understand that? A. No.

Q. Did you regard him as an informant about Armstrong and matters related to him, or about matters unrelated to Armstrong? A. He never voluntarily came as an informant to the police, regarding the Barton-Armstrong matter, so I did not refer to him as an informant in that respect.

Q. So when you say in your notebook, "Waiting for phone call from the informant" you meant that you thought that Vojinovic would ring you up some time about 11 O'clock to give information about matters having no connection with Armstrong and Barton? 10

A. I do not know what he was going to tell me. He told me he would ring me the next day.

Q. I am dealing with your mind. In your mind you expected he was going to ring up about matters that had nothing to do with Armstrong and Barton, did you?

A. I did not know what he was going to ring about.

Q. That is another lie, isn't it? A. It is not.

Q. Did you expect Vojinovic to ring you up about matters relating to Armstrong, and Barton? A. No. 20

Q. That is why you sat in your office, isn't it?

A. No, I do lots of other work.

Q. You wrote here, "waiting call from informant till 11 a.m." And then "Then to city to see informant re Barton inquiry". What did that mean? A. He was the man who had come forward initially as Mr. Barton's informant.

Q. Mr. Barton's informant. A. He had come forward initially. 30

Q. Are you seriously telling his Honour when you use the word in that context ---(interrupted). A. No, I am certainly not.

Q. What is the truth of it? What did you mean to convey to your superior officers when you wrote in your diary that you waited in the office until 11 o'clock and then went to the city to see the informant. A. That is the usual thing. I do not write criminals' names in my diary. I refer to them as informants. 40

Q. All criminals are referred to as informants, are they? A. That is correct.

Q. Men you are going to arrest? A. No, people I am going to see.

Q. That is what you said --- (interrupted). A. No.

Q. When you wrote down you are going to see another man and Vojinovic on the next day, the 10th; you had no difficulty about writing down their names, did you?

A. He was wanted badly, the man.

Q. What about Vojinovic? A. I wrote his name there too. 50

Q. Vojinovic left the C.I.B. on the Sunday night on the basis he would do all in his power to assist the police in their investigations, in the Barton and Armstrong matter, did not he? A. No.

Q. And he wanted money, did he not? A. Apparently.

Q. There is no doubt in your mind that he wanted money, is there? A. No doubt at all.

Q. And there is no doubt if this allegation was true it was a serious matter which warranted full investigation? A. Yes. 10

Q. And one of the ways that you get information is by using informants, isn't it? A. Yes.

Q. And you pay informants? A. I do not pay informants.

Q. Doesn't the Police Department pay informants?
A. The Police Department will pay for information, yes.

Q. In this particular case, Mr. Barton was prepared to pay for information which would lead to the conviction of the people involved wasn't he?
A. Yes. 20

Q. So that you knew that Vojinovic wanted money for information? A. Yes.

Q. You knew that Mr. Barton was prepared to pay money for information, did not you? A. Yes.

Q. You regarded the investigation as a proper one, didn't you? A. Yes.

Q. You knew that Inspector Lendrum had no objection to money being paid to the informant, didn't you? A. I think that would be wrong. 30

Q. I put it to you that you received from Mr. Barton \$400 to be paid to Vojinovic. A. I did not receive any moneys at all from Mr. Barton.

Q. And you put in your pocket \$100? A. I did not receive any moneys from Mr. Barton.

Q. And you gave Vojinovic \$300? A. Will I reply to that again, your Honour?

HIS HONOUR: Yes.

WITNESS: I did not receive any moneys from Mr. Barton. 40

MR. GRUZMAN: Q. I put it to you you paid to Vojinovic at Kings Cross, \$300? A. I did not.

Q. What made you so sure that Vojinovic would ring you the next day? A. I was not sure.

Q. But in accounting for your movements to your superiors, you said you waited for a phone call

didn't you? A. That is correct. He said he would ring me and I waited for him to ring me.

Q. You must have felt pretty sure, as a senior detective, if you waited for this criminal to ring, that he would ring you? A. I felt he would.

Q. What made you so sure? A. I felt he would ring me.

Q. Because he was promised money? A. No, I never promised him money.

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Q. It was because of the understanding he was going to help the police? A. No, there was no suggestion this man would be paid money.

Q. The understanding was he was going to help the police wasn't it? A. I did not think he could help the police. He told me he would ring me the following day.

Q. Tell his Honour what your opinion, your belief, was at that time? What did you expect Vojinovic to be ringing you about the next day?

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A. I do not know what he would be ringing about the next day.

Q. That is an honest answer, is it? A. That is an honest answer.

Q. As far as you were concerned, it was quite possible, in your mind that Vojinovic would ring you the next day, about some matter having no relationship whatever to Armstrong and Barton?

A. He told me he would ring me.

Q. So the answer to the last question is Yes?

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A. Yes.

Q. Then when he rang you, what did he tell you?

A. He wanted to see me.

Q. Did he tell you what about? A. No.

Q. As a busy senior detective, did you simply go out because this criminal rang you? A. As a busy senior detective, did you simply go out because this criminal rang you? A. As a busy senior detective, it is my duty to go and see criminals.

Q. With any criminal from Kings Cross who rings you up and says "Sergeant Wild, please come and see me," you drop everything and go, do you? A. Yes, I go and see them if it is at all possible.

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Q. What was the conversation when you got there?

A. I have already deposed to the conversation I had.

Q. Please answer the question. What was the conversation when you got there? A. Your Honour, as I explained before, my recollection of the conversation that I gave last Thursday, is purely and simply a recollection. Mr. Gruzman has the advantage of having

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my depositions to check me now. That was my recollection at the time, and as I explained to you, it is very difficult. I had no notes of any conversation. I compiled a report on my recollections but not in the first person. I would find it most difficult to give word for word the recollections that I gave last Thursday in this matter.

HIS HONOUR: I think you made that clear, that you had no recollection of the exact conversation. What do you want Sgt. Wild to do, Mr. Gruzman?

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MR. GRUZMAN: Repeat the conversation.

HIS HONOUR: He made it clear last Thursday, more than once, that he had no recollection of the exact conversation.

MR. GRUZMAN: We do not believe him.

HIS HONOUR: Subject to whatever qualifications you may want to make as to the precision of this, ----(interrupted).

WITNESS: They won't be precise, your Honour.

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HIS HONOUR: Do the best you can. This is the conversation on the Monday morning, is it?

MR. GRUZMAN: Yes.

WITNESS: I saw Vojinovic near the City Bowling Club. There was a conversation regarding that moneys if any, he was likely to get from Mr. Barton. I find it most difficult, your Honour.

HIS HONOUR: Yes. I do not really think there is any purpose pursuing this, Mr. Gruzman, when you look at the evidence at pages 563 and 564.

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MR. GRUZMAN: I won't take up time with it.

HIS HONOUR: The only topic he mentioned on that occasion was the same topic, and he did state on four or five occasions he had no recollection of the exact conversation.

MR. GRUZMAN: We do not accept it, with respect.

Q. This is the position, is it not, this man rang you up, and you were expecting the phone call, and you left your office, and drove to the City Bowling Club and you saw him in your motor car?

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A. Yes.

Q. Who was with you? A. I was on my own.

Q. And the conversation was about money? A. Yes, he was most anxious about money.

Q. What was he telling you, as the detective in charge of the case? What story or argument did he put up to you, as to why he should get money? A. He felt he had been promised money by Mr. Barton.

Q. What for? A. For his information to Mr. Barton.

Q. Recalling the conversation as best you can, and I appreciate you have told his Honour very clearly that this conversation really escapes you, all I am asking you to do is your best; here is this man who rings you up, and you were expecting the phone call, and you went to see him. A. That is right.

Q. And he was concerned about money? A. Yes. 10

Q. Try and tell his Honour, to the best of your recollection, what argument he put up, as to why he should get money. A. His argument was that Mr. Barton had promised him money for his information, as he said, to bring these men to justice, and he felt Mr. Barton owed him money for that information.

Q. Did you understand that you were to in effect, be his debt collector? A. On the contrary, I am not a debt collector for anybody.

Q. I am trying to find out what was in your mind. 20
What was your understanding as to why Vojinovic got you to leave the C.I.B. to go to see him? So that he could tell you that Barton owed him money?
A. What was in his mind?

Q. What was in your mind? ---

HIS HONOUR: That is not a very fair question.

MR. GRUZMAN: Q. Why did you believe Vojinovic was telling you about this money matter and Mr. Barton?

A. I thought that Vojinovic was trying to obtain money from Mr. Barton. That was his object. 30

Q. Through you? A. No, on the contrary, he arranged to see Mr. Barton himself.

Q. When was this? A. On the Sunday night.

Q. We are dealing with the conversation that took place at 11 o'clock on Monday morning, 9th January. In that conversation Vojinovic told you, in effect, that Barton owed him money. I am asking you why you believed Vojinovic was telling you about this. A. I wanted to find out what was in Vojinovic's mind. 40

Q. I would like you to tell us --- and if you have no idea, please say so - what was your belief as to why Vojinovic was telling you all this? A. I suppose because I had interviewed him the night before. He knew me by then. That is my answer.

Q. That is your best answer, is it? A. Yes.

Q. Did he ask you "Will you speak to Mr. Barton about it?" A. No.

Q. He never did? A. No.

Q. Did you say to him "Why are you telling me about this?" A. No, I did not. 50

Q. The conversation took some time, didn't it?

A. Yes, we talked for some time.

Q. How long? A. About a quarter of an hour.

Q. Twenty minutes on Thursday, wasn't it? A. I do not know if it was 20 minutes.

Q. Can you just recall other fragments, if you like, of the conversation, or other topics that were discussed during that period. A. No, I cannot.

Q. Let us see if I can help you, because I suggest to you you have a perfectly clear recollection of what took place in that conversation. A. I have not. 10

Q. I suggest to you in that conversation Vojinovic told you of his desire to assist the police, and told you of how he could bring these criminals to justice and said that he needed money to live on, and needed money in order to assist the Police?

A. Those items are referred to in his record of interview. 20

Q. Please answer the question. I suggest to you some such conversation took place, that he was offering information and assistance for money. What do you say to that? A. No, that is not right. He was most anxious to know whether Mr. Barton would pay him any money.

Q. For what? A. For the information he had given him.

Q. And not offering anything further? A. What?

Q. Did you understand he was not offering to do anything further? A. No, he never offered to do anything further. 30

Q. All he got you, as a senior detective, to go and see him for was to tell you Mr. Barton owed him money for what he had already done? A. That is one of the things. That is my recollection of the conversation.

Q. Is that all? A. That is my recollection of it.

Q. I can only ask you what your recollection is. Do you tell his Honour your only recollection of this conversation is of Vojinovic saying to you, telling you, that Mr. Barton owed him money in respect of information which he had already given? A. Mr. Barton had promised him money, yes. 40

Q. Didn't it occur to you to say to him "Look, we haven't got any convictions yet"? A. No, I never said that to him.

Q. Didn't it occur to you? A. No, it never occurred to me.

Q. Didn't it occur to you to say, "Can you assist the police to get these men?" A. No, I did not. 50

Q. That never occurred to you? A. I had his record of interview.

Q. That never occurred to you? A. No.

Q. Are you telling his Honour now there was in your view nothing which this man could do which could assist the police? A. I did not think so.

Q. That is contrary to your evidence with respect to Momo, is it not? A. In respect of which?

Q. You wanted to interview Momo, didn't you?
A. Yes.

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Q. And Vojinovic was the man who was going to find Momo for you? A. Vojinovic told me Momo had gone to Brisbane.

Q. When did he tell you that? A. On the Monday afternoon. I have already deposed to that.

Q. You are a conversation ahead, aren't you? We are dealing with the conversation at 11 o'clock, on Monday morning, at the City Bowling Club. A. Yes.

Q. Did you still maintain in your view as at Monday morning at 11 o'clock there was nothing Vojinovic could do to assist the police in their investigations? A. There was nothing he could have done?

20

Q. Yes. A. I did not believe that Vojinovic, and I did not think he could assist.

Q. Not even by finding Momo? A. He could have found Momo possibly.

Q. Wouldn't that have been a step in the inquiry?
A. Yes.

30

Q. So there was something he could have done on the Monday morning, in your mind, that could have assisted? A. Yes.

Q. Did you ask him? A. No.

Q. Did it come as a complete surprise to you when he rang later in the day? A. Yes, he rang me--- (interrupted).

Q. Did it come as a complete surprise to you when he rang later in the day? A. Yes.

Q. Do I understand when you left Vojinovic some time after 11 o'clock, on the morning there was no arrangement made at all with respect to--- (interrupted). A. Not really a specific time.

40

Q. What arrangement was made? A. He said he would keep in contact with me.

Q. What about? A. Anything he found out.

Q. About what? A. Anything.

Q. Are we back then to this being your understanding that Vojinovic, you thought, would turn into a common informer? That is an informer generally, rather than about anything to do with Armstrong and Barton? A. Yes.

Q. So what you are swearing is at the time you left Vojinovic, on that Monday morning you had no expectation that he would be giving you further information about the Armstrong and Barton matter? 10
A. No especial expectation.

Q. No expectation at all. A. No.

Q. When he rang in the afternoon, this was a complete surprise to you, was it? A. Yes.

Q. When you went to see him on the Monday afternoon was that also on the same basis that any criminal who rings a senior detective can expect the senior detective to go and see him? 20
A. Yes.

Q. You are not serious, are you? A. Quite serious.

Q. That is a lie, is it not? A. That is not a lie.

Q. In the morning there had been an arrangement made with respect to money, hadn't there? A. An arrangement?

Q. An arrangement? A. No, I never made any arrangement regarding money.

Q. I put it to you that you had in your possession the record of interview which I put to you before, and that thereafter to your knowledge Mr. Armstrong became aware of it. A. Which record? You have not mentioned any especial record. 30

Q. I put it to you you had in your possession the record of interview which I put to you before, which is now Exhibit 29.---

HIS HONOUR: I think you should identify it more than that.

MR. GRUZMAN: The record of interview --- (interrupted). 40

MR. BAINTON: I know what Exhibit 29 is, and it is not a record of interview.

MR. GRUZMAN: Q. Do you remember this morning I suggested to you you had an interview with Frederick Hume on the Monday or Tuesday, 8th or 9th January?
A. Yes, I remember that.

Q. I put to you at a time when you had that record of interview in your possession, Mr. Armstrong became aware of the existence of that document. A. There was never any such document existing. 50

Q. I put it to you Armstrong came to the C.I.B.
A. I did not see Armstrong at the C.I.B.

Q. What did you say? A. I did not see Mr. Armstrong at the C.I.B. I have seen the man, but I have never met him. I saw him in court.

Q. Did it come to your knowledge that Armstrong had visited the C.I.B.? A. Never.

(Luncheon adjournment).

HIS HONOUR: You are still on your former oath. 10

MR. GRUZMAN: Q. There are certain documents which record movements of police officers, aren't there? That is, people like yourself in the Police Force.

A. My diary?

Q. But there are other documents, aren't there?

A. Yes, there is a signing on pad.

Q. And that shows your movements, doesn't it? A. If you do not write your diary, you can show it on the pad. It is a signing on pad, and there is provision there for your movements to be shown. 20

Q. You enter up one of those documents, do you?

A. Yes, and sign on and off.

Q. And show what you are doing? A. Yes.

Q. You have told us that whilst you expected a phone call at 11 o'clock on the Monday morning you had no reason to suspect any particular subject matter. A. No.

Q. But nevertheless you went out and saw Vojinovic?

A. I did.

Q. At 2.40 p.m. the same day, when he rang you again, you again had no expectation of the subject matter to be discussed? A. No. 30

Q. But you went out and saw him? A. I did.

Q. When you left him after the conversation that commenced at 2.40 p.m. on the Monday, I take it you had no expectation of seeing him again? A. No.

Q. As far as you were concerned, that was the end of it? A. I had no expectation of him contacting me again.

Q. Or you contacting him? A. No. 40

Q. Tell us why you went to see him for some hours the next day? A. I drove around Kings Cross, and I thought I might see him there.

Q. What for? To say "How are you Alec?" A. To see if he had heard anything.

Q. I thought when you left him you had no expectation of hearing any more about this matter? A. I thought I might see him again.

Q. What about? A. About anything.

Q. Anything, whether or not in relation to Mr. Armstrong and Mr. Barton? A. Yes.

Q. Did you have anything better to do next day than look for Alec Vojinovic? A. I was looking for a man named Sellars also, and was driving around Kings Cross.

Q. You were filling in time, were you? A. I was not filling in time, I was working. 10

Q. What work were you doing for the Police Force driving around Kings Cross, on Tuesday 10th January 1967, looking for Alec Vojinovic? A. Actually I was driving around to see if I could see anybody, and had I seen Vojinovic, I would have spoken to him.

Q. What would you have said to him? A. I don't know. I did not see him.

Q. You must have had some reason in your mind, as to what you would speak to Vojinovic about? 20
A. No, I think it would have been just a conversation that would have grown out of my seeing him.

Q. You are really saying on your oath here that you took a police car and drove around Kings Cross looking for Alexander Vojinovic, and you had no idea of the subject matter you would discuss when you saw him? Are you? A. I was also --- (interrupted).

Q. Is that correct? A. That is correct.

Q. That is a lie, isn't it? A. That is not a lie. 30

Q. You wanted to see Vojinovic, because Vojinovic was assisting the Police, didn't you? A. No, he had not assisted the Police.

Q. And the arrangement had been made for Vojinovic to get money for assisting the police? A. That is not correct.

Q. And you never found him? A. I did not, no.

Q. Did you have anyone with you on the Tuesday?
A. No, I was on my own.

Q. I am sorry, I must go back to this: Your police diary is to provide information for your superiors about your police activities, is it not? A. Yes. 40

Q. To account for your time in an official way?
A. Yes, it accounts for my time.

Q. And it is in your diary that you wrote in respect of Tuesday the 10th. "Then to Kings Cross searching for Stephen Sellars and Alexander Vojinovic but could not locate them." A. That is right.

Q. Searching for Vojinovic? A. Yes.

Q. And you tell his Honour for no reason at all, except to have a conversation about no subject that you can tell us? A. That is correct.

Q. That is not true, is it? A. It is true, Mr. Gruzman.

Q. Let me put to you that Vojinovic had suggested to you a detailed plan as a result of which you would be able to prove that Hume at least, and probably Armstrong, were in fact involved in a conspiracy to murder. A. He gave me a record of interview along those lines. 10

Q. He put before you a plan as a result of which evidence could be obtained against these men, did he not? A. Not - there was a paucity of evidence in that record of interview.

HIS HONOUR: I think you are at cross-purposes.

MR. GRUZMAN. Q. He suggested to you a method of laying a trap which would provide evidence at least against Hume, did he not? A. I cannot place as to where he actually laid those plans. 20

Q. Did he not suggest to you that arrangements would be made for some shots to be fired outside Mr. Barton's home---(interrupted). A. Who suggested this?

Q. Wait a minute. Vojinovic. Didn't Vojinovic, suggest to you that arrangements would be made for some shots to be fired outside Mr. Barton's home and the Press would announce that Mr. Barton had been shot, or something to that effect, and he would then meet Hume and get the remainder of the money? A. Never at any juncture. 30

Q. As a police method, in an extraordinary case such as this, I suppose some such method could be adopted? A. I do not think it would hold up in court. I think you would be ostracized if you took such a course as that.

Q. Let us assume for the moment Vojinovic was telling the truth. Was there no way you could think of by which to get the evidence? A. No, I could not think of a way. I interviewed Hume and Ziric and they denied it. I could not think of another way. 40

Q. You did not even interview Hume, you say, for more than a week afterwards, did you? A. The 18th I interviewed him.

Q. You would expect, I suppose by that time the word would have got around? A. No, I do not think the word would get around in a case like that.

Q. That his friend, Det. Sgt. England, would have conveyed information he was sought by you? A. He could have. 50

Q. You would never anticipate getting evidence from Hume if you did not interview him till the 18th, would you? A. I cannot answer that in its entirety.

Q. Is that a truthful answer? A. I am on oath. I am giving truthful answers.

Q. Is that a truthful answer, that you, as a senior police officer believing or knowing Det. Sgt. England would convey to him the subject matter of the proposed discussion, believed on the 18th January you would get admissions from him? ---

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HIS HONOUR: I do not think I should allow that question to go in that form. There seems to me to be an element of ambiguity.

MR. GRUZMAN: Q. You have already told us you would believe Det. Sgt. England, because of his connection with Hume, may well have mentioned to him your inquiries about Momo? A. He could have, yes.

Q. In those circumstances you would not expect that on 18th January an interview with Hume would produce admissions, would you? Admissions of guilt, that is? A. Particularly if he was not guilty.

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Q. Guilty or not, you would not expect, if Hume was forewarned of the subject matter of the investigation, that he would make admissions to you, would you? A. That is correct.

Q. The only chance of getting admissions from Hume would be to get him as soon as possible, and before he knew what you were going to ask about. A. That may be.

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Q. I put it to you that is in fact what you did. You interviewed Hume as soon as possible after the complaint was made? A. I interviewed Hume on 18th January.

Q. Let us see what happened after this. I put it to you that on the Wednesday you saw Vojinovic and gave him \$300? A. That is not correct. I saw him, but I did not give him \$300.

Q. What did you see him about on the Wednesday? A. He rang me and wanted to see me again. He wanted to see me regarding his forthcoming appearance at the Central Court.

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Q. What did he want to see you about? A. I do not know.

Q. What did he tell you on the telephone? A. He wanted to know if I would come and see him again.

Q. He did not tell you why? A. No.

Q. And you left your work and off you went? A. I did.

Q. Where was the meeting place this time? A. At Potts Point. Near the Potts Point Post Office.

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Q. The same place? A. Yes.

Q. Did you take someone with you? A. No.

Q. Did I understand you to say at an earlier stage you usually worked with what you termed a mate? A. Yes.

Q. Your mate at this time was, who? A. Det. Whelan.

Q. On all these interviews, with this man Vojinovic, why didn't you take your mate with you? A. Det. Whelan was on annual leave for the whole of January and part of February.

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Q. Didn't the Police Department provide you with a relief mate? A. No.

Q. What about Det. Follington? A. Det. Follington's mate was on sick report.

Q. And you and Det. Follington comprised the team? A. We were there on the Sunday.

Q. Wasn't Det. Follington involved in this matter at the same time as you? A. Yes.

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Q. Through the same period you were involved in it, Det. Follington was involved in it, was not he? A. Yes.

Q. Why did you not take Det. Follington with you on these interviews with Vojinovic? A. Det. Follington had his own work. He is a separate entity to myself.

A. Did you ask him to come with you? A. No.

Q. Why did not you ask Det. Follington to come with you? A. I did not think it necessary.

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Q. On Monday you saw him twice; on Tuesday you searched for him and could not find him; and on Wednesday he rang you. A. Yes.

Q. He did not tell you why, but you went to see him at the same meeting place. A. Yes.

Q. What happened? A. We had a conversation regarding his forthcoming appearance at court.

Q. What did he say? A. Again, your Honour, this is only my recollection. I have already given my recollection. He discussed his forthcoming appearance on the 16th.

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Q. What charge was that? A. Breaking, entering and stealing.

Q. Where was that charge? In respect of what premises was that charge laid? A. Premises at Randwick. G.J. Coles, I think it was.

Q. What did he say about it to you? A. He

said "What do you think I will get for the job I am on?" I said, "I have no idea what you might get". I asked him whether he intended to plead guilty at court, and he told me he intended to do that, and he discussed what might happen to him at the court.

Q. As a fairly experienced criminal he would have had a fair idea of that, without asking you wouldn't he? A. I do not think so.

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Q. What did you say? A. I said "I don't know. It is a matter for the court".

Q. Neither of you knew? A. I did not know.

Q. So far it was not a very informative conversation for anybody was it? A. No.

Q. Then what did you talk about? A. That, I think, was the crux of the conversation, his forthcoming appearance.

Q. Weren't you a bit fed up, being summoned by this little criminal, to talk about nothing. A. I was not summoned. He asked me to see him, and I went and saw him.

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Q. Didn't you say "What is the meaning of calling me and getting me to come out on a matter like this?" A. No.

Q. And you left him, did you? A. Yes.

Q. The story of that conversation is a lie, isn't it? A. No.

Q. This is the occasion when you gave him the \$300, isn't it? A. I never gave him \$300.

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Q. In the early days of this investigation, you spent the best part of three days solidly investigating this matter didn't you? A. Sunday, Monday, and Tuesday, yes.

Q. And a considerable portion of Wednesday as well? A. Some time on Wednesday yes.

A. And then did something happen to make you lose interest in the matter? A. No.

Q. Did your interest continue unabated? A. Yes.

Q. Up to this point Vojinovic, with all his faults, had proved a helpful informant, had he not? A. I think not.

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Q. What do you think? A. I do not think he was a helpful informant at all.

Q. Did you ask him anything that he did not tell you? A. How do you mean?

Q. Did you ask for information which he refused to give to you? A. No.

Q. He was communicating with you voluntarily?

A. Yes.

Q. He gave you information as to the whereabouts of Momo? A. Yes.

Q. And he was a man you wanted to see badly?

A. Yes.

Q. At the same time you got information of the whereabouts of a man shot by the police, didn't you? A. He gave me information as to where they were. 10

Q. And you have no reason today to suppose all the information which Vojinovic gave you about Muki and Momo taking him to Brisbane is untrue, have you? A. Yes, I do think it is untrue.

Q. Did you ask Momo about it? A. As to whether he went to Brisbane?

Q. Yes. A. Yes.

Q. What did he say? A. He told me he never went to Brisbane. 20

Q. Did you think he would say "I took this criminal who had been shot by the police to Brisbane"? A. I received a wireless message (interrupted).

Q. Did you expect Momo to say to you "Yes, I took this criminal who was shot by the police to Brisbane"? A. No.

(At this stage Sgt. Anderson attended in answer to subpoena and produced further documents, being three documents headed "NSW Police. Duty Record Pad No. 32". Sgt. Anderson stated there are three sheets of paper. He stated the same position applied as previously with regard to documents produced that there was objection to their being shown to either of the parties until such time as his Honour considers they are relevant to the proceedings. He informed his Honour he was asked to produce these this morning. He stated these documents do mention these parties before the court, and that they should have been produced on subpoena, but were overlooked. His Honour stated they can be regarded in the same category as the other documents he has already allowed the parties to see, subject to the same caveat he has already placed upon the other documents.) 30 40

Q. I would like to get an answer to this question: As at the Monday and Tuesday, do you say you were actively trying to locate Hume or not? A. No. 50

Q. You were not? A. No.

Q. You had decided that it was unnecessary or undesirable to contact Hume that week, had you?

A. I wanted to find something out about Hume before I interviewed him.

Q. So it would be untrue to say attempts were being made to locate Hume during that first week, would it? A. I did not make an attempt.

Q. You were in charge of the case, were you not?

A. Yes.

Q. Your decision was that there should be no attempt to locate Hume during that first week?

A. Yes.

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Q. And if Const. Follington was making inquiries to locate Hume that would have been contrary to your instructions, would it? A. No, not contrary to my instructions. I never gave him any instructions about it.

Q. Is it possible Const. Follington would go off on a different attack on the case to you? A. He could have. I never gave him any instructions regarding it.

20

Q. If your decision was that Hume should not be contacted that week, you would not have expected Const. Follington would have been trying to contact him would you? A. I would not expect it, but I never discussed it with him.

Q. And he never discussed it with you? A. No.

Q. That is quite clear. A. That is quite clear.

Q. He never told you he was trying to contact Hume? A. Not that week.

Q. Or that he had contacted him? A. No.

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Q. And you had made the decision Hume should not be contacted that week? A. It was not a decision that Hume should not be contacted that week, but I just did not contact him that week.

Q. And you did not expect anybody else to contact him? A. No.

Q. I suppose it would be wrong for a junior officer to be endeavouring to contact an important suspect such as Hume over the head of his senior officer?

A. I would think so, yes.

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Q. That about Ziric? When did you decide to contact Ziric? A. After I saw Hume I told him to tell Ziric to come and see me.

Q. That is the first time? A. Yes.

Q. It would be wrong for Det. Follington to be contacting or endeavouring to contact Ziric during that first week, would it? A. Not so much wrong, but I would have thought had he done so he would have told me.

Q. That would have cut right across your investigation would not it? A. Yes.

Q. I put it to you on the Tuesday Const. Follington was endeavouring to contact both Hume and Ziric? A. I do not know whether he was or not.

Q. That would be Tuesday the 10th? A. I don't know.

Q. You would not be prepared to deny it would you? A. I could not deny it. I do not know whether he was or not. 10

Q. If Const. Follington was doing that it would be only on your instructions would not it? A. No, he did not do it on instructions from me.

Q. I asked you before whether your enthusiasm had continued after approximately the Wednesday. A. Yes.

Q. I am going to put it to you that something happened somewhere about the middle of that week, probably on the Wednesday, which caused your attitude to this case to change? A. No, it did not. 20

Q. I put it to you that Vojinovic had, so far as the police were concerned, shown a helpful attitude? A. Yes, he had. Yes.

Q. You tell his Honour that his attitude was when he was in trouble he could look to you for advice, do you? A. For advice, yes.

Q. And presumably for such assistance as you could give? A. Yes. I don't know what assistance I could have given him. 30

Q. But that was the relationship between you as at the Wednesday wasn't it? A. That would have been it yes.

Q. Subsequently you learned that he had been arrested in Melbourne and charged with stealing Hume's car, didn't you? A. That is right, and convicted, when I heard about it.

Q. That is your evidence, is it? A. That is it.

Q. I want to get that clear, you say that at the time you first heard that Vojinovic had been charged with stealing Hume's car, it was after he had been convicted, do you? A. That is correct. 40

Q. Is it not true that you received a communication from Sgt. Mengler of the Victorian Police? A. I did. Det. Menger.

Q. Is not this the position, that Vojinovic had been arrested by Det. Mengler? A. Yes.

~~Q.-----And-Vojinovic-had-claimed-to-Det.-Mengler-that~~

~~he had been framed by Momo, because he had given this information to the police? A. No.~~ (Objected to as irrelevant. Mr. Gruzman stated this is going to the witness' general credit. His Honour directed that the question and answer be struck out).

Q. It is within your knowledge that on the 11th you saw this man Vojinovic, when he asked you for certain advice. A. Yes.

Q. On the 12th he left for Melbourne with Momo?
A. Yes.

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Q. And some days later he was charged with stealing the car? A. 24th January.

Q. The 24th, he was actually charged, and said the car had been stolen, some days prior to that?
A. Yes.

Q. And Det. Mengler wrote to you and told you that then Vojinovic claimed that he had been framed by Momo because he had given the information to you?
A. No. (Objected to as irrelevant. Mr. Gruzman stated it is put on credit. Allowed).

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Q. You did receive a letter from Det. Mengler, did not you? A. I did.

Q. Where is that letter? A. I have not that letter.

Q. You destroyed it, did not you? A. As far as I know, I did. I could not find it.

Q. And that letter stated that Vojinovic claimed that he was being framed because he had given information to you? A. No, that is not correct.

Q. What did the letter say? A. The letter which I received after Vojinovic's conviction on the 27th January - that was when he was convicted - contained the facts that he had in fact been arrested for stealing a motor car, and had been convicted and sentenced to six months imprisonment. It contained the fact that Det. Mengler had had information that Vojinovic had absconded on bail from this State, and that if we wanted him we knew where he would be for the next six months. It contained the fact that Vojinovic had now appealed, and his appeal was to be heard some time later in the month. That is in February. It contained the fact that Vojinovic, as Det. Mengler described it, had told him a cock and bull story regarding a threat to kill a Mr. Barton in Sydney. I think that is about all it did contain.

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Q. Didn't Det. Mengler in that letter ask you to confirm or deny that Vojinovic had made to you these allegations about the conspiracy to kill Mr. Barton?

A. I do not think he asked for that, but I replied he had been interviewed in connection with such an allegation.

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Q. What do you say you did? A. I replied to

Det. Mengler's letter and told him that I had interviewed Vojinovic in connection with such a matter."

Q. Did you tell Det. Mengler that Vojinovic had made allegations involving a threat to kill, against certain people, including Momo? A. Including Momo?

Q. Yes. A. No, I told him he had made allegations about a threat to kill a man named Barton.

Q. Det. Mengler is a Detective Constable at Hamilton in the State of Victoria, is he not?

A. That is correct.

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Q. And he arrested a man to your knowledge driving a car which was not his own? A. That is right.

Q. And you know the man, who was Vojinovic, claimed that he had permission to drive the car?

A. That is right.

Q. And you know that Vojinovic claimed to Det. Mengler that the person who was giving information against him, namely Momo, had a strong motive to do so, because Vojinovic had given information to you concerning Momo? A. No, that was not the fact.

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Q. That is what Det. Mengler was writing to you about, wasn't it? A. No, Det. Mengler wanted to know from me what type of man Vojinovic was.

Q. And he told you that the story Vojinovic had told him about threats to kill company directors and so on sounded to him like a cock and bull story?

A. That is correct.

Q. And he wanted confirmation from you that information of this kind had been given by Vojinovic, to the C.I.B. and that it involved Momo. That is what Det. Mengler wanted, wasn't it? A. He mentioned that Vojinovic had told him that he had given the C.I.B. here information, yes.

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Q. And you know that it would be vitally important if the informant in a police prosecution could be shown to have a strong motive for telling lies?

A. Yes, I imagine it would be.

Q. Didn't you regard it as your duty to say to Mengler "Look, what Vojinovic tells you is true"?

A. I didn't think so, no.

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Q. "His story might sound like cock and bull to you, but the fact is he has made a record of interview. He has made these allegations, and whether they are true or whether they are false they certainly provide a motive for Momo to tell lies about him"? A. I didn't think of it that way.

Q. What you did was to write back to Mengler and tell him that Vojinovic is a bad man who had absconded from bail? A. I told him that, yes.

Q. And that had the effect that Mengler then did

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not believe Vojinovic? (Objected to; rejected).

Q. Your intention in writing that to Mengler was to ensure that Mengler did not believe Vojinovic? A. Not to ensure, but to give my version of what I thought.

Q. You will agree, won't you, as a police officer, that whether what Vojinovic told you about Momo was true or false, Momo would have every reason to get his own back on Vojinovic?

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A. If he knew of the allegations, yes.

Q. Mengler wanted confirmation one way or the other of whether Momo had a motive for telling lies about Vojinovic? A. No, that was not the crux of it. That was not my interpretation of it.

Q. Mengler told you about this cock and bull story in a letter, didn't he? A. Yes.

Q. And he described it as such? A. He described as a cock and bull story, yes.

Q. That is how it appeared to him? A. Yes.

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Q. You knew that, whether the facts were true or false, this allegation had been made? A. Yes.

Q. Didn't you think it important, knowing the significance and motive, to inform Mengler that whilst you did not know as to the truth or veracity of the allegation, the allegation had been made?

A. I did not do that, no.

Q. Because, I put it to you, you knew that if Mengler had known that Momo had a good motive for telling lies, Mengler was the sort of man who would not have proceeded with the prosecution? A. I have never met Mengler.

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Q. You would believe that any police officer who was satisfied that the informant was a man who had a good motive for telling lies may not proceed with a prosecution on his information? A. I think by this time it was a matter for the Appeals Court.

Q. Detective Mengler was sufficiently concerned about what Vojinovic had told him to write personally to you, wasn't he? A. He wrote to me, yes.

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Q. You would have understood that he was personally concerned as to whether he was furthering a false prosecution or whether he was engaged in an honest prosecution? A. No, I don't think that was his object at all.

Q. I put it to you that you know very well that he had one principal object in writing to you, and that was to find out whether it was true that Momo had a motive for telling lies? A. No.

Q. And of course when you wrote back, as you told us, you never disclosed to Mengler that Momo did have a motive to tell lies? A. I didn't, no.

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Q. Didn't you yourself, with your own knowledge of the circumstances knowing what allegations Vojinovic had made against Momo, didn't you feel that you should disclose to Mengler those facts?

A. No.

Q. And you never did so? A. I did not.

Q. You see, sir, by this time, I put it to you that you were actively assisting Hume? A. No.

Q. And that it was in the interests of Hume and Armstrong to have Vojinovic out of the road? A. No, that is not correct. Vojinovic was charged and convicted before I knew he was arrested.

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Q. Whatever may have been the position on the first charge, the matter was coming under appeal, wasn't it? A. Yes.

Q. Vojinovic in fact, as you know, I think, gave evidence of these allegations which he made in Sydney in evidence before the Appeals Court?

A. That is not correct.

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Q. It is not correct? A. That is not correct. I know that he never gave the evidence.

Q. How do you know that? A. Because I have seen Det. Mengler's report in connection with it.

Q. Does not Det. Mengler agree that this allegation by Vojinovic had been made? A. He disagreed.

Q. When did you see this report? A. In April of 1968.

Q. Of course you are aware, aren't you, that it is not the practice in Victoria for any transcript to be taken in an Appeals Court? A. I don't know that.

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Q. Did you think you were acting fairly to Vojinovic in all the circumstances in not disclosing to Mengler that Momo had a motive to tell lies against him? A. Yes, quite fairly.

Q. By the way, you told his Honour that Hume told you that it was his car that had been stolen?

A. That is correct.

Q. What was the number of that car? A. I think it was EBD-708 or 703, or something like that. I am not quite certain.

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Q. Have you some record from which you can check it? A. Yes, I have.

Q. Would you check it from that record? A. I have it in my report. It is also in my notebook, EBD-703.

Q. EBD-703? A. Yes.

Q. Under what date does that appear in your notebook? A. This is dated 18.1.67.

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Q. This is when you knew about the car stealing, was it? A. I knew the car had been stolen on the 18th.

Q. By Vojinovic? A. Yes.

Q. But he was not convicted until the 24th? A. He was not convicted until the 27th.

Q. 27th? A. He was not arrested until the 24th.

Q. So that you knew as at the 18th that it was alleged that he had stolen this car? A. That is correct. 10

Q. And the car was described to you by Hume as his car? A. That is correct.

Q. Would not you have expected that he would have had to give evidence in the matter? A. I don't know the actual charge. It may have been "person in lawful possession thereof" - "the owner or person in lawful possession thereof". I don't know. He told me he had given the car to Momo, or loaned the car to Momo. 20

Q. He told you he had loaned the car to Momo?
A. Yes.

Q. Did you ask him why? (Objected to; rejected).

Q. Sgt. Wild, you told us earlier that you had some doubt as to the truth of the information given to you by Vojinovic that Momo had taken Muki to Brisbane after he was shot? A. Yes.

Q. Of course, you knew, did you not, that Momo was driving a motor car? A. Vojinovic told me he had a motor car, yes. 30

Q. And that was the same motor car, EBD-703?
A. He did not know the number. He told me it was a Falcon sedan - a blue Falcon sedan. Looked like a police car, he said.

Q. Did Hume give you a description of the car that he loaned to Momo? (Objected to: rejected).

Q. So far as the information about Muki and Momo was concerned, what you subsequently ascertained was that Momo had driven Muki as far as Newcastle?
A. No, I did not find that out. 40

Q. Didn't you find that out? A. No, I did not find that out.

Q. Now, I would like to ask you about another topic. You obtained this record of interview from Vojinovic? A. Yes.

Q. And that record of interview you say was locked in your locker? A. Yes.

Q. Did anyone have any authority to remove the record of interview? A. No.

Q. Can you explain how the record of interview came into the possession of Mr. Barton? A. I have no idea how it came into Mr. Barton's possession - or to yours, sir.

Q. So far as you are aware, as a senior police officer, is there any way which you regard as a proper way in which that record of interview could have come into the hands of Mr. Barton? A. A proper way?

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Q. Yes. A. No, I can't.

Q. In other words, would you go so far as you say that if the record of interview was taken from your locker it was illegally removed? A. Exactly.

Q. You know, and have known for some time, that a copy of the record of interview is in the hands of Mr. Barton and his legal advisers? A. That is true.

Q. Have you made some inquiries to ascertain how that record of interview came into their hands? A. No, I have not. I don't think it would be worth while.

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Q. You think the person responsible would deny it? A. I am sure.

Q. And if the person responsible was a police officer you would regard him as having committed as illegal act? A. Yes.

Q. It would amount to stealing the document, would it? A. I imagine it would be stealing, but it would be in contravention of police rules to have removed it from my locker and given it to anybody.

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Q. It is in your custody, and removed without your permission? A. Yes.

Q. Sgt. Wild, you have told his Honour that on the night of Sunday, 8th, you met Mr. Barton at the Darlington Police Station? A. Yes.

Q. How were these arrangements made? A. Follington contacted me and told me, and I told him to have Mr. Barton there at 7.10 p.m., as arrangements were made for the meeting at 7.30.

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Q. When did you speak to Follington? A. Follington spoke to me some time during the afternoon on the Sunday. He had gone to Mr. Barton's home, and he rang from there.

Q. You say that he rang from Mr. Barton's home? A. Yes, that is right.

Q. You are quite certain of this? A. Yes.

Q. You went to the police station in your own car? A. I went in a police car.

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- Q. In your own police car? A. Yes.
- Q. On your own? A. Yes, on my own.
- Q. Well then, what happened? Who arrived? A. Mr. Barton arrived in his car, and Det. Follington came on foot at the appointed place.
- Q. We are back at the Police Station? A. Yes.
- Q. That is what happened? A. Yes, that is what happened.
- Q. Mr. Barton arrived in his car and pulled up outside the Police Station? A. Yes. 10
- Q. And Follington then arrived on foot? A. Yes, Follington arrived on foot.
- Q. Was there anybody else there? A. Not at that place, no.
- Q. Nobody else? A. No.
- Q. Where did Follington come from? A. I understand - it is only my understanding - that Mr. Barton Junior drove him in his car.
- Q. Mr. Barton drove in his own car? A. Mr. Barton 20 drove in his own car.
- Q. In his own white Mercedes? A. Mr. Barton Jnr. drove his own car. I didn't see him drive.
- Q. Were not special steps being taken to see that this man, whoever he was, would not realise there was a police trap? A. Yes.
- Q. Wasn't it a terrible risk to have Mr. Barton's white Mercedes drive up outside the Darlington Police Station? A. The meeting place was some considerable distance from there. 30
- Q. 600 yards away? A. I have not measured it. It was some considerable distance.
- Q. In other words there could have been no more obvious way than for Mr. Barton to drive his white Mercedes up to the Police Station? A. Had Vojinovic seen him, no doubt.
- Q. As a matter of fact, special steps were taken, as you know, to see that even on the drive-in from Castlecrag - if the house was being watched they could not see that police were there? A. Not to my knowledge. I was not out there. 40
- Q. Didn't you give instructions to Follington?
A. No.
- Q. Would you have expected that Follington would use his initiative to see that the fact that there was a police trap was not disclosed? A. Yes. I would expect that, yes.

- Q. And, having in mind that it was a police trap, didn't it occur to you, as an experienced police officer, that it was undesirable that a white Mercedes with Mr. Barton is it should pull up outside the Police Station? A. No.
- Q. You never even thought of it? A. No.
- Q. You can see now that it was a bit of a risk, can't you? A. I don't think so.
- Q. A man who haunts the Cross is likely to be in that area? A. The meeting place was not near Darlinghurst Police Station. 10
- Q. St. Vincent's Hospital is not far away?
A. Two blocks away.
- Q. You arranged the meeting, you say, outside the Darlinghurst Police Station at ten past seven?
A. Yes.
- Q. For a rendezvous at half-past-seven? A. Yes.
- Q. So that at the very time when the criminal was likely to be walking down to the rendezvous you had Mr. Barton waiting in his white Mercedes outside the Police Station? A. That is what I did. 20
- Q. I am suggesting that is not what you did?
A. That is what I did.
- Q. What was your purpose in taking whatever risk was involved in having Mr. Barton coming to the Police Station? A. It was the meeting place.
- Q. What was the necessity of it? A. That is what I arranged with Follington - to meet at the Police Station. I did not know he was coming in with Barton Jnr. 30
- Q. You wanted - you told us that you warned Mr. Barton under no circumstances to bring money?
A. I didn't say that.
- Q. You didn't? A. I didn't say that.
- Q. You understood that he was bringing money?
A. I told Mr. Barton not to pay money. I didn't tell him not to bring any money.
- Q. Is it consistent with your knowledge that Mr. Barton brought money? A. Yes. 40
- Q. You knew that he had \$1,000 on him? A. He told me that he had £500.
- Q. £500? A. Yes.
- Q. You approved of that? A. I did not. I didn't know he was bringing it there.
- Q. But you knew at the Police Station? A. Yes.
- Q. You did not prevent him, you say, going down

to the rendezvous with £500 in his pocket?

A. I didn't.

Q. You knew at this time? A. I did, yes.

Q. You could have prevented it if you wanted to? A. In what respect?

Q. You could have said "Oh, no, this is a police matter. Don't bring any money"? A. I asked him not to pay any money.

Q. Were there any other police present? A. No. 10
Only Follington.

Q. Look, sir, wasn't there a policeman disguised as a man with a beard and a stick? A. No. No.

Q. As far as you knew the man you were going to see could have been a criminal, prepared to shoot it out? A. He could have been, but I didn't think he would be.

Q. At the time you had no record of interview with him? A. No. I didn't know who he was.

Q. That is right. So he could have been a 20
criminal, prepared to shoot it out? A. He could have, yes.

Q. Did you take any precautions to protect Mr. Barton's life? A. I had Follington there, and I was there.

Q. But you were some distance away? A. Yes, that is right.

Q. You could not even see exactly what was happening, could you? A. I could not.

Q. So that are you telling his Honour that you 30
exposed Barton to a meeting in a dark street outside St. Vincent's Hospital with a man who could have been a criminal, prepared to shoot it out? A. I don't think a dark street outside St. Vincent's Hospital. He was meeting this man at 7.30.

Q. Isn't there a park opposite St. Vincent's Hospital? A. Yes, immediately.

Q. It is a fairly shadowy sort of place, isn't it? A. It is a public park. 40

Q. A public park? A. Yes.

Q. By the way, how was Follington dressed when you saw him approach Barton? A. Shirt and trousers.

Q. Shirt and trousers? A. Yes.

Q. Police officers carry their gun on a belt, don't they? A. There are various methods of carrying a gun. Some carry it around the belt, and some carry it in the holster.

Q. Did you happen to know if he had his gun on him? A. Follington didn't have a gun.

Q. Do you know where his gun was? A. No.

Q. Back in the car with Tommy, wasn't it?
A. With whom?

Q. Back in the car with Tommy, the boy? A. Who?

Q. Tommy, the boy. A. I didn't think his name was Tommy. I thought his name was Alexander.

Q. Tommy, the son. I am talking about Barton Jnr. A. I thought he was "Alexander" also. 10

Q. Whether Alexander or Tommy, you know that Follington did not have his gun? A. Well, he has trousers and shirt, and I would say he didn't have a gun.

Q. But you don't know where his gun was? A. No.

Q. So that that meant that Barton was meeting this man in this place, and the only person close to him was an unarmed policeman? (Objected to; rejected).

Q. What I put to you is that there was present at the scene a policeman close to Barton's car, disguised as a man with a beard and a stick? A. That is not correct. 20

Q. He was within some seven or eight feet of Barton's car? A. Nothing like that ever occurred, Mr. Gruzman. I don't know anything of it.

Q. Sgt. Wild, do you remember telling us this morning that you checked the fingerprint records that Monday under the names of Hume and Haristy? A. That is so. 30

Q. Do you remember telling us on Thursday that you never checked under the name of Haristy until some time in this year? A. I did not check until this year. I did not know his name was Haristy until this year.

Q. You told us this morning something different, didn't you? A. Well, I don't think so. I think I told you I checked the names of Hume and Haristy, but I don't think I specified at what juncture, this morning. 40

Q. Sgt. Wild, I just want to get this clear. I put it to you that you became aware that Mr. Armstrong had gone to the C.I.B.? A. I didn't know that he ever went to the C.I.B.

Q. That you, at the request of Armstrong or Hume, or of your own volition, destroyed the record of interview with him? A. There was no such a document.

Q. And that you were party, in the way I have put, to having Vojinovic put in gaol for six months?
A. I deny that emphatically. 50

Q. By the way, are you aware that Const. Follington went to Goulburn about this matter? A. No, I am not.

Q. You don't know anything about it? A. No.

RE-EXAMINATION:

MR. BAINTON: Q. Sgt. Wild, you were asked some questions about correspondence you had with Det. Mengler? A. Yes.

Q. What was your understanding of the reason why Det. Mengler wrote to you? A. To let me know where Vojinovic was. 10

Q. Yes. A. In case the matter of extradition was necessary. I felt that was his main object.

Q. You say "main object". Do you think he had others, and, if others, will you tell us what they were, in your belief? A. To ascertain what type of man I thought Vojinovic was, him having been convicted and his appeal pending.

Q. Yes. A. By the tenor of his letter he did not believe Vojinovic, and I subscribed to that, and I replied. 20

Q. You were also asked I think just before lunch whether Vojinovic had not given you some helpful information, and you endeavoured to say something about Momo and Muki and a police message from Brisbane, and you were interrupted. Would you tell us what the result was of the information Vojinovic gave you about these two people? A. The wireless message I received from Melbourne -

HIS HONOUR: Q. From Brisbane? A. From Brisbane, I am sorry, was to the effect that neither of these men had been located, but it was believed that the man involved had gone to Tasmania. That was the result of the wireless message from Brisbane. 30

MR. BAINTON: Q. I take it from the Police in Brisbane? A. From the Police in Brisbane.

Q. You were shown this morning some documents that were produced from the custody of the police relating to convictions recorded against three names, beginning with Smith and ending up, I think, with Hume? A. That is right. 40

Q. Do you recollect what the first of them was?
A. What the first of them was? It was a photostat copy -

Q. I am sorry, the first of the convictions.
A. I don't think I was ever shown this morning the actual result of the convictions. I was only shown the front page. I only saw a photostat copy. It was a copy Mr. Gruzman showed me from his brief.

HIS HONOUR: Q. It was another copy of the document Sgt. Murdoch produced? A. This is a copy of the 50

document Mr. Gruzman showed me. It is not the actual document.

MR. BAINTON: Q. It is a copy of it? A. Yes.

Q. Will you look at the first of the convictions?

A. This is not - this document does not show the convictions. It shows the arrest. There is the back of the form which will show the conviction. There is a matter No. 1, Barry John Smith, which gives an address, 22.10.56, and then you have to look at the back of the document to find that at Central Petty Sessions on 22.10.56, on a charge of found in a common gaming house there was a fine of £3 or six days' hard labour imposed.

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Q. You have been asked a lot of questions about your experience as a police officer over 28 years? A. Yes.

Q. Would it accord with that experience that by far the greater number of people who have played baccarat in Sydney are labourers by the name of "Smith" according to convictions? A. That seems to be the general rule. An assumed name is invariably used.

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Q. Would you regard that as something telling heavily against a person's character? A. No.

Q. My learned friend began to cross-examine you yesterday. He asked you a number of questions - A. Today?

Q. No, yesterday. A. Last Thursday?

Q. I am sorry, last Thursday. On a couple of occasions he asked you a number of questions in which he used the expression "valid complaint."? A. No, he used the word "charge" I think.

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Q. At p. 573, for instance, - I just pick this one out at random - my learned friend asked you "Will you tell his Honour what was said by anybody in the presence of Inspector Lendrum which caused you to doubt that this was a valid complaint," and the same expression was used on a number of occasions. Will you tell us what you understood the expression "valid complaint" to mean? A. That the person is making a complaint - that the persons making the complaint were not sincere. (sic).

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Q. That the person ...? A. ...making the complaint was not sincere.

Q. If it was valid he was sincere, and invalid, not sincere. Is that the thought you had? A. No, not completely. A valid complaint would of necessity have been a complaint which had vindication. There was no doubt in my mind that the persons who came to that office that morning were quite sincere.

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Q. You were also asked a number of questions about

things you said or didn't say when you interviewed people after this complaint on 8th January? A. Yes.

Q. Did you at any stage on any of these interviews, ever find it necessary to administer any warning to anyone? A. No, I never cautioned anybody.

Q. You were also asked, with reference to Frederick Hume, was he not a police informer, and you replied that he was a person who had given information to the Police? A. Yes.

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Q. What was the distinction you were seeking to draw between the expression put to you and the one you used? A. An informer to my way of thinking is a person who, for some gain, informs on another person, but a reputable person who supplied the number of a car being used by some person in a hold-up or some such similar thing which brought about the arrest of that person to my way of thinking is not an informer - he is a person who is assisting the Police.

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Q. You were also asked did you not believe, as a result of your experience as a Police Officer, that there had been what I think my friend described as contracts to kill in Sydney, and you said that it was suspected. You replied that it was suspected. A. It is suspected, yes.

Q. You were then asked a large number of questions as to - I will put it this way - you were asked a number of hypothetical questions as to how one would go about it. A. There were a number of hypothetical questions, yes.

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Q. About carrying out such a contract? A. Yes.

Q. I would like you to tell me what in your experience, or how, in your experience, you would regard this hypothesis. A person we will call perhaps A wants to get person B killed, so he goes and engages himself an intermediary, who we will call C, with instructions to get someone to kill B, so C goes along and gets himself another intermediary, D, and says he wants someone to kill B, and says to the second intermediary he has been commissioned to do this for the principal, and he names him, so the second intermediary goes along and gets a third person and says, "I want you to kill someone. I have been engaged to do it by the prior intermediary, who has been engaged to do it by the principal -"
A. I could not imagine -

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Q. Just a minute. Everyone along the line knows who is involved in it and the person ultimately engaged runs along to the victim and tells him. Is that in your experience a likely train of events?

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A. I could not imagine that the person you referred to as A, who sees C to commit such an offence - for C to pass on to anyone else the information as to who A was, the chain reaches a stage where everyone knows who the investigator is.

Q. Does your mind cast a little bit of doubt

on the story? A. Yes, it created great doubt.

Q. Did you form an opinion as to the truth of the story Vojinovic had been telling after you had interviewed him? A. Yes.

Q. What opinion did you form? A. I did not think that Vojinovic was telling the truth.

(Witness retired).

ALBERT GEORGE FOLLINGTON:

Sworn, examined, deposed:

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TO MR. GOLDSTEIN: My full name is Albert George Follington, I reside at 10 Stewart Street, Randwick, and I am a Detective Senr. Constable of Police presently attached to the Fraud Squad.

Q. On 8th January 1967, you were a detective Constable of Police attached to the Safe and Arson Squad? A. Detective Constable First Class.

Q. Det. Const. 1st class, attached to the Safe and Arson Squad? A. Yes.

Q. I want to take you to Sunday morning, 8th January 1967? A. Yes.

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Q. Where were you then, say at about 10 o'clock in the morning? A. To the best of my recollection I was at the Safe and Arson Squad Office.

Q. In the C.I.B. building? A. Yes.

Q. Do you remember something happening later in the morning? A. Approximately 11.30 on that morning I accompanied Det. Sgt. Wild to Mr. Blissett's office.

Q. Before you go any further how did you come to go to Mr. Blissett's office with Mr. Wild?

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A. Det. Sgt. Wild requested me to accompany him. That is the best of my knowledge.

Q. You went to Mr. Blissett's Office? A. Yes.

Q. What happened there? A. There were a number of people there.

Q. Who did you see? A. I saw Mr. Lendrum, and a person whom I know -

Q. That is Inspector Lendrum? A. Yes.

Q. Yes. A. There was Mr. Barton, his son, Mr. Millar, whom I later found out was a solicitor, and Mr. Muir, Q.C., now his Honour Judge Muir.

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Q. Apart from Lendrum and Wild did you know any of these other people before you went in to Mr. Blissett's office? A. No.

Q. Who introduced you to the various people

M.J. Wild re-x, ret'd.

so that you now know who they are? A. Mr. Lendrum introduced me to them.

Q. Mr. Lendrum? A. Yes.

Q. Now, can you recall Mr. Barton saying anything when you got into the office? A. I can't recall the exact words; it is some 18 months ago.

Q. Did you take any notes of the conversation?
A. None whatsoever.

Q. You were the junior police officer there? 10
A. Yes.

Q. Junior of the three? A. Yes. I can recall Mr. Barton saying, "I have received a call from a man named Alec who claims he knows of a plan to kill me".

Q. "Who claims he knows of a plan to kill me"?
A. Yes.

Q. Do you remember whether anybody else said anything? A. There was a lot of conversation, and I think that the majority of the persons spoke, 20
except myself.

Q. You think everybody had a go except you?
A. Yes. That is only from recollection.

Q. Apart from that bit of conversation that you have just referred to - that you have just re- counted - can you remember anything else that was said, regardless of by whom, at this particular interview? A. I recall Mr. Barton saying that he had left the man Alec at King's Cross the night before. 30

Q. That is the night of the 7th, is it? A. Yes, that is right.

Q. On the night of the 7th? A. Yes, and that they had come to some agreement concerning the plan. I recall Landmark Corporation being mentioned, proxies, and other companies.

Q. You remember companies being mentioned, do you? A. Yes. Vaguely, yes.

Q. Did you hear mention of any other police officers? A. I can't recall, no. 40

Q. You say the interview started at about 11.30?
A. Yes.

Q. In Mr. Blissett's office? A. Yes.

Q. How long did it last? A. Half an hour; three-quarters of an hour.

Q. You made a note, I think, in your diary?
A. Yes.

Q. Have you got your diary? A. No. My diary is outside.

Q. We can get it later. The interview, you say, lasted about three-quarters of an hour? A. That is only an estimate of time.

Q. Half an hour or three-quarters of an hour?
A. Yes.

Q. When it ended, what happened then? Did someone tell you something? A. Mr. Lendrum directed me to go with Mr. Barton Snr. to his home and await further telephone calls from the man Alec. 10

Q. You then left the C.I.B., did you? A. Yes, I then left the C.I.B. with Mr. Barton and his son.

Q. And where did you go? A. I accompanied them to Mr. Barton's home at 187 Edinburgh Street, Castlecrag.

Q. How did you get there? A. In Mr. Barton's car. I take it that it was Mr. Barton's car. A white Mercedes. 20

Q. What time did you arrive at Castlecrag?
A. Approximately 12.30, 12.20 to 12.30.

Q. You went there, I understand you to say, to wait for a telephone call, or wait for some contact, is that right? A. Yes, that is right.

Q. Was there a phone call to the house later on in the day? A. There were two phone calls.

Q. Let us deal with the first one. When do you say the first phone call was received? A. At 3 p.m. 30

Q. At 3 p.m.? A. Yes.

Q. Have you got a note about that in your diary?
A. Yes.

Q. When the phone rang at three o'clock, who did what in relation to the telephone? Who answered it? A. By arrangement Mr. Barton Snr. answered the phone near the stairway, and I picked up an extension at the same time in a small kitchen off what I take to be the lounge room.

Q. So that you could hear the conversation? 40
A. Yes.

Q. Who spoke first, can you remember? A. I can't recall. I do recall Mr. Barton saying "Is that you, Alec?"

Q. "Is that you, Alec?" A. Yes.

Q. Can you remember what the reply was? A. In my own verbage.

Q. As best you can recall, it is 18 months or so ago. A. I recall this voice saying "I have been trying to contact Mr. Mackie to find out, I will try again, and ring you about 6 p.m.". There was other conversation.

Q. Who did you understand Mr. Mackie to be?

A. I have later ascertained that it was a Detective Colin Mackie from the Darlinghurst Police Station.

10

Q. "I will try again and ring you back at six o'clock, is that right? A. Yes.

Q. What was said then, do you remember? A. On the telephone conversation?

Q. On the telephone conversation. A. I can't recall what further conversation there was.

Q. Is that all of that conversation that you can recollect? A. Yes.

Q. That was at three o'clock, and ended a little after three o'clock? A. Yes.

20

Q. Did you then speak to Mr. Barton at the conclusion of the 'phone call? A. Yes.

Q. What did you say? A. I said to Mr. Barton, "No matter what happens when he rings back make an appointment to see him outside St. Vincent's Hospital in Victoria Street at 7.30 p.m. so that you can discuss the matter further."

Q. So that you told Mr. Barton where you wanted him to meet? A. That is right.

Q. Did you speak at all during the course of the afternoon to Mr. Barton's son? A. Yes, I did.

30

Q. What did you speak to him about? A. Numerous things.

Q. Anything you can remember? A. Concerning his education. Mr. Barton Jnr. told me that he was at the time undergoing a course of law at the University. I can't recall whether he said he was in his first year or his second year, but he did say that when and if Armstrong leaves the business he will go into the business as legal adviser.

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Q. He told you that? A. Yes. Not in those words, but -

Q. What did you say to him when he told you he was studying to be a barrister? -

HIS HONOUR: Mr. Goldstein, it is not objected to, but what has it got to do with the case? It is not objected to, and perhaps I should not interfere, if both sides assent to it going in. I will not stop you from asking questions on it if Mr. Gruzman wants it in also.

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MR. GOLDSTEIN: I will not pursue it.

Q. During the course of the afternoon you say you dealt with this discussion with Mr. Barton Jnr. Did you have anything to say to Mr. Barton Snr., or did he have anything to say to you apart from this conversation about the rendezvous that you have just mentioned? A. There was considerable conversation. I was there for 5½ hours.

Q. Do you remember anything in particular? 10
A. I recall Mr. Barton showing me a number of photographs and scrap books. These photographs were of Mr. Barton and his family and Mr. Armstrong and his family.

Q. Well, I will take you up to six o'clock in the afternoon, or 6.15. Did something else happen then?
A. At 6.15.

Q. What happened then? A. There was another telephone call at that time.

Q. Yes. A. The telephone was answered in the same way as before. Mr. Barton kept calling the voice "Alec". 20

Q. Did you recognise the voice? A. I recognised the voice.

Q. Whose voice was it? A. It was the voice obviously of a New Australian.

Q. Was it the same voice you had heard at three o'clock? A. Yes. I recall this voice saying "I have been not able to contact Mr. Barton"- "Mr. Mackie", I am sorry. "I will try and contact him again in the morning." 30

Q. What did Mr. Barton say? A. Mr. Barton said, "I would like to discuss this matter with you further. Can you meet me outside St. Vincent's Hospital in Victoria Street about 7.30 p.m.?"

Q. And what did the voice say? A. He agreed to it.

Q. He said "That is all right"? A. He agreed to come there, yes.

Q. That was that. The 6.15 conversation ended about 6.18 p.m. I suppose? A. It was only a couple of minutes. 40

Q. About 6.20 or 6.25 did someone leave the house?
A. Yes, Mr. Barton Snr. left the house.

Q. Left the house in what? A. Left in the white Mercedes. I asked him to go to the -

Q. I will come to what you asked him to do. A. I am sorry.

Q. He left in the white Mercedes? A. Yes.

Q. And you left in what fashion, and in what vehicle? A. I left-

Q. With whom? A. I left some minutes later with Mr. Barton Jnr. in a grey Valiant, which I understand is Mr. Barton's wife's car.

Q. Mr. Barton's wife's car? A. Yes. I am not sure of that.

Q. Before Mr. Barton left, did you give him any directions? Did you say anything to him? A. Yes.

Q. What did you say? A. I said to Mr. Barton to go to the Darlington Police Station. I said, "You go to the Darlington Police Station, and Det. Sgt. Wild will be there, and I will see you there, too." 10

Q. Did Mr. Barton reply to that? A. He acknowledged it, but I can't remember the exact words.

Q. He said "All right", or something like that?
A. Yes.

Q. By the way, did he ask you where it was? Did he ask you where Darlington Police Station was?
A. No. 20

Q. Did you explain to him where it was? A. I think I told him that it was at Taylor Square.

Q. Taylor Square? A. Yes.

Q. Mr. Barton left, and some few minutes later you left. How, before you left did you ring anybody? A. Yes.

Q. Who did you ring? A. Prior to leaving I telephoned Mr. Lendrum and also Det. Sgt. Wild.

Q. Then you went outside. You got in the car with Mr. Barton's son. Who drove? A. Mr. Barton's son. 30

Q. Where did you go to? A. We went a back route to a lane opposite the Darlington Police Station in Bourke Street.

Q. That is where the car was parked? A. Yes.

Q. When you got there, what did you do? When you got to this lane, what did you do? A. On arrival at the lane I removed my coat, my revolver, pistol, handcuffs -

Q. Not both? A. I am sorry. Revolver and handcuffs.⁴⁰ I unloaded my revolver. I had the revolver and handcuffs and notebook placed in the glove box, which was locked, and I also took my tie off.

Q. You told Mr. Barton's son something. What did you tell him? A. I said to Mr. Barton's son "You wait here for some time. If I have not returned go to the C.I.B."

Q. Did you specify the time? Did you say "Wait

here for so long"? A. No, not that I can re-
collect.

Q You think you may have done, but you don't
remember what it was? A. I don't remember, if I
did.

Q. By the way, having taken your coat off and
your tie and handcuffs and everything else, what
did you do with the bullets that you took out of
the revolver which you say you unloaded? A. I put
them in my pocket. 10

Q Which pocket? A. I can't recall.

Q. Pants pocket or coats pocket? A. Pants pocket.
I didn't have a coat on.

Q. You told him to wait a while, and what did
you do then? Where did you go? A. I walked along
the lane and across Bourke Street to the Darlinghurst
Police Station into Forbes Street.

Q. When you got to Darlinghurst Police Station
what did you see there? Who did you see? A. I saw
Det. Sgt. Wild and Mr. Barton Snr. 20

Q. Where were they? A. They were standing beside
or between the police car and Mr. Barton's car.

Q. Whereabouts in relation to the Police Station?
A. Practically opposite, to the best of my re-
collection. I am not sure.

Q. On the footpath in front of the station?
Opposite the station? A. I am not sure whether
they were on the road or on the footpath, but
they were in front of the police station. 30

Q. In front of the police station? A. Yes.

Q. You walked up to the two of them, did you?
A. Yes.

Q. Did you speak to anyone? A. Yes, I spoke to
Sgt. Wild.

Q. What did you say? A. I said "Arrangements have
been made to meet the man Alec outside St. Vincent's
Hospital at 7.30".

Q. What did Wild say? A. Sgt. Wild said "I want
you go to down there opposite the hospital, and
should this man approach Mr. Barton I want you to
speak to him, tell him of our inquiry, and tell him
that we wish to interview him about it". 40

Q. Do you remember Mr. Barton saying anything
while the three of you were outside the police
station? A. There was other conversation I recall
Mr. Barton saying "I have got some money here".

Q. Did he mention any amount? A. I can't recall.

Q. He may have? A. He may have. I can't recall.

Q. Anyway, he said, "I have got some money here"? A. "I would like to give it to Alec for helping us".

Q. Did anyone say anything in response to that?

A. Det. Sgt. Wild said "Under no circumstances whatsoever give this man any money".

Q. Well, what did you do then? A. I then walked down to St. Vincent's Hospital, and stood on the verandah.

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Q. Stood on the verandah? A. Yes.

Q. You walked down to St. Vincent's Hospital and stood on the verandah? A. Yes.

Q. Looking in which direction? Looking into what street? A. Looking into Victoria Street, in a westerly direction.

Q. What time was it you arrived on the verandah?

A. Approximately 7.20, 7.25.

Q. What was the next thing you saw happen? Who was the next person you saw arrived on the scene? A. I saw Mr. Barton arrive in his car. He parked his vehicle opposite where I was. He alighted from the driver's seat and walked around on to the footpath.

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Q. You didn't, by the way, see any police officer that you know disguised as an old man with a beard and stick, did you? A. No.

HIS HONOUR: I think that is a figment of your imagination, Mr. Goldstein - there was not anything said before about his age.

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MR. GOLDSTEIN: Q. Any sort of man? A. There were people around.

Q. Did anyone fit that description? A. No.

Q. Even without the "old"? A. No.

Q. You say Mr. Barton pulled up with his Mercedes on the other side of the street and got out? A. Yes.

Q. Having got out, where did he go? A. On to the footpath, and stood in approximately the middle of the footpath.

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Q. In the middle of the footpath? A. Yes.

Q. Did you then see someone else? A. I saw a man who appeared to me to be a New Australian, and whom I now know to be Vojinovic.

Q. What did the man do? A. He walked up and spoke to Mr. Barton.

Q. Of course, you were on the other side of the

street, so that you don't know what he said?

A. No.

Q. What did you do then? A. I slowly walked across the street and stood very close to Vojinovic, and I heard Mr. Barton say "I have got the police here. You had better talk to them."

Q. Did you then say something to this man that you know now to be Vojinovic? A. Yes. I said "I am Det. Follington of the C.I.B., and we are making inquiries in connection with a complaint made by Mr. Barton. What is your name?"

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Q. What did he say to that? A. He said "Alec Vojinovic. I have done nothing wrong. I am only trying to help him and myself."

Q. What did you say? A. I said, "Are you prepared to come with us to the C.I.B., where we can discuss this matter further?"

Q. What did he say to that? A. Vojinovic said "Yes, but I don't want to be seen standing around here with a copper. Everyone will think I am giggling."

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Q. Which means what? A. It is a term used by criminals who have spent some time in gaol in reference to those criminals who give information to the police.

Q. So that you gathered he didn't want to be seen standing there talking to you in case someone thought he was telling you something. That is not unusual.

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Q. After he told you he did not want to be seen talking to you, what did you say? A. I said, "Det. Sgt. Wild will be along shortly. You can sit in Mr. Barton's car if you wish", and he said "All right".

Q. He said "All right"? A. Yes.

Q. Did he indeed get in Mr. Barton's car? A. Yes. Mr. Barton unlocked the nearside front door of his motor vehicle, opened it, and unlocked the rear door, which I opened. Mr. Vojinovic entered the vehicle and had not seated himself properly when Det. Sgt. Wild pulled up behind us.

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Q. You mean a car with Det. Sgt. Wild? A. Yes.

Q. Did you say something to Vojinovic when you saw Det. Sgt. Wild arrive in the police car? A. Yes.

Q. What did you say? A. I said "You can come with us now. Our car is here, behind us".

Q. Did you at any time at all touch this man Vojinovic on this night? A. No, there was no -

Q. In any way? A. No.

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Q. Did not help him into the car? A. No. I opened the door. But I stood very close to him at all times.

Q. Did you twist his arm behind his back? A. No.

Q. Vojinovic, you have told us, got out of Barton's car, did he? A. Yes.

Q. And what did he do? A. Prior to going back to the police car, I said to Mr. Barton "We are going back to the C.I.B." 10

Q. Yes? A. I then walked back with Vojinovic to the Police Car, opened the rear nearside door, and Vojinovic entered the Police Car.

Q. Did you say anything to Mr. Wild? A. Yes.

Q. What did you say? A. I said to Det. Sgt. Wild "This is Alec Vojinovic. He is the Alec who rang Mr. Barton."

Q. Now, you got into the Police Car, too, did you? A. Yes.

Q. And you went back to the C.I.B.? A. Yes. 20

Q. And at the C.I.B. I think you and Det. Wild interviewed Vojinovic, is that right? A. Yes, that is right.

Q. Will you have a look at this document, Exhibit "D", and just tell me if that is the record of interview that you took on that night?

A. Yes, that is the record of interview that I typed on that night.

Q. That is with Det. Sgt. Wild asking questions, and you typing the questions and the answers? A. Yes. 30

Q. That was the evening of the 8th, I think?
A. Yes.

Q. Now I want to take you to the 9th January. On 9th January, did you see Mr. Barton at all?
A. No.

Q. And I think you had a look at your diary for the 9th, did you? A. Yes.

Q. We will have the opportunity of having another look. When did you next see Mr. Barton? A. On the morning of the 11th. 40

Q. About what time? A. Approximately 9.30 a.m.

Q. Whereabouts did you see him? A. At the Safe Squad office at the C.I.B.

Q. Were you there with anybody? A. Yes, I was with Det. Sgt. Wild.

Q. And someone else? A. When Mr. Barton and his son arrived.

Q. Can you remember who said what to whom?

A. There was some conversation. In my own words I can recall Det. Sgt. Wild saying -

Q. To whom? A. To Mr. Barton Snr. I can recall him saying "From my inquiries and in my opinion Vojinovic has attempted to create a set of circumstances whereby he would place you and the lives of your family in fear and obtain money from you. He has admitted committing similar offences overseas." 10

Q. Do you remember Mr. Barton saying anything in reply to this? A. Mr. Barton said "That could be right, but I would like to see the matter cleared up."

Q. Do you remember Mr. Barton saying anything else? A. Mr. Barton said to Det. Sgt. Wild, "I would like to make some inquiries about purchasing a firearm".

Q. Now, did he use that word? A. I cannot recall whether it was firearm, pistol or revolver. 20

Q. Certainly a firearm is what you gathered?
A. Yes. I recall Sgt. Wild most strenuously saying "I strongly advise you against buying any sort of firearm".

Q. Did you stay any longer at this interview?
A. No. I left and went to the Central Court - Central Police Station, and then to the Court.

Q. This is the 11th January? A. Yes.

Q. Now later on that day, did you see anybody that you had seen earlier in the day? About 1.30 p.m. that day, Mr. Barton Jnr. arrived at the C.I.B. 30

Q. He came in to see you? A. Yes.

Q. When I say that, he came in to the room you were in? A. Yes.

Q. Did he say something to you? A. He said "Dad discussed with Det. Sgt. Wild about buying a gun, and we have decided to buy a rifle."

Q. What did you say? A. I said, "I can't see the necessity under the circumstances." 40

Q. And what did Mr. Barton's son say? A. Mr. Barton's son said "Dad has definitely said that he wants to buy a rifle, and I have got to do as he tells me. Would you help me to buy one?", and I agreed.

Q. You said "Yes", or something to that effect?
A. Yes.

Q. All right. Did you take him somewhere? A. Yes, I took him to Smith's Sports Store in George Street, near Taylor Square. (Sic). 50

Q. While there did he buy a rifle? A. Yes.

HIS HONOUR: Q. George St. near Taylor Square?

A. Near Railway Square. I am sorry.

MR. GOLDSTEIN: Q. How did you get to Railway Square?

A. In Mr. Barton's car, the white Mercedes.

Q. And whilst you were there, I think what happened? A. Well, I introduced Mr. Barton Jnr. to a salesman there - I don't know the salesman's name - and told him that he wished to purchase a rifle. Then Mr. Barton Jnr. was shown a number of rifles - three or four, if my memory serves me right - and I noticed, although I did not comment, that he bought the dearest one.

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Q. You just let him go ahead and buy the rifle?

A. Yes. It was his money.

Q. His money - his rifle? A. Yes.

Q. Did he receive any instructions at the store in the use of the weapon? A. None whatsoever.

Q. After you left the store did you say something to him? A. I was concerned at that stage, and I said to him "Have you any knowledge whatsoever of the use of this weapon?" - and he said -

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Q. Yes. A. He said "None". I don't even know how to load it. Will you show me how it works?"

Q. Did you take him somewhere? A. Yes, I took him back to the C.I.B.

Q. Yes. A. I then took him to the safest spot which I could think of, which was one of two ranges at the C.I.B. which is not used very often.

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Q. It is a pistol range? A. Yes.

Q. Yes. A. And there, to the best of my ability, I showed him or indicated to him safety precautions - cleaning and loading the weapon. He did in fact fire some shots out of the weapon.

Q. I am sorry, while at Smith's Sports Store, did he buy anything else, apart from the rifle?

A. Yes.

Q. What else did he buy, apart from the rifle?
A. He bought some ammunition. What stuck in my mind at that stage, having my knowledge of weapons, was that he received no cleaning gear.

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Q. He did not get any cleaning equipment? A. No.

Q. That is what stuck in your mind? A. Yes.

Q. How you are back at the Police Pistol Range. You have showed him some safety precautions. You showed him a bit about how to clean it, and how to load it, and let him fire some shots? A. Yes.

Q. From the rifle? A. Yes.

Q. How many? A. Between 10 and 20. It would not be any more.

Q. Did you suggest this to him, or he to you?
A. He suggested that he be allowed to fire one or two shots. When he fired these one or two shots, it was quite obvious to me that he was very frightened of the weapon, and I am of the opinion that any person who is frightened of a weapon should not have one. But there was nothing I could do about it. So to set him at ease, I allowed him to fire a few more shots, but there would not have been any more than 20. 10

Q. Any possibility that there were 200? A. Absolutely not.

Q. Did he fire off your pistol? A. Definitely not.

Q. Did he fire off any weapon other than the gun he bought? A. No. There were no other weapons there. 20

Q. After he fired off these shots what did you do? A. I took him back to the Safe Squad office, where I said to him "This is a very lethal weapon. I would suggest, with your experience, to leave the gun in one part of the house, and the ammunition in another part", and I supplied him with a piece of brown paper.

Q. Where did you get that? Where did you get the paper from? A. It was on top of one of the lockers at the C.I.B. It is on issue to all sections. I got him the brown paper, in which he wrapped the gun. 30

Q. Did you see what he did with the ammunition?
A. He put the ammunition in his pocket, because I told him to keep it separated.

Q. What did the two of you then do? A. I walked out into Campbell Street, with him, where he placed the weapon in the boot of the car, and after some conversation regarding miscellaneous matters he drove away. 40

Q. Now in between that date - that is to say, 11th January - and the 18th January, did you see or hear from Mr. Barton at all? A. I cannot recall. He may have rung me, but I cannot recall.

Q. I will take you to the 18th January 1967? A. Yes.

Q. Did you hear from or see anybody on this day?
A. Yes, on that day I was told by Det. Sgt. Wild that he had interviewed the man Hume, and after 2 p.m. on that day, I went to Mr. Barton's office at Landmark Corporation, 109 Pitt Street. 50

Q. Did you see Mr. Barton? A. Yes.

Q. What did you say to him? A. I said to Mr. Barton "Det. Sgt. Wild has interviewed Hume and has confirmed his suspicion about Vojinovic".

Q. What did Mr. Barton say? A. Mr. Barton said, "That is very good. But are you going to interview Vojinovic again?" I said "That is a matter for Sgt. Wild."

Q. Did Mr. Barton then say something? A. Mr. Barton then said to me "I have some business dealings with Mr. Armstrong today, and they seem to be going off very well." 10

Q. And you then left, did you? A. Yes.

Q. Do you know where you went? A. I beg your pardon?

Q. Do you know where you went? A. Yes, I went to an arson inquiry in Kent Street.

Q. And that is in your diary? A. Yes.

Q. All right. Well now, that was about two o'clock on the 18th. Did you hear again from Mr. Barton on that day? A. After five o'clock on that day Mr. Barton rang me at the Safe Squad Office at the C.I.B., and with other conversation he said to me "I am very happy. My business dealings with Mr. Armstrong have gone off all right." 20

Q. Did you talk to anybody about this conversation? A. I later told Det. Sgt. Wild about it.

(Further hearing adjourned to 10 a.m., on Thursday, 8th August, 1968).

BARTON -v- ARMSTRONG & ORS.

TWENTY-FIRST DAY: THURSDAY, 8TH AUGUST, 1968.

ALBERT GEORGE FOLLINGTON

On former oath:

HIS HONOUR: Q. You are still on your oath, Det. Follington. A. Yes.

MR. GOLDSTEIN: Q. Det. Follington, yesterday I think we made a few mentions of your dairy? A. Yes.

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Q. You have your diary with you at the moment covering the period about which you were examined yesterday? A. Yes.

MR. GOLDSTEIN: I tender Det. Follington's diary so far as these entries are concerned: 8th January 1967, 10th January 1967, 11th January 1967 and 18th January 1967.

HIS HONOUR: I understand there is a photostat copy in court. Are you agreeable to that being tendered in lieu of the original entries?

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MR. GOLDSTEIN: Yes.

MR. GRUZMAN: Yes.

(Photostat copy of diary of Const. Follington of 8th, 10th, 11th and 18th January 1967 tendered and marked Exhibit 53).

MR. GOLDSTEIN: A. Detective, yesterday afternoon I was asking you about some events which happened on 18th January 1967? A. Yes.

Q. Just before I go on any further, I want to go back to the evening of the 8th, that is, the Sunday evening, opposite St. Vincents Hospital. A. Yes.

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Q. At any time when you were there, apart from seeing Mr. Barton and this man Vojinovic and Det. Wild, did you see anybody else you knew? A. No.

Q. Did you see anybody else - did you notice anybody else? A. There were other people in the vicinity.

Q. Anybody with a beard? A. No, not that I noticed.

Q. Or a stick? A. No.

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Q. I was asking you about the 18th January. I want to take you up to 3rd November 1967. Did anything happen on that day? A. On 3rd November 1967 I received a telephone call from Mr. Barton. He said -

Q. I am sorry, what time of the day was that?
A. It was some time in the morning. I don't know

the exact time. Mr. Barton said to me "I have got something to discuss with you. I don't want to talk to you over the phone. Would you come out and see me?" I agreed to this. I went out there shortly after 2 p.m. on that day.

Q. Is there an entry in your diary about this?

A. About the visit, yes.

(Photostat copy of entry in Det. Follington's diary for 3rd November 1967 tendered and admitted as part of Exhibit 53).

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Q. You told us that you went to Mr. Barton's at about 2 o'clock. A. Some time after 2 o'clock.

Q. What happened then? A. On arrival at Mr. Barton's home I was met at the door by a lady - I don't know who the lady was - and I was then directed down to the swimming-pool where Mr. Barton was seated on a chair, and I had a conversation with him.

Q. Will you tell us this conversation? A. To the best of my recollection, in my own words, Mr. Barton said "I am thinking of taking some action against Mr. Armstrong. Have you interviewed Vojinovic yet?" I said, "No. As far as I know he is still in Melbourne, and the inquiry is just the same." Mr. Barton said "Who has got all the papers in this matter?" I said "Det. Sgt. Wild would have them, to the best of my knowledge." Mr. Barton said "Something was said in Melbourne at the court by Alec. How can I get those papers?" I said "You will have to apply to the authorities in Melbourne. I don't know the procedure down there." Mr. Barton said, "Would you see my solicitor, Mr. Bowen? He has chambers in Castlereagh Street." I said "I can't see him in the next week, and then I go on night work, so it won't be for some time." He said "Where do you live?" I said "At Randwick". He said "Mr. Bowen has got chambers at Double Bay. Will you see him there?" I said "Yes, but leave it for a week or two." Mr. Barton said "Well, I will make the arrangements, and I will ring you."

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Q. What did you do then? A. I left shortly after that. There was other conversation which I cannot recall.

Q. All right. Now, did you later hear from anybody? A. Two or three days later - it could be more - I received a telephone call from Mr. Barton. He said that he had made an appointment for the afternoon of 14th November.

Q. On the afternoon of the 14th did you do anything? A. Yes, I went to Double Bay by appointment with Mr. Barton.

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Q. Did you meet anyone? A. I met him there, yes.

Q. Was anybody with you? A. Yes, my wife

accompanied me down there, but she was not with me when Mr. Barton arrived.

Q. You say you met Mr. Barton there? A. Yes.

Q. Whereabouts? A. I am not sure of the name of the street, but it is on the corner of New South Head Road and Bellevue Hill Road, on the opposite side of the intersection. I think it is Cross Street, but I would not be sure.

Q. You think it is Cross Street? A. Yes. I am not quite sure of the name of the street. 10

Q. You met Mr. Barton. What was said? A. Mr. Barton said "We are a bit early to see Mr. Bowen. We will go and have a cup of coffee." With that I walked around - I agreed to this, of course, and I walked around with Mr. Barton to Knox Street where I had a cup of coffee with him.

Q. Whilst having the cup of coffee was there any conversation? A. There was a fair amount of conversation. 20

Q. Do you remember any particular parts of the conversation? A. I recall Mr. Barton saying "Do you remember in February you rang me and told me that I should go into hiding again, as my life was in danger?"

Q. What did you say? A. I said "You are mistaken." I said "There was no suggestion of your going into hiding or your life was in danger. This all happened in January."

Q. Can you remember any more conversation at the coffee shop in Knox Street? A. There was conversation regarding Landmark Corporation, which Mr. Barton told me was going very well, and also conversation concerning his son. 30

Q. About his son? A. Yes.

Q. All right. Well, what did you do then? A. We remained at the coffee shop for some short time, and went around to Mr. Bowen's office, where we saw Mr. Bowen.

Q. Who was present when you saw Mr. Bowen? A. Only Mr. Bowen, Mr. Barton and myself. 40

Q. And there was some conversation? A. Yes.

Q. Now, how long do you think you were there at the office? A. I cannot recall exactly but it would not be any longer than half an hour.

Q. Then did you leave? A. Yes.

Q. Did anybody leave with you? A. Mr. Barton.

Q. Mr. Barton left with you? A. Yes.

Q. Where did you go - the two of you? A. I

walked down with Mr. Barton to his car, and his car was parked near mine in a parking area across from Mr. Bowen's office, and I stood there talking to him for some short time, and I last saw Mr. Barton driving down New South Head Road towards the city.

Q. Now, all that happened on 14th November 1967? A. Yes.

Q. Between 14th November 1967 and February this year, did you see or talk to Mr. Barton? A. No. 10

Q. Now, there has been some evidence given, Constable, and I want to take you over the transcript, and I will read bits of it to you and ask you if you agree with it. The first section I want to deal with is on page 40 of the transcript. Detective, I will read this passage to you. I want you to listen to it in its context, and I will ask you some bits about it. A. Yes.

Q. Mr. Barton was being asked some questions by Mr. Gruzman about this meeting in January at the C.I.B. when Det. Lendrum was there? A. Yes. 20

Q. He was asked "Did you go to an office where Superintendent Lendrum was?" and he answered: "Mr. Muir Q.C. went to Mr. Lendrum and he called us into a big office - I think it was the office of Mr. Blissett who was the head of the C.I.B. then - and Mr. Lendrum called in Sgt. Wild and Det. Follington and asked me what it is all about. First Fred Millar introduced him with himself - he said that he knew Mr. Armstrong very well, he had been on the Board with Mr. Armstrong in Australian Factors Ltd. and he said that he knew this is a serious matter because he has been threatened by Mr. Armstrong himself. Then I told Mr. Lendrum what happened on Saturday afternoon from 3 o'clock onwards till I left the man at the Rex Hotel and then he said 'This is a serious matter and we have to organise the dogs and we have to catch that man.' I asked him what 'the dogs' mean and he said the men is all different disguises, the policemen in all different disguises will be on the spot, and he then said that Det. Follington should come to me with my home and wait for the telephone from the man who called himself Alec." 30 40

Just taking it up to that stage, Mr. Follington, do you remember Mr. Millar saying anything about he, Mr. Millar, having been threatened by Mr. Armstrong?

A. No.

Q. Now, I realise you were only the junior detective on the spot, but do you think you would have remembered this if it had been said? A. Yes, definitely for this reason, that had it been said it would have been some corroboration of Mr. Barton's story. 50

Q. Mr. Barton goes on to say that Mr. Lendrum said "This is a serious matter, and we have to organise the

dogs and we have to catch that man" Do you remember Mr. Lendrum saying anything about "dogs"? A. No, I am sure Mr. Lendrum would not have referred to them in that manner in front of them.

Q. Are you sure you did not hear anything like that? A. I definitely did not.

Q. Mr. Barton says that he asked Mr. Lendrum what "the dogs" meant, and he says that Mr. Lendrum said "The men is all different disguises, the policemen in all different disguises will be on the spot." Did he say anything about men in all different disguises? A. No.

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Q. You don't by any chance remember Mr. Lendrum talking about a person - someone to be with a beard and a stick, or anything like that? A. No.

Q. Mr. Barton goes on to say "We arrived to my home with Mr. Follington about a quarter to one and my wife has informed me a man already rang about 11 o'clock and he said he would ring again, and as I have been instructed by Mr. Follington that first I have to ask the man who is the detective who he was referring to on the previous night -" Just dealing with this passage, do you remember when you got to Mr. Barton's home whether Mrs. Barton told anybody in your presence that someone had rung about 11 o'clock? A. Not in my presence.

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Q. Mr. Barton says "...I have been instructed by Mr. Follington that I first have to ask the man...the previous night." Did you so instruct Mr. Barton? A. No. He had told me who the man was. He had told me who he was.

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Q. Who the detective was? A. Who the detective was, yes.

Q. Mr. Barton had told you? A. Yes.

HIS HONOUR: Q. Did that identify a particular detective to you? A. One of two.

Q. There were two of the same name, weren't there? A. At the same station.

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Q. Had Barton told you which one of the two it was? A. No.

Q. So that you didn't know which detective it was? A. No. I associated it immediately with one of two detectives stationed at the same station.

Q. It could have been either one of those two?
A. That is right.

Q. Barton in other words did not identify to you which detective it was? A. Which of the two, no.

Q. Were not you concerned to know which of the two it was? A. Not at that stage.

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MR. GOLDSTEIN: Q. Mr. Barton was asked "Did you say that he rang again?" and he answered "Before he rang, Mr. Follington instructed me what to say. He was asked "Yes?" and he answered "First I have to press him for the name of the detective he was supposed to bring along and also I have to tell him that I have guests and I cannot see him before 7 o'clock at night, because according to the C.I.B. this will be the best time to catch him." Just dealing with this passage, before he rang again did you instruct him what to say? A. This is before 3 o'clock? 10

Q. Before 3 o'clock? A. No.

Q. Did you instruct him to say that he had guests? A. No.

Q. Did you instruct him to say, or, rather, did you tell Mr. Barton that, so far as you saw the situation, after 7 o'clock would be the best time to catch the man who was ringing? A. No. 20

Q. Mr. Barton then goes on to say "At 1 o'clock the man called Alec rang and I said to him 'I like to know who is the detective who I supposed to meet.' Mr. Follington was listening on the extension line. And he said 'The name of the detective is Mackie,' and he told me that he could not contact him yet because he could not find him; he rang the Darlington police two or three times, and could not contact Mackie yet, and I told him that it doesn't matter because I have guests and I can't go and see Mackie and him before 7 o'clock and he said that is all right, by that time he will have Mackie with him and I should meet him at the King's Cross front of the hospital and he gave us a corner, the name of two streets which was not a corner that Mr. Follington worked it out that is should be on the Riley Street corner. Mr. Follington rang the C.I.B. He informed-" 30

We will go back over that previous section. Mr. Barton said "First I have to press him for the name of the detective." Did you tell him that. 40
A. No.

Q. Did Mr. Barton say to him - did the man called Alec ring at 1 o'clock? A. No.

Q. Did Mr. Barton say to him "I like to know who is the detective who I supposed to meet." A. No.

Q. Or words to that effect? A. No.

Q. Did the man called Alec say "The name of the detective is Mackie", or words to that effect? A. No. At 3 p.m. - 50

Q. This is during the first conversation. A. At 3 p.m. he said "I have been unable to contact Mr. Mackie. I will ring him again and contact you at 6 p.m."

Q. Did the man called Alec say that he had rung

the Darlington Police two or three times, and could not get in touch with Mackie yet? A. He could have said that, but I can't recall it.

Q. Did Mr. Barton say to tell him that it didn't matter because he had guests? A. No, I recall nothing of guests.

Q. Did Mr. Barton say that he could not go and see Mackie and Vojinovic before 7 o'clock, or anything like that? A. No. 10

Q. Did the man called Alec say "That is all right by that time I will have Mackie with me", or anything like that? A. No.

Q. Did the man called Alec say to Mr. Barton that Mr. Barton should meet him at Kings Cross in front of the hospital, or anything like that? A. I beg your pardon. Could you repeat that?

Q. Did the man called - did you voice say to Mr. Barton that Mr. Barton should meet the man he was speaking to at Kings Cross in front of the hospital? A. No. Mr. Barton suggested that to Vojinovic at 6.15. 20

Q. At 3 o'clock you say the man who was speaking to Mr. Barton did not suggest anything of this sort? A. No.

Q. Mr. Barton goes on to say "And he gave us a corner, the name of two streets, which was not a corner." During this first, or indeed, during either of the two conversations on this day did the man Vojinovic, as we know him to be - did he suggest to Mr. Barton any particular place where Mr. Barton should meet him? A. No, Vojinovic never suggested anything. 30

Q. Did you work out that the two streets did not form a corner for Mr. Barton during that afternoon? A. No.

Q. Now, the next question Mr. Barton was asked was "Just before you go on from that conversation, I would like you to think whether anything else was said in that conversation? A. Oh yes Alec said that I should bring £500 with me and I has been instructed by Mr. Lendrum and Follington again that I should promise him that I bring the money with me, and I told him I will have the money with me." 40

Just dealing with that, during the course of either of these two conversations on this afternoon, did Alec - this man Vojinovic - say anything to Mr. Barton about bringing £500? A. No.

Q. Did you hear Mr. Barton being instructed by Mr. Lendrum to take money with him? A. No. 50

HIS HONOUR: Mr. Goldstein, there is a major distinction between Mr. Barton being advised to promise to give money, which seems to fall into quite a

different category from Mr. Barton being advised to pay money over.

MR. GOLDSTEIN: Q. Did you hear Mr. Lendrum advise Mr. Barton at any stage to promise money to this man Vojinovic? A. No.

Q. Did you advise Mr. Barton to promise money to Vojinovic? A. No.

Q. "What was the next thing that happened?", Mr. Barton was then asked, and he answered "The next thing is, 6.30 Mr. Follington was staying with us all afternoon and 6.30 I left in my car and my son went with Mr. Follington in the other car to the spot which has been nominated by that man. Mr. Follington before he left warned me not to let anybody get inside of my car because that dangerous; they wanted me to get outside from the car - that means they can deal with the man themselves." Did Mr. Barton leave at 6.30? A. In the vicinity of 6.30.

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Q. Was that the next thing that happened after the first phone call? A. After the first, no. At 6.15 p.m. there was a further phone call.

Q. Mr. Barton says "...in the other car to the spot which has been nominated by that man." Did you hear, during the course of either of these two conversations on that Sunday afternoon, a spot nominated by "that man"? that is, by Vojinovic? A. No.

Q. "Mr. Follington before we left warned me not to let anybody get inside of my car because that dangerous." Did you so warn Mr. Barton? A. No.

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Q. Mr. Barton says "They wanted me to get outside from the car - that means they can deal with the man themselves." Did you say anything like that to Mr. Barton, that you, the police, wanted to deal with the man yourselves? A. I may have told Mr. Barton that I would speak to the man, and we would interview him.

Q. Now Mr. Barton goes on to say "When I arrived at the corner Alec was already there. I wanted to open the car door and I get out from the car on the other side, the opposite side where the driving seat is, according to Mr. Follington's instructions, and the man walk to me and he said that 'I could not get in touch with Det. Mackie,' and then I see Mr. Follington in shirt - take his coat off - in shirt, was just walking behind the man, was about 10 feet away, and I went to my pocket and took out \$1,000, and I told him 'It doesn't matter if you haven't got the police because I get them myself', and at that time Follington grabbed both of his hands from the back. Then some other detectives came around and Mr. Follington told me to drive to the C.I.B. and he went to the car which was parked in the lane and my son was sitting in that other car when

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Mr. Follington, as he said, left his hardware." He was asked "What did that mean to you?" and he answered "Is gun and other equipment. And I drove to the C.I.B. and I have been met by Inspector or Superintendent Lendrum - I don't know what is his real rank."

Now, Mr. Barton says "When I arrived at the corner Alec was already there." Was that the situation? A. I could not say whether Vojinovic was there at the time when he arrived, but it was not long after that he walked up and spoke to Mr. Barton. 10

Q. Mr. Barton says "I wanted to open the car door and I get out from the car on the other side, the opposite side where the driving seat is, according to Mr. Follington's instructions." Did you instruct Mr. Barton as to getting out from the car on any particular side? A. No.

Q. "The man walk to me and he said that 'I could not get in touch with Det. Mackie'", This could have been said, I suppose? You were not there? 20
A. I was not there.

Q. "Then I see Mr. Follington in shirt - take his coat off - in shirt, was just walking behind the man, was about 10 feet away, and I went to my pocket and took out \$1,000." Now, at any stage did you see Mr. Barton take from his pocket - that is, when at any stage opposite St. Vincent's Hospital, did you see Mr. Barton take from his pocket \$1,000, or any sum of money? A. No. Nor did I take my coat off then. 30

Q. At that point of time? A. No. I did not have a coat on to take off.

Q. When did you take your coat off? A. Back in young Mr. Barton's car.

Q. That is up at the police station? A. Yes, opposite the police station, where Mr. Barton Jr. had his car parked. I had removed my coat there. 40

Q. Mr. Barton goes on to say that he said to Vojinovic "It doesn't matter if you haven't got the police because I have got them myself." Do you remember Mr. Barton saying anything of that sort, or did you hear anything said by Vojinovic to Mr. Barton? A. I heard Mr. Barton saying, not the exact words, but as near as I can remember, "I have the police here. You had better talk to them."

Q. Mr. Barton then says "At that time Follington grabbed both of his hands from the back". Did you grab both of Vojinovic's hands from the back? 50
A. No.

Q. Either of Vojinovic's hands from the back?
A. No.

Q. Did you grab Vojinovic? A. No.

Q. "Then some other detectives came around..." At any stage on this night opposite St. Vincent's Hospital were there more than two police at any stage? A. No, definitely not. Not to my knowledge. I did not see any. They were not connected with this inquiry.

Q. "Mr. Follington told me to drive to the C.I.B." That is right? A. Yes.

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Q. "...and he went to the car which was parked in the lane and my son was sitting in that other car when Mr. Follington, as he said, left his hardware." Now, when you told Mr. Barton to drive to the C.I.B. did you tell him anything about hardware? Did you use that expression? A. No.

Q. Or anything like that? A. No.

Q. Did you eventually go back to this car which was parked in the lane opposite the police station?
A. No.

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Q. No? A. No.

Q. When did you get your gun and coat and things back? A. It was returned to me at the C.I.B.

Q. Returned to you at the C.I.B.? A. Yes.

Q. By whom? A. I don't recall who brought it in to the Safe Squad Office, but it was returned to the office.

Q. So that you left the scene with whom? A. Det. Sgt. Wild and the man Vojinovic. We returned straight to the C.I.B.

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Q. Now, Mr. Barton was asked "What did that mean to you?" and he answered "Is gun and other equipment." You say you did not say anything about hardware? A. Definitely not.

Q. Did you say anything at all to Mr. Barton about having left your gun or your handcuffs or anything like that somewhere else? A. I can't recall.

Q. You can't recollect? A. No.

Q. Mr. Barton was asked this question: "What did that mean to you?" A. His gun and other equipment. And I drove to the C.I.B....what is his real rank."

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He was further asked "It is either Inspector or Superintendent you are not sure", and he answered "I am not sure..." and so on. Further down, on p. 41 Mr. Barton said "And about half an hour's time Mr. Lendrum told me that he now go inside..."

HIS HONOUR: There is no need to put this, is there, Mr. Goldstein?

MR. GOLDSTEIN: I would like to ask something about this, if I may.

HIS HONOUR: Very well.

MR. GOLDSTEIN Q: "And he spent about 10 minutes inside and came out and told me that Alec has admitted everything in the same line as my allegations has been made this morning." Did you yourself ever tell Mr. Lendrum on this night that Alec had admitted everything, or anything like that? 10
A. No.

Q. Did you hear Mr. Wild say anything like that to Mr. Lendrum? A. Not in my presence.

Q. Now, I want to take you about halfway down p. 42. Mr. Barton was asked this question "That is money to be passed on to Alec?" and he answered "To be passed on to Alec, yes. But he told me quite clearly that I don't need to do it; it is entirely up to my decision if I wanted to do it or not." That was in relation to Mr. Lendrum. I will go back and read you this passage. It starts about the top of p. 42. His Honour asked him this question "Is that what Insp. Lendrum said?" and Mr. Barton answered "Yes, exactly what he said." His Honour asked "Will you say it again, what Insp. Lendrum said to you?" and he said "Mr. Lendrum said to me that Alec has admitted everything in the line as my allegations has been made this morning, and then he said that I am in danger, I have to be very careful I don't expose myself, and he also told me that they will let Alec go on next morning because that is the only way how they are going to lead them to the principals, and Mr. Lendrum brought up the question of money again. He said he had no objection if I want to see that his man has been caught fast, that to help the C.I.B. I give some money to the C.I.B. He said it is entirely up to me. He said they has not got the facilities of this nature, but might help the case or might not - it is up to me if I do it or not. He also said if I want to know further what happened I should come to the C.I.B. next morning and I talk to Mr. Wild." His Honour asked "Did he mean to leave some banknotes there to be passed over?" and Mr. Barton answered "No." He just was referring to the fact that they are going to let Alec go to lead them into the principals and he said he has no objection if I give money to the C.I.B. to use it for the purpose that it was given to Alec, help him to have money till these men are caught." His Honour asked "That is money to be passed on to Alec?" and Mr. Barton answered "To be passed on to Alec, yes. But he told me quite clearly that I don't need to do it; it is entirely up to my decision if I wanted to do it or not." Mr. Barton said "Next morning at 9.30..." 20
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HIS HONOUR: Mr. Goldstein, I don't follow what you are doing. I am sorry to interrupt you. Why did you read to Det. Follington that passage you have just finished, which does not purport to have been said in his presence, or to have been brought to his notice? 60

MR. GOLDSTEIN: It does not, but if I simply read the passage to him which relates to him, which is the fifth paragraph down, the first time he is mentioned, it would not mean a great deal to him out of the context in which it originally stood.

HIS HONOUR: All right. No doubt you will direct attention to what it is you want him to answer, but I do not really think there is much point in reading to him what Mr. Lendrum is alleged to have said to Mr. Barton in his absence. He can neither confirm or deny it. 10

MR. GOLDSTEIN: The difficulty is, if I merely read the passage which refers to him, it does not mean anything.

HIS HONOUR: Well, it is a matter for you, Mr. Goldstein.

MR. GOLDSTEIN: Q. Now, Mr. Barton then goes on to say "Next morning at 9.30 I went to the C.I.B. and I see Det. Sgt. Wild and Det. Follington. I ask them what happened last night. Sgt. Wild said that Alec admitted everything and they let him go last night and he asked me if I am prepared to give him money to pass it over to Alec till he doing the service for the C.I.B." He was asked "Would you repeat that?" and he answered "To giving money to Sgt. Wild and Follington to be passed over to Alec till he help the C.I.B. to get them, to catch the people who hire him. I ask Sgt. Wild how much money he recommend and he said 'Oh, \$400 will do.' I went to my pocket and I gave \$400 to put it on the desk of Sgt. Wild in the presence of Follington and Wild". 20 30

Q. Next morning at 9.30 - that is to say, on the morning of the 9th - did Mr. Barton come to see you and Mr. Wild? A. No, I left the C.I.B. at 9.30 on that day.

Q. Did you see him at all on that following morning?
A. No.

Q. Did he ask you what happened last night on that morning - on the morning of the 9th? A. I never saw him, no. 40

Q. Did Sgt. Wild say to Mr. Barton on that morning, or at any time at all, that Alec - that is, Vojinovic - admitted everything? A. No, not to my knowledge.

Q. At any time at all? A. No.

Q. Did Sgt. Wild say to Mr. Barton on that morning, or at any time at all, so far as you know, that the police had let Vojinovic go "last night". Did you ever hear Mr. Wild say anything like that to Mr. Barton? A. No. We could have told him we let him go, because that was the actual fact. He did leave the C.I.B. 50

Q. Mr. Barton went on "...he ask me if I am prepared to give him money to pass it over to Alec till he doing the service for the C.I.B." Did you ever hear Sgt. Wild ask Mr. Barton for money at any time?
A. No, not at any time.

Q. He was asked "Would you repeat that?" and he replied "To giving money to Sgt. Wild and Follington to be passed over to Alec till he help the C.I.B. to get them, to catch the people who hire him." Did you ever hear Sgt. Wild say anything like that to Mr. Barton? A No. 10

Q. Did you ever say anything like that to Mr. Barton? A. No.

Q. "I ask Sgt. Wild how much money he recommend, and he said 'Oh, \$400 will do.'" Did you ever hear Sgt. Wild say anything like that to Mr. Barton?
A. No.

Q. Or Mr. Barton ask Sgt. Wild anything about a proper amount of money to hand over? A. There was conversation on the night of 8th January outside Darlinghurst police station where Mr. Barton said 'I have got some money here I would like to give to Alec for helping us,' and Det. Sgt. Wild said most emphatically "Under no circumstances give this man any money." 20

Q. Mr. Barton goes on to say "I went to my pocket and I gave \$\$\$00 to put it on desk of Sgt. Wild in the presence of Follington and Wild." Did you ever see Mr. Barton put \$400, or, for that matter, any amount of money on Sgt. Wild's desk?
A. No. 30

Q. Then Mr. Barton goes on to say "Then I ask him how far the interrogation of Alec went, and Sgt. Wild took out an interview from his drawer and said 'You can read it,' and I went through - I read Alec's statement what he made."

Now, on the morning of the 9th did you see Sgt. Wild give Mr. Barton any document to read?
A. No. 40

Q. Did you ever see Mr. Wild give Mr. Barton a record of interview taken from Vojinovic? A. No.

Q. Did you ever give it to him? A. No.

Q. At p. 45, about the middle of the page, Mr. Barton was asked "Yes, what did you do?" and he answered "I went to the C.I.B. on 11th January 1967." He was asked "Yes?" and he said "I went to the C.I.B., and I seen Sgt. Wild and Follington, and I asked Sgt. Wild that if he can get me a pistol licence what I can buy a pistol for self-defence, and Sgt. Wild rang the Chatswood police station because he said that Castlecrag belonged to the Chatswood police station and talked to the sergeant - I don't know his name - and after the conversation with the sergeant he 50

said I cannot get a licence in one day, but he advised me to buy a rifle, what I don't need any licence for, and then Mr. Wild said that Det. Follington will assist us to purchase a rifle. Then my son and myself and Mr. Follington got into my car and we drove to the end of George Street near to the Central Railway and on the way to the place where we finally bought the gun Mr. Follington informed me that they got Hume in and got an interview taken by Hume. I told Mr. Follington I would like to see that interview, and he said "No problem. As soon as we purchase the rifle you come back with me to the O.I.B. and I will show it to you." Now, the date Mr. Barton was referring to was 11th January 1967. He said that he went to the O.I.B. and "seen Sgt. Wild and Follington and I asked Sgt. Wild that if he can get me a pistol licence." Were you present when such a conversation took place? A. I was present when Sgt. Wild - I was present when Mr. Barton said "I would like to make some inquiries about purchasing a firearm. I cannot recall whether it was a pistol, revolver, or what.

Q. In your presence did Sgt. Wild ring the Chatswood Police Station? A. No.

Q. And talk to the licensing sergeant, so far as you could observe? A. No. When I left Mr. Barton was still with Sgt. Wild.

Q. Did you hear anything said by Sgt. Wild about a licence? Did you hear Sgt. Wild say anything about not needing a licence for a rifle? A. No.

Q. Did you hear Mr. Wild say anything about you helping Mr. Barton to purchase a rifle? A. No.

Q. Did he ever tell you to help Mr. Barton to purchase a rifle? A. No.

Q. Then Mr. Barton says "Then my son and myself and Mr. Follington got into my car and we drove to the end of George Street near to the Central Railway and on the way to the place where we finally bought the gun...." Now, did you and Mr. Barton and Mr. Barton's son on that day drive to the end of George Street? A. No. At 1.30 p.m. on that day Mr. Barton Jnr. and myself went, but not Mr. Barton Snr.

Q. Mr. Barton went on to say "We finally bought the gun." A. No.

Q. Who bought the gun? A. Young Mr. Barton.

Q. And who was present? A. Myself.

Q. Anybody else? A. There were a number of people in the shop.

Q. Mr. Barton Snr. - was he present? A. No.

Q. "Mr. Follington informed me that they got Hume in and got an interview taken by Hume."

Did you say this to him on 11th January? A. No.

Q. "I told Mr. Follington I would like to see that interview." Did he say such a thing to you on 11th January 1967? A. No.

Q. He said that you told him "No problem. As soon as we purchase the rifle you come back with me to the C.I.B. and I will show it to you." Did you say any such thing to Mr. Barton on 11th January? A. No.

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Q. Mr. Barton goes on to say "My son and Mr. Follington went to the shop, and about 15 minutes later came out with a rifle and some ammunition." Then there is something about his name. I will take you to the bottom of p. 45, where he was asked the question "You had told us that you went with Const. Follington and bought the gun and had some conversation with him, and after you got back in the car, or your son got back in the car with Follington and the gun, was something said. He answered "We went back to the C.I.B. and went to Sgt. Wild's office, and he was not there, and then Det. Follington went into a steel cabinet..." Just dealing with that passage, after you and young Mr. Barton had bought the gun did you go back to a car? A. Yes.

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Q. Was Mr. Barton in it? A. No.

Q. Did you have any conversation with him in the car after the purchase of the gun? Any conversation with Barton Snr.? A. No. He was not there.

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Q. Did you go back to the C.I.B., after the purchase of the gun, with Mr. Barton Snr.? A. I went back to the C.I.B., but not with Mr. Barton Snr.

Q. Did you go to Sgt. Wild's office with Mr. Barton Snr. on 11th January and take something from a steel cabinet? A. No.

Q. At p. 46 of the transcript Mr. Barton was asked this question "What did happen? You say you were in an office here?" and he answered "Yes. We went - Det. Follington went to a steel cabinet and took out a brown folder which had big letters marked 'Barton & Armstrong' and took it to Sgt. Wild's desk, opened it up, took out a document." Did you do any such thing on 11th January 1967? A. No.

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Q. I want to take you now to p. 49, at the very bottom of the page. Mr. Barton was asked this question "You gave evidence yesterday that Det. Follington went to a steel cabinet and took out a brown folder which had big letters marked 'Barton' and 'Armstrong', to which he answered 'Yes'. He was asked "Would you have a look at this document I now show to you, and tell me have you seen that document or object before?" He answered "Yes, I have seen it." He was asked "Where have you seen that

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before?" and he answered: "The first time I seen it at the C.I.B. on 11th January 1966-1967." Now, I show you Exhibit "Q". That is the document that is being referred to. Did you ever show that to Mr. Barton? A. No. It was not in my possession to show it to him, I made that out. That is my writing on it. I made that out on 8th January.

Q. You made it out on 8th January 1967? A. Yes.

Q. Did you ever take it from Mr. Wild's locker, or anyone else's, and show it to Mr. Barton? A. No. I can't get in to Mr. Wild's locker. 10

Q. Mr. Barton was asked these questions: "Q. Is that the document - the object - which you described as a brown folder which had big letters marked 'Barton' and 'Armstrong'? A. Yes. Q. You said in your evidence that Mr. Follington took it to Sgt. Wild's desk, opened it up and took out a document? A. Yes. Q. Would you tell his Honour - would you describe precisely the document to which you refer as having been taken from that folder? A. Foolscap white -" On 11th January 1967, or, indeed, at any time did you take a foolscap document from that folder and show it to Mr. Barton? A. No. 20

Q. Or any other document, foolscap or otherwise?
A. No.

Q. A little further down on page 50 Mr. Barton was asked these questions: "Q. I will not ask you any more questions on this subject matter at this stage, but I think that you left the C.I.B. and where did you and your son respectively go? A. Mr. Follington then said that he would like to take my son to the police rifle range and train him in how to use the gun which has been purchased on the same morning, and I have agreed, and I went back to the Landmark Corporation with a cab and my son used my car and went with Mr. Follington to a rifle range, and later I learned from my son he spent all the afternoon and was shooting some 200 bullets." So far as the answer "Mr. Follington then said he would like to take my son to the police rifle range," on that date did you tell Mr. Barton Snr. that you wanted to take his son to the police rifle range? A. No. 30 40

Q. Or any sort of shooting range? A. No.

Q. Did you ever tell Mr. Barton you wanted to train his son in the use of a gun? A. No.

Q. Mr. Barton says "I went back to the Landmark Corporation" presumably from the C.I.B. Did he leave from the C.I.B. on that day, the 11th? A. No, he was still with Det. Sgt. Wild when I left in the morning. 50

Q. Did the son shoot off anything like 200 bullets? A. No, that is ridiculous.

Q. I want to take you to page 54, at the bottom of the page. My friend asked Mr. Earton these questions: "You referred in your evidence to a document taken from a folder by Det. Follington, and read by you? A. Yes. Q. First of all, what size was the paper? A. Foolscap size. Q. Foolscap size? A. Yes. Q. How many pages were comprised in it? A. Five or six pages. Q. Did you recognise any of the handwriting in the document? A. Yes. Q. Whose handwriting was that? A. Frederick Hume. Q. Did the handwriting that you refer to appear on the document once, or more than once? A. It was on every page. Q. It was on every page? A. Yes. Q. I don't want you to tell me the contents, but from the form of the document was it a document with large paragraphs, or with small paragraphs such as question and answer form? A. It was questions and answers. Q. Did the document have a title to it? A. Yes. Q. Don't answer this for the moment. What was the title on the document? A. Record of interview between Det. Sgt. Wild and Frederick Hume taken at the C.I.B. Sydney. Q. Just one other matter. You have mentioned that the contents of the document were in a question and answer form? A. Yes. Q. Was there - I don't want to deal with what it is, but in any part of the document was there something other than writing in the form of questions and answers? A. Yes. Q. What was that? A. It was a drawing. Q. A drawing? A. Yes. Q. Approximately how much of a page did the drawing occupy? A. About 40 percent of a page. Q. On the top or on the bottom? A. On the bottom."

Did you ever show Mr. Barton a foolscap document? A. No.

Q. Did you show him any sort of document?
A. No.

Q. Did you show him any five or six-paged document? A. No. 40

Q. Did you ever show him a document with writing which, so far as you know, was Frederick Hume's writing? A. No.

Q. Did you ever show him a document with the words at the bottom, "F. Hume" or "Frederick Hume"?
A. No.

Q. Did you ever show him any record of interview?
A. No.

Q. Did you ever show him a document with a drawing on it? A. No. 50

Q. Have you ever seen a record of interview with a drawing on it? A. No.

Q. Say that you are taking a record of interview from a suspect, or anybody at all, for that matter, and he says "I have left everything in such-and-such a place, I want to draw you a sketch." As a matter of practice is the sketch put in the body of the record of interview? A. It depends entirely on each and every officer, but I myself would have obtained a separate piece of paper on which I would let him draw his plan. I would then get him to sign it, and I would witness it. 10

Q. That is what you would do? A. Yes. I have never seen a plan drawn by an accused person or a person in custody and attached to a record of interview.

Q. That is, in the body of the record of interview? A. Attached.

Q. So far as the Barton and Armstrong papers are concerned - this folder - whose custody was it in? A. It is Det. Sgt. Wild's. 20

Q. Was there any period of time when it was not in his custody? A. Yes. Det. Sgt. Wild went to Tasmania. Before he left he -

Q. When was it he went to Tasmania? A. I don't know the exact date, but it would have been in the vicinity of 10th January this year.

Q. This year? A. Yes. I was given that folder, together with the papers that were in it.

Q. Apart from that time have you ever had custody of the papers in this matter? A. None whatsoever. 30

HIS HONOUR: Q. What were the papers in it when it was given to your custody?

HIS HONOUR: Mr. Gruzman, would you prefer that I leave this?

MR. GRUZMAN: No, I am happy for your Honour to ask it.

MR. GOLDSTEIN: Q. What were the papers in it when given to your custody? A. To the best of my recollection there were a number of records of interviews - 40 that is, original and copies - of that with Vojinovic, but I cannot recall what else was in it. There may have been paper. I don't know. It was only left with me just in case it was required at the Commissioner's office by someone there.

Q. At page 105 Mr. Barton was asked these questions by Mr. Staff: "Q. And you, Mr. Barton, went with your

son to buy a rifle, you tell us? A. Yes. Q. And your son you allowed to go off to learn to handle a rifle? A. Yes.

Did Mr. Barton go with his son and you to buy the rifle? A. Definitely not.

Q. Then he was asked this question, a bit further down: "Q. Your first reaction was to allow your son to protect you, was it, and not look after yourself?

A. No, it just happened that when we went to the C.I.B. and the rifle has been purchased and Follington said he will take out Tommy to the rifle range and teach him how to use the gun. It just happened. It has not been planned." Did you volunteer to take Tommy to any rifle range in Mr. Barton's presence? A. No. 10

Q. Did you volunteer to take Tommy to any rifle range? A. No rifle range.

Q. Did you volunteer to take Tommy to any rifle range in Mr. Barton's presence? A. No, no rifle range. 20

Q. In Mr. Barton's presence did you volunteer to teach Tommy how to use a gun? A. Mr. Barton Snr., no.

Q. I want to take you to page 203A. Mr. Barton was asked this question: "Q. That Mr. Millar then said that that statement had not been taken seriously? A. I don't recollect it." Do you recollect one way or another whether Mr. Millar said that? A. No. 30

Q. This is on the morning of the 8th? A. No.

Q. About halfway down the page Mr. Barton was asked this question: "What I want to put to you is that at this interview at the C.I.B. Mr. Millar said that that conversation, or the account of that conversation given to you had not been taken seriously." You don't remember one way or another? A. No.

Q. Then he was asked this question; near the bottom of the page: "Did Mr. Millar then go on to say that these discussions had resulted in a discussion last Wednesday in which an agreement by way of compromise had been reached? A. No." Do you recall anything of that kind being said by Mr. Millar, that there had been a discussion and there had been a compromise reached "last Wednesday", which is the Wednesday prior to the Sunday? A. No, I don't recall that. 40

Q. You don't recall? A. No.

Q. The next passage is on p. 205. Mr. Staff asked Mr. Barton these questions: "Q. You wanted to pay money to the man in Queensland? A. No. Q. The first time that any discussion with any police officer, in relation to such a subject, took place, was at the Darlinghurst police station on Sunday evening, wasn't it? A. Not in Darlinghurst police station. It was at 50

the C.I.B. on Sunday night. A. You went to the Darlinghurst police station - A. No. Q. - before you met the man from Queensland on the Sunday evening? A. No. I went to the C.I.B. Q. You are quite sure you did not go near Darlinghurst police station on that evening, 8th January? A. I do not know where the Darlinghurst police station is, therefore I cannot be specific, but I do not go near to it. Q. Did you go to a police station at Darlinghurst? A. No." 10

Now, so far as this discussion about money with Mr. Barton first, he was asked "The first time that any discussion with any police officer, in relation to such a subject, took place, was at the Darlinghurst police station on Sunday evening, wasn't it?" and he answered: "Not in Darlinghurst police station. It was at the C.I.B. on Sunday night." What have you got to say about that? A. The only conversation about money that I can recollect was outside the Darlinghurst police station. 20

Q. When? A. On the night of the 8th.

Q. That was on the Sunday? A. Yes.

Q. "Q. You went to the Darlinghurst police station - A. No." Did Mr. Barton Snr, go to the Darlinghurst police station? A. Yes.

Q. "Q. ~ before you met the man from Queensland on the Sunday evening? A. No. I went to the C.I.B.?" A. He did. 30

Q. Did Mr. Barton go to the C.I.B. on that evening before he met the man from Queensland? A. I don't know.

Q. You don't know? A. I was not with him.

Q. What lapse of time was there between your arriving at Darlinghurst? Did Mr. Barton get there before you? A. He was with Det. Sgt. Wild, and I walked across from Forbes Street.

Q. Did it take you a long time to get from Castlecrag? A. Not a great length of time. I could not say if it was a long time for the journey, because I am not familiar with coming in from that direction. But not a great length of time. 40

Q. "You are quite sure you did not go near Darlinghurst police station on that evening, 8th January? A. I don't know where the Darlinghurst police station is." Did Mr. Barton ever say to you he didn't know where the station was? A. No.

Q. Did he seek directions from you as to what street it was in, or anything like that? A. No. 50

Q. "Did you go to a police station at Darlinghurst? A. No." Is that true? A. Yes he did. He was outside the police station.

Q. On page 206 he was asked: "Q. Anywhere near Darlinghurst? A. I went to the Rex Hotel. Q. Do you regard that as a police station? A. No. You said 'Anywhere near'." Did Mr. Barton go near Darlinghurst police station? Or did he go to Darlinghurst on this Sunday evening? Did he go near Darlinghurst or did he go to Darlinghurst on this Sunday evening? A. On Sunday evening, 8th January 1967, he definitely went to the Darlinghurst police station and then he went to Victoria Street Darlinghurst, outside St. Vincent's Hospital. 10

Q. On page 206 Mr. Barton was asked this: "Q. I said did you go to a police station anywhere near Darlinghurst? A. I said 'No. The only place I went was to the C.I.B.'" Is it true that the only place Mr. Barton went on that evening, so far as you are aware, was the C.I.B.? A. No.

Q. He was asked: "Q. Then it would be quite untrue, would it, to say that you went on the Sunday evening, before you met the man from Queensland, to the Darlinghurst police station? A. Yes. This would be quite untrue." You say that he was there? A. Definitely was there. 20

Q. He was asked: "Q. And from there you went to a place opposite St. Vincent's Hospital, on the corner of Burton Street? A. I went straight from home, on instruction of Mr. Follington, who had been designated by Insp. Lendrum to give me instructions what to do all day on Sunday. He was with me at the C.I.B. He came home with me and he stayed with me when I left to the place where I met the witness from Queensland." Now, Mr. Barton says that he went straight from home on instructions from you. That is true enough, isn't it? A. Yes. 30

Q. Where did you instruct him to go to?
A. Darlinghurst police station.

Q. Did you go with him to the C.I.B. prior to his meeting the man from Queensland? A. No.

Q. I want to take you a couple of questions down on page 206. Mr. Armstrong was asked: "Q. I put it to you that you never went near the corner of Riley Street to meet the man from Queensland that Sunday evening? A. I went to the corner opposite the hospital. That is where I have been directed by Mr. Follington, and I went straight from home. I did not go from Darlinghurst police station. I did not meet Mr. Wild there, either." Did Mr. Barton to your knowledge go straight from home to the corner opposite St. Vincent's Hospital? A. I don't know, but when I arrived at Darlinghurst police station he was there. 40 50

Q. That was before you went down? A. Before we went down, yes.

Q. To St. Vincent's Hospital? A. That is right.

Q. Did Mr. Barton meet Mr. Wild before he met the man from Queensland? A. Yes.

- Q. When Mr. Barton says that he did not go to Darlinghurst police station before he met the man from Queensland, is that true to your knowledge?
A. Yes. (sic). He must have went from Darlinghurst police station.
- Q. Is it true when he says: "I didn't go"? A. No.
- Q. Where is the corner of Riley Street in relation to St. Vincent's Hospital? A. It would be a good six blocks away. 10
- Q. Six blocks away? A. That is only an estimate.
- Q. It is not the corner on which St. Vincent's Hospital stands? A. No. Victoria Street and Burton Street. Riley Street does not cross Victoria Street.
- Q. Does not cross Victoria Street? A. No.
- Q. Now, Mr. Barton was asked in about the middle of the page: "You told us in your evidence in chief that you went to the corner of Riley Street and another street, didn't you. Was that untrue? A. I think your question is untrue, because I say that the man gave two streets as a corner, which was not a corner, and the C.I.B. figured it out, where I should go to." Did the man in any conversation with Mr. Barton give two streets as a corner? A. I am sorry, could you repeat that? 20
- Q. Did the man in any conversation with Mr. Barton direct Mr. Barton where to go? A. No.
- Q. Anything that you heard? A. No.
- Q. During both of these telephone conversations that afternoon - that is the one at 3 p.m. and the one at 6.15 p.m. - you were on the extension, were you? A. Yes. 30
- Q. All the time? A. Yes.
- Q. From the time the bell rang until the completion of the conversation? A. It had been arranged that when Mr. Barton picked up his phone I picked up the extension at the same time.
- Q. Did you do that? A. Yes.
- Q. So far as you could observe? A. Yes. 40
- Q. You heard all of the conversations? A. Yes.
- Q. Both conversations? A. Yes.
- Q. Did you hear anything at all about the corner of Burton Street and Riley Street? A. No.
- Q. Did you hear this man Vojinovic at any stage on this afternoon, during either of these two conversations, tell Mr. Barton where he, Vojinovic, wanted to meet Mr. Barton? A. No.

Q. Then, further down on page 206 -

HIS HONOUR: Q. Did you anticipate Mr. Barton was going to nominate St. Vincent's Hospital as the place to meet? A. No. I suggested it to Mr. Barton. I have had other exercises in that area, and I know it very well, and that is the reason I suggested it. It was in close proximity to Kings Cross, where Mr. Barton had said he had seen this man the night before. That was why I chose that spot. There would not be many people parked there.

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MR. GOLDSTEIN: Q. Mr. Barton was asked this: "I put it to you that the only policeman in the vicinity when you met the man from Queensland were Sgt. Wild and Det. Follington? A. I seen only one, Det. Follington. But I have been told - " Is it true? A. I was opposite, on the verandah of St. Vincent's Hospital. Sgt. Wild was parked some 200 yards up the street in the police car.

Q. Then Mr. Barton was asked: "Q. I didn't ask you what you had been told. The only policeman you saw, you say, was Const. Follington? A. Yes.

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Q. Do you deny that Sgt. Wild was present?

A. Yes. Q. And you say you saw no-one else whom you knew to be a policeman? A. No. Q. I put it to you that when you met this man from Queensland you, Sgt. Wild and Const. Follington simply walked up to him and asked him would he go to the C.I.B.?

A. No. Q. They did not take hold of him in any way? A. They got Mr. Follington - Q. I put it to you that neither Sgt. Wild nor Det. Follington laid their hands on the man from Queensland? A. Mr.

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Follington laid his hands on him and twisted it under his back. Q. I put it to you that Const. Follington did not grab both of this man's hands from the back?

A. He did. Q. In your evidence at page 41 you told his Honour, after saying that Follington grabbed both of his hands from the back. 'Then some other detectives came around and Mr. Follington told me to drive to the C.I.B.' Was that true?

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A. Yes. Q. You told us a moment ago that Mr. Follington was the only policeman whom you knew to be a policeman at the scene? A. Yes.

Q. Was that untrue? A. It was not untrue. Q. So you knew that there were some other detectives on the scene when you met this man, did you? A. I have been told by Mr. Lendrum -"

Without going any further, during the time that Mr. Barton and Vojinovic and yourself were on this corner opposite St. Vincent's Hospital did any other officer arrive during the time you were all there?

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A. No, not until Det. Sgt. Wild arrived.

Q. But he did arrive? A. Oh yes.

Q. And he had met Mr. Barton before, I think?

A. Yes.

Q. You were present? A. On the 8th he met him - earlier on that particular day.

Q. Did you grab this man Vojinovic's hands at all? A. No.

Q. Did Mr. Wild? A. No.

Q. Did anybody grab him? A. No.

Q. Anyone twist his arm behind his back? A. No.

Q. Push him? A. No.

Q. About halfway down page 207 Mr. Barton was asked "Q. You did not know whether they were or not? Is that what you say? A. Except Mr. Follington. 10

Q. And you swore in chief that some other detectives came around, didn't you? A. Yes. Q. I want to put here that before you went to the spot where you met the man from Queensland on the Sunday evening, you told Sgt. Wild that you had £500 which you wanted to give to a man you called Alec? A. That is right. Q. Is that true? A. That is not true.

Q. You went to the meeting place with £500, didn't you? A. Yes. Q. You had it in your pocket? A. Yes.

Q. And you got it on that Sunday, did you? A. Yes." 20

Now, so far as there being other police, you say Det. Wild was at the scene with you eventually? A. Yes.

Q. A bit later? A. Yes.

Q. Mr. Barton was asked: "I want to put it to you that before you went to the spot where you met the man from Queensland on the Sunday evening you told Sgt. Wild that you had £500 which you wanted to give to a man you called Alec." Is this true?

A. I am sorry, could you repeat it? 30

Q. Mr. Barton is asked this question: "Q. I want to put it to you that before you went to the spot where you met the man from Queensland on the Sunday evening you told Sgt. Wild that you had £500 which you wanted to give to a man you called Alec." A. I don't know about the sum of money at Darlinghurst police station on the night of the 8th I recall Mr. Barton saying: "I have some money here. I would like to give it to Alec for helping us," and Det. Sgt. Wild said most emphatically: "Under no circumstances give this man any money." 40

Q. Any money? A. Yes.

MR. GOLDSTEIN Q: At p. 208 Mr. Barton was asked this: "You told us in your evidence in chief that on the following day you put \$400 on Sgt. Wild's desk..did you ever get it back? A. No." Did you ever see Mr. Barton put \$400 or any sum of money on Sgt. Wild's desk? A. No.

Q. Did you ever see Mr. Barton hand any money to Sgt. Wild? A. No. 50

Q. Did you ever see Sgt. Wild count any money in Mr. Barton's presence? A. No.

Q. He was asked this question farther down on p. 208: "Did you ever ask anybody if they gave it to the man from Queensland.....to find out the progress they make." Did Mr. Barton ever ask you whether you or the C.I.B. or any police officer had given any sum of money to the man from Queensland? Did he ever ask you that or anything like it? A. No.

Q. Vojinovic? A. No.

Q. On page 209 Mr. Barton was asked this: "I put it to you when you told Sgt. Wild that you had £500 which you wanted to give to Alec on the Sunday evening, he told you you should not give him anything? A. I did not talk to Mr. Wild that Sunday evening until I got to the C.I.B." Were you present on the Sunday evening when Mr. Barton spoke to Det. Sgt. Wild at a place other than the C.I.B.? A. Yes.

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Q. Where was that? A. At the Darlinghurst police station.

Q. Further down on p. 209 Mr. Barton was asked this: "I put it to you that you saw neither Sgt. Wild nor Const. Follington nor any other officer at the C.I.B. about this matter, on Monday, 9th January? A. I have. Q. What time did you get to the C.I.B. on the Monday, the 9th? A. About 9.30." Did you see Mr. Barton on the 9th? A. No.

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Q. At the C.I.B. or anywhere else? A. No, I was away from the C.I.B. at the moment.

Q. On page 214 Mr. Barton was asked: "And very soon after settlement you rang Const. Follington and told him everything had gone well.....nothing like it." The date being referred to - A. The 18th.

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Q. About 18th January? A. 18th January.

Q. Did Mr. Barton have any such conversation as this with you? A. Yes.

Q. "And very soon after settlement you rang Const. Follington and told him everything had gone well and the deal was settled,"? A. I don't know what time the settlement was.

Q. Did he have any such conversation with you on 18th January? A. After 5 p.m., yes. May I clarify that?

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Q. Yes. A. I don't know what settlement or what business dealings took place. I have heard since, read in the newspapers that it was the 17th.

Q. You say on the 18th you had a conversation this time with Mr. Barton? A. Yes.

Q. Further down on p. 214 Mr. Barton was asked this. He was asked when did something happen: "I took Mr. Follington to Peter Bowen's office in November 1967. Q. Then you told him, did you, that everything went well on the settlement? A. I did not say everything went well." Can you remember whether

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anything like this was said, that is everything went well, at Mr. Bowen's office? A. I recall him saying the business was going well, but nothing about "went well".

Q. The next passage is at p. 216 Mr. Barton was asked: "You told us in your evidence in chief that your son fired two hundred bullets...at the police range? A. Yes." Did this boy fire anything like 200 bullets while you were with him at the police pistol range? A. Nothing like it whatsoever. 10

Q. How many? A. Between 10 and 20.

Q. At the top of p. 217 Mr. Barton was asked this: "What I want to put to you is that your son fired at most, 12 bullets at the police rifle range.. With a number of different guns? A. Yes." Whilst you were with Mr. Barton's son at the police pistol range did he use any other weapon other than the .22 which he had purchased that day? A. No.

Q. Did he use your pistol? A. No. 20

Q. Did you give him another gun to use? A. No.

Q. Further down on p. 217 Mr. Barton was asked this: "You came out on your own and got a cab back to the office? A. Yes. Q. Did your son tell you that he had gone from the C.I.B. to the rifle range? Q. Yes. Q. You are quite sure about that? A. Yes." Then he was asked: "He had left the C.I.B. building and taken your car...On the way to buy a rifle? A. Yes." Did you ever tell Mr. Barton that you had had a good training with Tommy, with Mr. Barton Jnr.? A. Not a good training, no. 30

Q. Any sort of training? A. I told him I had shown young Barton how to use a rifle and the safety precautions and cleaning procedure.

Q. Mr. Barton was asked whether or not his son came back and saw Const. Follington and said that he, Mr. Barton, insisted that the son buy a rifle. Is that true? A. That is correct.

Q. It was then put to Mr. Barton: "Your son went back alone". Is that true? A. That is definitely right. 40

Q. " - and went off with Const. Follington alone, to purchase the weapon." Is it true Mr. Barton Jnr. went off alone with you to purchase the weapon? A. Yes.

Q. And came to the C.I.B. alone? A. Yes.

Q. And spoke to you? It was then put "Your son went off alone with Const. Follington to purchase the weapon? A. Not true." You say it is true? A. Definitely. 50

Q. It was then put to Mr. Barton: "And that no conversation took place between you and Const. Follington in a vehicle - A. Yes, it did." Was

there any conversation with Mr. Barton Snr. in a car on the day you and the boy purchased the rifle?

A. No.

Q. Was there any conversation between you and Mr. Barton whilst you and Mr. Barton Jnr. were on the way to purchase the rifle? A. No. Mr. Barton Snr. was not there.

Q. At p. 235 Mr. Barton was asked this: "At pages 49, 50 and 54 to 56 you gave some evidence as to looking at a document in the C.I.B....I did not say it is locked. It is unlocked." Did you ever show Mr. Barton at any time a document headed "Record of interview between Det.Sgt. Wild and Frederick Hume?" A. No.

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Q. Did you ever take a document from Sgt. Wild's locker and show it to Mr. Barton? A. No.

Q. Did you ever take a document from anybody's locker down at the C.I.B. and show it to Mr. Barton? A. No.

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Q. Did you ever take a document from anybody's locker anywhere at all and show it to Mr. Barton? A. No.

Q. At p. 237 Mr. Barton was asked: "And you decided, didn't you, on that day, that because of what you had thought to be your duty...When did they tell you? A. All the time." Did you ever tell Mr. Barton that you would protect him whatever happened? A. No.

Q. In those words? A. No.

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Q. Or anything like it? A. No.

Q. Did you ever hear anybody else, any other police officer, say: "I -" or "We will protect you whatever happens"? A. I can't recall that ever being said.

Q. Or anything like it? A. No.

Q. At p. 243 Mr. Barton was asked a question and he said: "Yes, and as I said before, the C.I.B. advised me from time to time that the arrest is just around the corner...Q. On the telephone? A. I phoned him many times." Did you ever advise Mr. Barton from time to time, or indeed at all, that "the arrest is just around the corner", anybody's "arrest is just around the corner"? Q. I may have suggested there is a warrant in existence for Alex Vojinovic in this State; should he return he would be arrested.

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Q. Did you ever advise him that "the arrest is just around the corner", in those terms? A. No.

Q. Then Mr. Barton was asked this: "You phoned him?", that is to say phoned you. "Yes, and also he came to the Landmark Corporation office...to put it in with my affidavit to the court. Q All

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of this conversation, you say, took place in February 1967? A. Yes. A. Then throughout the year you had a number of other conversations with Const. Follington? A. When he bought this --. I will just go back. So far as the period after January 1967 - did you go to Landmark office after January 1967? A. No.

Q. Did you ever tell Mr. Barton in January 1967, or indeed at any time, that he had to be very careful now? A. No. 10

Q. Did you ever tell Mr. Barton that Mr. Armstrong had been in the C.I.B.? A. No.

Q. Indeed, so far as you know had Mr. Armstrong ever been in the C.I.B.? A. Not to my knowledge. I have never met Mr. Armstrong.

Q. Did you ever tell Mr. Barton Mr. Armstrong had been in the C.I.B. and blown his top? A. No.

Q. Or lost his temper? A. No.

Q. Or anything like that? A. No. 20

Q. Did you ever tell Mr. Barton to be very careful of Mr. Wild? A. Definitely not.

Q. Did you ever tell Mr. Barton to be very careful of Mr. Wild because he was working with Mr. Armstrong? A. Definitely not, in no circumstances.

Q. Have you ever told Mr. Barton Mr. Wild was working with Mr. Armstrong? A. No.

Q. Did you ever tell Mr. Barton you were keeping Mr. Armstrong under surveillance? A. No. 30

Q. Were you ever keeping Mr. Armstrong under surveillance? A. No.

Q. Did you tell him that you found Mr. Armstrong went to places where businessmen normally don't go? A. I did not, no.

Q. Did you ask him if he was prepared to spend a couple of hundred dollars? A. No.

Q. Did you ever say anything like that to Mr. Barton: "Are you prepared to spend some money?" or " - give us some money" or "- spend a couple of hundred dollars", anything like that? A. No. 40

Q. Did you ever say you would be willing to use your four days off to keep Mr. Armstrong under surveillance? A. No.

Q. Did you ever tell him you were willing to spend your four days off to bring Mr. Armstrong's arrest about? A. No.

Q. Did you ever tell Mr. Barton you were willing to give to any purpose of his your four days off?

A. No, unless, of course, I was directed by a senior officer to come on duty to carry out an inquiry for Mr. Barton, but otherwise I would not at all come on duty.

Q. Did you ever say to Mr. Barton the reason why Mr. Armstrong blew his top was because the witness from Queensland had told the court in Victoria something? A. No.

Q. Did you ever tell Mr. Barton that Vojinovic had told the court in Victoria that he had been framed? A. No. 10

Q. Did you ever tell Mr. Barton that Vojinovic had made a statement in the C.I.B. involving Mr. Armstrong, M.L.C. and a man called Frederick Hume? A. Would you repeat that?

Q. Did you ever tell Mr. Barton that Vojinovic had made a statement at the C.I.B. involving Mr. Armstrong M.L.C. and a man called Frederick Hume? 20

MR. GRUZMAN: That is what he said he told the court.

MR. GOLDSTEIN: Did you ever say to Mr. Barton that Vojinovic had made a statement anywhere at all involving Mr. Armstrong M.L.C. and a man called Frederick Hume and a man called Momo? A. I may have told him of the record of interview which took place on 8th January 1967.

Q. But no other statement? A. I know of no other statement. 30

Q. Did you ever tell him anything Vojinovic said in the court in Melbourne? A. No. I do not know what was said.

Q. Did you ever tell him anybody claimed Vojinovic had said certain things in the court in Melbourne? A. No.

Q. Indeed do you know what was said in Melbourne? A. I don't know what was said in Melbourne.

Q. By Vojinovic? A. No.

Q. Did Mr. Barton ever say to you: "Would you get me a record of this court hearing" - the Melbourne court hearing? A. The Melbourne court hearing? 40

Q. Yes? A. He asked me at his home on 3rd November whether or not it was possible to obtain a copy of it and I told him it would be necessary to apply to the authorities in Melbourne as I had no knowledge of their procedure of taking depositions.

Q. Did you ever tell him such a thing at Landmark office? A. No.

Q. Did he ever ask you such a thing at Landmark office? A. No, not that I can recall. 50

Q. Did you ever say to Mr. Barton at the Landmark office that you would get a photostat copy of the witness's - that is of Vojinovic's original statement that he had made at the C.I.B.?
A. No.

Q. Did you ever tell Mr. Barton either at Landmark or anywhere else that you would get him a photostat copy of Vojinovic's statement?
A. No.

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Q. Mr. Barton goes on to say "And next day he brought it along and gave it to me." Did you ever give Mr. Barton a photostat copy of Vojinovic's statement at the C.I.B.? A. No.

Q. Did you ever give Mr. Barton a photostat copy of anything? A. No.

Q. On page 244 Mr. Barton was asked: "Will you just answer the question I ask you? Throughout the year after February 1967 did you have another or a number of conversations...you say you waited without doing anything about attacking the agreement? A. I had two reasons." After February 1967 and indeed between February and November 1967 did you see Mr. Barton at all? Did you meet him at all? A. No.

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Q. Did you have any telephone conversations?
A. There was a number of telephone conversations.

Q. Would it be anything like practically every week? A. I don't think so but there was quite a number.

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Q. Mr. Barton was asked: "In the subsequent conversations shortly after February did Constable Follington tell you that something was likely to happen to clear up the problem you had? A. Yes." Did you ever tell him either shortly after February or indeed at any time that something was likely to happen soon to clear up the problem he had? A. Other than I may have told him if Vojinovic should be arrested in this state he may be interviewed if Sergeant Wild so desired and have the truth obtained.

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Q. Further down the same page Mr. Barton was asked, after having said "I had two reasons", was asked: "You what? A. I had two reasons. One is the C.I.B. indicated to me that the persons and parties to this thing will be arrested. Q. "When you say the C.I.B., you mean to say Constable Follington, do you? A. Yes." Did you ever indicate to Mr. Barton that the persons or parties to this thing will be arrested?
Q. As I said I may have indicated that Vojinovic would have been arrested.

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Q. For what? A. I may have told him there was a warrant in existence, a first instance warrant in this State for his arrest at this moment.

Q. Did you ever tell Mr. Barton Vojinovic was or anybody else was likely to be arrested in

connection with this matter be complained of in January 1967? A. No.

Q. Never told? A. No.

Q. The next matter is on page 245, Mr. Barton was asked this question: "You mean because of what you say was the promise of Constable Follington, don't you? A. I treated Constable Follington as a contact man between myself and the O.I.B. designated by Mr. Lendrum, who said to me that he is a very good man; studying to be a barrister, and I had all reason to believe that he is a proper person." Did you matriculate? A. No. 10

Q. Ever tell anybody you were studying to be a barrister? A. No.

Q. At page 417 Mr. Barton is being asked in relation to I think 11th January 1967. He was asked: "Would you tell his Honour what happened in relation to the document? A. I was sitting on a chair in front of Sergeant Wild's desk with Mr. Follington on one side and my son on the other side. Mr. Follington took out the record of interview between Det. Sgt. Wild and Frederick Hume out of this brown folder, and gave it to me to read." On 11th January 1967, or indeed at any time, did you give Mr. Barton any record of interview? A. No. 20

Q. Did you give him a record of interview between Det. Sgt. Wild and Frederick Hume? A. No.

Q. Indeed as at 11th January 1967 so far as you know was any such document in existence? A. No. 30

Q. At page 418 Mr. Barton was asked: "The question was, what was in the document? Will you answer that question to the best of your ability? A. 'Interview between Det. Sgt. Wild and Frederick Hume taken at the Criminal Investigation Branch in Sydney.' It was a foolscap document. On the first page, round about the middle was a question." On 11th January 1967 did you show such a document to Mr. Barton. A. No.

Q. Have you ever seen such a document? A. With that heading, no. 40

Q. In connection with this matter, or at all, have you given Mr. Barton any documents? A. No.

Q. At page 420 Mr. Barton was asked: "Earlier in your evidence in chief you described to his Honour the document - a document - which was taken from a folder by Det. Follington and read by you? A. Yes." Did you ever read a document to Mr. Barton? A. No.

Q. At page 422: "You had never previously ever seen the words in writing 'Frederick Hume', had you? A. I seen - Q. Answer my question? A. That is what I am trying to do." Did you ever show Mr. Barton a document with the words in writing "Frederick Hume" on it? A. No. 50

Q. At page 426 Mr. Barton was asked in relation to a document which you allegedly showed to him: "Don't you recall whether it was single, double, triple or quadruple spacing?...Didn't you start at the top?" Did you ever show Mr. Barton a five page document? A. No.

Q. Three page? A. No.

Q. On page 429 this was asked of Mr. Barton: "You asked Constable Follington, I suppose, whether the police had been out to search Armstrong's house? ...I am just repeating the conversation." Were you ever asked by Mr. Barton if you had been out to search Mr. Armstrong's house? A. No. 10

Q. Were you ever asked by Mr. Barton why you had not been there to search for stolen jewellery?
A. No.

Q. Did you ever say to Mr. Barton that you had not been to Mr. Armstrong's house because he was a Member of Parliament? A. No. 20

Q. Did you ever say to Mr. Barton you had not been to Mr. Armstrong's house because he was a Member of Parliament and he had to be caught red-handed? A. No.

Q. Did you ever say anything to Mr. Barton about catching anybody red-handed? A. No.

Q. Did you ever say to Mr. Barton you did not want to take the risk of going to Mr. Armstrong's house to search? A. No. It was not a matter for me. 30

Q. At page 430 Mr. Barton was asked this: "You didn't speak to Mr. Wild about whether any inquiries had been made to catch Mr. Armstrong red-handed? A. No. Q. You didn't speak to Inspector Lendrum? A. No, I did not talk to anybody except Follington." Did Mr. Barton ever speak to you about catching Mr. Armstrong red-handed or otherwise?
A. No. (Objected to).

Q. On page 431 this question was asked: "At any rate, you didn't think it was your business to prod the police into doing anything about stolen jewellery." (Objected to). 40

Q. Mr. Barton said in reply to a question: "Yes, I was keeping pushing Mr. Follington to get results." At any time at all, so far as you could work out what Mr. Barton was telling you, was he pushing you to get results? A. No, only to interview Vojinovic.

Q. Mr. Barton was asked: "For 12 months you were content with that, and there was nothing happening?"
A. Yes. Mr. Follington was keeping informing me he was making progress." Did you so inform Mr. Barton during those 12 months? Did you keep telling him that you were making progress? A. No. 50

Q. On page 435 Mr. Barton was asked: "What I want to put to you is that on 9th February" - this is 1968 - "you had a conversation outside this courtroom about 11.45 a.m. with Det. Const. Follington, do you recall that? A. I had no conversation. He said something to me." Did Mr. Barton say something to you outside this court on 9th February 1968? A. He did.

Q. Can you tell us what he said to you? 10
A. Outside this court on that day - I was here for the production of documents, to the best of my recollection - Mr. Barton approached me, shook my hand, asked me how I was. Mr. Barton - Mr. Barton Senior - said: "Sergeant Wild is away in Tasmania and you will be giving evidence." I said: "A subpoena has been received for documents only, but if required I will give evidence." Mr. Barton said: "You rang me in February and told me that my life was in danger, that I should go into hiding again" I said: "You are mistaken" Mr. Barton Senior said: "I am sorry about the letters about the jewellery, but I have got a lot of money at stake," I said; "That is a complete lie. The Commissioner asked me about this this morning and also about the papers that you have, and I said -". 20

Q. That was what you said? A. Yes. Then Mr. Barton said: "I have been told to say that you gave me the papers, that you gave all the papers to Armstrong's solicitor and that you are refusing to bring the other papers to court, Mr. Wild is away and you will be giving evidence." I said: "This is a complete fabrication. Sergeant Johnson and Sergeant Anderson are here representing the Commissioner of Police. I want you to tell them." Mr. Barton said: "I cannot do that. I have been told not to be seen talking to you." 30

Q. Who was present when this conversation took place? A. Mr. Barton's son was nearby and there was quite a few people outside the court. 40

Q. After the conversation what did you do? A. I immediately informed Sergeants Anderson and Johnson, asked them to inform the Commissioner of Police, which I was later told they had done.

Q. What did you do? A. On my return to the C.I.B. I informed Det. Supt. Fergusson of the happenings.

Q. What did you do then? A. I typed out, as far as I could remember, some of the conversation that took place.

Q. Would you have a look at the document shown to you? A. Yes, that is the document. 50

Q. Is that the document you typed out at the C.I.B. when you returned on 9th February? A. Yes.

(Above document tendered).

WITNESS: Sir, may I say on the back of this document there are some notes which do not refer to this matter. They refer to another case.

HIS HONOUR: Q. Another case altogether? A. Yes. In longhand, they are.

MR. GOLDSTEIN: I only tender the front.

WITNESS: Part of them refers to some information I obtained from the Central Fingerprint Bureau concerning a date of conviction of Vojinovic in Melbourne.

HIS HONOUR: Mr. Goldstein, the tender is the face of the document? 10

MR. GOLDSTEIN: The face of the document.

MR. GRUZMAN: I propose to read the back and to tender the back as well. I will not object to tender of the front.

HIS HONOUR: So far as concerns the tender of the back, that might be deferred at the moment. Unless it fits into the context of this examination in chief it might be better to leave it until the cross-examination. Do you want to press the tender now? 20

MR. GRUZMAN: No, your Honour.

(Statement by Det. Follington tendered and admitted without objection as Exhibit 54).

MR. GOLDSTEIN: Q. On page 435 Mr. Barton was asked whether he had any conversation with you outside this court on 9th February 1968 and he said he did not. What do you say about that? A. He did.

Q. On page 436 Mr. Barton was asked: "Did you pay him" - in relation to you - "money? A. Yes.

Q. What money did you pay him? A. I paid him three times \$200 each." Did he ever pay you any money? A. No. 30

Q. He was then asked: "What were the conversations which led up to each of those payments of money? "Then he was asked: "Would you tell his Honour the conversations that led up to each of these payments of money?" Then he was asked: "When was the first conversation as a result of which you paid the sum of \$200 to Mr. Follington? A. I think it was in February 1967. Mr. Follington came to me -" (Objected to). 40

Q. Mr. Barton says you told him that you were keeping Mr. Armstrong under surveillance. You say this is not true? A. No, that is completely wrong.

Q. His Honour asked a question and Mr. Barton said "They - the C.I.B. - are keeping Mr. Armstrong under surveillance, but they are short of men, and he would like to do these things during his four days off if I am prepared to pay for that, and then I agreed and on his request I gave him \$200 for that purpose." Did he ever give you \$200 for that purpose? A. No (Objected to). 50

Q. Did he ever say to you - (Objected to).

Q. Did you ever say to Mr. Barton that you were prepared to spend your four days off (Objected to: allowed).

MR. GOLDSTEIN: Q. Mr. Barton said that you came to him and you asked him if he, Mr. Barton, knew of any matter Mr. Armstrong was involved in which was worthwhile investigating. Did you ever say that to Mr. Barton? A. No.

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Q. Did you ever ask him such a question and say: "So that they" - so that the police - "can get something on Mr. Armstrong". Did you ever say that? A. No.

Q. Did Mr. Armstrong ever tell you "There is a matter in Goulburn worthwhile to be investigated?" A. He told me about a matter in Goulburn but nothing worthwhile investigating.

Q. He then said after you told him you were prepared to spend a week in Goulburn he gave you another \$200. Did he give you another \$200.

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Q. No.

Q. Did you ever say you were prepared to spend your holiday in Goulburn, or a week in Goulburn? A. No.

Q. Mr. Barton then said: "When he approached me about three weeks later and I asked what he did find out in Goulburn he said he cannot disclose it to me and it is a matter for the police". Did you ever have such a conversation with Mr. Barton? A. No.

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Q. He said he then gave you another \$200 in the middle of August. A. No.

Q. Mr. Barton was then asked: "What was the conversation regarding that payment to him? A. He then said they are getting closer and closer to be effective of an arrest of Mr. Armstrong and he needs to keep up his surveillance of Mr. Armstrong and he said he has followed Mr. Armstrong to different places where a normal business man don't go". Was there ever such a conversation? A. No.

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Q. Did you ever say to Mr. Barton you were getting closer and closer to an effective arrest of Mr. Armstrong? A. No.

Q. Indeed, any sort of arrest of Mr. Armstrong? A. No.

Q. Did you ever say you needed to keep up your surveillance of Mr. Armstrong? A. No. (Objected to).

Q. On p. 437 Mr. Barton was asked: "In the course of your cross-examination I think Mr. Staff asked you whether for a period of 12 months you were content with dealing with Follington, and you answered words to the effect that he had big hopes." Did you ever tell Mr. Barton you had big hopes. A. Big ---?

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Q. Big hopes. A No.

Q. Or anything like it? A. No.

Q. Mr. Barton said: "Mr. Follington told me the arrest of these persons responsible for the attempt on my life will happen shortly because they are getting closer and closer to getting results. "Did you ever tell Mr. Barton that or anything like it? A. No.

Q. I want to take you to p. 322. Mr. Barton was asked: "What was it happened in November 1967? 10

A. Early in 1967 Mr. Follington came to my home on a Friday afternoon about 5.30 and I was swimming in the swimming pool and I came out and he told me that he had very good news for me because a robbery had just happened during that week. They followed the thing up and two pieces of jewellery finished up in Mr. Armstrong's possession and one of them was a ring which was worn by Mrs. Armstrong. I told him that I would not---". 20
Early in 1967 did you go to Mr. Barton's home one Friday afternoon, early in 1967? A. Early in 1967, on 8th January I went to his home.

Q. Did you tell him you had very good news for him because a robbery had just happened? A. No.

Q. Or anything like that? A. No.

Q. Did you tell him you followed the thing up and two places of jewellery had finished up in Mr. Armstrong's possession? A. No.

Q. Or anything like that? A. No. 30

Q. Did you ever tell him anything like that, on this afternoon, or at all? A. No.

Q. Did you tell him that one of these pieces of jewellery he refers to was a ring worn by Mrs. Armstrong? A. Could you repeat that?

Q. Did you tell him on this afternoon or indeed at all, that one of these pieces of jewellery was a ring worn by Mrs. Armstrong? A. This is the allegedly stolen jewellery?

Q. Yes. A. No. 40

Q. On p. 322 Mr. Barton says: "I told Mr. Follington that I don't want to deal with this kind of matter myself if he will be prepared to come to see my solicitors, and he then said that Mr. Armstrong's arrest is just about happening now." Did you ever say such a thing to Mr. Barton? A. No.

Q. Mr. Barton goes on to say: "It just will happen now and because Mr. Armstrong is an MLC they didn't want to question him about my whole matter before, but now if they have got something concrete on him that all my problem will be solved, and then he agreed to come to my solicitor." Did you ever have such a conversation with Mr. Barton? A. No. I agreed to see his solicitor. 50

Q. Did you ever tell him that you or the Police generally had got something concrete on Mr. Armstrong?

A. No.

Q. Or anything at all on Mr. Armstrong? A. No. (Objected to).

Q. When you left Mr. Barton's office, did you leave on your own, or how did you leave? (Objected to).

HIS HONOUR: I think that has been covered.

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(Luncheon adjournment).

AT 2 P.M.

MR. GOLDSTEIN: Q. At p. 272 of the evidence Mr. Vojinovic was asked some questions about \$300. He said he was given the \$300 by Det. Sgt. Wild, and as far as we can understand, said you were present. Were you ever present when money was given by Det. Sgt. Wild to Vojinovic? A. No, definitely not.

Q. On page 313 Vojinovic was being re-examined and was asked by Mr. Gruzman these questions: "I was asking you before the adjournment, or about to ask you, what occurred at the C.I.B..... half an hour or 40 minutes". He says the discussion went on about thirty or forty minutes. Prior to the record of interview was there any discussion with Vojinovic at the C.I.B., other than what appears in the record of interview? A. This is prior to---?

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Q. Prior to the record of interview being typed, on the evening of the 8th? A. Yes, Sgt. Wild had obtained the personal particulars of Vojinovic.

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Q. When you say "personal" --- A. His name and date of birth, and he had left the room for a short while. Whilst I was preparing paper for the record of interview, I did ask Vojinovic whether he was married and he said yes, he was married to a Scottish girl, and had one baby - or his wife had had the baby.

Q. Was there any other discussion? A. No.

Q. On p. 314 Vojinovic is asked: "You read that statement through on the night that it was taken down before you signed it? A. Not exactly. Q. You glanced through it? A. That is right." So far as you could observe, did he read the record of interview? A. Yes. The original was handed to him, which he appeared to read.

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Q. Did he spend any time on it? A. Quite some time.

Q. How long? A. Approximately half an hour.

Q. So far as the taking of the record of interview was concerned, would you tell his Honour the method that was adopted. What happened? A. At the record of interview, whilst Sgt. Wild was out of the

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room, I placed a number of sheets of foolscap with carbon between them. On his return I placed those into the typewriter, it was suitably headed. Sgt. Wild asked the questions, Vojinovic supplied the answers, which I recorded fully on the typewriter.

CROSS-EXAMINATION:

MR. GRUZMAN: Q. What made you think that Vojinovic would be party to making a record of interview?

A. What made me think?

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Q. Yes. A. It is something that I assumed on that night. I got the paper ready for the record of interview.

Q. What was said, as a result of which you simply prepared your paper. A. I made it a practice of every time preparing it.

Q. Does every person who comes in to an office with you agree to the making of a record of interview? A. Not every person.

Q. Did you ask him "Are you prepared to make a written statement?" A. No, I did not ask him.

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Q. Did anybody in your presence ask him if he was prepared to make a written statement? A. I can't recall. He did not object.

Q. So this is what happened, is it, that you prepared paper in your machine without knowing whether or not he would agree to make a written statement? A. Yes. (Objected to; allowed).

Q. You assumed that Vojinovic would agree to whatever was being said taken down, and you assumed also that he would sign it? A. I did not assume anything.

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Q. You assumed nothing? You have not told the truth about the way in which this record of interview was taken, have you? A. I have.

Q. What happened was that there was a discussion first of all about the matter generally, was there not? A. There was not.

Q. You are swearing that not another word was said other than what you have told us? A. Other than what I told you happened prior to it, while Sgt. Wild was out, and after the record of interview there was a conversation between Det. Sgt. Wild and the man Vojinovic about a suitcase and some tools.

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Q. Have you discussed this matter with Sgt. Wild?
A. Since then?

Q. Yes. A. Yes.

Q. And discussed the evidence you were going to give? A. Discussed the whole thing in general.

Q. On how many occasions? A. I could not say. This is over a year and a half. It is ridiculous to say how many times.

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Q. On many occasions? A. On a number of occasions.

Q. You have been called upon to make reports on the matter? A. Yes, I have made a report.

Q. Is it true or not true to say that in January 1967 Mr. Barton was, in your opinion, in genuine fear for his life? (Objected to).

HIS HONOUR: Det. Follington, would you mind waiting outside the court for a moment please.

(Witness leaves court room).

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HIS HONOUR: It seems to me it is at least open upon the evidence Det. Follington gave in chief that the conclusion be formed that he took this complaint and subsequent actions in regard to it in a very light fashion. It seems to me in deciding whether his actions were as limited as he would put them today, it is relevant for Mr. Gruzman to go into what his belief was about the substance of the complaint and Mr. Barton's attitude. It seems to me it could touch his credit in whether I believe he was as offhand as his evidence would suggest.

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MR. GOLDSTEIN: Would your Honour limit it to a particular time, a day or a time of the day?

HIS HONOUR: Yes, I am prepared to accede to that. I reject that particular question on the understanding it is going to be reframed by being more directly related to a point of time.

(Witness returns to witness box).

MR. GRUZMAN: Q. I want you to take your mind back, shall we say to Monday, 9th January, the time after you had seen Vojinovic. I want you to tell us whether at that time it appeared to you that Mr. Barton was in genuine fear for his life and safety. (Objected to: allowed). A. I would not say fear. I would say concerned.

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Q. Take on the Sunday, 8th January. Would you say that at that time ---

HIS HONOUR: I think there you might be more specific.

MR. GRUZMAN: Q. Take on Sunday 8th January and let us take for example the time after the three o'clock phone call. Would you say that at that time Mr. Barton appeared to you to be in genuine fear of his life and safety? A. He appeared concerned, but I had some doubt.

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Q. You had some doubt about it? A. Yes. I can explain that, if I am permitted.

Q. What you want to say is that if you considered carefully the question, that is did he have a genuine fear for his life and safety, you would be inclined to say No, is that right? A. It is a very hard question to answer, and I can only answer it in this way, that if Mr. Barton had had a genuine

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fear of his life on the night of 7th, the night preceding the interview, he would not have went to a place like Kings Cross to see a man whom he only knew as Alec - a place which is frequented by the worst criminals which we have in Australia.

Q. A place like the Rex Hotel? A. Yes.

Q. That is a place frequented by the worst criminals in Australia? A. Yes, I know some criminals there that could be considered the worst criminals in Australia that have been there. 10

Q. You think because he went to the Rex Hotel and saw a man called Alec that showed he was not in genuine fear of his life? A. That put a doubt in my mind.

Q. Did you ever form a view that Mr. Barton was in fear of his life - genuinely? (Objected to: allowed).

Q. Did you ever have a view that Mr. Barton was in genuine fear of his life? A. No, only that he was concerned. 20

Q. Would you explain more clearly to his Honour what you meant to say by saying that he was only concerned? A. Mr. Barton is a business man, not a policeman, and is not used to this type of thing. He had received a telephone call from a man whom I think he went unwisely and seen, he was told certain things, and I think that he was concerned more for his family than he was for himself.

Q. Did you believe that Mr. Barton genuinely feared that his family or one or more members of it, might be killed? A. No, I would say once again that he was concerned about it. 30

Q. By "concerned", do I understand you to be saying something less than fear? A. Yes, you could put it in those words.

Q. And something far less than obvious fear?
A. Yes.

Q. What about the members of Mr. Barton's family with whom you came in contact? Take, for example, his son. (Objected to). 40

Q. Did you ever form the view that the son, Tom, was in obvious fear of his life? (Objected to).

MR. GRUZMAN: I undertake to make it directly relevant on credit.

HIS HONOUR: In the light of that assurance I will allow it.

MR. GRUZMAN: Did it ever appear to you that one member of his family, namely his son, Tom, was in obvious fear of his life? A. Not obvious fear of his life, no. 50

Q. Did it appear to you that Tom, Mr. Barton Jnr.

was in fear of his life? A. They were all concerned.

Q. But something less than fear? A. Yes.

Q. Did you come in contact with any other member of his family? A. Mrs. Barton.

Q. Did she appear to you to be in obvious fear of her life?

MR. GRUZMAN: Again I give the same undertaking.

HIS HONOUR: If that is given I allow the question. 10

WITNESS: Once again I say concerned.

MR. GRUZMAN: Q. Something less than fear? A. Yes.

Q. Did you ever tell anybody that Mr. Barton and his family were obviously in fear of their lives? A. No, not obviously. They were---

Q. Listen to the words. I want to have your oath on these words. Did you ever say to anybody Mr. Barton and his family were obviously in fear of their lives? A. No, I cannot recall that.

Q. Are you prepared to swear you did not say it? A. No, I did not say it. 20

Q. So the position is you swear that you have never said to anybody those words: "Mr. Barton and his family were obviously in fear of their lives"? A. Yes.

Q. Did you ever write those words: "Mr. Barton and his family were obviously in fear of their lives"? A. Obviously concerned.

Q. I would like your oath on it. Did you ever write the words "Mr. Barton and his family were obviously in fear of their lives"? A. No, I can't recall it. 30

Q. Are you prepared to swear you never wrote those words? A. I said I can't recall it.

Q. Is this the position, you might have done so? A. I can't recall it.

Q. Are you using your memory to the best of your advantage? A. Yes.

Q. Have you had a bad memory? A. Average.

Q. Reasonable. You are an experienced witness, are you not? A. It depends on how long you have got to be a witness to be experienced. I say it takes considerable time. 40

Q. How long have you been in the Service?
A. 12½ years.

Q. Could you count the number of times you have given evidence? A. No.

Q. Innumerable times? A. A number of times.

Q. And been cross-examined on many occasions by many counsel? A. Yes.

Q. I suppose you would rather pride yourself on being able to recall conversations? A. Yes, that I have taken notes of and refreshed my memory from.

Q. I suppose you would be even more able to recall words that you had written, would you not? 10
A. Not particularly. I write many things, every day.

Q. And you might forget some of them? A. Yes.

Q. But this case is a rather important case in your life, is it not? A. It is now. It was not prior to this.

Q. You were called on to write a report to the Commissioner, were you not? A. Yes.

Q. Did you inform the Commissioner of Police that Mr. Barton and his family were in obvious fear of their lives? A. I can't recall, unless I see the report. 20

Q. I would like to correct the question. Did you inform the Superintendent in charge of the Criminal Investigation Branch --- A. No.

Q. ---in a report, that Mr. Barton and his family were obviously in fear of their lives? A. I submitted a report ---

Q. Did you inform the superintendent in charge of the Criminal Investigation Branch in a report that Mr. Barton and his family were obviously in fear of their lives? A. I can't recall. 30

MR. GRUZMAN: Might I have the documents produced on subpoena? (Handed to Mr. Gruzman).

Q. (Approaching) I want you to read nothing except those words. Read these words, starting from "Mr. Barton". A. "Mr. Barton and his family were obviously in fear of their lives".

Q. Is that your signature on the document? A. That is correct. 40

Q. Would you agree now that you did write in a report to the Superintendent in charge, Criminal Investigation Branch, the words, "Mr. Barton and his family were obviously in fear of their lives"?
A. Yes, I put it in those words, but I still say he was only concerned.

Q. What, you told a lie to the Superintendent?
A. No, I did not tell a lie.

Q. You have a clear distinction in your mind between the words, "concern", "fear", and "obvious" 50

fear", have you not? A. Yes. They are associated.

Q. What you told your superior was that both Mr. Barton and his family were in obvious fear?

A. As I said, they were in obvious concern.

Q. That is not what you wrote, is it? A. It is in the report.

Q. It is in the report, is it? A. Yes.

Q. What, that they were obviously concerned?

A. Obviously in fear. 10

Q. Obviously in fear? A. That is playing with words, as far as I am concerned.

Q. You intended the Superintendent in charge to accept your report as correct, did you not?

A. Yes.

Q. This report was prepared by you after certain proceedings had been commenced in this court?

A. Yes.

Q. It was at the time when you knew that your conduct was going to be called into question, did you not? A. I knew that I would be called as a witness. 20

Q. And you knew that your actions in this matter were going to be called into question, did you not? A. I knew that I would be called as a witness, yes.

Q. You knew certain documents had been called for on subpoena, did you not? A. Yes.

Q. And you knew that it was said that there was a record of interview with a man Hume, which was missing? A. I don't recall saying that myself, and I don't recall any record of interview missing. 30

Q. But you knew something had been said about that? A. The only record of interview I knew anything about was one I typed on 6th February this year.

Q. You knew a question would arise in these proceedings as to whether the record of interview with him existed? A. Yes, from the newspaper reports.

Q. May we take it the truth is that in your opinion Mr. Barton and his family were in obvious fear of their lives? A. Concern. 40

Q. Do you now tell the court that in your mind it means the same thing to say that somebody is in obvious fear on the one hand, or merely concerned on the other hand? A. That is the way I worded it.

Q. Would you please answer the question directly?

Do you now tell the court that in your mind there is no difference between a person in obvious fear on the one hand and only concerned on the other hand? A. A very fine line.

Q. May we take it, whatever the line is, that the words "obvious fear" describe your view as to the state of mind of Mr. Barton? A. That is the way I worded the report, yes.

Q. And that is a truthful report? A. Yes. 10

Q. And that report was what was in your mind at that time? A. Yes.

Q. And what members of his family were you speaking of in this report? A. I have not read the report since I put it in.

Q. You may take it those words: "Mr. Barton and his family were in obvious fear" - and you may take it there is no other reference in the report to describe members of his family. A. I take that to be his wife and son. 20

Q. So may we take it it is true in your mind, both Mr. and Mrs. Barton and Mr. Barton Jnr. were in obvious fear of their lives? A. Were concerned.

Q. You have told us that whatever the dividing line is, the truth is that when you used the words "obvious fear" that represented what was in your mind? A. Put it this way. I do not know what you want, but I say it is very closely allied, the two words. 30

Q. (Previous question read). That is right, is it not? A. I meant it to be a word in place of "concern".

Q. Is this what you now tell his Honour, you should have written "concern", but in mistake you used "obvious fear"? A. No, I thought it was a better word to use.

Q. A better word to describe your views?
A. Yes.

HIS HONOUR: Q. You said a moment ago you knew from something you had read in a newspaper that the question would arise as to whether there was a record of interview with Hume. Do you remember saying that a moment ago? A. Yes sir. 40

Q. Had not Sgt. Anderson asked you before 9th February whether there was such a record of interview? A. Yes sir, I think he did. I can't recall any conversations. It is something I never took notes of, but I did keep a note of all the matters that appeared in the Press, and I am only replying on what I read in the Press mainly, but Sgt. Anderson did ask me about it. 50

Q. Sometime before 9th February? A. I am not

sure of the time, sir, but I would say it would be before that.

MR. GRUZMAN: Q. Do you remember telling his Honour about your movements from Castlecrag on the night of Sunday the 7th to the meeting place with Vojinovic? A. Yes.

Q. You were, at that time, of the opinion that the man you were going to meet could be a dangerous criminal? A. No.

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Q. Weren't you? A. No, not a dangerous criminal at all.

Q. What you knew at that time was that a Queen's Counsel, a leading solicitor and two citizens had seen fit on the Sunday morning to approach the senior detective on duty at the O.I.B. You knew that, did you not? A. Oh yes.

Q. And you knew that a complaint had been made of what was said to be a conspiracy to murder? A. I know a complaint had been made, but I don't know the full context of the complaint.

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Q. Are you suggesting that there was not present to your mind that the complaint was a complaint of a conspiracy or agreement to murder? A. I have not read the record of interview since then. I understand there were three people mixed up in it.

Q. I am talking now of a time prior to the record of interview, and I am asking you will you deny that there was present to your mind, before going to this meeting place, that the complaint was a complaint of an agreement or conspiracy to murder? A. An alleged complaint.

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Q. An alleged complaint? You heard the complaint, did you not? A. The complaint was made by Mr. Barton Snr. Now he was getting, in my mind, the information secondhand, as we may put it in the vernacular.

Q. Did you not understand that what Mr. Barton was alleging was that there was a conspiracy or an agreement to murder him? A. There could be, yes.

Q. And that is what you understood you were investigating? A. Assisting, yes.

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Q. You had been directed to assist in that investigation? A. Yes.

Q. Without any more knowledge than that, would you not assume that a person who was alleged to be a party to a conspiracy to murder may be a dangerous criminal? A. Not under these circumstances.

Q. Just tell his Honour exactly what circumstances there were which prevented you from forming the opinion that the man involved might have been a dangerous criminal. A. Here was a man who obviously rang the complainant, Mr. Barton, some

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time prior. Mr. Barton had gone to Kings Cross, a place well known to be frequented by criminals, without notifying the police, had seen him, had come away unharmed, and therefore I could not see this man being dangerous. If he had wanted to commit any dangerous act that would have been the most opportune time.

Q. You now know that the man Vojinovic, prior to this occasion, had been sentenced to 12 months imprisonment for carrying a revolver? A. I now know. 10

Q. You are aware of that, are you not? A. You are just telling me.

Q. Is this the first you know of it? A. I have not checked his record.

Q. Are you telling his Honour that up to this moment, until I told you in court, you are unaware from any source that Vojinovic was sentenced to 12 months imprisonment for carrying a pistol prior to 7th January 1967? A. I know he had a record, but I have no knowledge of him having a pistol in his possession. 20

Q. Are you quite serious on that? A. I cannot recall it.

Q. Have not even read it in the Press? A. No, I have not.

Q. If you had known that on the night of Sunday the 7th you would have regarded him as a possibly dangerous criminal, would you not? A. Yes. That is a different set of circumstances. 30

Q. But it is the same thing, you were going to say? A. Yes.

Q. And you are seriously telling his Honour that in a complaint made to you in those circumstances you never thought there was any possibility that the man involved would be a dangerous criminal?
A. No.

Q. Do you regard a man who has a record for break enter and steal and for carrying an unlicensed pistol as a dangerous criminal? A. No. 40

Q. You do not? A. No.

Q. What, he is not dangerous until he shoots someone, is that right? A. No. Many criminals carry pistols for various reasons, and break enter and steal is the least thing to make him dangerous, but carrying pistols, I know criminals that have carried pistols merely for psychological reasons, to give them confidence.

Q. You are seriously telling this court in your opinion a man with a record for break enter and steal and sentenced to 12 months imprisonment for carrying an unlicensed pistol is not a dangerous person? (Objected to). A. It depends on the criminal (allowed). 50

Q. You remember the question? A. No, I don't.

Q. Are you seriously telling the court in your view a man with a criminal record of break enter and steal and had earlier been sentenced to 12 months imprisonment for carrying an unlicensed pistol is not, in your view, fairly described as a dangerous criminal? A. I have got myself into a position where I do not consider most criminals dangerous, irrespective of their record.

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Q. Did you not think that circumstances warranted giving Mr. Barton the benefit of your experience in dealing with criminals in his association with this man? A. In what way?

Q. If I must explain it to you, a man who threatens, or says that he is party to a conspiracy to kill, may be telling the truth, may he not?

A. I cannot recall saying that he was a party to it.

Q. According to Mr. Barton this man had said that he had been approached to kill. That was the complaint, was it not? A. He said he knew of a plot or a plan.

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Q. And he was the trigger man, was he not, according to the plan? A. Not that I recall. I have not read the record of interview since January.

Q. Forget about the record of interview. The complaint was that certain people had approached this man with a proposition to kill Barton and instead of killing him he had approached Barton. That was the complaint, was it not? A. Are you talking about the complaint on 8th January?

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Q. I am talking about the complaint made to Inspector Lendrum in your presence? A. I can't recall Vojinovic being nominated as the trigger man or as you wish to nominate him.

Q. What was your understanding of the complaint?

A. My understanding of the complaint was this - I understand at that interview the complaint was that there was a claim that a man knew of a plot to kill him, not that he was going to be actually involved.

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Q. Your description of it, was there was a complaint re the actions of a man named Alec and Allegations that Mr. Alexander Armstrong M.L.C. and a Mr. Frederick Hume were conspiring together to murder Mr. Barton Snr. That was your understanding of the matter was it not? A. That was as it is there, but no indication that Vojinovic was going to be a ---

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Q. Was it your understanding of the matter that Mr. Alexander Armstrong M.L.C. and a Mr. Frederick Hume were conspiring together to murder Mr. Barton Snr. A. That was the claim, yes.

Q. Was it your understanding also that Vojinovic

had been approached with a proposition to carry out the actual killing? A. No, I was told that he was told about it. I am only replying on memory. I have not read these documents for so long it does not make any difference.

Q. I put to you your last statement is untrue, and you are not relying on memory. I put to you you are telling deliberate lies. A. I am not.

Q. The complaint that Mr. Barton made was that Alec had said: "My group has been commissioned to do a certain job, a man paying £5000 to kill you and rob your wife of a diamond ring." That was the complaint, was it not? A. When was this said? 10

Q. Don't you remember ---A. No. I can't recall this.

Q. You can't recall that being said in Inspector's Lendrum's Office? A. No.

Q. Was that said? A. I can't recall. I did not take any notes. 20

Q. Notes or not, was it said? A. I cannot recall.

Q. What were you investigating? A. I was there as the junior member of the staff, taking no notes. There were two senior members of the Department conducting an interview and I was standing there at their beck and call.

Q. In the days and weeks that followed, what were you investigating? A. I did not carry out any other investigations other than on that day, other than trying to locate Mr. Hume. 30

Q. What did you understand was the reason why you were trying to locate Mr. Hume? A. Det. Sgt. Wild wished to interview him in connection with the allegation obtained from Vojinovic.

Q. Do you tell his Honour you have absolutely no recollection of what took place in Inspector Lendrum's office? A. No, I do not say that for one moment.

Q. Will you agree with me that, whatever words were used, your understanding of what took place in Inspector Lendrum's office on that morning was that Mr. Barton was saying that Vojinovic alleged that he had been hired to kill Barton? A. No. 40

Q. You never understood that? A. That he had received a telephone call from a man Alec who claims that he knew of such a ---

Q. So on your understanding these words as said by Alec could never have been said: "My group has been commissioned to do a certain job, a man paying £5000 to kill you and rob your wife of a diamond ring"? A. I never said that. I said I can't recall it. 50

Q. To your understanding of the situation those

words could not have been said in Inspector Lendrum's office? A. I did not say that. I said I can't recall it being said.

Q. I am not putting to you precise words. I am putting the effect on your mind of what you heard in Inspector Lendrum's office. I am putting to you on your understanding of what was said, neither those words, nor anything like it could have been said? A. I did not say that. I said it could have been said, but I can't recall it. 10

Q. Is it possible that you left Inspector Lendrum's office believing that the man Alec had been commissioned to kill Barton? A. I can't recall that far back, but I would say no, otherwise I would have taken my pistol with me when I went down to see this man.

Q. So that is your very clear recollection now, that you never had, when you interviewed that man that night, the idea that he had been commissioned to kill (Objected to; question withdrawn). 20

Q. Did you at any time on the Sunday, or the Sunday night, have the impression that the man Vojinovic claimed that he had been hired to kill or that Mr. Barton said that he so claimed it. A. No. I don't think they are the words even in Vojinovic's record of interview, and I have not read it since January 1967. I say that he was told by this man Momo that "I know of a plan which both of us are not game to carry out", or words to that effect. 30

Q. Whatever your understanding was, did you think that a man who would be involved in such a plan, to whatever extent, was necessarily not a dangerous criminal? A. Not necessarily.

Q. So there was in your mind the possibility that this man was a dangerous criminal? A. No.

Q. Do you remember the trip into town from Castlecrag? A. Yes.

Q. How did the cars go? There were two cars, were there not? A. In what way do you mean that, mechanically, or in which direction? 40

Q. In which direction, one behind the other? A. No, I spotted Mr. Barton's white Mercedes on two occasions.

Q. Where did you spot it? A. I don't know the name of the place. Once was near a bridge and once closer to town.

Q. You both left the house at the same time, did you not? A. No, there was a lapse of three or four minutes between. 50

Q. Who was last? A. We were.

Q. "We" being you and Tommy, the boy? A. Yes, young Mr. Barton.

Q. What, were you slow? A. No.

Q. Couldn't get the car started, perhaps?

A. No.

Q. How did it come about you were three or four minutes later, both leaving together? A. Mr. Barton left in front and we left afterwards.

Q. Why did you not travel together? A. I could not see any reason for it. We were going to the same destination.

10

Q. How did it come about you spotted him twice?

A. Because we must have got near him.

Q. How do you remember you only spotted him twice? A. I seen his car. It is a car that stands out.

Q. Why did you not stay behind him? A. We would have stayed behind him coming in if he was in front of us.

Q. How did he get away, so that you spotted him a second time? A. Well, traffic lights, it could be anything. This is 18 months ago you are asking me to throw my memory back.

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Q. This was a prearranged plan, was it not?

A. Not to my knowledge.

Q. That is a lie, isn't it? A. No.

Q. The fear in your mind was that one of the criminals would be watching the house? A. No.

Q. And it was therefore arranged that Mr. Barton would leave and that the other car would not leave, so as to mislead anyone watching the house? A. No.

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Q. And it was arranged the two cars would go by different routes, was it not? A. No.

Q. You went one way, by arrangement, and Mr. Barton went another way? A. I don't know which way Mr. Barton went.

Q. You say you spotted him twice? A. But I don't know which way he left the house.

Q. You went one way and he went the other?

A. I ---

Q. You saw him go? A. I saw him leave but don't know the way he went after he left.

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Q. The arrangement was that the cars would not follow one another to town was it not? A. I can't recall that.

Q. You are prepared to swear that there was no arrangement that the two cars would not leave the house together? A. Yes.

Q. And you are prepared to swear there was no arrangement the two cars would follow separate routes to town? A. No.

Q. You swear there was no such arrangement, or there was? A. There was no such arrangement.

HIS HONOUR: Q. Did it occur to you the house might be being watched? A. Not at that stage, no sir.

Q. At this point of time Mr. Barton had told you of two men, had he not; one who had met him the night before and led him to the man Alec? 10

A. I learned this, to the best of my knowledge, later, from Vojinovic, that Vojinovic said that a man had met Mr. Barton outside the hotel and taken him inside. That was my only knowledge of two men there. The only other knowledge of other men were of this Momo person and Vojinovic, and Hume, that was mentioned to Mr. Armstrong (sic).

Q. What I do not quite follow is this. On the Sunday morning, according to Mr. Barton, the man Alec had not kept an appointment at a Post Office, because Mr. Barton had not gone unescorted. Do you remember that being said, on the Sunday morning? A. I can't recall it. It could have been said, but I can't recall it. I look at it in this light, if I can explain, that Mr. Barton had already met this man by arrangement, so why wouldn't he meet him again under the same circumstances. 20

Q. Was it present to your mind the man had not kept one appointment he had made with Mr. Barton because Mr. Barton went escorted by somebody else, in another car? A. No, I can't recall it. 30

MR. GRUZMAN: Q. You had been told that at least one other man had met Mr. Barton outside the Rex Hotel and escorted him to Alec, had you not? A. I was told after we had located Vojinovic, yes.

Q. Are you prepared to swear in Inspector Lendrum's office that morning you were not told that Mr. Barton stopped at a bus stop and a man asked was he looking for Alec, he said Yes, and he said his name was John and he took him to the big bar at the Rex, and introduced him to Alec. Are you prepared to swear that was not said in Lendrum's office that morning? A. It is possible it could have been said but I cannot recall. That was 18 months ago. 40

Q. If it had been said, it was to your knowledge that at least two men were involved? A. Two men at the meeting, yes.

Q. I put it to you that you were told on that Sunday morning that one rendezvous had not been kept because somebody was watching? A. I can't recall. 50

Q. If you had known both those things there would have been a very good reason for taking special precautions to see your approach to the

man was not observed? A. That is possible.

Q. One obvious way to do that would have been to send the cars to town by different routes, would it not? A. Yes, but I don't know of two different routes to come in from Castlecrag.

Q. Another way would be by a time lapse between the two vehicles? A. Yes, it is possible.

Q. But it never occurred to you? A. I can't recall making any arrangements. In fact, I say I never. 10

Q. You are prepared to swear you never did?
A. No.

HIS HONOUR: Q. What is being put to you is that it might appear that it would have been prudent to have taken steps to ensure that anybody that was watching the house did not report to whoever this man Alec was, that somebody was going with Mr. Barton from his home in another car. Do you follow the significance of what is being put? A. Yes sir. 20

Q. What do you say about that suggestion? It is being suggested to you that that is an obvious sort of thing which one would have thought would have occurred to you and which you would have taken some precautionary measure about? A. Naturally, but as I say, this is 18 months ago, I am asked to recall something from my mind, of which I have had no notes, nothing. I say, and I still think, that it was foolish of Mr. Barton to go and see this man Alec if he was - as Mr. Gruzman likes to differentiate between fear and concern - to go and see him on that night. If that man was prepared to wait there and see him I would say at this stage I could see no reason for separating any vehicles that left. 30

MR. GRUZMAN: Q. But you knew that Mr. Barton had a special armed bodyguard watching him at the Rex Hotel, didn't you? A. No.

Q. You never knew that? A. No.

Q. He never told you? A. No. 40

Q. I put it to you that there was an arrangement made as to where the cars should meet when you got to the city? A. There was, yes.

Q. Where was that? A. Darlinghurst Police Station.

Q. Did you go to Darlinghurst Police Station?
A. Yes.

Q. In the car? A. In the car, with the son, yes.

Q. You went direct to Darlinghurst Police Station in a car? Q. In a lane opposite Police Station at Darlinghurst, yes. 50

Q. In a lane opposite. So the two cars never

met? A. No. Never come together, if that is what you mean.

Q. I thought you told his Honour there was an arrangement that the two cars should meet at Darlington Police Station? A. That is Det. Sgt. Wild's car and Mr. Barton's car.

Q. Are you telling his Honour now you thought I was talking about Det. Sgt. Wild's car in that last question? A. I am afraid I can't follow you. If you could explain it more simply --- 10

Q. I will repeat the question. You told his Honour there was an arrangement that the two cars should meet at Darlington Police Station, did you not? A. Yes.

Q. And the only two cars we were talking about were the son's car, and Mr. Barton's car, were they not? A. Yes.

Q. Those two cars never met at Darlington Police Station, did they? A. They were at the Darlington Police Station. One was across the road in a lane, the other one was outside the Police Station, and if you - I think it is only being technical to say across the street is not together. 20

Q. Did that car remain in that lane? A. I don't know how long it remained after I left.

Q. It remained in the lane until after the incident with Vojinovic, did it not? A. I don't know. 30

Q. To the best of your knowledge it did?
A. I don't know.

Q. You don't know anything to the contrary, do you? A. No, I was not there.

Q. But your gun was there? A. Locked in the glove box, yes.

Q. Locked in the glove box? A. Yes.

Q. Are you serious? A. Yes.

Q. Who locked the glove box? A. I did.

Q. What did you do with the key? A. Gave it back to Mr. Barton Jnr. 40

Q. So you locked your gun in the glove box, is that right? A. That is correct.

Q. What was the point of that? A. To secure it there.

Q. That is a Police regulation, is it? A. Not to my knowledge.

Q. It sounds the right thing to say, does it,

that you locked it in the glove box? A. I don't know whether it sounds. That is what happened.

Q. Do you swear that? A. Yes.

Q. No possibility of mistake? A. No.

Q. Did you get the key from Mr. Tom Barton?

A. Yes.

Q. What, you asked him for the keys out of the ignition, did you? A. I put them in there, and he passed them to me. I can't recall whether I asked or he just passed them.

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Q. Was the gun in its holster? A. Yes.

Q. You unbuckled it, did you? A. Yes.

Q. And put the gun and the belt --- A. No.

Q. You put the gun in the glove box? A. Gun, holster, handcuffs, and notebook.

Q. In the glovebox, then Mr. Tom Barton gave you the key and you personally locked the glovebox? A. That is correct.

Q. Then did you give the key back? A. Yes.

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Q. That is a pack of lies, isn't it? (Objected to). A. No.

Q. Would you recognise the car again? A. I would recognise the make and the colour.

Q. What was the make and the colour? A. It was a grey Valiant.

Q. A grey Valiant? You understood it to be the one owned by Mrs. Barton? A. Yes.

MR. GRUZMAN: The car is downstairs immediately outside the Court in Macquarie Street. I would ask your Honour to bear with us while Const. Follington shows us the lock on the glove box.

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HIS HONOUR: You want to put to the witness that there is no lock on the glove box?

MR. GRUZMAN: Yes.

HIS HONOUR: I think what I shall do - it is preferable that Det. Follington goes down first. I will not go down unless there is anything - if there is a lock which he wishes to point out to me - I will go down and see it. If there is no lock there is no need for me to go down.

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Q. You understand what is to be sought. Detective Follington? A. Yes.

Q. You are going to be asked to look at a car outside the Court. It will then be suggested to you that that is the car that you were in that night.

Will you be good enough to see if you can identify it as such, and see if you are able to identify the lock on the glove box that you locked that night. You follow what is being asked? Then I will see if it is necessary for me to go down.

HIS HONOUR: I will adjourn for a few moments, and perhaps Det. Follington can go down with counsel and my Associate.

(Short adjournment).

10

MR. GRUZMAN: Q. Constable Follington, during the adjournment we went downstairs and you had the opportunity of inspecting a motor car? A. A motor car, yes.

Q. Was it a grey Valiant? A. Yes.

Q. Was it similar to the motor car in which you travelled from Castlecrag to the city? A. Only similar in colour and similar in make.

Q. - with Mr. Barton Jnr. on the night of Sunday (sic) 7th January 1967? A. Similar in colour and similar in make.

20

Q. Was there anything about that car which distinguished it in your mind from the car in which you travelled on the night in question? A. Yes. The car that I was travelling on the night in question was a well-kept motor vehicle.

Q. That is a year and a half ago? A. Yes, it is a year and a half ago.

Q. Are you prepared to admit that the car downstairs was the car that you travelled in? A. I don't know.

30

Q. You don't know? A. No.

Q. Apart from the fact that it is $1\frac{1}{2}$ years older, is there anything about the car downstairs which differs from the car that you travelled in? A. Yes, I notice that the duco is a different colour in various places.

Q. Are you prepared to deny that the car you saw was the same car? A. The same car as used on the 8th?

Q. Yes. A. I would not know whether it is the same car.

40

Q. The car that you saw has no lock at all on the glove box, has it? A. Not now.

Q. You are a police officer of some experience, and I suppose in your experience you have looked at many motor cars? A. Yes, some.

Q. From any appearance of the motor vehicle, did it appear to you that there had been any alteration in the glove box lid or lock at any time? A. That would need an expert. I could not say.

Q. There is no doubt that there is no lock on this glove box in the car that you saw? A. Not on this particular glove box.

Q. So is this the position, that first of all you do not admit that this is the car that you travelled in? A. I did not say that at all, Mr. Gruzman.

Q. Would you admit or would you not admit that the car you saw downstairs is the car that you travelled in? A. I don't know whether it is the same car. 10

Q. Well, you won't admit it? A. Well, I don't know.

Q. So that you won't admit it? A. No, I never took particulars of the number.

Q. Will you admit it is the same make and model as the car that you travelled in? A. All I can tell you it is the same - very close to the same colour. And same make, I am sorry. 20

Q. And the same model, isn't it? A. I cannot recall the model. The particular model.

Q. So first of all you won't admit this is the car, and secondly, I take it you do not admit, if it is the car, that the glove box is now the same as it was on the 8th January 1967? A. I cannot recall whether or not it is the same motor vehicle. It is quite possible. But I say that there was a lock on the glove box.

Q. Do you happen to know that with this particular model of motor vehicle - that this motor vehicle - this particular make and model of motor vehicle, is not fitted at any time with a lock on the glove box? A. I don't know. But I know it would not be hard to put one on. 30

Q. You think one was put on? A. I don't know but there was one on it.

Q. Of course, the first time you ever suggested to anybody that there was a lock on the glove box was this morning, in your evidence? A. In Court? 40

Q. Yes. A. In Court, the first this time.

Q. You have never told anybody out of Court, have you? A. Not that I can recollect, no.

Q. There is certainly no document been produced by the police Department which would have a reference to any such thing? A. Not that I can recollect.

Q. So if someone was going to change the glove box to accord with or disprove your evidence it must have been done today? A. Quite possibly. I know I did tell other people all about it. Not in this Court, and not the Police Department. I did tell Mr. Goldstein. 50

- Q. You told Mr. Goldstein, did you? A. Yes.
- Q. That the glove box had a lock on it? A. Yes.
- Q. Mr. Goldstein, of course, is counsel - one of the counsel for Mr. Armstrong? A. That is right.
- Q. You are not suggesting he told anyone?
A. I don't know.
- Q. I take it, then, notwithstanding what you observed downstairs today you will not admit that you told an untruth when you say you locked your pistol and other things in the glove box? A. Definitely not. I distinctly remember young Mr. Barton handing me the keys, and it was a separate key from the ignition key. 10
- Q. What is the registration number of the car which you saw downstairs? A. You told me to record it, Mr. Gruzman. It is DJY-211.
- Q. You took that directly from the car yourself, didn't you? A. Yes.
- Q. You are satisfied that is the registration number of the vehicle which you inspected? A. Yes. 20
- Q. You see it would be wrong, I suppose, in your view for a police officer to leave a pistol lying around unlocked - in an unlocked situation? A. It depends entirely on the circumstances. If I left it lying around a room, yes.
- Q. If you left it in the custody of a person who to your knowledge was frightened of firearms, that would not be right in your view, would it? A. It was quite secure. I considered him a man of good repute. I had taken the bullets out of it, and I trusted him to take it to the Criminal Investigation Branch. 30
- Q. But you were not trusting him. You wanted it locked up, didn't you? A. Naturally.
- Q. And that is because it is the proper thing to do, isn't it? A. Well, it is the thing that I do, anyhow.
- Q. What I put to you is that you are prepared to tell any untruth whatsoever that you think will help your side of this? A. No. 40
- Q. Particularly, that you would tell any untruth whatsoever which will prevent you from facing disciplinary action by the Police Department? A. No.
- Q. You followed a course of conduct of deceiving in part Mr. Barton and getting money from him? A. To use your verbage, Mr. Gruzman, that is a lie.
- Q. Let us take Goulburn. You made a mention of Goulburn in your evidence. There was some discussion between you and Mr. Barton about Goulburn? A. Yes. 50

Q. When did that take place? A. On the 8th - to the best of my knowledge on 8th January 1967.

Q. Is that the only time you saw him? A. Saw who?

Q. Mr. Barton? A. No, I saw him on the 11th.

Q. When else? A. I saw him on the 18th. I saw him on 3rd November.

Q. Yes? A. I saw him on 14th November.

Q. How many times did you come to Mr. Barton's home? A. Once. 10

Q. That was on 3rd November? A. No, twice, I am sorry. It was on the 8th January 1967 and on 3rd November 1967.

Q. And on 3rd November you came on official police business? A. Yes.

Q. How did you travel there? A. Police car.

Q. In a police car? A. Yes.

Q. Has Mr. Barton ever been to your home? A. No, not to my knowledge. 20

Q. Have you ever travelled to Mr. Barton's home in your car? A. Yes.

Q. Your own personal car? A. No.

Q. You do own a car, don't you? A. Yes.

Q. In fact you have owned several cars, haven't you? A. Yes. I have owned four cars. Five cars.

Q. Five cars? A. Yes.

Q. Let us see. Did you own a very old Zephyr?
A. A very old Zephyr?

Q. Yes. A. I owned a 1959 Ford Zephyr. 30

Q. Blue? A. Yes.

Q. An old Blue Zephyr - a 1959 model blue Zephyr? A. Yes.

Q. So that in 1967 you would fairly describe that as an old blue Zephyr, wouldn't you? A. I would not, no.

Q. A blue Zephyr, eight years old? A. Yes. It is not old to me, Mr. Gruzman.

Q. Did you drive that car to Mr. Barton's home?
A. No, I disposed of that car early in 1967. 40

Q. Well, I suppose we can - it won't be difficult to check the exact date? A. Not at all.

Q. Do you suggest that you disposed of that car prior to 7th January 1967? A. I can't recall. I think it was in February. But the transport records would indicate that.

Q. Well, do you know of any circumstances as a result of which Mr. Barton would know just for that month between January and February 1967 you were driving a car which some people might describe as an old blue Zephyr? A. Unless I told him at his home on 8th January. 10

Q. You think you might have told him that is what you were driving? A. I could have quite easily.

Q. But there is no circumstance or occasion occurred as a result of which Mr. Barton would have seen your car? A. No, not unless he went specifically looking for it.

Q. Or, of course, unless you drove it out near his home? A. I didn't.

Q. Well then, you changed that car? A. Yes. 20

Q. Let us see. Did you get a late model Holden - a two-toned car? A. Yes, 1964 Holden.

Q. Can you explain to his Honour how Mr. Barton would know that you then had a late model two-toned car? A. Yes, quite easily, sir. Mr. Barton - I am very interested in cars. I have an interest in them - not that I have a good mechanical knowledge of them. But when I was at Mr. Bowen's office. Mr. Barton's car was parked very close nearby, and during our conversation there I was comparing my car with his, which is a Mercedes, of course, and it is a thing that you talk about. I do, anyhow - not being able to afford a car of that calibre. 30

Q. You in fact drove the Holden car also out to Mr. Barton's home, didn't you? A. No.

Q. In fact you went to Mr. Barton's home on some four or five occasions, didn't you? A. No.

Q. I understand from what you tell his Honour that you did not regard this as a very important matter at all, really? A. Not after the 11th January. 40

Q. Not after 11th January. Do I take it that up to the 11th January you did regard it as an important matter? A. I considered it as an inquiry requiring some attention.

HIS HONOUR: I did not hear that. A. I considered it as an inquiry requiring some attention.

MR. GRUZMAN: Q. But purely an official matter? Purely official? A. Yes.

Q. Not the sort of matter in which you would take any personal interest? A. Det. Wild was in charge. He made the decisions. 50

Q. So far as you were concerned this was a purely routine matter - a matter where you had been dragged in, as it were, to assist Sgt. Wild?

A. You just said, it. Dragged in.

Q. "Dragged in" is right? A. Yes.

Q. May I take it, then, there would be no reason why you would at any time have given to Mr. Barton your personal phone number? A. I have no personal phone number.

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Q. Just answer the question. There was no reason why you would have given to Mr. Barton your personal phone number? A. No.

Q. There was no such reason, was there? A. No.

Q. In point of fact you have not got a phone at your home, have you? A. No.

Q. Your neighbour has a phone? A. That is right. I gave that to Mr. Barton.

Q. You gave that to Mr. Barton - 396705? A. Yes.

Q. Why did you give Mr. Barton your neighbour's phone number if this was a purely police routine inquiry that you had been dragged in? A. In case he wanted to contact me when I was not at work.

20

Q. Why did you imagine at that time that Mr. Barton might want to contact you through your neighbour if you were not at work? A. I was on night work at various times. Mr. Barton did ring regularly. And there was also the occasion of making the appointment to see Mr. Bowen, and I make it a habit of giving that phone number to a number of people.

30

Q. By that, do I take it you would have expected that Mr. Barton would have contacted you by ringing your neighbour when you were off duty? A. I gave it to him for that purpose, and mainly - my main concern was Vojinovic.

Q. I don't quite follow. Would you mind expounding on that? A. Well, I will. Vojinovic is wanted in this State, as we know, on a warrant of first instance. There are other matters which I would like to speak to him about, but which I would not like to disclose in this Court at the moment, not concerning this inquiry. And I hope that should he return to this State at any time, he may contact someone, including Mr. Barton, and Mr. Barton may contact me.

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Q. You felt that, after Mr. Barton had arranged for him to be taken by the Police, if he came back here, knowing there was a warrant out against him, that he would contact Mr. Barton? A. He could quite well do so, That is nothing unusual for a criminal.

50

Q. I take it it is not the right thing to do - to abscond from bail on a criminal charge? A. No.

Q. May I take it that the police are concerned to recover criminals who do that? A. Yes.

Q. I understand, from what you have just said, you were concerned about it? A. I am concerned about all persons who are wanted for any sorts of offences.

Q. It came to your knowledge, didn't it, that a letter was written by the Victorian Police to Sgt. Wild advising of the whereabouts of Vojinovic, so that he could be brought back here if required. That came to your knowledge, didn't it? A. The letter, but nothing of the contents. The contents I did not know. 10

Q. Does what I have just put to you come as a surprise to you? A. I recall, on producing documents here, you asked me about a letter - whether I had any knowledge of the letter. To the best of my knowledge I can remember that I heard of it the day before - about some letter - but other than that I had no knowledge at all. 20

Q. Would you just tell his Honour - you have told his Honour earlier that you gave your neighbour's phone number to Mr. Barton because you wanted to get Vojinovic? A. That is right, and in case Mr. Barton wanted to contact me about anything.

Q. Just dealing with Vojinovic first, did it never come to your knowledge during the year 1967 that Vojinovic was in a gaol in Melbourne? A. Not until such time as he had appealed.

Q. That is going back almost to the beginning of 1967? A. I don't know. I can't recall the exact date. 30

Q. April or thereabouts. Some time in the early part of 1967 you became aware that Vojinovic was in prison in Victoria? A. In custody.

Q. In prison? A. Yes. Awaiting appeal.

Q. I beg your pardon? A. Awaiting appeal. He could have been released.

Q. You say you became aware of it after he was first convicted and before he appealed? A. As his appeal date was approaching, yes. 40

Q. Is there not some police magazine which is circulated interstate for the purpose of informing police in other States of the whereabouts of criminals? A. Would you say that again?

Q. Isn't there a police magazine or publication of some kind in which the names of criminals who have been arrested is circulated interstate? A. Not to my knowledge.

Q. Anyway, you got direct knowledge of the fact that Vojinovic was in custody in Melbourne? A. Yes, at one stage. 50

Q. And you wanted him? A. Yes.

Q. What did you do about him? A. I contacted the detective who was in charge of the original inquiry on which he absconded, which was, to the best of my knowledge again I say, Mr. Gruzman, that it was a charge of breaking entering and stealing, and he informed me that there was no extradition desired.

Q. Well, in other words, it was quite all right for him to leave the State and that was that? 10

A. Leave which State?

Q. Leave New South Wales? A. No.

Q. Well, he was not to be brought back on that charge? A. No, but should he come back he would be arrested. No authority to bring him back.

Q. Was any authority sought to have him extradited? A. Yes. I was told by Det. Col Mackie of Darlinghurst Police Station that he had made some inquiries along those lines, and had found that the Department would not stand the cost. 20

Q. Is this what you are telling us, that there was an official application - tell me if I am wrong - that there was an official application to have Vojinovic extradited from Melbourne at the end of his sentence? A. I don't know if it was official or otherwise.

Q. What is the procedure if you want a criminal back who has absconded? What is the procedure in that case? A. Usually if it is an offence committed against a company the store or the person controlling that company is approached to see if they would stand the cost of bringing the person back. If they will, a report is submitted; if they won't it is quite possible that the Detective in Charge may submit a report to the Commissioner of Police asking for him to be returned at State expense. 30

Q. As a result of your inquiry are you able to tell his Honour whether either of these courses were adopted in this case? A. I don't know. I asked Det. Mackie whether or not extradition was being considered and he said that there would be no extradition. 40

Q. When was this? A. I can't recall.

Q. To the best of your recollection? A. I cannot recall, Mr. Gruzman.

Q. Well, within months? A. Somewhere between the time of his appeal and November last year.

Q. I just want to go back again to the situation after you left Castlecrag. (Approaching witness). I have here a street directory. Would you be good enough to mark the lane opposite the Police Station where the car which Mr. Tom Barton drove was parked? A. Will I put "X"? 50

Q. Yes. A. Just there (indicating). Darlington Police Station is right there.

Q. There is no lane actually marked on this particular map at that particular point, is there?

HIS HONOUR: Mr. Gruzman, I have a street directory here which you may use.

MR. GRUZMAN: Don't mark this, please. With your ball point pen retracted will you try to indicate where it is. A. This one here. It is in Foley Street. It is recorded in here. 10

Q. I can get it on the transcript now. I see it. If we proceed from Taylor Square down Bourke Street to Woolloomooloo, which you can't do because it is one-way traffic - if we walk down Bourke St. from Taylor Square the little lane on our left is Foley St., and that is the lane you mean? A. Yes.

Q. There is a hotel on the corner, isn't there?
A. Yes, there is an hotel on the corner of Oxford Street and Bourke Street, and it is my recollection it comes right down in the lane I referred to. 20

Q. That is around the back from the Police Station?
A. Yes, the Police Station is on the corner.

Q. You parked the car in Foley Street. Your car was parked in Foley Street, and you then walked to the Police Station and past the Police Station to the meeting place, is that right? A. Outside the Police Station, yes.

Q. In other words, the car was here, the Police Station was there, and the meeting place was there, on the far side of the Police Station? A. That is right. 30

Q. The proposed meeting place. When I say "meeting place" I think you understand me to mean the proposed meeting place with Vojinovic? A. With Vojinovic?

Q. Yes. A. Oh no.

HIS HONOUR: I am sorry. I thought you meant with Sgt. Wild. 40

MR. GRUZMAN: Q. Where was the proposed meeting place with Sgt. Wild? A. Outside Darlington Police Station.

Q. In other words, I accept that as being the same as Darlington Police Station? A. Yes.

Q. You knew you were going to travel from the car to Darlington Police Station and then in effect past Darlington Police Station down to the meeting place with Vojinovic? A. Walk past it, yes.

Q. And you knew that, you have told us, before you left Castlecrag? A. I did not know the exact place to park, but on the way in I decided that would be the most opportune place to park. 50

Q. So that before you parked the car you had decided then where you would park the car, and that you would walk across the road to Darlington Police Station where you would meet Sgt. Wild and then you would go on to the meeting place with Vojinovic? A. Yes.

Q. That was your plan? A. That is right.

Q. And I suppose that, although an emergency may require it, it would be undesirable to leave a police pistol in the custody of a young and frightened boy, wouldn't it? (Objected to). 10

Q. A young boy, frightened of guns? (Objected to; rejected).

Q. In anything other than an emergency - except in an emergency it would be undesirable in your view, to leave a police pistol in the custody of a young boy? A. To start with he is not a boy - he is a man and I do not think it was undesirable. He was a person of good repute, and I see no reason - no objection - in leaving it there. Had I had to stop at the Police Station and book my appointments in the time would not have permitted me to reach St. Vincent's Hospital. 20

Q. You would have found difficulty in saying to the station sergeant, or one of the detectives "Here, hold my coat and things; I have got a job to do"? A. Usually you will find in my knowledge of these things if you go into a police station and try to give them something they are like all Government Departments - they want to enter it in half a dozen books, and that is putting it bluntly. 30

Q. You are seriously telling his Honour that, knowing you were going to go to the Police Station, you preferred to leave your pistol in the custody of young Tom Barton rather than leave it at the Police Station? A. I would not have had time.

Q. There is a detectives room at Darlington, isn't there, upstairs? A. Yes.

Q. There would not have been any difficulty at all, would there, in asking one of your colleagues "Keep an eye on it"? A. I would have doubts as to if there would be anyone there at that time of night. Most unlikely. 40

Q. There would certainly be the Station Sergeant there? A. Yes, downstairs.

Q. Would not you have regarded it simpler and safer to have handed your gun to the Station Sergeant rather than leave it in the custody of Tom Barton? A. Not particularly. 50

Q. You never went to Darlington Police Station at all, did you? A. I did. I never went inside it, Outside it.

Q. You never met Sgt. Wild there, did you?
A. Yes, I did.

Q. And you never intended to meet Sgt. Wild there, did you? A. Yes, I did.

Q. You remember after the 3 p.m. 'phone call you rang Sgt. Wild, didn't you from the house?

A. There was a 'phone call. I don't know whether - I think they rang Mr. Barton's home. I can't recall whether I rang them or they rang me.

Q. And that was after the 3 p.m. phone call? 10

A. Yes.

Q. And there was no other call from Sgt. Wild, was there? A. No other call?

Q. Yes. A. Well, after 6.15 p.m. I made three phone calls. One was to Sgt. Wild's home, one was to Mr. Lendrum's home and the other one was back to Sgt. Wild's home.

Q. That is the first time you have mentioned this? A. I beg your pardon?

Q. That is the first time you mentioned this? 20

A. You have never asked.

Q. You were asked about phone calls in your evidence in chief? A. Well, I apologise. If it can be read back to me I can explain.

Q. What was the phone call to Sgt. Wild after the 3 p.m. phone call about? A. As I say, I can't recall whether he rang me or I rang him.

Q. What was the subject matter of the conversation? A. I would have told him - I can't even recall whether it was Sgt. Wild or Mr. Lendrum, but I would have told him - I would have told whoever it was of the phone call. 30

Q. And what was arranged? A. There were no arrangements made - arrangements other than that Vojinovic was going to ring back at 6 p.m.

Q. What actually happened was this, wasn't it, that the two cars met near the intersection of Victoria Street and Oxford St, at the top of a hill away from St. Vincent's Hospital? A. I don't know. I was not there. 40

Q. What? A. I was not there.

Q. I suggest to you that you were there? A. I was not.

Q. And the car was then parked in the laneway near there known as Barcom Lane? A. Barcom Lane?

Q. A laneway just down from Oxford Street? A. I know of a Barcom Street, but I don't know Barcom Lane.

HIS HONOUR: There does not seem to be a Barcom Lane.

There is Barcom Place, Barcom Avenue and Barcom Street.

MR. GRUZMAN: Q. I am sorry. It is Barcom Avenue. Tom Barton's car was parked in this avenue, wasn't it? I am indicating in the vicinity of Barcom Place. A. No, definitely not.

Q. And from there it was a matter of 500 or 600 yards down to the meeting place? A. From where?

Q. From the vicinity of Barcom Place down to the point where you were going to meet Vojinovic was about 500 or 600 yards, wasn't it? A. I was not at Barcom Lane. I was at Darlington Police Station and I walked down Forbes Street into Burton Street and across the park to St. Vincent's Hospital. 10

Q. If you did that, you would have been walking right across or almost across the very point where you were going to meet Vojinovic? A. I would have walked past there, yes. 20

Q. If you came from that direction why didn't you stop in the park? A. Because there was better cover over at St. Vincent's Hospital. At that time of night it would have been visiting hours.

Q. It meant that you walked through the park just approaching the time when you were going to meet the man, didn't you? A. Yes.

Q. Over to the opposite side of the road? A. That is right.

Q. Of course, if the car had been parked up the top end of Victoria Street it would have been much more likely, wouldn't it, to your mind that you would walk down Victoria Street and stay on the verandah of St. Vincent's Hospital? A. Had I come from that direction, but I didn't. 30

Q. And the only conversation that you say that took place at the police station or in the vicinity of the police station was a conversation with Sgt. Wild about money? A. Can you qualify which Police Station and what time and date, please, Mr. Gruzman? 40

Q. The only conversation which took place in the vicinity of Darlington Police Station at about 10 past 7 on the night of Sunday, 8th January 1967, was a conversation about money? A. No.

Q. What else was said? A. Using my own words once again - and I have already given this in evidence - as I approached Det. Sgt. Wild, I said, "Arrangements have been made to meet the man Alec outside St. Vincent's Hospital at 7.30." 50

Q. Just pausing for the moment, didn't he know that? A. I can't recall.

Q. Haven't you sworn that you telephoned him and told him that? A. I telephoned, yes.

Q. So why did you repeat it? A. Nothing unusual in repeating it.

Q. That is the way you work, is it? A. Yes.

Q. Carry on. A. Sgt. Wild said, "I want you to go down opposite the hospital and wait there, and should this man approach Mr. Barton I want you to speak to him, tell him of our inquiry, and tell him that we wish to interview him."

HIS HONOUR: Q. Wish to - ? A. Wish to interview him. 10

MR. GRUZMAN: Q. Anything else? A. There was other discussion, but I left at that stage, and Mr. Barton and Sgt. Wild were still there, and I walked down -

Q. Tell me, had not any of this been discussed with Sgt. Wild? A. What part?

Q. About how you were going to approach the man. Hadn't that been discussed with Sgt. Wild? A. Naturally. It is a thing that is always done in Police matters, that if you have to approach a person like this it is quite obvious not to turn up in a suit and hat, because 90% of them will pick you as a policeman. 20

Q. Change your shoes, too, I suppose? A. That could be quite possible, too.

Q. Had you arranged with Sgt. Wild that you would approach him in shirtsleeves? A. No, not that I can recall.

Q. That was something you did of your own volition? A. Yes, something that I always do. 30

Q. You had done this sort of thing before, I suppose? A. Yes.

Q. Did you really need detailed instructions from Sgt. Wild as to exactly what to say and as to exactly what to do? A. I cannot tell Sgt. Wild what to say, Mr. Gruzman.

Q. You were saying a moment ago "When dealing with a man like this". What did you mean by that?
A. Can you re-phrase that in some way to give me a better idea of what you are speaking about? 40

Q. I am using your words. A. Yes. But it is a bit vague.

Q. You referred to Vojinovic in these terms. You said, I think "When dealing with a man like this" certain things... I ask you what you mean by that phrase? A. Well, appointments to meet people, particularly people who are giving information - a lot of them will not speak to a policeman who has any resemblance to a policeman. For some unknown reason they don't like to be seen with a policeman, and if they had decided that they did not wish to speak to the policeman and they see a man in a suit and a hat, to put it quite bluntly they clear out. 50

Q. How do you prevent them from clearing out?

A. Well, if necessary I chase them.

Q. You what? A. I chase them.

Q. In order to prevent the risk that they will clear out what steps do you take? A. Usually stand very close to them, Mr. Gruzman.

Q. If you were suspicious that the man was not an informer, but in fact a criminal who possibly had a criminal intent at the time what steps would you take? A. Are you talking about Vojinovic at this stage? 10

Q. Yes. A. I didn't know that he was a criminal. I knew at that stage that he was willing to supply some information, and it was only necessary to stand close to him, because he had seen Mr. Barton the night before and had rung him after that, and I could not see any reason for any other course of action.

Q. I suppose this sums out your whole attitude to this case, does it, that you never, from anything that was said to you, at any point understood that Vojinovic was a man who had been engaged himself to perform a criminal act in relation to Mr. Barton? 20
A. I still do not think that he has ever been engaged.

Q. And so you tell his Honour that your attitude to him was that this man was a mere informer? A. That is so.

Q. Going about his business informing for money? 30
A. I don't know for money, but he was informing.

Q. As you understood it, informing for money?
A. Informing, yes.

Q. Do I understand further that you say that you did not even believe that he had information?
A. I did not say that, Mr. Gruzman.

Q. Did you believe that he had genuine information which was of value to the police, or that he didn't? A. I believed that he had something to tell us. 40

Q. But did you believe that he had information which could lead to the prevention or detection of a criminal offence at any time? A. Yes, this could have operated in my mind.

Q. Well, I gather then that, if that was your belief, you must have accepted at the time you are speaking of, the likelihood that there was a conspiracy to kill Mr. Barton (Objected to; question withdrawn).

Q. You have told us that you believed that he had information which he would give to the police which would lead to the detection or prevention of a crime? A. Claimed he knew of it, yes. 50

Q. You believed that it was possible - (Objected to).

Q. You did believe that he had information about a plot to kill Mr. Barton? A. I believed that he had information or something he could tell us.

Q. About a plot to kill Mr. Barton? A. Yes.

Q. Of course, that meant that you would be concerned, as a police officer, with Mr. Barton's safety? A. Not on this occasion, no. 10

Q. You have just told us that it was - just a moment? A. I am sorry.

Q. You have just told us that it was your belief that this man had information about a plot to kill Mr. Barton? A. That is right.

Q. If there is a plot to kill a man, is that not the very situation in which the police should protect the citizen concerned? (Objected to; allowed).

Q. Having the belief that you told us about, was that not the very sort of situation in which a citizen could look to the police for protection? 20

A. I had no fear for Mr. Barton's life. I had no fear that Mr. Barton's life was in danger on this particular night of this particular meeting.

Q. I am not referring to this particular night for the moment. When you had the information which Vojinovic had given to you in his statement, did you not thereafter believe that there was a plot to kill Mr. Barton? A. No.

Q. Did you believe that Vojinovic had information about a plot to kill Barton? A. Yes, because at that stage you are talking about Vojinovic had already made his record of interview. 30

Q. And, with the knowledge that Vojinovic had information about a plot to kill Mr. Barton, didn't that cause you to offer protection to Mr. Barton? A. No.

Q. No? A. Not my position.

Q. Did you believe that Mr. Barton was entitled to protection from the Police in those circumstances? (Objected to; allowed). A. I personally didn't, knowing the person concerned and Mr. Barton's action, that he needed police protection all the time. 40

Q. Forget about "all the time". Did you believe that Mr. Barton needed any form of police protection? A. No.

Q. Did you believe that he needed any form of protection at all? A. No.

Q. Did you believe that it was reasonable for him to arm himself against attack? A. No, very foolish. 50

Q. Very foolish? A. Yes.

Q. Did you believe that it was necessary for him to own a rifle? A. No.

Q. I just want to ask you these few questions. You are interested in firearms yourself, aren't you?
A. Yes.

Q. You load your own bullets yourself, don't you? A. I have. I don't at the moment.

HIS HONOUR: I am sorry. I did not hear the answer. A. I have. 10

MR. GRUZMAN: Q. You have in fact loaded a dum-dum type of bullet which is more effective than the police bullet? You loan a dum-dum bullet, don't you? A. No, I don't.

Q. Well, what sort of bullets do you load yourself? A. I used to load the standard type. The police armoury have a machine to do it.

Q. Why did you load your own bullets? A. For practice. Only at the practice range. You are not allowed to use them otherwise. 20

Q. And it was these bullets that you loaded yourself that you used for target shooting? A. Yes.

Q. And you keep your bullets in a little wooden box, don't you? A. No.

Q. Don't you keep a number of bullets in a wooden container with holes? A. No.

Q. Have you ever seen such a container? A. Not wooden, no.

Q. What sort? A. Standard containers, in which ammunition is bought for the type of pistol that I have, are plastic containers in which there are various holes to stand the bullets in. 30

Q. There are various types of holes, are there?
A. All the same size - naturally.

Q. In the top of your locker you keep a container with bullets, don't you? A. No.

Q. Are you sure of that? A. No, in the bottom of my locker.

Q. In the bottom of your locker? A. Yes. 40

Q. What sort of container is that? A. There are three yellow containers to the best of my recollection.

Q. What do they contain? A. Bullets.

Q. What sort of bullets? A. 38 special.

Q. Some you have loaded yourself? A. No.

Q. Where do you keep the ones that you load yourself? A. Shoot them off as soon as I load them.

Q. Shoot them off as soon as you load them?
A. Yes.

Q. And can you offer any explanation as to how I am able - I should know, and be able to ask you as to whether you load your own bullets? (Objected to: allowed).

Q. Can you offer any explanation as to how Mr. Barton or Mr. Barton Jnr. or anyone should know that you load your own bullets? A. Yes. 10

Q. What is it? A. I discussed firearms at a little length with Mr. Barton Jnr., and told him how easily it was to load your own ammunition.

Q. And you took your own bullets out of your locker and took them down to the range, with your own pistol, didn't you? A. I took my pistol, but I didn't take any bullets. I took the bullets that were in the gun, naturally, but I didn't take any extra. 20

Q. And you fired off some shots out of your own pistol, didn't you? A. No.

Q. You have told his Honour that your only purpose in teaching Mr. Barton about guns was safety? A. No, that is not the entire reason. That was as the question was phrased, Mr. Gruzman. My main reason, if you permit me to explain, was this, that I was approached by a young man - obviously an intelligent young man - who had been sheltered all his life. He had come into the possession of a lethal weapon, and that should he have left there without my showing him how to use it and had he shot someone then it would have been a neglect of duty on my part, and I am sure that the Commissioner of Police would have taken some action against me. 30

Q. This was an automatic, wasn't it? A. Semi-automatic.

Q. With a bolt action? A. No.

Q. Semi-automatic with a pump action? A. No, it was a semi-automatic, and the gas given off by the discharge of the first - 40

Q. - reloads, the next one? A. Yes, forces the action back to re-cock it.

Q. So that you fire it each time? A. Pull the trigger each time.

Q. How many cartridges does it hold? A. I am not sure whether it was a five or an eight magazine.

Q. All you had to do was to show him how to load the weapon, is that right? A. That was one of the things, yes. 50

Q. And how to unload? A. Yes.

Q. And how to check if the breech was empty?
A. Yes.

Q. And the magazine was empty? A. Yes.

Q. You had to show him the safety devices on it? A. Yes.

Q. What were they? A safety catch? A. Yes.

Q. Anything else? A. To make sure, of course,
there was nothing in the breech.

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Q. The only safety device fitter to the weapon was one safety catch? A. I can't recall the weapon specifically, but 90% of weapons have a safety catch.

Q. You don't remember much about it? A. I see very many weapons.

Q. Rifles? A. Many of them, Hundreds of them.

Q. So that there was nothing peculiar about this weapon? A. Nothing peculiar.

Q. It had a safety catch, and the safety precautions are that you must always see that the magazine is unloaded and there is nothing up the spout? A. Not quite as simple as that.

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Q. Not as simple as that? A. No.

Q. What is the complication? What is complicated about it? A. It is the handling of the weapon; where to point it, how to load it. When you are placing a cartridge in the chamber where the rifle should be pointed. What you should do when activating the magazine on it - unloading it, or cleaning it. Making sure there are no bullets left in the magazine, as it weakens the spring. There is quite a bit to it, Mr. Gruzman, as you can appreciate.

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Q. One thing that it is not necessary to learn the safety precautions of a rifle for is to shoot?
A. Yes.

Q. And if you had to shoot it you can shoot it once, can't you? A. Yes, naturally.

A. And then that is a very effective demonstration, because at that stage both the magazine has cartridges in it and the breech has one in it, because it has automatically been re-loaded? A. Yes.

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Q. What are the safety aspects with which you are concerned? A. This is my opinion, Mr. Gruzman - I am not going by any books - I believe that a person who has a lethal weapon should have an intimate knowledge of it and should know what it feels like to go off in his hand. If he does not know what it feels like when it goes off in his hand, he is far from capable of handling a weapon at any time.

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Q. That would be one or two shots? A. No. Not in this case it was not.

Q. You were teaching this boy how to aim the rifle effectively, weren't you? A. I was teaching him how to point the rifle towards the front, and away from anyone else.

Q. You were teaching him not only how to handle the weapon, but how to shoot effectively? A. How to aim it, yes. 10

Q. So that he would hit what he was aiming at?
A. That is the main object of firing a rifle.

Q. So that by the time he left you he was a young man who could, in your opinion, effectively use this rifle for self-defence? A. He could use it, but not effectively. He needed a great deal more practice.

Q. To the best of your ability you had taught him how to use this rifle for self-defence? A. I had taught him how to use it.

Q. For self-defence, wasn't it? A. No. 20

Q. There was no other purpose, was there? A. No.

Q. He was not going shooting rabbits, or anything like that? A. Not to my knowledge.

Q. The only matter in contemplation was whether he would know how to use this rifle to save his life or his father's life? A. That was what they undoubtedly obtained it for, but my purpose was to make sure that no innocent person got killed from an inexperienced hand.

Q. To make sure if he had to shoot he shot the right person? A. Yes. 30

Q. Mr. Follington, during the first week after the Sunday, did you make efforts to contact Hume and Ziric? A. Hume, yes.

Q. And Ziric? A. Yes, and Ziric, too.

Q. What efforts did you make? A. I tried to locate Mr. Hume at his office. I think he had an office at that time at 77 Riley Street. I was unable to locate him, and I was relying on him to locate Mr. Ziric. 40

Q. Didn't you - did you speak to Hume?
A. Eventually, yes.

Q. When? A. Shortly prior to 18th January.

Q. When did you start making your inquiries to locate Hume and Ziric? A. I think it was the 10th. The 9th or the 10th. The 10th.

Q. The 10th? That is Wednesday? A. This is only from memory.

HIS HONOUR: Tuesday.

MR. GRUZMAN: Q. Tuesday. On whose instructions did you make these inquiries? A. Det. Sgt. Wild's.

Q. Did you go down to the office in Riley Street?

A. No.

Q. What did you do? A. I attempted to ring there.

Q. You telephoned the office at Riley Street and you spoke to Mr. Hume? A. No.

Q. Well, what happened when you telephoned the office in Riley Street? A. To the best of my recollection there was no answer. I could not contact him.

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Q. How many times did you phone him? A. I could not tell you. It is 18 months ago.

Q. Roughly? A. I could not tell you, Mr. Gruzman.

Q. What did you do about locating Ziric? A. I was relying on Mr. Hume to locate him for me.

Q. Is it true that you made phone inquiries to locate Ziric? A. No.

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Q. Did you ever write that on Tuesday, 10th January you made phone inquiries to locate Ziric? A. I can't recall. Telephone calls to locate Ziric would have been through Hume, and they both would have been connected, so that you can say that by telephoning Hume I would have been making inquiries also to locate Ziric.

Q. You say you never spoke to anybody? A. I did speak to Det. Sgt. England later.

Q. I am speaking about when you rang Hume's number. You say you never spoke to him? A. Never spoke to him, no.

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Q. And you never spoke to anybody? A. I can't recall whether I spoke to anyone there, or not. I think he had left that address, Mr. Gruzman, I am not sure, though.

Q. And when did Det. Sgt. Wild instruct you to make these inquiries? A. Testing my memory again, Mr. Gruzman, I think it was on the night of the 8th.

Q. Sunday night? A. Yes. But then again, Mr. Gruzman you are testing my memory.

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Q. I just show you these typewritten notes? A. Yes.

Q. Are they your typewritten notes? A. I can't recall whether I typed them or Sgt. Anderson typed them for production of documents in Court.

Q. These documents were produced to the Court in answer to a subpoena? A. Yes, to the best of my knowledge.

Q. Will you just tell us of what document is that a copy or extract? A. "Inside re Barton" - that would be from my diary.

Q. Then it goes on to say, "Phone inquiries to locate Hume and Ziric"? A. Yes.

Q. If those words are not written in your diary, where would they have come from? A. That is what I would have naturally done.

Q. Do I understand that these typewritten documents are your own expanding of the entries in your diary? A. Of what I would have done in those days.

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Q. Something you made up by looking at your diary? A. I didn't make them up.

Q. I am not putting it with any connotation of that kind. You looked at your diary, and, applying your mind to it, it says "Inside re Barton", and you have written down what you did? A. That is what I would have done.

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Q. And that applies to all of these various pieces of paper? A. Yes, I think so. I didn't type them all. Unless I read them all I could not tell you.

Q. These were documents that were produced in those circumstances? A. They appear to be.

HIS HONOUR: The documents will be placed in the envelope which has on the back the matter "F" and which is headed "Diary of Det. Const. Follington", together with some other material.

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(Further hearing adjourned to 10 a.m. on Tuesday, 13th August, 1968).

BARTON v ARMSTRONG & ORS

TWENTY-SECOND DAY: TUESDAY, 13TH AUGUST, 1968.

MR. GOLDSTEIN: There are a couple of matters in the transcript - not the last day's, but on page 641. In the fifth question down, the answer is "I recall Mr. Barton saying that he had left the man Alec at Kings Cross the night before". I thought it was "met".

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MR. PURVIS: I would think it more likely that it was "met" than "left".

HIS HONOUR: At page 641, in the fifth answer on that page, "he had left..." should read "...he had met...".

MR. GOLDSTEIN: On the same page, the seventh question from the bottom, starting with "when it ended..." I thought the answer was "with Mr. Barton Snr."

MR. PURVIS: I think that would be so.

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HIS HONOUR: On page 641 the seventh question from the bottom, the name "Mr. Armstrong Snr." should read "Mr. Barton Snr."

ALBERT GEORGE FOLLINGTON

On former oath:

HIS HONOUR: Q. You are still on your former oath, detective? A. Yes.

MR. GRUZMAN: Q. Constable Follington, you told us that on 14th November 1967 you went to see Mr. Peter Bowen? A. That is right.

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Q. Peter Bowen was Mr. Barton's solicitor?
A. Yes.

Q. And you went to see Mr. Peter Bowen at the request of Mr. Barton? A. Yes.

Q. Because you knew that Mr. Barton was proposing to bring some proceedings? A. Anticipated.

Q. And I suppose you anticipated that you could give some information to Mr. Barton's solicitor which would be helpful to those proceedings? A. I would assist him with what I know, yes.

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Q. Was that part of your official duties? A. No. Yes. I consider it as part of my duties to see people in connection with my police duties.

Q. You first answered "no" and then you answered "yes". Which is the considered answer to the question?
A. "Yes".

Q. Was it done in police time? A. No, I was on

night work at the time. I think you have had a look through my diary this morning, Mr. Gruzman, you would be able to know.

Q. You were on night work, were you? A. Yes.

Q. Do I take it from that that you were not on duty at the time you saw Mr. Peter Bowen? A. That is right.

Q. Do I take it from that that there would be no entry relating to that visit in your diary? A. No. 10

Q. You mean there would be no entry? A. No entry.

Q. In fact there is no entry, is there? A. I have not seen the diary of the 14th.

Q. I hand to you your diary, and will you tell me, is there any entry in your official diary relating to your interview with Mr. Peter Bowen?
A. No.

Q. You recognise Mr. Peter Bowen sitting in Court here? A. Yes. Only by meeting him outside this morning. I recalled seeing him somewhere. 20

Q. He is the gentleman whom you interviewed in his office at Double Bay? A. I take it to be him, yes.

Q. I beg your pardon? A. I take it to be him, yes.

Q. Have you any doubts whether it is the same man? A. No, I have no doubts, but as I said, I saw a gentleman outside the Court this morning and I said to him "I have seen you somewhere before", and he said "Yes, I am Peter Bowen," and I shook hands with him. 30

Q. I think you indicated in the course of your evidence that you regarded Hume as a man of good character? A. I do.

Q. Did you say - and you so regarded him in the year 1967? A. Yes.

Q. Did you say to Mr. Bowen these words, or words something like them, in respect of Hume, "I won't have any trouble getting another statement out of him. I can put him in any time I like, and he knows it"? A. No, these words have been moved around, I think, Mr. Gruzman. 40

Q. What was said? A. During the conversation - and I can only recall from memory here - Mr. Bowen asked me whether I could get a statement from Mr. Hume, and I said "I don't think Mr. Hume would have any objection whatsoever".

Q. I want to make it clear to you what you said to Mr. Peter Bowen is "I won't have any trouble getting another statement out of him. I can put him in any time I like, and he knows it"? A. No. 50

Q. Was that said, or something like that? A. No.

Q. Did you then have a general conversation with Mr. Bowen about the activities of a number of Yugoslav criminals in Sydney? A. I may have discussed the activities of Vojinovic.

Q. Vojinovic, Momo, and other Yugoslav criminals?

A. I may have discussed Yugoslav criminals, but I can't recall any particular names, Mr. Gruzman.

Q. Did you tell Mr. Bowen that a number of them, including Hume, were police pimps? A. No. Vojinovic I may have said, but not Hume. 10

Q. Look, I put it to you that you told Mr. Peter Bowen that Hume was known to you as a police pimp?

A. He is not and I did not.

Q. Did you answer that as saying he is not a police pimp? A. That is right.

Q. And not known to you as such? A. No, he is not known to me as such.

Q. What is your definition of a police pimp? 20

A. A police pimp is a person who comes to the police solely for the purpose of supplying information for his gain.

Q. And a person - you mean direct financial gain? A. Yes.

Q. Any other sort of gain does not come within the definition, is that right? A. I would say no. It is a very hard one to answer, Mr. Gruzman. I don't know of any criminals that usually front up other than for some financial gain. 30

Q. What about a criminal who gave information on his fellow criminals in consideration of his own personal protection against police activity? Would that make him a police pimp, in your mind? A. No. I do not protect criminals, and if those circumstances did happen I would say yes.

Q. In fact what you told Mr. Peter Bowen was that Hume was known to you as a police pimp? A. No I did not.

Q. Look, you went further. Didn't you say this "Hume is a strong-arm man who would have no hesitation in killing somebody if he wanted to get rid of them"? A. Absolutely not. 40

Q. Or words like that? A. No, definitely not.

Q. Did Mr. Bowen say "But surely that is impossible. He must get caught"? A. No.

Q. Did you say to him "No, he can just truss the body up and take it out to sea. There would never be any evidence"? A. No.

Q. Did you say "Any number of them - any number 50

of Yugoslavs have disappeared and I bet that is what has happened to them"? A. No.

Q. Have a number of Yugoslavs disappeared?

A. Absconded on bail, but not in the sense of disappearing. I know they are in custody in other States.

Q. You say you have no knowledge of any Yugoslavs who have just disappeared? A. No.

Q. None at all? A. None at all.

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Q. You deny that you made a statement to the effect of the words I have just put to you to Mr. Peter Bowen? A. Most emphatically.

Q. Did he ask you "What do you know about Mr. Armstrong?" A. Yes.

Q. Well, what did you say to that? A. I said "The only thing that I know about Mr. Armstrong is that he lives at 9 Coonalong Avenue, Vaucluse", and that everyone seems to drive a white car.

Q. That was the limit of your conversation?

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A. There was another person mentioned by Mr. Bowen that drives a white car to my knowledge.

Q. I'm sorry, I didn't follow that? A. There was another person mentioned during the conversation that I don't know whether he still does, who did in fact drive a white car.

Q. Who was this? A. Abram Saffron.

Q. How did his name come into it? A. Mr. Bowen asked me what knowledge I had of Mr. Armstrong's connection with Mr. Saffron and, I had earlier been spoken to by Mr. Barton concerning this association, and, as I say, my reply was "The only thing I know is what Mr. Barton has told me, and they have all got white cars".

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Q. Did you say anything else about Mr. Armstrong?

A. I was asked by - I can't recall by Mr. Bowen or Mr. Barton - I was told earlier by Mr. Barton regarding jewellery (Objected to; question withdrawn).

Q. Didn't you say this to Mr. Peter Bowen in answer to a question "What do you know about Mr. Armstrong", "We have been keeping our eye on him for some time. He has been seen going into some low dives up around Waverley, and his car or his wife's car is frequently seen at Kings Cross", and did Mr. Bowen say "What would a man like Mr. Armstrong be doing at low dives?" and did you say "He is mixed up with Hume, and I suspect that he is involved - I have it on good authority that he has stolen goods in his house at Vaucluse. We only have to catch him", or words to that effect? Was that the conversation? A. No, I did not say that, but I was told of something that was in his house.

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Q. What were you told? A. This brings us back to the objection (Objected to: allowed).

Q. Constable Follington, the fact is that in Mr. Peter Bowen's office the subject matter of jewellery in Mr. Armstrong's home was dealt with, wasn't it? (Objected to: allowed).

Q. Constable Follington, just answer this question yes or no. A. If I can I will.

Q. Was the subject matter of jewellery in Mr. Armstrong's home dealt with in the conversation with Mr. Peter Bowen? (Objected to). 10

Q. What do you say was said in Mr. Peter Bowen's office, and, if you like, for the moment confine yourself to this subject matter (objected to: allowed).

Q. What was said by Mr. Bowen on that topic?
A. There has been quite a bit covered, Mr. Gruzman.

Q. What was said. We were dealing generally with this topic of Mr. Armstrong. You might tell us now what was said to Mr. Bowen and what Mr. Bowen said to you on the subject of Mr. Armstrong? A. I can't recall the exact conversation, nor can I recall which of the men asked the questions all the time. I do recall that Mr. Bowen - have I to put this in the first person? 20

Q. Yes, A. I do recall Mr. Bowen saying "Do you wish to make a written statement about this?" and I said "You know as well as I know that I am unable to make any written statement without the permission of the Commissioner of Police". He said "Do you mind if I take notes?" I said "No", and he did in fact take notes. They were on a long pad similar to the one that your associate there is writing on now. There were questions concerning the papers in this matter - where they were - and I told Mr. Bowen, or my answer was, that Det. Sgt. Wild had them. I was once again asked what happened in Melbourne. I told them that I had no knowledge other than he was charged down there. Then I think Mr. Bowen said "What do you know about the jewellery that Mr. Armstrong has got in his house?" I said "Nothing, only just what Mr. Barton has told me". He asked me whether or not I could get a statement - whether or not there was a statement available from Mr. Hume. I said "No, but I have no doubt, knowing Mr. Hume, that he would make one if requested". There was other odd conversation, but right at this moment I can't recall it. Only about the cars. Mr. Bowen or Mr. Armstrong - Mr. Bowen or Mr. Barton did ask me what I knew about Mr. Armstrong's visiting Mr. Saffron's nightclub at Kings Cross, of which I told him I knew nothing. He asked me what I knew about their association and, as I said there, "the only thing I know, there seems to be a lot of white cars in this inquiry". 30
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Q. Is that all? A. I am only testing my memory.

Q. Is that all? A. There could have been more, Mr. Gruzman.

Q. Just taking the last bit, you were saying that Mr. Armstrong drove a white car also? A. Now that you have mentioned it, I don't know. I know that Mr. Saffron did at one stage own a white car. I know that Mr. Barton owns a white car.

Q. Has Armstrong a white car? Mr. Armstrong has a black car? A. I don't know. 10

Q. You don't know? A. I have never met Mr. Armstrong.

Q. You say the only connection you knew between them is that apparently they all had white cars? A. Yes.

Q. But you never knew what colour car Mr. Armstrong had? A. That is right.

Q. It may be black? A. It could be any colour, Mr. Gruzman, I don't know.

Q. You may just repeat again what was said about the documents in the case. Who said what about those? A. Well, on my visit over to Mr. Barton's premises on 3rd November Mr. Barton said "Who has got all the documents in this inquiry?" I said "Det. Sgt. Wild, as far as I know." He said "Something was said in Melbourne by Alec. How can I get the papers?" I said "I don't know". I said "You will have to apply to the authorities down there. I don't know their procedure". Mr. Bowen - it is very hard to give the conversation, Mr. Gruzman - asked me practically the same questions, and also whether or not a statement could be obtained from Mr. Hume. 20 30

Q. Look, sir, no-one would be suggesting that Sgt. Wild had custody of the Melbourne Court documents, would they? A. I don't think it was ever suggested.

Q. No. So if anybody raised the subject of the documents in the custody of Sgt. Wild it could only be the documents brought into existence as a result of your investigations? A. Yes. But that is not what I said about the documents in Melbourne. 40

Q. You have told his Honour in the course of your version - of giving your version of the conversation with Mr. Bowen, that you were asked who had custody of the documents, and you said they were in the custody of Sgt. Wild. Do you remember saying that? A. This is the Sydney documents.

Q. That was relating to the Sydney documents? A. Yes, as far as I know. I would not know what he did with them. 50

Q. What did you understand was the purpose? What was your understanding of the purpose of asking

that question? A. So that he could peruse them and see what was in them.

Q. Were you asked for permission to peruse the documents? A. No, I was not. I had previously told them that Det. Sgt. Wild had the documents.

Q. Had you ever been asked for permission to peruse any of the documents in this matter? A. No.

Q. Had you ever allowed anybody to peruse any of the documents in this matter? A. No. 10

Q. That means that so far as your knowledge goes Mr. Barton, you say, has never seen the Vojinovic record of interview? A. Not as far as my knowledge goes.

Q. Nor has he ever seen the Hume interview?
A. I correct that. I was at an interview with Mr. Grant on one occasion and on Mr. Barton's affidavit there was a copy of the actual record of interview with Vojinovic, so that he must have seen it. 20

Q. Apart from that knowledge do you maintain that, so far as any other source of knowledge, you are unaware as to whether Mr. Barton ever saw the Vojinovic document? A. Other than having had it on his affidavit.

Q. You are unaware as to whether he ever saw the Hume document? A. The Hume document only came into existence on 5th February this year. That is the only document I know of, and the only way he could have seen that was when it was produced in Court, to the best of my knowledge. 30

Q. You say there was no document from Hume in January 1967? A. Well, I never saw one. I was not present at the interview between Det. Sgt. Wild and Hume.

Q. Would that document have necessarily been shown to you? A. No.

Q. Well, let us take Vojinovic at the moment. You gave a copy of that to Mr. Barton, didn't you? You gave a copy of the Vojinovic document to Mr. Barton? A. No. 40

Q. Would it have been contrary to police regulations to do such a thing? A. I don't know of anything written. I would say the Commissioner would have something adverse to say about it.

Q. Were not you helping Mr. Barton in the early stages of this inquiry? A. I was conveying information to him, yes.

Q. And the most important information was what Vojinovic had said, wasn't it? A. Yes. I would have told him what Vojinovic said, yes. 50

Q. Well, you think that you would have told him

whatever Vojinovic had said? A. Parts that I could remember, after typing the record of interview.

Q. But could not you have refreshed your memory from the record of interview? A. I could have if I asked Det. Sgt. Wild for that.

Q. But are you saying that you could not look at the document without the permission of Det. Sgt. Wild? A. I could not, no.

Q. Why was that? A. He does not work with me, to start with. He occupied a different cubicle, as I referred to, at the C.I.B. in the Safe Squad office room, and the keys to his locker would be held, I assume, by him and his mate, and no-one else. 10

Q. Do you say that it would be a physical impossibility for you to have obtained a key to open the locker? A. The actual key. I do know from my experience that there are master keys for practically every type of lock. I could have broken into the locker, if that is what you are suggesting. 20

HIS HONOUR: Q. Det. Sgt. Wild was the officer-in-charge of the Safe Breaking Squad at that time, wasn't he? A. I don't know whether he was acting. I think he was acting in charge.

MR. GRUZMAN: Q. You were on the Safe Squad yourself, weren't you? A. Yes, for a short time.

Q. What I want to get clear is this: do you say that it was a matter of physical impossibility for you to open Sgt. Wild's locker by the use of a key not obtained from Sgt. Wild? A. I could have obtained one of these master keys, but I would think that the only place you would obtain that from would be the firm that makes the lockers, and they keep a record of them. 30

Q. If I told you that as a matter of expert evidence Sgt. Wild, holding the senior position that he does, said there would be no trouble for anyone to get a key to his locker what would you say to that? (Objected to: rejected). 40

Q. Would you go so far as to say that it is not possible for one detective working in that office to obtain the key to open another detective's locker? A. Not by the duplicate key system that I spoke of.

Q. What is the duplicate key system? A. Well, I understand that if - just by knowledge of locks, working in the Safe Squad -

Q. I don't mean by going out and buying a master key. I'm not suggesting that, do you understand? A. Yes. 50

Q. I am suggesting that within the system as it operates at the C.I.B. I suggest to you that there

is no difficulty in one detective opening another detective's locker, because there are keys available?

A. Well, not in the Safe Squad office, and I certainly don't know anything about it, Mr. Gruzman, You know more than I do.

Q. If you go down to the office, at that time the cubicles - they don't have doors on them, do they? A. No. Some do, but not all.

Q. Your cubicle has an area of what? Nine feet by nine feet, or less? A. I would not know the exact measurements, but some such measurement.

10

Q. With a glass partition? A wood and glass partition about four or five feet tall? A. Five foot six, yes.

Q. Five foot six? A. Yes.

Q. And there is - if you imagine this Court as being the whole area - A. Yes.

Q. Your cubicle is in, say, the bottom righthand corner furthest from the main entrance? A. Yes, when I was first stationed there.

20

Q. And Det. Sgt. Wild's is in the bottom lefthand corner? A. Yes.

Q. So that the two doorways to these cubicles are separated by the width of the corridor - I suppose four or five feet? A. Yes, approximately. I don't know the exact measurement, approximately, yes.

Q. And by virtue of the fact that there is no door, and glass partitions, you can merely, by glancing across, know who is in the other man's cubicle? A. No, not from the office that I occupied at the time. There were -

30

Q. There were some lockers? A. There were lockers along one wall, and therefore I would have had to move out of our cubicle into the hallway to see who was in the room. But there was nothing to stop me from going into the room.

Q. In other words, if you were going down the corridor into your room you would see, immediately before you, Sgt. Wild's room, and know if there was anyone there? A. Slightly to my left, but I would know if there was anyone there.

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May I make an observation, your Honour. This diary of mine - every time it has been produced to the Court it seems as though it is opened for everyone to look at. Everyone seems to go through it.

HIS HONOUR: Mr. Gruzman, the diary ought not to be referred to for any page other than those in regard to which I have given permission.

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MR. GRUZMAN: I observe that my friend's finger is on the entry for 18.1.67, page nine.

WITNESS: I understand there are duplicate copies here that Sgt. Anderson obtained.

HIS HONOUR: Is that so? Are there copies? Are there Xerox copies?

MR. GOLDSTEIN: What I actually tendered were Xerox copies, and not the diary.

HIS HONOUR: Mr. Gruzman, I think the diary ought to come back to my associate and remain, except when you want it for a particular topic. I don't like it being down there at the bar table. I think Det. Const. Follington is quite justified in asking that his diary be preserved as a personal document. If you want to refer to the diary other than the Xerox copy you can identify what it is, and I will consider your application. 10

MR. GRUZMAN: Q. Now, the lockers are simple Brownbuilt steel lockers? A. I don't know if they are Brownbuilt or Steelbilt. They are of similar make to that. 20

Q. There are no special locks on them? They are an ordinary standard lock? A. A simple type of lock, yes.

Q. Do I understand you to say that first of all you never looked at the Vojinovic document or any other documents in the matter from the time that the statement was taken? Is that correct? A. Could you just clarify that a bit, please?

Q. Do I understand you to be saying that from the time the Vojinovic statement was taken you never looked at it again? A. No, until Sgt. Wild proceeded to Tasmania, and on that occasion he gave me the file that contained the documents. 30

Q. When was that? A. On the 10th of - once again this is only a guess - 10th January, I think he gave them to me.

Q. 10th January of which year? A. 1968.

Q. 1968? A. Yes.

Q. In other words, from 8th January 1967 to 10th January 1968 you neither saw nor had custody of any of the documents in this matter? A. No I didn't. 40

Q. In other words, my statement that from 8th January 1967 to 10th January 1968 that you neither saw nor had custody of any of the documents in this matter is correct? A. I cannot recall reading them or seeing them. If I had seen them or read them it would have been very close to 8th January, 1967, but shortly after that I certainly didn't have them at all.

Q. You know that Mr. Barton did have a copy of Vojinovic's statement. You saw it annexed to his affidavit, didn't you? A. Yes. 50

Q. Can you offer any explanation how Mr. Barton came into possession of a copy of Vojinovic's statement? A. No, Mr. Gruzman. A lot of things happen that I cannot understand.

Q. I beg your pardon? A. A lot of things happen that I cannot understand.

Q. You are a member of the Safebreaking Squad?
A. No, I am a member of the Fraud Squad.

Q. Were you a member of the Safe Squad? A. Yes, I was. 10

Q. For how long? A. About 15 months.

Q. 15 months? A. Yes.

Q. And you have an intimate knowledge of Sgt. Wild's locker - of the procedure under which documents such as Vojinovic's statement are kept in custody? A. No, I don't have an intimate knowledge at all.

Q. Haven't you. Does he use the same system as you? A. I don't know. 20

Q. You don't know that? When you worked with him for the period didn't you observe that the documents were locked in a locker? A. I can't recall seeing him lock them in there. I would say that would be the place that he would have locked them in.

Q. You told us there was no way short of breaking into the locker or by the master key by which that document could have been removed from Sgt. Wild's locker. That is correct, isn't it? A. It was your suggestion they were in the locker. If they were in there I could not have got in there to get them. 30

Q. Nor could anybody else? A. Except his mate or himself.

Q. Either his mate or himself? A. Yes.

Q. You did not hear that the locker was broken into? A. No.

Q. And you are prepared to accept the documents would have been in the locker? A. I have no reason to think that they were not.

Q. Does that mean, then, that either you, Sgt. Wild or Det. Whelan must have given the document to Mr. Barton? A. I didn't - 40

Q. Someone must have? A. If he got it obviously someone must have. I don't know who did.

Q. What is your suggestion as to who gave it? (Objected to; rejected).

(An application by Mr. Gruzman to interpose a witness from Harden & Johnston was objected to by Mr. Bainton, and the application was refused).

(Bruce Edward Hosking, assistant to the sales manager, Harden & Johnston Limited, called on subpoena duces tecum by Mr. Gruzman. Mr. Hosking produced a copy of the subpoena together with the documents called for under the subpoena. Mr. Hosking stated that the documents produced were confidential and that he preferred that his Honour should look at them in order to decide whether they should be made available to the parties. 10

Mr. Gruzman then made application to inspect the documents and, after inspection by his Honour, the documents were made available for inspection by the parties. Mr. Hosking released).

MR. GRUZMAN: Q. Constable Follington, do you remember that you inspected in Macquarie Street the other day a Valiant motor car, DJY-211? A. Yes.

Q. And you would not admit that that was the car in which you travelled with Mr. Barton Jnr. on Sunday, 8th January? A. No, Mr. Gruzman, I cannot recall specifically by any mark or means whether it was the same car. 20

Q. I want you to assume that in due course evidence will be given in these proceedings by Mr. Hosking or some other officer of Harden & Johnston Limited - (Objected to: rejected).

Q. I want you to assume that on 1st June 1964 that Valiant car, with the registration number DJY-211, was sold by Harden & Johnston to Mr. Barton, and that at the time of the sale the car was not fitted with a glove box lock. Will you assume that? A. Yes, I will assume that? 30

Q. I want you to assume also that as at 8th January 1967 the car was still owned by Mr. Barton, according to the records of the Transport Department? A. I will assume it, yes.

Q. And I want you to assume also that records were kept of keys - numbers of keys supplied with the car. There was no glove box key supplied with the car. Will you assume that? A. I will assume that. 40

Q. I want you to assume also that the car today, so far as its glove box is concerned, is still in the same condition as when it was sold? A. Well, this is only an assumption?

Q. Yes, I want you to assume it. A. Yes, I assume it.

Q. Will you admit the car in which you drove on 8th January 1967 and in which you say - in respect of which you say you put your gun in the glove box - that that glove box had no lock? A. I recall a lock being on that glove box, Mr. Gruzman. I say this in all sincerity. 50

Q. So that the position is that even on the

assumptions, which I have asked you to make you will not admit that you have not told the truth about the lock on the glove box (Objected to: rejected).

Q. Even on the assumptions that I have asked you to make you won't admit that the car that you drove in on 8th January did not have a glove box lock? (Objected to: rejected).

Q. I want you in your mind for the moment - I understand you may have doubts about it - to assume that those assumptions I ask you to make are in fact accurate? A. On these dates, yes. 10

Q. On those assumptions you will agree that the car on 8th January did not have a lock on the glove box? (Objected to: rejected).

Q. Constable Follington, assuming first of all that on 1st June 1964 this particular motor car was sold by Harden and Johnston, and that it was not fitted with a glove box lock? A. I will assume that, yes. 20

Q. And assuming that the firm that sold it - someone from the firm that sold it is able to say that it appears to him to be in the same condition today as when the vehicle was sold (Objected to: rejected).

Q. I will withdraw that question. Assuming that it was sold on 1st June 1964 without a glove box lock, and assume that it is still in the same condition today, you would admit, wouldn't you, that there was no glove box lock on 8th January 1967? A. No, I would not assume, Mr. Gruzman. I don't want to carry this matter on to great lengths, but in my mind I can recall the glove box lock, and no matter what you say that is my answer, that I can recall a glove box lock on it. Whether or not it was changed before or after I assume, the same as you, that there was a glove box lock on it at the time. 30

Q. What you say - and I will accept your words on it - you say that no matter what I say, you maintain that there was a glove box lock on the night of 8th January 1967? A. Yes. As I say, in my mind's eye I can recall one there, and locking it. 40

Q. I put it to you that you know very well now that there was no lock on that glove box on that night? A. I don't know that. I know in my own mind that I can recall a glove box lock being there.

Q. And I put it to you that, having told an untruth, you will stick by it, no matter what evidence to the contrary is produced? A. No. That is wrong, Mr. Gruzman. I could go ahead and say that it was a mistake. It means nothing either departmentally or otherwise. But, as I say, and I truthfully say, that I can see in my mind's eye that there was a glove box lock on that date. 50

Q. You didn't take the bullets out of the gun, did you? A. I did.

Q. That would have been a breach of your departmental duties, wouldn't it? A. What?

Q. If you had left this pistol in the hands of this boy? A. Boy? Man.

Q. Fully loaded - a man of 20, or a boy of 20?
A. I think he was about 23.

Q. I am sorry. Anyway, Tom Barton. It would have been a breach of your departmental duties to leave Tom Barton Jnr., who was then aged 20, with a fully loaded police pistol, wouldn't it? A. No, I don't think so. 10

Q. You don't think so? Look, sir, do you remember telling us that you could not remember getting your gun back out of the car? A. No, I can't recall who returned it to me, but it was definitely returned to me, because I have it on now.

Q. Well, I suppose your police weapon is an important piece of equipment? A. It is to me.

Q. And if it got into the hands of undesirable persons it would be a rather dangerous situation, wouldn't it? A. If it did. But it didn't. 20

Q. So doesn't it strike you as odd that you cannot remember - you can't even remember how you got your gun back? A. No, not particularly.

Q. Do you often leave it around at different places? A. No.

Q. How many times would you have given your gun to a boy of 20, or a man of 20, if you like, to mind for you? A. I have given it to police on occasions to lock in their locker. That is when I have not brought my own key to work - the key of my own locker - during the lunch hour, but I can't recall giving it to anybody at all. But I could not see any reason for not giving it to this man. He was a man of obvious good character. 30

Q. This is the one and only occasion in your whole police experience that you have entrusted your pistol to a civilian, and you can't even remember how you got it back? A. No, I can't. Someone returned it. I was busy at the time - very busy, as you can appreciate, interviewing someone. Who returned it to the office I don't know. 40

Q. The three cars pulled up at the C.I.B. almost simultaneously, didn't they, after Vojinovic was taken there? A. Three cars?

Q. Three cars. Sgt. Wild's car, Barton Jnr's car, and Mr. Barton Snr's car? A. No, I only recall our car. That is the car that Sgt. Wild and myself was in. But these others could have pulled up nearby. But I can't recall them. 50

Q. Look, your car pulled up directly in front of

the C.I.B. main entrance? A. I can't recall. It would have been locked that time of night.

Q. Your car pulled up there, didn't it? A. It pulled up at the C.I.B., but whereabouts at the C.I.B. I don't know.

Q. Almost directly opposite the front entrance?
A. I can't recall whereabouts at the C.I.B. It could have been in Smith Street or Campbell Street.

Q. It was in Campbell Street, wasn't it? A. I can't recall, Mr. Gruzman. 10

Q. You were in the back of the police car with Vojinovic, weren't you? A. No.

Q. Weren't you? A. No.

Q. Where were you? A. In the front.

Q. In the front? Vojinovic was on his own in the back? A. That is right.

Q. Have you always been clear on that? A. Yes, I can recall this, because I shut the door after Vojinovic entered the vehicle. 20

Q. So that you are quite clear that when you first got into the vehicle with Vojinovic, Vojinovic got in the back and you got in the front? A. Yes, Sgt. Wild was driving.

Q. That is not true, is it? A. It is. I just told you.

Q. You were in the back with Vojinovic, weren't you? A. No. I had no reason to be.

Q. And when you got to the C.I.B. you grabbed him by the arm, put his arm behind his back and frog marched him up the steps of the C.I.B., didn't you? (Objected to: rejected). 30

Q. When you got to the C.I.B. you got Vojinovic out of the car and put his -. First of all, you got Vojinovic out of the car, didn't you? A. I can't recall what order we got out of the car but I would have got him out of the car; opened the door for him to get out, or he would have opened the door. He would have got out some way.

Q. Can't you remember? A. No, I can't remember exactly who opened the door. 40

Q. You got Vojinovic and put his arm behind his back, didn't you? A. I didn't.

Q. You walked behind him, with him partly in front of you, up the steps of the C.I.B., didn't you? A. I may have walked behind him.

Q. You were holding his arm behind his back at this time, weren't you? A. I was not.

Q. Were not you concerned at that moment where your gun was? A. No. I considered it to be in safe hands.

Q. But you didn't know where it was, did you?

A. I knew young Mr. Barton had it, and it would be returned to the C.I.B.

Q. Didn't you see his car there? A. No.

Q. Are you prepared to swear his car was not there? A. No, I didn't see it there.

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Q. His car was there right alongside yours, wasn't it? A. I didn't see it, Mr. Gruzman.

Q. Were not you looking for it? A. No.

Q. Were not you concerned to know where your gun was? A. At that stage I had a man with me, and I was watching him.

Q. Why were you watching him? A. It is something that you always do, if you have some person with you.

Q. He was practically a friend by this time, wasn't he? A. Yes, but I don't walk down a street looking around for cars.

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Q. You told his Honour Vojinovic was a perfectly voluntary informant at this time? A. He was.

Q. Well, why were you watching him? A. It could be a matter of habit, but I definitely did not see any car belonging to Mr. Barton.

Q. That is precisely what I am putting to you, that you were too busy with Vojinovic to worry about your gun at that point of time, weren't you? A. I was not worried about my gun at any time.

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Q. And that is why it is that you can't remember how you got your gun back, isn't it? A. I can't recall how I got my gun back. That is what I told you, Mr. Gruzman.

Q. Because you got to the C.I.B., took Vojinovic in in the way I have mentioned, and did not regard it as necessary to worry about your gun at that time, did you? A. Well, I think you have served about three up to me there, Mr. Gruzman. But at no stage did I force Vojinovic into the C.I.B. I did go into the C.I.B. with him. I did direct him where to go. But I was not overly concerned about my appointments because I knew they were in safe hands.

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Q. And it was Sgt. Wild who went over to Mr. Tom Barton and got the gun and handcuffs back and walked into the C.I.B. with them, didn't he? A. I don't know, Mr. Gruzman.

Q. And it was Sgt. Wild who in fact handed back to you your pistol? A. I don't know.

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Q. You have not the faintest idea? A. I don't recall who brought them in. They were definitely in there, because I had them.

Q. And this was the one and only time that you ever entrusted your pistol to a civilian? A. That I can recall, yes.

Q. By the way, you told us that on Tuesday, I think 10th January, you made inquiries to locate - you made 'phone inquiries to locate Hume and Ziric? 10
A. Yes, that is the best of my recollection.

Q. Where did you get the name "Ziric" from?
A. I didn't have it at that stage. I can't recall having it at that stage. To the best of my recollection that was - this is only assuming - I was told this by Sgt. Wild at a later date. I can't recall knowing it then I may have. I don't know. But I knew that if this man Momo knew Hume obviously Hume would locate him for me.

Q. You were prepared to rely on Hume, were you? A. Yes, undoubtedly. 20

Q. You may have known the name Ziric at that time? A. Not on the night of the 8th.

Q. But by the 10th? A. Well I can't recall, Mr. Gruzman.

Q. You may have and you may not have? A. It is something that I can't recollect.

Q. You may have known it and you might not have, is that the position? That is the position, isn't it? A. It is possible. I would not have known it - I would say that I definitely would not have known it without speaking to Hume or ascertaining it from Sgt. Wild. 30

Q. And that is exactly what I am putting to you. If you knew the name Ziric on 10th January you could only have got it from Hume couldn't you? A. Not only have got it from Hume.

Q. You tell his Honour where else up to the 10th January you could have got the name Ziric from except from Hume? A. Had there been a record at modus operandi under an alias I might have been able to obtain it from Det. Sgt. England, who is a friend of Hume's. As I say, I can't recall whether I had it or not. 40

Q. Are you able to tell his Honour - are you prepared to tell his Honour of any positive source from which you recollect getting the name Ziric on or before 10th January? A. No, I know of no positive source.

Q. And the only source would have been Hume, wouldn't it? A. If I had spoken to him, but I never. 50

Q. Of course, if a statement had been taken from

Hume on or before that date you would have known the name Ziric, wouldn't you? A. I don't know whether one was obtained or not, but had one been obtained, and had it been included in it, and whoever obtained it told me, possible, yes.

Q. Constable Follington, I would just like to take you back a little bit to the night of 8th January. I just want to go through with you some of the events which occurred. First of all you spent, I think, six or seven hours at Mr. Barton's home on that Sunday? A. Roughly six hours. 10

Q. What? A. Roughly six hours, Mr. Gruzman.

Q. Roughly six hours? A. Yes.

Q. Mr. Barton's home has a very large glass window, hasn't it? What they call a picture window, I suppose, or a glass wall? A. Yes.

Q. And you told him to draw the curtain, didn't you? A. No. The curtain was half drawn.

Q. And you told him to draw the curtain so that you would not be observed from outside, didn't you? A. Not that I can recollect. 20

Q. Are you prepared to swear that you didn't?
A. I said not that I can recollect.

Q. The point is that you are not prepared to stake your oath one way or another? A. Well, I can't recall, Mr. Gruzman.

Q. You see, sir, you had been deputed by your superiors to go with Mr. Barton for the purpose of trapping this man who was supposed to be threatening him, weren't you? A. To locate him and interview him. 30

Q. Yes. And you knew that the man was suspicious, because you had heard that he had failed to keep an appointment because he thought there was someone else there? A. As I said before, I can't recall. It may have been said but I can't recollect.

Q. You cannot even remember that? A. No. This is 18th months ago, and I made no notes.

Q. Let me get at it this way. Do you tell his Honour that your understanding was that this man had some information, and you had been asked to ask him what his information was? A. He had some information, and it was my duty to locate the man then and cause him to be interviewed. 40

Q. You were on the telephone when he rang up, weren't you? A. That is right.

Q. Well, why didn't you say "Alec, come up here. It is Detective Follington here. You may tell me all about it". A. If the man was in any way frightened I am sure that is the easiest way to frighten him off. 50

Q. Was it your understanding that the man would not wish to be interviewed? A. No.

Q. Well, I will ask you again. You were talking to him when on the telephone, and you were also on the telephone. Why didn't you say "Call down to Darlington Police Station and I will meet you there"? A. Number one, I was not speaking to him. Mr. Barton spoke to him.

Q. Well, you were on the telephone, weren't you? A. That is right. And he had previously met Mr. Barton at an appointed point which was nowhere near a police station and I would assume that was the reason that he made that particular place. 10

Q. There are two possibilities - I suggest there are two possibilities. One is that in your mind Vojinovic was a willing informant, and the other is that he was a man who might well be a criminal engaged on some criminal activity. Those were two possibilities in your mind? A. Put them to me again and I will answer them one at a time. 20

Q. One possibility is that he was a willing informant? A. Yes.

Q. And the other possibility is that he was a criminal engaged on some criminal activity? A. That is a very hard one to answer, Mr. Gruzman. He could have been a criminal. I would have only assumed it, had I assumed it. But to my knowledge he was a person willing to give information to Mr. Barton. 30

Q. Perfectly willing without pressure, is that what you mean? A. He appeared to be, yes.

Q. Well, why didn't you speak to him on the telephone and say to him "Alec, don't worry about Detective Mackie. I am here, Detective Follington. Come and see me"? A. It would have been too late if he was not going to speak to the police.

Q. I beg your pardon? A. It would have been too late then if he didn't want to speak to the police.

Q. As I put to you, there are only two possibilities. One is that in your mind he was a perfectly willing informant, and the other is that he was a man who, whether from fright or whatever reason, would escape the police if he could. They were the two possibilities? A. Give me one at a time, if you don't mind. 40

Q. One possibility is that you believed that he would thoroughly co-operate with the police to give information. That was one possibility, wasn't it? A. Not entirely.

Q. That was a possibility? A. Do you mind my explaining to you what I thought at the time? 50

Q. Please do. A. Now here I had a man who was prepared to speak to Mr. Barton. There is no doubt in the world about that. Mr. Barton had spoken to

him the night before. Whether or not he was prepared to speak to a policeman was another thing, and I had to bear this in mind. Had I told him that I was Detective Follington over the 'phone and I wanted to see him he may have been the type of person that would not have kept the appointment. Yet he may have been.

Q. So that you had to act on the assumption that he was a person who would not speak to a policeman if he could avoid it? A. May not have. 10

Q. And that was the assumption that governed your movements on that night, was it? A. Yes. Meeting him down there, yes.

Q. And that is why you made this elaborate plan to interview him whether he liked it or not, isn't it? A. I am afraid I cannot interview any man whether he likes it or not. It does not come within my powers. I can put questions to him. If he declines to answer them I cannot pursue the matter further. 20

Q. Look, sir, I put it to you it was because you thought that he may not wish to be voluntarily interviewed that you made this elaborate plan to capture him? A. What elaborate plan do you speak of other than taking my coat off and getting in the near vicinity and walking up and speaking to him and having him taken to the C.I.B. and having met him at this particular place?

Q. That is an elaborate plan, you see? A. If that is elaborate it is rather simple, Mr. Gruzman. 30

Q. Well, the only reason why you made that plan because you thought he would be a man who would not be interviewed voluntarily? A. By the police.

Q. Yes. I suppose that, having that view in mind, you would think that he might perhaps be looking at the house at Castlecrag, or have someone there, to see whether the police were coming? A. Once again I can only cast my mind back by saying that I don't think so, because he had already spoken to Mr. Barton, and there would be no reason why he would not speak to him again. 40

Q. I don't want to waste time on it. Didn't you tell Mr. Barton to draw the curtains of the big picture window in case someone saw you there? A. I don't want to waste time either, but, as I told you, I can't recall.

Q. I put it to you that is an untruth. That you know very well that you gave that instruction to Mr. Barton? A. Well, that is not so. 50

Q. In the course of that discussion - in the course of that six hours - there was a long discussion between you and Mr. Barton, wasn't there?
A. On many topics.

Q. And without going into it in detail, Mr. Barton

expressed his opinion of Mr. Armstrong, didn't he?

A. Oh yes (Objected to; allowed).

Q. I will go back a moment. You told Mr. Barton that the curtains should be drawn, and you used the words "because someone may have a shot at us" didn't you? A. No.

Q. Mr. Barton told you in the course of the discussion that Armstrong was a ruthless and vicious man?

A. I don't know about the "vicious" part of it. He said he was a ruthless businessman. 10

Q. Did he tell you that he had been called a perjurer? (Objected to).

HIS HONOUR: I am of the view that I should admit the evidence of what Mr. Barton said at the time relevant to the making of the agreement under challenge, not as evidence of the truth or reliability of what he said but as being one type of conduct from which an inference may later be able to be drawn as to what his state of mind was. 20

MR. GRUZMAN: Q. Do you remember asking was there a photograph of Mr. Armstrong available? A. I could have, yes - quite easily I could have.

Q. Have a look at this photograph (Exhibit 2 handed to witness) and tell me whether another copy of that photograph was shown to you - a photograph the same as that was shown to you? A. I recall many photographs and many scrap books being shown to me. Whether or not it is exactly this - I know the Barton and the Armstrong family were together in one or two of them. 30

Q. Just have a good look at that photograph and see if you recognise there somebody who is neither Barton nor Armstrong. (Objected to; rejected).

Q. Were you shown a photograph and did you say, "Well, I recognise this man here," indicating some person who was neither Barton nor Armstrong in the photograph - "He is well known to the police"?

A. No. (Objected to; rejected. His Honour directed that the answer be allowed to stand in the record). 40

HIS HONOUR: I understand the question that was asked before the argument upon which I ultimately ruled that you could have statements of Mr. Barton in indicating his state of mind, that question was not pressed, it was not put again, nor was it answered.

MR. GRUZMAN: I interposed another question.

HIS HONOUR: It can be noted that the question upon which the argument was founded, upon which I gave a general ruling, was not pressed. 50

MR. GRUZMAN: Q. Did you ask Mr. Barton, "Why does Mr. Armstrong want you killed?" A. I can't recall asking that question.

Q. Or a question something like it? A. I can't recall. I know that Mr. Barton spoke of Mr. Armstrong's business activities and there was some friction in business between them, but I can't recall that particular question.

Q. Did you ask Mr. Barton a question to this effect, "Why does Mr. Armstrong want you killed?"

A. No, I can't recall it.

Q. Are you prepared to swear that you did not ask a question to that effect? A. I didn't say that. I said I can't recall it. 10

Q. There was discussion about business and in the course of discussion did Mr. Barton say to you that Mr. Armstrong was a mentally sick man? A. No. (Objected to: allowed).

Q. You say that was not said? A. No, I can't recall it.

Q. You are not prepared to swear it was not said? A. I can't recall it being said at all. 20

A. Did he tell you that Mrs. Armstrong had admitted this in November? (Objected to. His Honour asked the witness to leave the Courtroom, which he did).

HIS HONOUR: I'm only prepared to allow evidence of statements made by Mr. Armstrong at or immediately prior to the signing of the agreement for the purpose of casting light upon what was his state of mind.

MR. GRUZMAN: I prefer to indicate with some clarity to your Honour the nature of the matters we wish to put to the witness and to get your Honour's prior ruling. I inform your Honour that in respect of Mr. Armstrong, in answer to a question "Why does Armstrong want to get you killed?" there was a general discussion about the business side of it and the negotiations at the general meeting and in the course of that discussion Mr. Barton said that he was a mentally sick man, that Mrs. Armstrong had admitted this in November but does not want to testify against him, Armstrong was ruthless and vicious, called a liar and perjurer by a judge, a dangerous man, personally threatened me many times and has now decided to get me killed - that is about Armstrong. Then about Hume, what Follington said to Barton was that he had a criminal record in Europe, had enough on him to arrest him at any time. Then as to Constable Follington's views on bodyguards, as to whether they were effective, in fact we will be putting that they were worth nothing because half of them run away when there is trouble and the other half are as bad as the criminals, and so on. All of these were matters which either reflected Mr. Barton's state of mind or acted upon it. 30 40 50

HIS HONOUR: I am of the view, as I said previously, that it is open to the plaintiff to tender evidence, as I have already ruled a short time ago, of statements

made by Mr. Barton at the relevant time from which one may infer his state of mind and I shall allow the conversation which took place on this afternoon. Whether it does provide material touching that inference remains to be seen at a later point of the case.

(The witness returned to the witness box).

MR. GRUZMAN: Q. I suggest that this question was asked by you, "Why does Armstrong want you killed?" or words to that effect? A. I can't recall it. This I am trying to tell you. 10

Q. Did Mr. Barton, in the course of a general discussion on this topic lasting quite a long time, say that Armstrong was a mentally sick man? A. No, I definitely can't recall that.

Q. When you say you definitely can't recall it does that mean - A. Nothing whatsoever about anybody being mentally sick.

Q. Did he say that Mrs. Armstrong had admitted this in November but does not want to testify against him, or words like that? A. No. He mentioned Mrs. Armstrong but nothing like that that I can recall. 20

Q. Did he say that he was a ruthless and vicious man? A. He said that he was a ruthless businessman but I can't recall anything about being vicious.

Q. Did he tell you he had been called a liar and a perjurer by a judge? A. No. I didn't even know that he had appeared in Court. 30

Q. No mention was ever made of that? A. No, I can't recall it.

Q. Do I understand you to be saying that up to the moment of sitting in the witness box here you never knew that he had ever been in Court? A. No, I didn't, no.

Q. And you still don't know? A. I have seen him here, come to the Court here.

Q. But you have never heard of any other Court proceedings? (Rejected). 40

Q. Did he tell you that he was a dangerous man? A. No, I can't recall him saying that.

Q. Did he tell you that he had previously threatened him many times? A. No, I can't recall that either.

Q. Nothing like this at all? A. I can't recall it. This was six and a half hours of conversation 18 months ago.

Q. Did he tell you that Armstrong had decided to get him (Barton) killed? A. Only of his conversation with Vojinovic - what Vojinovic had told him. 50

Q. Did he tell you that his understanding of that was that Armstrong was trying to get him killed? A. I can't recall, but he was concerned about it.

Q. Not in obvious fear? A. Well, as I said on my last appearance here, there is a very fine line as far as I am concerned there, and he was obviously concerned.

Q. Did he ask you about Hume and what you knew about him? A. He spoke of Hume but I can't recall telling him of my knowledge of him. 10

Q. Are you prepared to swear that you never told him anything that you knew about Hume? A. No, I can't recall.

Q. I suggest to you you have got a very convenient memory, Constable Follington? A. I don't know about convenient. I am not super-human to remember 18 months ago.

Q. I suggest to you that you are not telling the truth when you say that you can't recall. A. I am. 20

Q. Did you tell him that Hume had a criminal record in Europe for violence? A. No. I would say that would be impossible. As far as I know Mr. Hume arrived here as a child.

Q. I suggest you have since ascertained that?
A. I have since ascertained or have been told that he arrived here when he was 13 - I thought he arrived here when he was about six.

Q. I suggest to you that at the time of your speaking to Mr. Barton at his home on 8th January you told Mr. Barton that Hume had a criminal record in Europe for violence? A. No. 30

Q. I suggest that you stated that you have enough on him to arrest him at any time on other charges?
A. No.

Q. Did you use the expression "We can bag him"?
A. No.

Q. What does "bag" mean? A. I take it to discredit somebody. 40

Q. That is what it means, does it? A. Bag.

Q. Did you say, "There is no worry about a confession"? did the conversation go this way; did you say to him, "If we don't get Alec we can get Hume. There is no worry about a confession. We can bag him" - that type of conversation? A. No. There was conversation about locating - (Objected to: disallowed).

Q. Did a conversation come up about bodyguards that Mr. Barton was employing? A. I can't recall it. 50

Q. Did he tell you that he had employed bodyguards for some time? A. I can't recall it.

Q. Bodyguards employed at a general meeting. Do you know anything about this? (Disallowed).

Q. I am dealing now not with your knowledge but with a conversation. A. At Mr. Barton's home?

Q. At Mr. Barton's home on the Sunday - was there a discussion between you and Mr. Barton about bodyguards? A. I can't recall any. I do recall at a later date, now that you have just -

Q. Don't worry about at a later date. Did you say that these investigators were worth nothing because half run away when there is trouble and the other half are as bad as the criminals? (Objected to; pressed; rejected). 10

Q. Is this the position, that you have got no or very little recollection at all of what was said during this afternoon of Sunday the 8th January?

A. Only parts of it, as you can appreciate, as I have said many times. It is 18 months ago.

Q. Just tell us what you do remember. A. I recall Mr. Barton or his son or somebody was speaking of the view they had at the back - (Objected to: allowed). I recall Mr. Barton - I don't know whether it was Mr. Barton Snr. or Jnr. or his wife, but there was a discussion concerning the view out the back - we could see a bridge or some monument - they were building a road - I think Hookers or some agency were subdividing on the other side - I am not quite sure there. 20

Also we discussed the fact that there was a track from the back of Mr. Barton's home down to the water's edge. I am a keen fisherman and discussed whether they go down there regularly. I was shown a number of photographs. A number of scrapbooks. Mrs. Armstrong - 30

HIS HONOUR: Q. Mrs. Barton? A. Mrs. Armstrong was spoken about. Do you wish me to go into full on that? (Objected to: not pressed). Trying to remember back is very hard. We spoke of the swimming pool. I recall Mr. Barton saying that he had relatives in Sydney or staying in Sydney or something of that nature. We spoke about cars. We also spoke on the lighter side of it - I was given something to eat while I was there, some Hungarian sausage, and we spoke about the makeup of that. That was the trend of the conversation throughout the afternoon other than when the 'phone rang at 3 p.m. After the 'phone call at 3 p.m. I asked Mr. Barton to make arrangements to meet the man Vojinovic and what I have already given in evidence. There may have been other conversation but it is so far back that it is very hard to remember. Anybody that says they can - it is very difficult. 40 50

MR. GRUZMAN: Q. I just want to make sure that you have exhausted your recollection. Was there anything else said on the subject of Mr. Armstrong that you can recollect, other than what you have given in your evidence? A. Mr. Barton did mention to me that

Mr. Armstrong had a property and a business in Goulburn which had not gone very good businesswise, that he was mixed up in numerous companies. This scrapbook that he showed me had numerous - two of them - had numerous clippings in them and he did speak to me about them but I am unable to recall even what they were about.

Q. That exhausts your recollection of anything that was said about Armstrong? A. Unless you can refresh my memory from something. 10

Q. Was anything else said about the business relationship between Armstrong and Barton?

A. Yes.

Q. Just tell us what your recollection is? A. Yes, Mr. Barton told me that the business was going better since Mr. Armstrong had relinquished some position.

Q. Yes, continue. A. There was conversation of course, with young Mr. Barton. Mr. Barton was not there at all times. 20

Q. Just exhaust your recollection. Sit and take your time. What else was said on the business relationship between these two men? A. There was conversation concerning young Mr. Barton going into the business. I can't recall anything to mind at the moment. Perhaps as we go on I may.

Q. You have known for quite a long time that you have been going to give evidence in these proceedings, haven't you? A. Yes - for a few months, yes. 30

Q. You have known practically all this year that you were going to give evidence in these proceedings? A. Yes.

Q. In fact you have been giving evidence now - you started on Thursday and you had the Friday, Saturday, Sunday, and Monday to think it over, and this is now the Tuesday. A. Yes.

Q. I ask you again can you recollect anything further being said about the business relationship between these men? A. Not that I can recall at the moment. 40

Q. How long do you want to think about it? A. Mr. Gruzman, as we know with the memory, if you can give me something to recall, yes, but it may take me days to sit down and try and recall what was said there.

Q. Did Mr. Barton tell you that there was a purported agreement reached a few days before and that Mr. Armstrong was trying to force him to sign it or to sign some documents? A. No, only to the fact that Mr. Armstrong relinquished some position. 50

Q. That is all you were told? A. That is all I can recall.

Q. Are you prepared to swear that is all you

were told? A. As I said, I can't recall anything being said of that nature.

Q. In point of fact you arrived out there prior to one o'clock, didn't you? A. I would say so, yes.

Q. The first phone call came about one o'clock, didn't it? A. No. That is from Vojinovic you speak of?

Q. That is from Vojinovic? A. No.

Q. Immediately after that first phone call you rang Sergeant Wild? A. I may have spoken to Sergeant Wild on the phone during the afternoon - I can't recall - but I can definitely say there was no phone call at one p.m. 10

Q. After the name Mackie had been mentioned didn't you ring Sergeant Wild about Mackie? A. I could have told him after three p.m., yes.

Q. After the first phone call, whenever it was? A. Yes.

Q. Didn't Sergeant Wild then later ring back and say that he had found out that there were two Mackies? A. Well, I knew that myself. 20

Q. Did Sergeant Wild tell you that one Mackie was away and the other was playing golf that afternoon? A. He could have but I can't recall it.

Q. And you told this to Mr. Barton and said that it looked as though Alec was probably telling the truth when he said he could not get in touch with Mackie? A. I can't recall that.

Q. You are not prepared to deny that you said it, are you? A. No, but I can't recall it. I think it would be untruthful for me to say that I could this long back. 30

Q. You therefore knew or in fact it was your belief, wasn't it, that Alec was trying to get in touch with Detective Mackie? A. Yes.

Q. And Detective Mackie belonged to Darlington Police Station? A. Yes.

Q. I suppose it was quite on the cards in your mind that Alec would go to Darlington Police Station and wait for Mackie? A. It never entered my mind at that stage. The first I recall of it he said he would ring Mr. Mackie. 40

Q. But you could not be sure that he would not go to the police station and wait for him? A. No, I could not be sure.

Q. And yet you tell his Honour that you told Mr. Barton to drive up to the Darlington Police Station in his white Mercedes? A. I did.

Q. And park opposite it? A. I did - not park 50

opposite it but to drive to the Darlington Police Station.

Q. To drive to the police station, yes, knowing that there was a possibility that this man you were trying to trap would be at that very place?

A. Mr. Gruzman, I don't know what operated in my mind where Vojinovic would be on that day. You are only putting something up to me now which I can only assume could have happened then.

10

Q. I am putting to you that your story about going to Darlington Police Station and a conversation with Sergeant Wild about "Don't pay any money" is a complete fabrication. Do you understand that?

A. That is not so.

Q. And I am putting to you that your story about Mr. Barton parking opposite the Darlington Police Station is untrue; it never happened. Do you understand that? A. I understand that, but it is not true.

20

Q. And that your story about you parking the car in the lane, in Foley Lane, is untrue and it never happened? A. I didn't know the name of the lane at the time but I take it to be Foley Lane near the police station there.

Q. I want to put to you that you made careful arrangements under which the two cars were to go by different routes to the City and were to meet in Oxford Street just short of the corner of Victoria Street? A. No.

30

Q. And I put it to you that that is where the cars met? A. Definitely not - under no circumstances.

Q. (Approaches witness). I am trying to draw a rough sketch showing here Oxford Street and Taylor Square; this is Victoria Street and there is St. Vincent's Hospital. A. That is correct.

Q. Here is the park. A. That is correct.

Q. What is the name of this street which comes down here at the back of St. Vincent's Hospital? A. I can only say there is a Boundary Street and a Barcom Avenue close by there, but I don't know which is which.

40

Q. I put it to you that precisely what happened was this, that the two cars met at the point just short of the corner of Oxford Street and Victoria Street where I have marked two vehicles and put "1" and "2"? A. That is definitely wrong.

Q. That there was then a discussion and you told Mr. Barton that just prior to 7.30 he was to drive down Victoria Street and the rendezvous was at the point where I put a cross with a circle around it? A. Yes - it might have been a bit further back than the corner but it was in that vicinity.

50

Q. And I put it to you that you told Mr. Barton

to drive down there so that he arrived at the rendezvous at about 7.30? A. No, not that particular point.

Q. And I suggest that you told him to arrive there at 7.30? A. I told him that the meeting time was 7.30 but I never at any stage went there with Mr. Barton.

Q. Just think. I suggest that you drove off in the other car with Tommy down Oxford Street. A. This is young Mr. Barton? 10

Q. Young Mr. Barton. St. Vincent's Hospital here. See Barcom Avenue. There are lights at that intersection of Barcom Avenue with Oxford Street, aren't there? A. Barcom, Dowling. I think there is a set of lights near there, yes.

Q. Barcom Avenue goes down at the back of St. Vincent's Hospital and becomes West Street as it passed behind St. Vincent's Hospital? A. Yes, clearly indicated. 20

Q. You will see another little lane here called Barcom Place. See that? A. Yes, I see it.

Q. Barcom Place. You agree that that is where Barcom Place would be? It subsequently takes an angle and goes back on to Victoria Street, doesn't it? A. I don't know. Would you just give me another look at that?

Q. It goes round a little bend and goes into Victoria Street? A. It indicates that it goes through but I wouldn't know whether it was a footway or what it was. 30

Q. What I suggest happened is precisely this; you drove round with Mr. Barton junior along Oxford Street, turned left into Barcom Avenue and the car was then reversed up Barcom Place and stayed there facing out on to Barcom Avenue. A. To use your words, that is definitely false.

Q. You then walked down West Street and either through St. Vincent's Hospital or along the street at the end of the verandah? A. I did not. 40

Q. Whereabouts on the verandah were you? Assuming that is the verandah marked there, mark with a "Z" if you like where you were? A. I think that is the hospital building proper marked like that. This is the hospital proper here?

Q. That is right, yes. A. Now, there is a verandah along this side and there is an entrance here on to the verandah. Now, I stood, to the best of my recollection, about here until such time as Mr. Barton pulled up and this man whom I now know as Vojinovic walked over to him. 50

Q. I will put a little square around where you say you were. A. Yes, that is right. To the best

of my recollection I was somewhere in the vicinity of there on the verandah.

Q. I will just draw a line where I suggest to you the car went round, and parked there where the line ends. A. That is definitely wrong.

Q. And I suggest that you walked along the dotted line in some way to the point. A. No. I won't agree with that at all.

(Rough sketch tendered - objected to - m.f.i. 31). 10

Q. By the way, in that conversation with Vojinovic over the telephone the £500 was mentioned, wasn't it? A. No.

Q. What was the first you heard of a sum of money in relation to this matter? A. At the Darlinghurst Police Station.

Q. You say that at no stage in any of the conversations was any money mentioned? A. I definitely can't recall it. I think I would have recalled it if it ever happened. 20

Q. Didn't Mr. Barton tell you? A. I can't recall it. I don't know how many times I have got to tell you. I just can't recall it. The first I recall of money being mentioned was at the Darlinghurst Police Station.

Q. But you know that Mr. Barton had the money with him at that time? A. As he said, but I didn't see it.

Q. Didn't you know at Darlinghurst Police Station that Mr. Barton had the money with him? A. He said that he had some money with him. 30

Q. Did you have any doubts about it? A. I have got no reason to doubt whether he had it in his pocket or not. I couldn't see in his pocket.

Q. I want to come back now to the Monday after the Sunday, the Sunday night the statement was taken from Vojinovic? A. The 8th January, yes.

Q. On Sunday the 8th January you were present at the taking of that statement? A. I typed it. 40

Q. What was done with the statement afterwards?
A. Well, as usual I made out - as I do in all cases - I made out an envelope, not of this type but of a brown paper type, which has been produced here in evidence.

HIS HONOUR: Haven't we had this, Mr. Gruzman? It is Exhibit "Q".

MR. GRUZMAN: Q. And that was put where? A. That I gave to --

HIS HONOUR: We have had all this in chief and you cross-examined on it. 50

MR. GRUZMAN: Q. In that document did you take Vojinovic's statement, put it in the folder which you had prepared, and was the folder locked in Sergeant Wild's office on the Sunday night? A. I can't recall what Sergeant Wild did with it. I know that Sergeant Wild would have come into possession of the thing obviously because he had it, but I definitely made out that envelope. I wrote on the front and I would have undoubtedly put Vojinovic's record of interview in it if Sergeant Wild had not done so. 10

Q. The statement of Vojinovic was put in Sergeant Wild's drawer, wasn't it? A. I don't know.

Q. You do know, I suggest, because on the Monday morning Mr. Barton came to the C.I.B., didn't he? A. Monday.

Q. Yes, next morning, bright and early? A. No. Well, I never seen him if he did.

Q. And you were there and Sergeant Wild was there? A. I was not there. 20

Q. And Sergeant Wild in your presence showed Mr. Barton Vojinovic's statement? A. Not on that morning - not while I was there.

Q. In fact you then went over to your room while Mr. Barton remained in Sergeant Wild's room reading this statement of Vojinovic? A. No. I never saw Mr. Barton the morning after.

Q. When did you next see him? A. The 11th.

Q. The Wednesday? A. It was the 11th - I don't know whether the 11th was a Wednesday or a Friday. I take it it would be - the 11th - counting the days up now it would be the Wednesday. 30

Q. When did you see him? A. On the 11th.

Q. At what time? A. At about 9.30 a.m.

Q. Where? A. At the C.I.B.

Q. For what purpose? A. He came in and he saw Det. Sergeant Wild.

Q. For what purpose? A. And there was a conversation there in which Det. Sergeant Wild told Mister - 40

Q. He wanted a pistol, didn't he? A. There was a conversation concerning a firearm.

Q. He wanted a pistol, didn't he? A. But I don't know whether it was a pistol, a rifle, or what it was. But it was a firearm.

Q. Look, Sir, are you prepared to deny that he wanted a pistol and that there was a phone call to Chatswood Police about that subject matter? A. I am not denying it at all. I said that there was a firearm mentioned. I was not there when any phone call was made to Chatswood Police Station. 50

Q. Was it then suggested that you should go and help him buy a rifle? A. Not at that time, no.

Q. Well, how did the conversation end up? A. I left to go to the Central Police Station and Central Court.

Q. And there was never any discussion at that point of time about buying a rifle? A. There was mention of a firearm. Mr. Barton mentioned he wished to buy a firearm. He could have said a pistol, he could have said rifle. He could have said any sort of firearm. I can't recall. 10

Q. I put it to you that you went in the car with the two Bartons to Smith's Sports Store - did you do that? A. At 1.30 p.m. I went with young Mr. Barton but not with Mr. Barton senior.

Q. What was this - in your lunch hour? A. Yes. - it would have been in my lunch hour - one to two.

Q. Is this in your diary? A. No. I had just "inside duties" and lunch. I am only going on my memory. If I could have a look at my diary I could possibly tell that accurately. (Diary handed to witness) Yes. I have "inside duties. 1-p.m. meal to 2-p.m. Inside duties re Barton" and another person whose name I do not wish to mention - there are still proceedings about that. 20

Q. May I see the entry? Isn't there an entry with respect to Barton in the morning, before lunch on that same day? A. Inside duties re (name given by witness directed by his Honour to be omitted from the record) and Barton. I am sorry - that name, if it could be deleted; it is a matter the Commonwealth have taken up. Then to the Central Police Station re So-and-so. 30

Q. You had to go up towards Central Police Station that morning? A. Had to go to -

Q. I won't take up a lot of time with this. You went to the Smith's Sports Store? A. At 1.30.

Q. And a rifle was purchased? A. Yes, in the afternoon. 40

Q. Your memory of all of this is very clear, is it? A. Going to buy the rifle?

Q. Yes. A. Yes.

Q. This is something that really sticks in your memory? A. Not what you would say very clear. I recall a rifle being purchased. One thing I did recall, of course, was why people have got to buy the dearest firearm that is shown to them? He was shown three or four. I can't even recall the make of it. I know that to the best of my memory it had a dark stock on it but then again I am only using my memory. 50

Q. One of the things that sticks in your memory is that there was no cleaning material bought? A. That is right.

Q. That is right, isn't it? A. I don't recall that, no.

Q. You said, didn't you, at p. 649, "What stuck in my mind at that stage, having my knowledge of weapons, was that he received no cleaning gear.

Q. He didn't get any cleaning equipment? A. No

Q. That is what stuck in your mind? A. Yes."

Q. That is one of the things, yes.

Q. You were present while the rifle was purchased; in fact you observed it was the most expensive one? 10

A. I was standing back some three or four feet.

Q. You observed that in addition to the rifle he bought cleaning accessories for \$3.25, don't you? A. I can't recall that, no.

Q. You say that what stuck in your memory is that he never bought any cleaning accessories? A. No, I can't recall it.

Q. This invoice was made out in your presence, wasn't it? A. I don't know about this invoice. I can't even recall him getting an invoice but it is possible he did. I see "cleaning accessories" written here but I definitely can't recall any. 20

Q. You recall the opposite. You have told his Honour in your evidence in chief to Mr. Goldstein that what stuck in your mind is that he didn't get any cleaning equipment? A. That is true.

Q. And, of course, that is a mistake, isn't it?

A. I can't recall any. I still say that I can't recall him getting any cleaning equipment. 30

Q. Not only you can't recall, but what stuck in your mind was that he did not get any cleaning equipment? A. That is correct.

Q. And you are certain of that? A. Well, I can't recall seeing him get any. I am quite certain about that.

Q. Won't you admit that you can make a mistake?

A. We all can.

Q. Have you made a mistake about the cleaning equipment? A. I would say no because being as interested in firearms as I am it would have been one of the things I would have noticed, unless of course it was very small-ly (sic) packed in a packet amongst something else. 40

Q. You think that the cleaning equipment might have been packed with something else and you didn't notice it? A. I never seen it.

Q. He only got one little box of bullets, didn't he? A. I don't know how much ammunition he got.

Q. A box of bullets would fit in your hand, wouldn't it? A. Yes, it would, but you couldn't close your hand. 50

Q. The cleaning equipment you would expect would contain a ramrod or pullthrough? A. No. It is about two and a half inches long and it is wrapped very tightly, usually with a piece of twine. It depends on the make, but it is usually contained in a little plastic bag.

Q. And some oil? A. No, I can't recall any oil.

Q. Flannelette? A. No, I can't recall that.

Q. You don't remember any of that. Do you remember in the car on the way a discussion coming up about Hume's statement? A. No. 10

Q. Are you prepared to swear that that did not happen? A. No, we discussed the rifle.

Q. Are you prepared to swear that in the car on the way to Smith's Sports Store there was no discussion about Hume's statement? A. Definitely definitely not.

Q. You are prepared to swear that? A. Yes.

Q. What, have you got a recollection that it didn't happen? A. Well, we would have been discussing firearms at that stage and not discussing Hume. 20

Q. Wasn't the whole point of the inquiry in your mind up to that time to locate Hume and Ziric and get statements from them? A. On that morning of the 11th January 1967 I had formed the same opinion as Det. Sergeant Wild apparently had.

Q. Which was? A. That it was an attempt by Vojinovic to create a set of circumstances whereby he could obtain money from Mr. Barton. 30

Q. I suppose you formed that opinion as a result of what Hume had told you? A. No, I had not seen him.

Q. How could you form that opinion without ever talking to Hume? A. On what Sergeant Wild had told me, Sergeant Wild is a very experienced investigator and I have got no reason to disbelieve him.

Q. Had you checked Momo's record? A. No.

Q. Did you know whether Momo was a criminal or not? A. No. 40

Q. You knew that Vojinovic was a man who carried a firearm? A. As I said before --

Q. You knew that, didn't you? A. You asked me this question before.

Q. You knew that Vojinovic was a man who carried a firearm as at this Wednesday morning? A. No, I can't recall it at that Wednesday morning. You asked me that question before.

Q. Are you seriously telling his Honour that you 50

and Sergeant Wild to your knowledge had come to a firm conclusion about this whole inquiry by the Wednesday morning without ever having spoken to Hume or to Momo? A. I accepted Detective --

Q. Is that what you are saying? A. Yes, I accepted Det. Sergeant Wild's word. He is a man of considerable experience, known all over Australia for his prowess as a detective.

Q. When did you speak to him about this matter- this particular subject? A. It would have been either on the 10th or the 11th - the same day. 10

Q. Can you help his Honour a little bit better than that? This was an important matter, wasn't it? This was an important matter, wasn't it? A. Yes. All inquiries are reasonably important.

Q. This was an allegation which had been made against a Member of Parliament, hadn't it? A. I don't think being a Member of Parliament makes him any better than anybody else. 20

Q. Well, Superintendent Blissett was personally brought into it, wasn't he? A. I don't know.

Q. You don't know that? A. No.

Q. You don't know that there were phone calls to Superintendent Blissett about this matter? A. No. It had nothing to do with me.

Q. That is by Sergeant Wild, your immediate superior. A. Yes. I never asked him whether he had. I would say he would but I don't know anything about any call and I wasn't present when he did. 30

Q. The moment it became clear to you that there was no truth in the allegations against Armstrong, Hume, and Momo, that was an end to the inquiry as far as you were concerned, wasn't it? A. It had nothing to do with me when the end of the inquiry was.

Q. Speaking as a police officer in your own right, once it became clear to you that there was simply no substance whatever in the allegations against Armstrong, Hume, or Momo, there was nothing more to investigate about it, was there? A. When there is no substance you are wasting the time investigating. 40

Q. I take it then from the moment that that information and belief came to you you ceased to enquire into this? A. I had no other inquiries other than to locate Mr. Hume.

Q. Why would you want to locate Mr. Hume after your principal and experienced senior detective had told you there was no substance in it? A. Because I was told to. 50

Q. But you have told us that as far as you were concerned it was an end of the inquiry once you came to the conclusion that there was no substance in the allegations? A. I don't know whether --

Q. That is what you told us, isn't it? A. Can I explain?

Q. No. That is what you told us, isn't it?

A. Could you repeat the --

Q. Yes. Once you came to the conclusion that there was no substance in the allegations, that was an end of the inquiry as far as you were concerned, wasn't it? A. No.

Q. But you just told us the opposite a few moments ago, didn't you? A. Personally, in my thoughts, yes; but when I am directed by a senior officer I must do as I am told. 10

Q. But you told us that you formed your conclusion as a result of what your senior officer had told you? A. That is correct.

Q. And that was Sergeant Wild? A. That is correct.

Q. And Sergeant Wild had told you, either on the Tuesday or the Wednesday, that there was no substance in the allegations? A. That he could see no substance, no. 20

Q. And didn't he tell you that was an end of the inquiry? A. No, I can't recall him saying that. If he had said that he wouldn't have wanted me to contact Hume.

Q. When did he tell you to contact Hume? A. On the night of the 8th, to the best of my recollection.

Q. When did he tell you that in his view there was no substance in the allegations? A. As I have just told you, I don't know whether it was the 9th or the 10th or the morning of the 11th, but it was one of those days that he told me. 30

Q. On what basis did he tell you that he had reached that conclusion? A. Well, I can't recall back then but I would only assume now that I know that he did not have further conversation with Vojinovic. I understand that he did not have further conversation with Vojinovic.

Q. What did he tell you as to the reason why he felt there was no substance in the allegations? 40

A. As I have told you previously, that he thought that Vojinovic was attempting to obtain money from Mr. Barton; also that Vojinovic had committed similar offences overseas.

Q. And that was the end of it? A. What do you mean, that was the end of it?

Q. That was the whole of the reasons given to you by Sergeant Wild? A. That is all I can recall at the moment. 50

Q. So that by the Wednesday morning when Mr. Barton

arrived at the C.I.B., as far as both you and Sergeant Wild were concerned, there was no substance in the allegations? A. I don't know what operates in Sergeant Wild's mind, but I had that feeling.

Q. That was yours? A. Yes.

Q. And that was present to your mind when you went to the Smith's Sports Store? A. Yes.

Q. And when you went to the rifle range? A. To a pistol range. 10

(Luncheon adjournment).

(On resumption Mr. Gruzman asked that the witness produce documents to the Court in response to a subpoena addressed to him).

WITNESS: I have the subpoena here. It relates to personal documents. In my opinion there is nothing there that will cause me any great concern in this matter, but it relates to things which are personal to myself and to my wife and I wouldn't like them to come out in Court. I have no objection to explaining them fully to you in detail. I have them here and I am ready to produce them. 20

HIS HONOUR: I think the documents ought to be produced with the subpoena and I shall respect your wish that your personal affairs be not the subject of inspection by any other person unless I am of the view that they could be in some way material or relevant to what is here in issue. Beyond that I will not go at the moment. 30

(The witness produced the documents and subpoena to the Court and his Honour directed that they be placed in an envelope).

MR. GRUZMAN: I would ask leave to inspect the documents.

WITNESS: May I say something in respect to that?

HIS HONOUR: Yes.

WITNESS: My main reason for not wanting these made public, I have got no objection to Mr. Gruzman having a look at them but if it comes out in Court here it could be any one of these persons that I may have to deal with in the future and I don't want them to know whether I am paying my shoes off or what I am. 40

HIS HONOUR: I see two documents here that do not seem to fall within the subpoena.

WITNESS: They do answer something that does appear.

HIS HONOUR: I don't know what to do about these. Const. Follington is only a witness in the case. One naturally would understand his wish that his personal affairs be not made known to strangers and unless they are relevant to some particular subject 50

matter that you can identify I am most reluctant to expose him to having his personal affairs bandied about.

(TO WITNESS) I understand you to say that you do not mind Mr. Gruzman seeing these documents but what does concern you is a general disclosure of your personal financial affairs in the course of the evidence?

WITNESS: That is correct, and they will take a lot of explaining. If Mr. Gruzman likes to make a time and place I will explain them to him in detail but I just do not wish it to come out and be generally bandied about. 10

MR. GRUZMAN: I would be prepared to accept inspection between counsel only, not to be disclosed elsewhere without putting specifically to your Honour in some way what use is sought to be made of it. I would ask your Honour's indulgence to adjourn for a few minutes. I would accept also Det. Follington's suggestion that he explain to us such matters as he sees fit and I would not proceed to ask questions on that, until after reference to your Honour. 20

HIS HONOUR: Yes. Mr. Staff, this is a somewhat unusual situation - it is not unusual but it is one that one cannot decide on fixed rules. I think Constable Follington's expressed wish to go through these with Mr. Gruzman in private first before we go any further into the matter should be respected. 30

MR. STAFF: There is nothing we would wish to say in opposition or otherwise.

HIS HONOUR: These are all the documents covered by the subpoena, are they? A. Yes. There may be a few there in excess that I have volunteered - in excess of what is in the subpoena - but I have volunteered them quite voluntarily.

HIS HONOUR: I think the best course would be, with due regard to what you have said you wish to do --

WITNESS: This is only for convenience, that no aspersions can be cast. 40

HIS HONOUR: I will adjourn for five minutes. Mr. Gruzman, you and your two juniors and my Associate will go into the conference room with Constable Follington and you may go through the documents there. I will have the Associate take them in but the documents will remain in her custody for the time being.

Mr. Staff, what will then happen - Const. Follington, is your witness - the documents will be in Court and if they are needed arrangements can be made, if he wishes, to discuss them with you. At the moment I think it better that the two groups of counsel do not overlap on this discussion. 50

(Short adjournment).

MR. GRUZMAN: All I wish to say is that that ten minutes has probably saved an hour. I do not propose to say any more about it.

Q. On the night of Sunday the 8th you drove Vojinovic home, didn't you? A. No.

Q. How did he get home? A. I don't know.

Q. Are you prepared to swear that you did not take him in your car and drive him home? A. Yes.

10

Q. In a police car? A. Yes.

Q. Was it your understanding when he left that he was going to help you find the people involved?
A. He was going to assist Sgt. Wild but to what extent I can't recall.

Q. You understood that he was going to assist Sergeant Wild in his inquiries into this matter?

A. That is what I understood, but I can't recall --

Q. You expected that he would be in touch with you again - you or Sergeant Wild? A. In touch with Sergeant Wild - not myself.

20

Q. You expected that he would be giving information about this? A. I expected to Sergeant Wild undoubtedly, yes.

Q. Your understanding was that that was the reason why he was let go? A. No. There was no evidence to substantiate a charge in my estimation, but once again that is a matter entirely for Sgt. Wild, but I can't see any evidence there to substantiate a charge at that stage.

Q. Do you remember in the course of a lengthy answer this morning you used the words that Vojinovic had commenced similar offences overseas? A. Yes.

30

Q. What did you mean by that? A. Meaning similar acts.

Q. Meaning what? A. Similar acts.

Q. What offences? A. Only what Sergeant Wild had told me - he had obtained money under similar methods overseas.

Q. Isn't that an offence? A. Well, in this State --

Q. Is it or not? A. You are asking me to express an opinion?

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Q. Yes. A. Without going into it - I could say it could be one of possibly two which would require lengthy investigation. One would be to create a public mischief, which is common law and requires a lot of work and you couldn't arrest for it. The second of those I wouldn't be sure would be attempted false pretences, which once again I think is a common law misdemeanour.

Q. What about demanding money with menaces?

50

A. No - to the best of my recollection there were no menaces in the record of interview.

Q. You had a friendship with Mr. Hume for a number of years? A. Not actually a friendship but I knew him.

Q. You had known him for a number of years?

A. Yes.

Q. How had you come in contact with him? A. Well, I can't recall even the year - it is that long ago - but I was making some enquiries concerning some forged Commonwealth banknotes and I was trying to locate a person by his nickname. I recall meeting Mr. Hume for the first time when he was discussing - I don't know about "discussing" but he was talking to Det. Sergeant England and just in general conversation I told him that I was trying to locate a certain person and he said, "Oh, he could be so-and-so" - I would not like to mention his name at this moment because he has served a gaol sentence and has finished that gaol sentence. 10 20

Q. So he was able to assist you in that way?

A. Only in giving a name that is all.

Q. A name is everything sometimes, isn't it?

A. Sometimes, yes.

Q. From time to time has he assisted you in a similar way? A. No, he has not. That is the only occasion that he has assisted me, although I have spoken to him.

Q. How did that come about? A. I have spoken to him on the phone when I located him for Det. Sergeant Wild. I don't know whether he rang me or I rang him but I got the message to him to contact me. 30

Q. How did you get the message to him? A. I got Det. Sergeant England to locate him. I am sorry - I am just trying to explain this. When I knew Mr. Hume he had an office in Riley Street and to the best of my recollection when I went to locate him again I had not seen him for some considerable time and I rang that phone number - I can't recall whether I got an answer or not but I tried for a few days and couldn't get Mr. Hume. I knew that he was friendly with Det. Sergeant England so I went and asked his assistance and, once again to the best of my recollection, Sergeant England did locate him and Mr. Hume rang me and I made the appointment for him to see Sergeant Wild. 40

Q. Hume was a man, you have told us, you had known for a number of years? A. Yes.

Q. You told us of one occasion that you met him. Over a number of years how had you met him - in what circumstances? A. The first day that I met him, as I say -- 50

Q. You have told us about that. Tell us the other occasions. A. There is other occasions that I have met him. I have met him at this Court.

Q. What would that be in connexion with - what type of things? A. This matter.

Q. Forget all about the Barton and Armstrong matter. Is it true to say that at the beginning of this year you would describe Hume as a man whom you had known for a number of years? A. Yes, I have known him for a number of years.

Q. You have told us about one occasion that you met him? A. Yes. 10

Q. Are there other occasions? A. I have seen him a at the C.I.B. and said Hello to him and spoke to him, passed the time of day.

Q. Did you have some knowledge of him which would make him a man who to you was obviously of good character? A. Yes. I spoke to Sergeant England about him and he told me that he was a man of good character.

Q. And that is what you accepted? A. Well, yes. Det. Sergeant England is a senior member of the Service and I accept his word. 20

Q. Did you regard it as unusual that a man of good character, a licensed private inquiry agent, a licensed pistol holder and so on, you could not locate him for days and had to locate him through another policeman? A. Not a private inquiry agent. They are sometimes away on other inquiries. I know that Mr. Hume at one stage had an office in Balmain. I know that he had one in Riley Street. I know that he had one in Wollongong. I have been told that he did in fact have one in Queensland and there was some other office, but I can't recall where it was. 30

Q. You are telling his Honour that although he was, to your knowledge carrying on a business as a private inquiry agent, the only way you could locate him was through a police-officer? A. That was the simplest form because I knew that Det. Sergeant England knew him well enough to be able to locate him.

Q. But you yourself, with all the facilities at your disposal, you are telling his Honour you were not able to locate him? A. No. I could have located him through other methods. 40

Q. But the normal methods of simply using the telephone or going down to his office--A. I didn't go to his office.

Q. There was no reason why you should not have done that, was there? Q. No, but I didn't.

Q. You had been instructed to find him? A. That is correct. 50

Q. By Sergeant Wild? A. That is correct.

Q. The obvious way was to go to his office?
A. I telephoned his office.

Q. The obvious way was to call down at his office? A. Nobody is answering his phone. It is reasonable to assume that there is nobody at home.

Q. Did you know where he lived? A. No, not until recently.

Q. He was in the phone book wasn't he? A. I didn't know.

Q. You did see him on the Monday or Tuesday, 9th or 10th January, didn't you? A. No. 10

Q. He was not a man who was difficult to locate, was he? A. Not difficult if you knew the man --

Q. You knew him? A. Not real well. As I told you, I didn't know him that well but I know him to be a man of good character.

Q. You reported to your superior that "Mr. Hume is the holder of a current private inquiry agent's licence, a pistol licence, and I have known him for a number of years and he is obviously a man of good character."? A. That is quite obvious. 20

Q. And that was your report on 6th February 1968? A. That speaks for itself. It states that the man is of obvious good character.

Q. Did you receive certain sums of money from Mr. Barton? A. No, I did not.

Q. Did you receive money from him on three occasions amounting to \$200 on each occasion? A. No.

Q. Did you tell Mr. Barton that you would use your four days off to keep Mr. Armstrong under surveillance? A. No. I have more things to do with my four days off. 30

Q. What things? A. I have got a wife and two children and I like to look after them to start with.

Q. Did you go to Goulburn to make some enquiries on behalf of Mr. Barton? A. No, but after receiving a subpoena that was served by your solicitors, I think Mr. Gruzman, I did make some enquiries at the Modus Operandi Section regarding, I think it was, the Goulburn Acceptance Company - correct me if I am wrong - and I went to the Modus Operandi Section to see if there had been a death recorded as is set out in the subpoena and the search was made by Sergeant 1st-Class Rose, the officer in charge of that section, who told me that there was no record whatsoever of a death of a person down there, but they would not record it if it was accidental or suicidal or natural causes. 40

Q. I ask the question again: Did you go to Goulburn and make enquiries on behalf of Mr. Barton? A. No. 50

Q. Have you been to Goulburn since January 1967?

A. I conveyed a chap charged with murder through the town, stopped there and had a meal and I don't know the date unless I check up.

Q. Roughly when was that? A. If I could say something that would not be printed I may be able to give some indication. It was when there was a shooting -

HIS HONOUR: I think anything that is said ought to go down. Just think. 10

MR. GRUZMAN: Q. Just the best indication you can give of the date. A. Could I have a look at my diary?

HIS HONOUR: Yes. (Handed to witness).

WITNESS: I don't know how late it was. I can't see it here. I would say it would be early in the year that we took a man from here to Wagga and we stopped there for a meal on the way through.

MR. GRUZMAN: Q. So some time in the first two or three months of 1967-- A. It could have been later - it could have been. Give me time to search and I would be able to find it for you. 20

Q. The best estimate you have got in your mind at the moment is that at some time anyway in the first half of 1967 you were in Goulburn? A. Yes.

Q. And Mr. Barton had told you that there was something - I think the way you put it was something of interest to be investigated in Goulburn? A. I didn't say that at all.

Q. Correct me if I am wrong. What is your recollection of what Mr. Barton said? A. Mr. Barton said to me that Mr. Armstrong was connected with the Goulburn Acceptance Company-- (Objected to: rejected). 30

Q. When you made your report on this case to the Superintendent-in-Charge of the C.I.B. I suppose you meant to give him a full report of your activities? A. What he required.

Q. What he required? And what he required was a report of your investigations into this matter? A. If you show me the memo. I would be able to tell you how much he required. I can't recall. I handle four or five files a day. If you show me I am sure it would be attached to the file. 40

Q. Have a look at the file if you like but you can assume that there is no memo, that gave rise to it. It must have been a verbal request brought about by the subpoena that was served on the Police Department. A. I can't recall whether it was a verbal request or what it was. 50

Q. So far as the file shows there is no request for information but there is a reference to a subpoena and I suppose you can assume that that is how the

report came into existence? A. Yes. I recall the subpoena was about the time that I had to report on it.

Q. You allege in that report that it was Mr. Barton junior who said that he wished to purchase a pistol or some type of firearm? A. That was right - at 1.30 on the 11th.

Q. But you were answering the affidavit of Mr. Barton and you referred to par. 31 of the affidavit in your report where Mr. Barton said that he had caused the purchase of a .22 calibre rifle, the way you describe it - do you remember that? A. Yes. 10

Q. Mr. Barton in his affidavit said that he had sought a pistol, didn't he? A. I would have to have a look at my report again there but Mr. Barton senior definitely was not there.

Q. Is this the position, you say that the whole story of that incident is this, that on 11th January 1967 Mr. Barton junior called at this office and stated that he wished to purchase a pistol or some type of firearm - is that true? A. That is early in the morning. 20

Q. That is true. Mr. Barton junior wanted to purchase--A. No - Mr. Barton senior.

Q. Just listen again. I want to know whether this--A. I am sorry - I have found something here that you were wanting and I have just got my hand on it.

Q. Would you like to mention it so you can get it off your mind? A. It is the day that I went through Goulburn. It was the 13th May 1967. 30

Q. Is this the truth, what you wrote in this report on 11th January 1967. "Mr. Barton junior called at this office and stated that he wished to purchase a pistol or some kind of firearm" - is that true?

Q. Mr. Barton junior did.

Q. "stated that he wished to purchase a pistol".

A. "purchase a firearm."

Q. Listen carefully. A. I know what you said. 40

Q. I want to know whether it is true and accurate. "On the 11th January 1967 Mr. Barton junior called at this office and stated that he wished to purchase a pistol or some type of firearm." Is that true and accurate? A. I have compiled there --

Q. Would you answer that: is it true and accurate?

A. Will you allow me to answer so that we do not mislead the Court?

Q. The Court will worry about itself. Is that statement a true statement? A. Yes and No. 50

Q. In what respect is it not true? A. I have

compiled there that there was an approach to buy a firearm.

Q. Please continue. A. In the morning Mr. Barton senior and his son arrived. There was some conversation about a firearm and I had to leave to go to the Central Police Station and later that day Mr. Barton junior arrived and it was then when he told me that his father wished to purchase a rifle.

Q. Look, Sir, is it the truth in any sense to say that on any occasion Mr. Barton junior said that he wished to purchase a pistol? (Objected to). 10

A. Before you go on, I am afraid that I have misquoted the date here. That was the date of arrest that I quoted. We left Sydney on 16th May to go to Wagga and on going through to Wagga we stopped at Goulburn.

Q. For lunch? A. To the best of my recollection it was for lunch. I am just trying to read this if you will give me time. No, it was later than lunch. It wasn't till after lunch that we left. 20
At 6.20 p.m. he was supplied with a meal at Goulburn on that day; that is clearly indicated in the diary.

Q. Then you drove down to Wagga? A. Yes, and then we turned around and came straight back. It was one long drive down to Wagga and straight back.

Q. One drive to Wagga and straight back - is that right? A. Yes. It went into the following day, the whole drive.

Q. Where did you spend the night? A. We drove. 30

Q. You drove all night? A. Yes.

(Mr. Gruzman asked leave to see the diary entry at a later stage. His Honour granted leave).

Q. In your report of 6th February 1968 although you dealt with the incident of the rifle and the pistol you made no mention of going to Smith's Sports Store, did you? A. No.

Q. You made no mention of going to the Police rifle range? A. No. 40

Q. Any reason for not mentioning it? A. No reason why I should.

Q. In February 1967 at about 12.30 p.m. towards the end of February, you came to Landmark office, didn't you? A. I am sorry, could you repeat that?

Q. You came to Landmark office in Pitt Street at about 12.30 p.m. on a date towards the end of February 1967? A. No.

Q. Have you ever been to Landmark office? A. Yes.

Q. On how many occasions? A. One occasion to the best of my recollection. 50

Q. When was that? A. That was 18th January 1967.

Q. 18th January 1967 you went to Landmark office - 18th January 1967 - is that right? A. Yes.

Q. Who did you see there then? A. Mr. Barton senior.

Q. What was that conversation in connexion with?
A. I told him that Det. Sergeant Wild had interviewed the man Hume and had confirmed his suspicion of Vojinovic. Mr. Barton senior told me that he had business dealings with Mr. Armstrong and things were going off all right.

10

Q. What time of the day was that? A. Only using my recollection - it would be in my diary - it would be after two o'clock.

Q. Some time after two o'clock? A. Yes.

Q. Who was there at the time? A. I can't recall.

Q. One person or a number of persons? A. I can't recall.

Q. No recollection? (Mr. Gruzman asked for the diary notes and the typewritten document). While those are being found, are you studying any course?
A. No.

20

Q. Have you ever studied in recent years? A. No.

Q. Not at all? A. Only privately I have studied books and that that I have got from the library - Randwick Library.

Q. Have you studied to matriculate? A. No.

Q. When you were asked to go to Mr. Bowen's office, you understood it was for the purpose of giving evidence to assist in litigation to be brought by Mr. Barton against Mr. Armstrong? A. No. At that stage I didn't know whether there would be any litigation at all, although it is quite possible that there could have been, but my main object I thought at the time was to bring Mr. Bowen up-to-date with the inquiry.

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Q. To bring him up-to-date about what? A. About the inquiry itself.

Q. But you knew that Mr. Bowen was concerned with a possible action against Mr. Armstrong, didn't you?
A. I didn't know that they intended actually to take action, but --

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Q. But you knew that this was what was in their minds? A. It could have been yes, but I couldn't read his mind.

Q. And when you said - I think you did say - you could get a statement from Hume, you meant by that a statement which would support Barton against Armstrong, didn't you? (Objected to).

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Q. Didn't you tell Mr. Bowen - I put it to you that you said you could get another statement from Hume? A. No.

Q. You denied that. Didn't you say to Mr. Bowen that you could get a statement from Hume? A. Yes, a statement could be obtained from him. I did inform Mr. Bowen that he would not have had any trouble getting one off him, because he has got nothing to worry about.

10

Q. And, knowing that Mr. Bowen was concerned with a possible action against Mr. Armstrong, what you meant was that Hume would give a statement which would support Barton against Armstrong, didn't you?
A. No. (Objected to).

Q. You identified this document of 6th February 1968 as your report? A. Yes. I already have once before, Mr. Gruzman.

(Report of Detective Follington, 6th February, 1968, tendered and admitted as Exhibit "V").

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Q. When did you first see the solicitors for Mr. Armstrong? A. Gee, Mr. Gruzman, I can't recall.

Q. What is your best recollection? A. I think it was sometime early this year, but I could not say, Mr. Gruzman.

Q. According to your diary it was the 17th January, I think 1967? A. Well, I could not say. I will take your word for it.

HIS HONOUR: 17th January 1967?

MR. GRUZMAN: 1968. I am sorry.

30

Q. 17th January 1968? A. Yes.

Q. Between 12.15 and 1 o'clock on 17th January 1968. Would that be correct? A. Well, I doubt whether it would be in the diary. I was directed to start a new diary once that was produced in Court. But I will take Mr. Gruzman's word. I saw Mr. Grant, in fact.

HIS HONOUR: Q. I will pass you your diary. (Diary handed to witness). A. 17th January you say, Mr. Gruzman?

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MR. GRUZMAN: Q. 1968? A. That is correct. Between 12.15 to 1 p.m. I saw Mr. Grant, solicitor, re Barton and Armstrong.

Q. How did you come to see him? How did you come to see Mr. Grant? A. A telephone call I think to see him.

Q. A telephone call from whom? A. I can't recall, Mr. Gruzman. I get telephone calls every day and am told to go places. I don't recall specifically who told me to go there, but I know I did in fact go and see Mr. Grant.

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Q. You have no recollection whether it was Mr. Armstrong or Mr. Grant or who it was? A. It was not Mr. Armstrong, because I had never spoken to him.

Q. You don't know who it was? A. No, I cannot recall who it was.

Q. How many times would you have seen Mr. Armstrong's legal representative since that date? (Objected to: allowed). 10

Q. What is your answer? A. I cannot recall exactly, but I would say two or three times at least, Mr. Gruzman.

Q. Mr. Grant or any of the legal representatives of Mr. Armstrong. On how many occasions have you seen them, or any of them, since January 1968? A. It would only be a guess, but I would say three, perhaps four times. That is only guessing. I have got nothing here to substantiate when I was there.

Q. And would the same apply to Sgt. Wild, to your knowledge? (Objected to: rejected). 20

Q. I just want to ask you this. I suggest you came to Landmark Office in February 1967 and you said to Mr. Barton "Armstrong has been down to the C.I.B. and blown his top"? A. As you asked me before, I said "No". Someone asked me - I'm not saying it was you and I said "No".

Q. And it was on that occasion you told Mr. Barton that this had arisen because of what Vojinovic was alleged to have said in Melbourne? A. No. 30

Q. And it was then that you promised to get Mr. Barton a copy of Vojinovic's statement? A. No.

Q. And the next day you gave it to him? A. No.

RE-EXAMINATION:

MR. GOLDSTEIN: Q. Detective, you were asked a number of questions about Sgt. Wild's practice in relation to files and matters of that kind. Do you remember that? A. Yes.

Q. Now, as at January 1967 had you ever worked with Sgt. Wild before? That is, before 8th January 1967? A. Never as a workmate. 40

Q. Apart from January 1967 have you worked with him since as a workmate? A. We have been out to certain buildings where the whole squad has participated, but not as a mate, no.

Q. You were asked a lot of questions about what happened to your pistol on the night of 8th January? A. Yes.

Q. You were not too sure who gave it back to you. Did you get it back on the evening of the 8th? A. Yes, 50 I definitely got it back. I have got it on now.

(Witness retired).

FIRST NAMED DEFENDANT
Sworn, examined, deposed:

TO MR. STAFF: My full name is Alexander Ewan Armstrong and I reside at 9 Coolong Road, Vaucluse.

Q. And your occupation is that of company director?
A. Correct.

Q. Basically? A. Yes.

Q. You are aware of the allegations which have been made in the statement of claim in these proceedings? A. I am. 10

Q. Have you at any time, Mr. Armstrong, employed Mr. Hume or any other person to kill Mr. Barton?
A. Certainly not.

Q. Have you ever employed Mr. Hume or any other person to threaten to kill Mr. Barton? A. No.

Q. Have you yourself, either on a telephone or in person, threatened to kill Mr. Barton or to have him killed? A. Certainly not.

Q. Have you yourself ever telephoned Mr. Barton in the early hours of the morning for any purpose?
A. No. 20

Q. Have you ever by telephone calls at early hours or any other hours of the day breathed heavily in the telephone? A. No.

Q. Or telephoned a number at which Mr. Barton answered and simply said nothing? A. Definitely not.

Q. Have you ever employed or arranged or instigated or suggested to anyone that they should make telephone calls to Mr. Barton and breathe heavily 30 or don't say anything when Mr. Barton answered? A. No.

Q. Have you ever employed, engaged, instigated or suggested to anyone that they should make telephone calls to Mr. Barton and threaten him? A. No.

Q. Have you ever engaged Mr. Hume or suggested to Mr. Hume or instigated Mr. Hume or anyone else to watch Mr. Barton at his house, in his movements in the street, or at Landmark office? A. No.

Q. Or anywhere? A. Not anywhere.

Q. Mr. Armstrong, in July 1966 I think that you, with your wife, and daughter Margaret, were at Surfers Paradise in the latter half of July? A. That would be correct. 40

Q. Was Mr. Barton there also for some part of the latter part of July? A. Mr. Barton was there at some part. I don't know exactly when.

Q. Do you recall that during at least some of the time that Mr. Barton was at Surfers Paradise Mr. Hume was also in Surfers Paradise? A. He was.

Q. And are you aware that - well, did you at 50

or about that time introduce Mr. Barton to Mr. Hume? A. I did.

Q. Now, you will recall - the purpose for which Mr. Hume was invited to Surfers Paradise was related to the termination of the Hopgood contract? A. That is so.

Q. Now, was this discussed with Mr. Barton - that is, by you - before Mr. Hume came to Surfers Paradise? A. Yes. 10

Q. Do you recall that Mr. Barton gave some evidence in this case as to the conversation which took place between you and Mr. Barton in relation to the termination of the contract, and the inviting of Hume to Surfers Paradise? A. I recall the evidence, yes.

Q. I think perhaps I should read this to you specifically. Do you recall that Mr. Barton at the foot of page 9 gave this evidence: "Mr. Armstrong said....I have a man who does all my dirty work I employ permanently". Do you remember that evidence being given by Mr. Barton? A. I do. 20

Q. Was that true, Mr. Armstrong? A. No.

Q. Do you remember Mr. Barton continued his next answer by saying "I employ him permanently, and he does all the strongarm work that I may require. He will be able to do this job efficiently". Did you say that, or anything like it? A. No.

Q. Then the evidence continued having Mr. Barton saying that, after you said that, you then turned to Mrs. Armstrong and said "Give me Fred's number", and Mrs. Armstrong took out a black small notebook from her bag, and while she was looking for the number she said "I don't think Alexander Barton will agree to the methods what you and Fred use". Mr. Barton then goes on to say "Then Mr. Armstrong said - I just want to be precise - 'the company has not got anybody who can do that job as efficiently as Fred can do it. He has done many jobs for me before'". Did any of these conversations or these things occur at that time? A. Only the part about "get Fred's number". 30 40

Q. Will you tell us what is your recollection as to that conversation? A. The conversation which took place, so far as I can recall - I can recall this; it is some time ago, but so far as I can remember I stated to Mr. Barton that I thought Fred would be a useful person to do this work, and I asked Mrs. Armstrong to give me his number.

Q. Do you recall what Mr. Barton said to you? A. He said "Well get hold of him", or words to that effect. 50

Q. Following that did you communicate with Mr. Hume and ask him to come up to Surfers Paradise? A. I did.

Q. And when he got there what happened? A. I introduced him to Mr. Barton.

Q. Yes. Was there any more conversation you recall at the time you introduced him to Mr. Barton?

A. Nothing specifically. I think Mr. Barton then instructed him what action to take in relation to the Hopgood matter.

Q. Do you recall the evidence which Mr. Barton gave as to a conversation he had with Mr. Hume in your presence when Mr. Hume arrived? A. Not specifically. 10

Q. Perhaps I will have to deal with it with a little more precision. At the foot of page 10 do you recall Mr. Barton giving this evidence Mr. Armstrong. He was asked "Q. Did you again see Mr. Hume during that day?" and he answered "I saw Mr. Hume the next day". He was asked "Was this in Mr. Armstrong's presence?" and he answered "It was in Mr. Armstrong's presence in front of the Paradise Towers building on the Pacific Highway". Do you recall a number of conversations to that effect. Mr. Armstrong, with Mr. Barton and Mr. Hume? 20

A. Concerning the serving of notices?

Q. Yes. A. Something to that effect, yes.

Q. The passage is as follows: "Q. Did you give Fred Hume the notice to serve? A. Yes. Q. And did you again meet Fred Hume? A. Yes. Q. When was that? A. I met him on the same day again in Mr. Armstrong's company, and he said that it is difficult to serve a dismissal notice, because he went to Mr. Hopgood's home and his wife said to him that he is not at home and she said if he were at home he might jump out the window and run away. Q. I think you got some legal advice on the matter? A. Yes. 30

Q. Did you again see Mr. Hume during the day? A. I saw Mr. Hume the next day. Q. Was this in Mr. Armstrong's presence? A. It was in Mr. Armstrong's presence in front of the Paradise Towers building on the Pacific Highway". A. I don't remember the piece about him jumping out the window. 40

Q. On page 12 I remind you of some evidence that Mr. Barton gave. He said that after your return in 1966 from overseas he, Mr. Barton, spoke with you, having heard that you and your wife had arrived at Landmark Corporation office. Mr. Barton said he came to you and said "I am not prepared to work with you on any circumstances. I see only one alternative, that you resign and get out of Landmark Corporation Limited. I can't resign myself, as much as I would like to, because of my responsibility to shareholders, United Dominions Corporation Limited, and other persons and parties connected with the projects which are under consideration". He went on to say "Mr. Armstrong replied that he was not prepared to resign, and he said that the city is not as safe as I may think between office and home and I will see what he can do against me and I will regret the day when I decided not to work 50

with him". Did any such conversation at or about that time take place between you and Mr. Armstrong (sic)? A. Not of that type.

Q. Mr. Barton, I am sorry. A. Not of that type.

Q. Did any conversation such as that one take place between you and Mr. Barton at any time? A. No.

Q. Did you ever say to Mr. Barton that the city is not as safe as he may think between office and home? A. Certainly not. 10

Q. After your return from overseas in 1966 was there any discussion between you and Mr. Barton about one or other of your resigning from the position with Landmark as director? A. There was some discussion between us, yes.

Q. Can you recall what that discussion was, and when it took place? A. Not specifically. It took place over a certain period of time.

Q. There were some discussions of that character? A. That is right. 20

Q. Did you at or about that time - that is, after your return from overseas in 1966 - have any discussion with Mr. Barton in your office at Landmark where the subject matter of the discussion was a piece of paper which Mr. Barton showed you marked with a red pencil "no" and signed by Mr. Barton, at which time Mr. Barton said to you "You cannot have a boat in Sydney and you cannot have a boat at Surfers Paradise and you can't have a chauffeur all the time and paid by the company"? A. No I didn't. 30

Q. Did you have any discussion of that character with Mr. Barton at any other time or at any other place? A. No.

Q. Did Landmark Corporation or any of its subsidiaries ever provide you with a boat in Sydney or a boat at Surfers Paradise? A. No.

Q. Or a chauffeur? A. No.

Q. Mr. Armstrong at page 13 do you recall Mr. Barton giving some evidence? I remind you of Mr. Barton's giving this evidence, having placed it as a conversation I think at the same time as when he said the boat was discussed? A. I didn't hear that (Question withdrawn). 40

Q. I want to remind you of a piece of evidence at page 13 which Mr. Barton gave which, he said, I think followed the statement by Mr. Barton about the boat in Sydney and the boat in Surfers Paradise and the chauffeur. He was asked "Did Mr. Armstrong stand up or sit down? What did he do or say?" and he answered "He was sitting down, and he said 'I am a large shareholder of this company; I am a large creditor of this company, and I can issue a s. 222 notice against the company. I can wind up the company any time I want to'". Did that conversation take place? A. No. 50

Q. Did you ever have with Mr. Barton prior to 18th January 1967 any discussion in relation to Landmark Corporation or any of its subsidiaries in which a s. 222 notice was mentioned? A. I cannot recall that, Mr. Staff.

Q. Do you recall any conversation at any time with Mr. Barton prior to 18th January 1967 in which you said, in relation to your position as a creditor of the company, "I can wind the company up anytime I want to"? A. No, I can't recall that. 10

Q. In the middle of page 13 Mr. Barton gave some evidence that prior to you leaving for overseas in 1966 you asked Mr. Barton to approve overseas expenses for yourself and your wife, and that he refused to do this. Did such a conversation take place? A. There was a conversation between Mr. Barton and myself concerning overseas expenses. He said he would put it to the other directors, and I understand from him that he did so and they did not wish to pay it, and there was no more said about it. 20

Q. Was that as a result of a request made by you to Mr. Barton? A. I would say yes.

Q. Sometime shortly before you left for overseas in 1966 did you have a discussion with Mr. Barton in which Mr. Barton said to you - at the top of page 14 - "I told Mr. Armstrong that he could do two things - to employ people himself and pay the people to work for him and take his private companies out of Landmark Corporation premises, or he can agree with Landmark Corporation Limited and have the board to approve that he should pay a certain fee to recompense Landmark for the expenses". Did that conversation occur? A. No. 30

Q. I remind you that Mr. Barton gave this evidence at page 14-15, that he had a discussion with you in or about May of 1966, in which he said to you "You are a vicious and ruthless man. You are only interested in your own financial affairs. You go as far as death, conspiring to mislead justice, and would attack anybody in any high positions, including judges". Did Mr. Barton make such a statement to you? A. Certainly not. 40

Q. Did you ever say to him, "Never mind all this. I have my own way of getting things done, and I always get what I want, but I agree for you to have the physical running of Landmark Corporation Limited"? A. No.

Q. Did Mr. Barton, in the course of the same conversation, say to you - the evidence is: "I said to Mr. Armstrong that I am very seriously objecting that he is instructing people to spy on me - giving information after any conversations or dealings I had with them. I told him I objected that he committed the company to various real estate deals and objected that Mr. Armstrong was dealing directly with Laurie Wall who sold his business out to Doug Bryant and Doug Bryant was Landmark's agent at Surfers Paradise and 50

Mr. Kilmartin was the representative of Landmark Corporation and subsidiaries. Q. Did Mr. Armstrong make any comments, about these statements of yours? A. Yes. Q. What did he say? A. Mr. Armstrong said that he had been dealing with Laurie Wall for many years, and he made some remarks about Doug Bryant, and said 'Doug Bryant is not a proper person to deal with ', and then - Q. You told him 'You are a ruthless, vicious man...'? A. Yes. Q. Would you mind just telling me after that incident in May were there further discussions with Mr. Armstrong in the ensuing weeks about money matters? A. I had constantly discussions with Armstrong about money matters. He tried to withdraw his loans from Landmark Corporation".

10

Did any such conversation occur? A. No.

Q. Mr. Barton said that you said to him that you had been dealing with Laurie Wall for many years; you made some remarks about Doug Bryant, and said "Doug Bryant is not a proper person to deal with", and then Mr. Barton told you the piece about "You are a ruthless, vicious man"? A. No, that is not correct.

20

Q. On page 15 Mr. Barton gave this evidence: "On one occasion he said he wanted Landmark to repay him \$100,000". Mr. Barton said that the company's liquidity position could not afford it at that stage, but he would make an effort to see that you would be paid, and he said that you then said "I am in a position, as a creditor of the company, and my money is overdue, I can issue a s. 222 against the company and liquidate the company", and that conversation, Mr. Barton said, took place after the incident in May of 1966? A. I don't recollect that.

30

Q. On another occasion before you went overseas in 1966 Mr. Barton gave this evidence, on page 15: "On another occasion at a board meeting Mr. Armstrong demanded 18 per cent interest for his loan monies... that they are not prepared to approve any higher interest than has been paid to other finance companies". Did that conversation take place? A. No.

40

Q. Mr. Armstrong, throughout the years of your association with Landmark Corporation and its subsidiaries, securities which you held - I am sorry, the securities which companies with which you were concerned held for monies due to them were second mortgages? A. In most cases, yes.

Q. Will you tell us generally at what rate of interest the loans so secured were secured? A. 12 per cent.

50

Q. And companies throughout your association with them were borrowing regularly large sums of money from commercial finance houses? A. Yes.

Q. Upon security? A. Yes.

Q. What sort of security? A. I didn't quite catch your first question. Which companies were borrowing from what?

Q. The Landmark company and its subsidiaries were borrowing from commercial finance companies? A. Yes. They were paying 12 per cent, and sometimes as high as 13 per cent.

Q. On what sort of security? A. First mortgage usually.

Q. Did you ever make any demand upon Landmark Corporation for the payment of 18 per cent interest?
A. No. 10

Q. Did any of the companies with which you were concerned ever, to your knowledge, make any demand for payment of interest at 18 per cent? A. No.

Q. Do you recall that there was a board meeting of Landmark Corporation Limited, held on 24th October, 1966, a little over a week after you returned from overseas? A. Yes I do.

Q. Do you recall that that was a lengthy meeting?
A. It was.

Q. It was a meeting at which a transcript of the proceedings, or some of them, was taken by tape recorder? A. That is right. 20

Q. There were present at that meeting a number of persons other than directors? A. Yes there were.

Q. And at that meeting, amongst the resolutions passed, were some resolutions contained in Exhibit "A" which dealt with managing director's executive authority, and moved or confirmed that no other directors should have any executive authority? A. I remember those resolutions. 30

Q. And also dealing with the use of office and secretarial assistance? A. Yes.

Q. At that meeting did Mr. Barton tell the board that he was no longer prepared to work under the existing conditions, "with Mr. Armstrong interfering with my job and committing the company without my knowledge". Did he say those words? A. I think he did say words to that effect.

Q. And that you were drawing expenses which were not company expenses? A. I don't remember him talking about expenses so much, but I do remember the other part quite clearly. 40

Q. May I take it that this subject matter occupied a considerable part of the time? A. It certainly did.

Q. Which the meeting took? A. It certainly did.

Q. Was it a quiet friendly discussion or meeting, or a heated meeting? A. I would say rather heated.

Q. Have you any recollection in any detail of what various people said at that meeting? A. Not very clearly after this time, Mr. Staff. 50

Q. Do you recall at that meeting Mr. Barton saying, on page 17, "Have you paid Oscar Guth for the speech what he prepared for you what has been said in Parliament about the Opera House?" A. I do recall something to that effect.

Q. What is your recollection of that conversation?

A. I think Mr. Barton wanted to know whether I was using the company's public relations officer to prepare speeches for me. I think that was the purpose of his question.

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Q. What is your recollection of what your reply was? A. I told him that I paid him for the speech myself.

Q. Mr. Guth had in fact done some work in the preparation of the speech which you delivered in Parliament, had he? A. Correct.

Q. At that time he was public relations officer for Landmark company? A. He was.

Q. You say that you paid him for doing this preparatory work for the speech you made? A. Yes, I paid him myself.

20

Q. I want to read you this piece of evidence. Mr. Barton said "I said to Mr. Armstrong 'Have you paid Oscar Guth for the speech what he prepared for you what has been said in Parliament about the Opera House?' Mr. Armstrong said 'Yes'. I have asked him if he paid by cheque or by cash, and he said 'By cash'. But also I have asked Mr. Armstrong if he was prepared to resign as director... and the board meeting has stopped, and he came back and then he said he is not prepared to resign". Did that take place? A. I cannot understand that conversation. To me it has never made sense.

30

Q. Have you any recollection, apart from that which you have told us about the question in relation to the payment of Oscar Guth - have you any recollection of the remainder of the conversation of which Mr. Barton gave evidence? A. I think Mr. Barton may have asked me would I resign. That is all I recollect.

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Q. Have you any recollection of what your reply was? A. Not clearly.

Q. Mr. Armstrong, on page 18 Mr. Barton gave - or was asked these questions, and gave these answers: "Q. Can you remember a conversation with Mr. Armstrong late in November 1966? Do you recollect having a conversation with Mr. Armstrong late in 1966? A. Yes. Q. Can you tell his Honour what that conversation was? A. Mr. Armstrong said to me that 'I am of German origin, and Germans fight to the death!'. Then his Honour asked "Q. I am sorry, I did not hear that. A. 'I am of German origin, and Germans fight to the death. I will show you what I can do against you, and you had better watch out. You can get killed.'"

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Did that conversation ever occur at that time,

or any time? A. Definitely not. Mr. Barton well knew I was of Scotch descent.

Q. Did anything like it ever occur? A. No.

Q. In or about November 1966 have you any recollection of leaving a board meeting after Mr. Bovill had left, and following Mr. Bovill to a washroom or toilet? A. No recollection of that.

Q. Well now, Mr. Armstrong, you told me in answer to a general question that you did not ever make any threats on the telephone. Do you recall on page 27 Mr. Barton gave some evidence that in January of 1967 he recognised your voice on the telephone, and when you said "You will get killed" that he replied "You go to Callan Park". Did any such telephone conversation take place? A. Certainly not. 10

Q. On page 34, the fourth question from the top, Mr. Barton gave this evidence, that at a board meeting of Paradise Waters (Sales) on 7th December 1966 you, in front of all the members of the board, said to Mr. Barton "You can employ as many bodyguards as you want. I will still fix you". Did you ever say that at that or any other board meeting? A. No. 20

Q. At pages 34-35 Mr. Barton gave this evidence about a board meeting. He gave this evidence: "He asked me if I would come out from the board room because he had something very important to say to me. I have refused first, because I didn't want to talk to him on my own; I was preferring that everything that he wants to say, to say in front of other people. But he was insistent, and then I went with Mr. Armstrong to my room, and Mr. Armstrong said to me, 'Unless Landmark buys my interest in Paradise Waters (Sales) Pty. Limited....I will have you fixed'". Did these incidents and these conversations take place? A. They didn't. 30

Q. At a board meeting on 14th December 1966, or at any other time? A. No.

Q. At the foot of page 34a and over Mr. Barton gave this evidence, that after a board meeting on 24th November 1966 Mr. Bovill and he came to you, and Mr. Barton said that he said to you "These public fights will result in loss of money to the shareholders, and I told him that I already have the support of the shareholders and no further reason for him to contest that meeting, and I advised him - I said to him 'You should resign and get out and let us protect the shareholders' interest'. Mr. Armstrong then said "I am not working for the widows and orphans. I am working for myself" first of all, did you ever say to Mr. Barton at this time in the presence of Mr. Bovill or otherwise, "I am not working for the widows and orphans. I am working for myself"? A. I did not. 40 50

Q. Did the conversation which Mr. Barton said took place between him and you in Mr. Bovill's presence occur? A. I don't think so.

Q. You have no recollection of it? A. No recollection.

(Further hearing adjourned to 10 a.m. on Wednesday, 14th August, 1968).