

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

15 OF 1972

Term No. 22 of 1969

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; TERRENCE
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; TERRENCE 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 6

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

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

SOLICITORS FOR THE APPELLANT
(Plaintiff)

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

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

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,
149 Castlereagh Street,
SYDNEY.

SOLICITORS FOR THE RESPONDENT
(14th Defendant)

Dawson, Waldron,
44 Martin Place,
SYDNEY.

INSTITUTE OF ADVANCED
LEGAL STUDIES.
25, RUSSELL SQUARE,
LONDON,
W.C.1.

IN THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

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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 GONGZE</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.

THIRTY-SIXTH DAY: TUESDAY, 17TH SEPTEMBER 1968

(Commissioner of Police called on subpoena duces tecum by Mr. Gruzman. IAN BARRY ANDERSON appeared in answer to the subpoena. Sergeant Anderson produced a copy of the subpoena, together with document called for in the subpoena.)

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HIS HONOUR: Q. Is there any objection to this document being seen, Sergeant Anderson?

SERGEANT ANDERSON: We object to the document being made available to the parties until such time as the Court is satisfied that the document is relevant and admissible in evidence.

HIS HONOUR: Is it required as a matter of urgency?

SERGEANT ANDERSON: No.

HIS HONOUR: I prefer not to read the document until such time as it is tendered in evidence. Apart from the nature of the document is there anything in it which is confidential so far as the Police Department is concerned?

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SERGEANT ANDERSON: No.

HIS HONOUR: The document may be made available for inspection.

Mr. Gruzman, do you challenge the sufficiency of the production on this subpoena?

MR. GRUZMAN: No, I cannot. But Sergeant Anderson, I think, was cross-examined on the voir dire, and other officers were, and one would have thought that all documents relating to this matter would have been produced to the Court. A most relevant and vital document is produced at this stage, and only because we issued a subpoena following upon evidence in this Court. It is only because we issued a subpoena specifically naming it that this document has been produced. With respect, I submit that we should be permitted to re-open on the voir dire to ascertain what other documents there are, where this document was produced from and why it was not produced before. I ask for leave to re-open on the voir dire.

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SERGEANT ANDERSON: I should point out that the subpoena names a document of 10th February, 1967. The document I have produced to the Court is dated 10th February 1968, and did not come into the possession of the police until somewhere about 14th February 1968. I have no knowledge of any document dated 10th February 1967 as indicated in the subpoena, and it is my error in not pointing this out earlier to the Court on the production of the document.

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HIS HONOUR: The matter that has been adverted to, Sergeant Anderson, is the query - and I must confess it is in my mind - as to why this document was not produced in answer to one of the earlier subpoenas addressed to the Commissioner. Are you able to enlighten me on that?

SERGEANT ANDERSON: Yes. The position was that the earlier subpoenas were served in January 1968. This document did not exist at that stage. All of the documents which related to police investigations were produced to the Court after certain further inquiries were made by myself after the first occasion in this Court before your Honour. This particular document was discussed with the Crown Solicitor and it was advised in view of the fact that it had not been in existence at the time of the subpoena and that it had not been made or come into existence - had not come into our possession as a result of police inquiries - the document did not fall within the subpoena.

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MR. GRUZMAN: I might state that the document of 5th February 1968 was produced by the police.

HIS HONOUR: Sergeant Anderson, I am not quite satisfied with the explanation. I think this ought to be re-opened. Perhaps whoever it was who gave you the advice regarding the earlier subpoena might wish to appear to develop the matter.

I don't think, Mr. Gruzman, that I should permit this to be gone into if Sergeant Anderson received legal advice on the earlier subpoena; I think before this goes further I should allow him an opportunity of referring this question to whoever it was who advised him, with a view to being represented.

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SERGEANT ANDERSON: I think I may be at a disadvantage there. I think that the individual concerned is no longer with the Crown Solicitor. I am not sure of that.

HIS HONOUR: I will defer any further proceedings on this question until 2.30 p.m. today, so that the matter may be looked into. At the moment, as I say, I am not entirely satisfied with what you have said as to the reason for this document not having been produced earlier. But I will say no more about that at the moment. The matter will be dealt with at 2.30 p.m. You need not wait, but the matter will be re-opened at 2.30, and in the meantime the document will be made available to both counsel to inspect.

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SERGEANT ANDERSON: I am also at a disadvantage there. I have not a copy of the document and I have not a copy of the subpoena.

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MR. GRUZMAN: We think we have a copy of the document.

HIS HONOUR: Do you have the earlier subpoenas?

SERGEANT ANDERSON: Yes, I have those. I have some of them. I think I have them all. I am not sure.

HIS HONOUR: Mr. Gruzman, can you make available a copy of this subpoena to Sergeant Anderson?

MR. GRUZMAN: We have not one immediately available at Court. Speaking for ourselves, we have no objection to the subpoena going to the witness.

HIS HONOUR: I will release the subpoena, together with copies of whatever earlier subpoenas were dealt with. I shall have them passed down to you presently. I shall have passed to you the document you produced this morning, the subpoena, and the earlier subpoenas directed to the Commissioner of Police. This matter will be re-opened at 2.30 p.m.

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(ROBERT IAN GRANT called on subpoena duces tecum by Mr. Gruzman. Mr. Grant appeared in answer to the subpoena; produced a copy of the subpoena and stated that there were no documents in his possession which fell within the terms of the subpoena.)

HIS HONOUR: I shall have the following note made. Document m.f.i. 61 was tendered. Detailed contents are not relevant, but it is common ground that a general description of the document is a relevant and admissible subject for evidence. Rather than encumber the record with the whole book being admitted, the parties are agreed that the following description of the document should be read on to the record. The document is m.f.i. 61, and the note is; "Mr. Hume has entitled the book 'Diary' (spelt "dairy") for work carried out starting on the 27th day of October 1962'. The book contains what appears to be daily entries in summary form with varying degrees of detail of the business activities of that day, or a statement that no work was carried out that day, as the case may be. It also contains entries of cash received. The last entry on the last page of the completely filled book is for Saturday, 17th April, 1965."

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(Copy article in Australian 12th November 1966, tendered and admitted as Exhibit 75.)

(Chevron Queensland Limited called on subpoena duces tecum by Mr. Bainton. Darryl Kerry Stewart, 88 Pitt Street, Sydney appeared in answer to the subpoena. Mr. Stewart produced a copy of the subpoena, together with documents called for under the subpoena. Mr. Stewart stated that there was no objection to the documents produced being seen by parties to the litigation, nor were the documents required to be returned as a matter of urgency. Excused.)

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FREDERICK HUME

On former oath:

HIS HONOUR: Q. Mr. Hume, you are still on the oath administered to you last week to tell the truth? A. Yes, your Honour.

MR. GRUZMAN: Q. Mr. Hume, for the purpose of identification, would you mind telling us the make and model of the pistol that you are licensed to carry? A. It is a Walther PPK.

MR. GRUZMAN: I ask your Honour's permission later today, in view of the evidence given about the size of this weapon, to have one brought to the Court for identification.

HIS HONOUR: Mr. Gruzman, you will have to take your own course in relation to that.

MR. GRUZMAN: Q. Mr. Hume, did you know whether Michael Novak used to live at a place called Burwood, near Melbourne? A. No, I very seldom go to Melbourne. I don't even know there is a suburb called Burwood in Melbourne. 10

Q. Do you know whether Mr. Novak used to live in Melbourne? A. Not to my knowledge.

Q. Not to your knowledge? A. No.

Q. This morning I want to put the suggestion to you that during the second half of 1966-early 1967, Mr. Armstrong came to provide by far the greater part of your business. Do you agree with that? A. I really would not know, unless I look at the books. 20

Q. But you see, what I am putting to you, Mr. Hume - just listen to me please - Mr. Hume, what I am putting to you is, without looking at the books, you are aware in your own mind that from July 1966 to January 1967 Mr. Armstrong would be described by you as your best customer. Is that true, or false? A. First of all ---

Q. Is it true or false that within your knowledge Mr. Armstrong would be described by you in respect of the period July 1966 to January 1967 as your best customer? True or false? A. That is false, because --- 30

Q. That is false? A. Yes, but I have not ---

Q. Mr. Hume, you will answer the question, please. Now, Mr. Hume, you do keep a book, do you not - a cash book? A. Yes, that is right.

Q. And in that book is recorded all the money you receive? A. Yes.

Q. From all sources? A. Yes. 40

Q. You have no other source of income? A. No, no other source of income. We have got a cash receipt book, too, that we keep.

Q. But this book, which is a book larger than foolscap - is a book in which you keep the records of your business? A. Yes.

Q. And it records all your receipts and all your expenditure? A. Yes.

Q. And this particular book covers a period from the first week of 1965/66 up to the end of the financial year 1967/68? A. I don't keep 50

that book, so I would not know. That is kept by my father, an accountant.

Q. From information supplied by you? A. Yes.

Q. It starts, apparently, or to be precise it contains records relating to the end of the 1964/65 financial year, and it commences with the first week of 1965/66. Correct? A. Yes.

Q. And it goes through 1965/66, and there is apparently a summary at the end of the financial year 1966 - the 53rd week - and it starts again the first week, 1966/67, and goes through week by week right through until we get to the end of the financial year 1966/67, again the 53rd week. Correct?
A. Yes. 10

Q. And then it starts 1967/68, and it goes through week by week and, although it is entered up to the 53rd week of 1967/68 - it is prepared for entries up to that date? A. Yes.

Q. In fact the actual entries seem to taper off at about the 41st week - about April - is that right? A. That is right. 20

Q. Now, Mr. Hume, your business has never been very successful has it? (Objected to; rejected.)

Q. I want to bring you now to the period ending 30th June, 1966. A. 30th June 1966?

Q. 30th June, 1966. That is the period that you first met Mr. Armstrong - you met him early in 1966, didn't you? A. That is right.

Q. You had played tennis with him from time to time after that date? A. That is right. 30

Q. Your car was repossessed in June 1966, wasn't it? A. I am sorry, it was not my car. I gave that car to a man called John Carter. I told you that last time. I gave it to John Carter, and it was repossessed from him.

Q. That is another car you gave away, is it? A. Yes, that is right. It was smashed up.

Q. Smashed up? A. Yes.

Q. Who smashed it up? A. It was left parked while I was taking photographs of an accident case, and someone ran into the back of the car. 40

Q. So you gave it away? A. I didn't give it away.

Q. I thought you said that? A. I told him to keep paying off the terms of the car.

Q. Wasn't that insured? A. Yes. But they don't do a good job after you smash a car usually.

Q. As at 30th June 1966 was this the position,

that your total receipts for the year had been £2341? A. That is right.

Q. And your total expenditure for the year, including your own withdrawals, had been £2776? A. That is right. Mr. Carl Melvey was disbarred, and he owes me a lot of money. I was working for him at that time. My father always helped me out when I am in financial difficulties, and he would lend me the money.

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Q. I only want to get the facts. You say you did not receive from Carl Melvey --- A. He was disbarred, and there was a lot of money outstanding.

Q. Money you mentioned the other day. £4,000?
A. No, dollars.

Q. And it was never paid to you? A. No, never.

Q. Whatever the reason was, the fact is that as at 30th June 1966 your business had taken total receipts of £2341, and, including your own withdrawals, the expenditure had been £2776? A. That is right.

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Q. Of which your withdrawals were £627? A. Yes.

Q. So that you had taken from the business an average of £12 a week? A. That is right.

Q. And the business had ended up with a loss on the average over the year of £8 a week? A. That is right.

Q. So that the business had returned you for that year about £4 a week? A. Yes, it was a bad year.

HIS HONOUR: That is the year ended 30th June ---?

MR. GRUZMAN: 1966.

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Q. So that it is fair to say, Mr. Hume, isn't it, that when you met Mr. Armstrong you were short of money? A. I was not short of money. My father helps me out all the time. Whenever I am short of money he gives me money. He lends it to me, and he says, "When you have it, give it back to me." My father sold his property, in 1966. He sold his property in Balmain. He had a lot of money then.

Q. How much money did you borrow from him? A. He just gives it to me, because he said that if he gave it to me in a lump sum I would spend it. He just gives it to me when I need it.

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Q. You said he lends it to you? A. It is an arrangement between father and son. He gives it to me, and hopes some day that I will give it back.

Q. You say your father has given you this money as a gift? A. He calls it a loan. He says, "I am lending it to you, and when you have money - when you pick up your business - you give it back to me."

Q. How much do you owe him? A. I don't know. I leave that up to him.

Q. Have you the slightest idea? A. Not the slightest idea. It could be quite a lot, I suppose. \$5,000 or \$6,000.

Q. \$5,000 or \$6,000? A. Yes. It could be more. I don't know.

Q. Do you bank this money that your father lends you? A. No, he puts it into the business. When I am short of money he gives it to me and I pay the bills, or if I don't pay the bills he pays the bills. 10

Q. Does he pay it to you in cash? A. If I need it in cash he gives it in cash. Otherwise he just goes and pays the bills.

Q. How long has this been going on? A. I suppose ever since I started.

Q. When was that? A. 1962.

Q. Your father has been contributing to your support since 1962? A. Yes, he has. And even before that - since the date I was born. 20

Q. Since the day you were born? A. Yes.

Q. What is your father's work at the present time? A. At present he is retired. He was a chemist before that, an industrial chemist.

Q. When did he retire? A. I don't really know. I think last year or the year before that - some time like that.

Q. I will have to ask you this. Was he an industrial chemist with his own business? A. No he was working. 30

Q. He was working? A. Yes.

Q. Mr. Hume, you, of course, are an able-bodied man? You have got nothing physically wrong with you? A. No.

Q. So far as you know. I suppose you would be anxious to earn enough money to keep yourself wouldn't you? A. Of course I am anxious to earn enough money to keep myself. 40

Q. But you have just never been able to do that? A. I have, but since I have been in business, in business you need a lot more money than just when you are existing - when you are just working some way you don't have so many expenses.

Q. Do I understand from the answer you gave earlier that never in your life have you been able to earn enough money to keep yourself? A. No that is not correct. I did not say that. My father helped me from time to time, I said. 50

Q. So that the position is that from as far back as you can remember your expenditure has always been more than your income? A. Not always, no. Sometimes when I was working as a taxi driver I was making quite a bit of money.

Q. You were overseas for two years weren't you?
A. Yes.

Q. That was not very profitable was it? A. Well, I lived very well from playing tennis. I think in all the time my father had to send me only about £400. That was two years. 10

Q. You have never earned enough - you did not earn enough to keep yourself whilst overseas? A. I did earn - all my expenses were paid, but when we were in the export-import business my expenses were greater. That is when my father had to put some money into it.

Q. You have already told us that you were, I understand, anxious to earn enough money to keep yourself from about the middle of 1966. A. I was always anxious to earn enough money to keep myself. 20

Q. Do I understand from that you are always looking for an avenue through which to earn money?
A. I am not always looking for an avenue. What do you mean by "an avenue"?

Q. In a business in which for years you had lost money were you actively looking for some way to earn enough money to support yourself? (Objected to; rejected.) 30

Q. Perhaps we might go back to the previous year then - the year ended 30th June, 1965. During that period was the total of your receipts £1567? A. Yes.

Q. And your total of expenditure £1538, including £411 drawings? A. Yes.

Q. So that, allowing for the slight difference, you earned from the business during the year 1964/65 something less than £8 a week? A. That was at the time when I was over at Balmain. My parents had a restaurant there and I had the investigations in the front of the restaurant. 40

Q. Whatever the reason was, your total income for the year 1964/65 was something like £8 a week?
A. Yes.

Q. Well, didn't you feel by the middle of 1966 that you were anxious to follow any avenue which would enable you to earn money? A. No. I wanted to give it away, but my father would not let me. He said, "You should persevere with it. You started it; persevere with it. If you have any trouble financially come to me and I will help you." 50

Q. Well, didn't you regard Mr. Armstrong as a possible source of income to you? A. I did not

regard Mr. Armstrong as a possible source of income. I was playing tennis with him. That means that everyone I played tennis with I regard as a possible source of income. There are a lot of wealthy people I play tennis with - even a Deputy Prime Minister overseas I was playing tennis with. I do not regard them as a possible source of income.

Q. That is not an Australian Deputy Prime Minister? A. No, overseas.

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Q. Mr. Hume, I suppose it was pleasing to you when Mr. Armstrong in fact offered you the chance to earn some money? A. Mr. Armstrong did not offer me a chance. He said, "If you would like to come up and do a job". Mr. Barton was going to be in charge. I didn't know who I was working with. Mr. Armstrong didn't tell me anything about who was the man - whether they were in the same company. I would not even understand it. Companies are too complex for me. I have never been in a company re-
possession before until that time.

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Q. Didn't you in your mind attribute the fact that you got this job to your association with Mr. Armstrong? A. Yes, I did.

Q. And do I take it that that pleased you? A. Well, not really. I did not like that job after I had to do it.

Q. Well, what didn't you like about it? A. I didn't like the things that I had to do - for instance, promise people everything, like Mr. Barton said; "Promise them anything".

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Q. You didn't like that? A. No, I didn't like that. I didn't like that at all.

Q. You have told us before. You have also told us that so far as you know all the promises were made good? A. I don't know that. That is what you are putting, Mr. Gruzman.

Q. You don't know one way or another? A. I don't know one way or another.

Q. If a big company like Landmark promised the workers they are going to be paid, what is wrong with that? A. A lot of shareholders have a different belief on it now.

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Q. What do you mean by that? A. You just said because it is a big company everything will be all right, but it does not say that because it is a big company everything is all right.

Q. You believe the shareholders of Landmark have lost a lot of money do you? A. I believe so, Yes. According to what I have been reading.

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Q. You have told us you did not like this job because you were told to promise the men they would get paid? (Objected to.)

Q. "Promise them anything." You have no knowledge that any promise you made was not kept? That is a fact, isn't it? A. There are other things, too, that eventuated that I have not mentioned yet.

Q. Just take them one at a time. You are not telling his Honour are you that there was something in your mind wrong about promising men anything they wanted provided the promises were fulfilled? That is not wrong, is it? A. How would I know that they were going to be fulfilled? 10

Q. You were told, weren't you? A. I was told by Mr. Barton.

Q. You were told by Mr. Barton, and so far as you know you have no knowledge other than that they were fulfilled? A. I don't know. At a later date they could have been fulfilled and they could not have been fulfilled so far as I know.

Q. You have not even enquired? A. Well, I would have to go to Queensland and find out from the workers who were working there. They might have a different opinion. 20

Q. Is that the reason why you didn't like the job? A. No there were a number of other things. For instance, the way they were trying to sell some dredges to Mr. Armstrong for \$14,000, when actually they were only worth \$4,000, and it was from Mr. Barton or Mr. Vaglas ---

Q. You were saying? A. If it was not for the chief mechanic, Mr. Keith Hawthorne, I would not have been aware of the value of this dredge, and I would not have told Mr. Armstrong about it because I would not have been aware of it. It was Mr. Keith Hawthorne who actually was the man who made this dredge and he knew the full value of it, that it was only \$4,000; and then it took them a few years to try and sell this dredge. And then later on in Mr. Kilmartin's office there was a meeting of Mr. Vaglas and some other people, and they were trying to sell this dredge to Mr. Armstrong for \$14,000. 30 40

HIS HONOUR: Q. I thought you said \$40,000? A. No. \$14,000.

MR. GRUZMAN: Q. And you felt an attempt was being made to cheat Mr. Armstrong? A. No - to cheat the shareholders in the company. This was not Mr. Armstrong's company.

Q. Did I not understand you to say that a dredge which to your knowledge was worth \$4,000 was being sold - sought to be sold - to Mr. Armstrong for \$14,000? A. Yes, Mr. Armstrong was representing the company, I suppose. 50

Q. And you thought that was wrong? A. To sell the dredge for \$14,000 if it was not even worth \$4,000? Yes, I do believe that is wrong.

Q. You thought Mr. Armstrong was being cheated?
A. Not Mr. Armstrong being cheated. I thought everybody in the company was being cheated.

Q. What other reason did you have for not liking the job? A. I thought this was sufficient by that time.

Q. Those were the two reasons? A. Yes.

Q. I thought you said that you objected because Mr. Barton had said "Shoot the dog. Kill him"?
A. Yes, that is also another reason.

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Q. You forgot that one this time? A. No, I did not forget it.

Q. It did not occur to you? A. It did. I mentioned that one before.

Q. By the way, can you explain why Mr. Barton would say, "Shoot the dog" if, to his knowledge, you did not have a gun? A. I don't know why he would have said that. I suppose he thought I could have obtained a gun. Anybody can obtain a gun anywhere.

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Q. But the fact is that in the conversation, you say, between you and Mr. Barton the question of shooting the dog did arise? A. He said, "Shoot the dog, poison him, do whatever you have to. Get rid of it" - because he was the man who had to go there in the morning and address the men - which he did not.

Q. Do I understand from what you have said that you did not want any work with which Mr. Armstrong was associated? A. It is not correct. I did not want any work that I would have to do those things that Mr. Barton was implying.

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Q. You did not like underhand work? A. No, I did not like that. That is why I did not take any more jobs from him, when he said to me if I was interested to take some other jobs.

Q. You might tell his Honour, when did Mr. Barton offer you a specific job to do, apart from the Surfers Paradise? A. The first ten minutes when I met him, he was already offering me other jobs if I was successful with this one. He did not specifically mention what type of job. And later on when he paid me with the cheque he again asked me if I was interested to take on some other job.

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Q. But no specific job was ever mentioned to you? A. No, no specific job was ever mentioned to me.

Q. Did not you associate this whole job at Surfers Paradise with Mr. Armstrong? A. Associate - yes. He was, I believe, one of the men that was in charge of the company. It was him and Mr. Barton.

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Q. And it was Mr. Armstrong who got you into the work in the first place? A. Mr. Armstrong told me that Mr. Barton was going to be in charge, and I was to take instructions from Mr. Barton and from no-one else.

Q. But those were Mr. Armstrong's instructions to you? A. Mr. Armstrong never gave me any instructions. He just introduced us, that is all.

Q. Do not let us take a lot of time - Mr. Armstrong got in touch with you about a job at Surfers Paradise, you came up there and you met him, and he instructed you to take further instructions from Mr. Barton, did he not? Is that right? 10
A. That is right, he rang up and said

Q. That is right - just a moment. A. Yes.

Q. And the job turned out to be job which, shall we say, did not meet your standards; is that right? A. No, it did not.

Q. Do I understand from that, that you would not do any other work for Mr. Armstrong? A. As Mr. Armstrong told me Mr. Barton was going to be my superior I had to take instructions from Mr. Barton, not Mr. Armstrong. It was only that Mr. Barton would not go and address the men, I had to finally find Mr. Armstrong. 20

Q. Yet Mr. Armstrong addressed the men? A. Yes.

Q. And he made promises to them, did he not, when he addressed them? A. I don't think he made any promises. 30

Q. He addressed them for the purpose of getting them to work for Landmark, did he not? A. Yes.

Q. Did he not tell them that Landmark would pay them? A. I would not remember now what he told them. I suppose he must have told them something to that effect.

Q. What I am trying to find out is, if that sort of conduct did not meet with your standards, why would you accept any further work for Mr. Armstrong? A. In my opinion Mr. Armstrong is a very fine man, but I have never been working for him. I have always been asked for him to do something on his behalf (sic). I never did anything for Mr. Armstrong. 40

Q. Did you think that Mr. Barton had some personal interest in the Surfers Paradise work, more than Mr. Armstrong? A. Yes, at the time when these dredges were trying to be sold, I thought there would be some personal interest of Mr. Barton's. 50

Q. On the job that you were brought up to do, to repossess machinery, are you telling this Court that you thought Mr. Barton was more personally interested than Mr. Armstrong? A. Not on the job

of repossessing machinery, but on the job of selling the dredges.

Q. I just want to get the picture quite clear, so that we follow it chronologically? A. Yes.

Q. I think you can agree with me that it was in March of 1966 that you first started paying money through your book to Michael Ziric? (Objected to; rejected.)

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Q. (Approaching.) You will agree that on the 30th March, 1966 you paid to Michael Ziric for job work £20? (Objected to.)

Q. When did you first start employing Ziric or Novak to do work for you? A. I would not know. When he was short of money I used to give him little things to do.

Q. Would that have covered, say, the whole of 1966? A. I would not know. I think he was in 1966 up at Chevron, employed as a waiter there, at Surfers Paradise.

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Q. You would not dispute that in March 1966 you employed him on some particular job and gave him £20 for it, would you? A. He was probably then in Sydney, and was short of money and I employed him then.

Q. And that was on the 30th March? (Objected to.)

HIS HONOUR: I thought one question would enable it to be resolved, and I allowed it in the interests of brevity. You have now got the fact that in March 1966 Mr. Hume paid £20 for some job.

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MR. GRUZMAN: Q. Will you agree - do not answer this question for a moment - will you agree that during March 1966 you paid, on 8th March £25, on the 21st March £25, and on the 30th March £20 to Ziric? You may answer that. A. If you have it in the books, yes, of course I paid him.

Q. You would agree with that? A. If it is in the book I agree.

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Q. If I may just show you the book

HIS HONOUR: If there is some conflict between what he said last week, then I will concede relevance on credit, but unless there is a conflict with something Mr. Hume said before, I do not see what it has to do with it.

MR. GRUZMAN: Q. Did you employ Ziric in divorce raids? A. No, not in divorce, no.

HIS HONOUR: I see, looking at page 1300, that Mr. Hume said on Thursday - you were asking about 9th February, 1966, and you put to him that Mr. Gibbons saw him about that time, and Mr. Hume said "No, well before that".

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MR. STAFF: He had said earlier that it was four to five years before.

MR. GRUZMAN: Q. In October 1967 did you and Ziric go and obtain divorce evidence together? A. No. Ziric could not obtain divorce evidence, as he was not an agent.

MR. GRUZMAN: May I just write a name down, and put it to the witness?

HIS HONOUR: Yes.

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MR. GRUZMAN: Q. Will you look at the name which I write on this paper, and tell me whether you and Ziric together in October 1967 obtained divorce evidence? (Objected to; allowed.) (Shown to witness.) Did you go with Ziric in that case to get divorce evidence? A. He was employed by Mr. Eckstein ...

Q. There is no need to mention the name unnecessarily. He was employed by the person named on the paper? A. Yes.

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Q. Were you employed on the same case? A. Yes, but he was employed to work with Mr. Eckstein on his books, and he was doing some following for Mr. Eckstein. It has nothing to do with me.

Q. But you were the principal agent? A. Yes, I was the principal agent but

Q. You knew about the other employment of Ziric? A. I knew about the arrangement between Mr. Eckstein and Mr. Ziric, but that has nothing to do with me, because that is between the two of them. He was working for Mr. Eckstein, and Mr. Eckstein put that through his books as an employee for his company.

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Q. Did you and Ziric together eavesdrop outside the lady's bedroom? (Objected to; allowed.) Together? A. Which lady's bedroom?

Q. You do not want us to mention names around the Court? In connection with this case which I put to you on the piece of paper, did you and Ziric together eavesdrop outside a lady's bedroom? A. I eavesdropped there, yes. I think Mr. Eckstein was down the corridor and so was Ziric somewhere up the other end.

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Q. You still deny that you and Ziric together sought to obtain divorce evidence in a case? A. I was there to obtain the divorce evidence. I don't know what Mr. Eckstein and Mr. Ziric were doing. He was employing Ziric. That was nothing to do with me.

Q. How did he come in contact with Ziric? A. He asked me could I tell him somebody who would work for his company. I said, "You can contact Michael Novak and he will help you with it. He knows something about following people."

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(Document m.f.i. 71.)

Q. After the conclusion of the July 1966 matter at Surfers Paradise did you continue to play tennis with Mr. Armstrong? A. Would you mind repeating the dates?

Q. What I am suggesting to you is that the matter at Surfers Paradise occurred in July 1966. That would accord with your recollection, would it not?

A. Yes, July; I think it was July.

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Q. And after that date did you continue to play tennis with Mr. Armstrong? A. Yes, yes, I have been playing tennis with Mr. Armstrong until about five weeks ago.

Q. More or less on a weekly basis? A. Not on a weekly basis because Mr. Armstrong sometimes goes away for longer periods of time and I do not see him, but when he comes back to Sydney we have a game. There is always the same people that play with us.

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Q. Each week while he is in Sydney? A. Not each week. Sometimes he does not play tennis; he has other things to do. But I play practically every day, but that has nothing to do with Mr. Armstrong, because he knows where we are playing, you see, and he comes down.

Q. From July 1966, say to the end of 1966, would you have played tennis with Mr. Armstrong approximately once a week? A. I could not answer that, because I do not know whether Mr. Armstrong was in Sydney or where he was during that time.

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Q. Whilst he was in Sydney did you see him once a week during that period? A. Yes, I saw him once a week, yes.

Q. Did you ask him how he was getting on with Surfers Paradise after the conclusion of the job?

A. Did I ask him how he was getting on?

Q. Yes. A. I was not very interested in it.

Q. Were you not interested to know whether the work which you had done had proved a lasting success? A. How do you mean, a lasting success? I had completed my work, and that was it.

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Q. Did you ask him whether they were operating the dredges now? (Objected to; pressed, then not pressed.) A. I do not think he would even know.

MR. GRUZMAN: I think I have to press the question.

HIS HONOUR: Your question is, did Mr. Hume ask Mr. Armstrong how the dredges were going on or about?

MR. GRUZMAN: Some time after July 1966.

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HIS HONOUR: Of itself, that topic does not seem to me to have any relevance.

MR. GRUZMAN: But it is a step in cross-examination, and it is put on that basis. (Allowed.)

Q. Did you discuss how the dredges were going with Mr. Armstrong? A. No, because Mr. Armstrong is not a ...

Q. You said "No". Did you ever discuss again with Mr. Armstrong anything which had occurred in Surfers Paradise? A. I think only after he sent me up there to see how things were going, whether there was any progress in the work they were doing up there. 10

Q. In the next month or two after July 1968, did you have any discussion with Mr. Armstrong? A. After July 1968?

Q. I withdraw the question. In the month following July 1966 did you have any discussions with Mr. Armstrong about the progress of the work at Surfers Paradise? (Objected to; allowed.) Did you? A. Did I discuss? 20

Q. the progress of the work at Surfers Paradise? A. Yes, after he sent me up there, yes, I discussed it when I came back, and I spoke to him, yes.

Q. But before he sent you up there, did you have some discussions with him about it? (Objected to; allowed.) A. Before he sent me up there?

Q. Yes. A. When he sent me up there he just said, "Have a look whether there is any progress". That is the whole of the discussion. 30

Q. Are you telling us that, from the time that you went to Surfers Paradise in July 1966 up till the time you went there again, the whole of the discussion was in the words that you have just told us? A. Yes. We don't know anything about dredges, neither Mr. Armstrong nor I. I know less.

Q. You understand what you are saying? A. Yes.

Q. ~~I will accept your answer if you say it is a considered answer~~ (Objected to; rejected and struck out.) 40

Q. I ask you to consider your answer carefully. Do you understand that? A. Yes.

Q. Do you say that from the time you returned from Surfers Paradise in July 1966 to the time you went up there again on the instructions of Mr. Armstrong, there was no conversation between you about Surfers Paradise, other than the words that you have told us? A. No, no conversation. Mr. Armstrong does not discuss his business with me at all. 50

Q. Who gave you authority to pay money to Mr. Hawthorne? A. I did this out of my own goodwill, because I thought Mr. Hawthorne was a very helpful

man to me, or I would not have been able to take over the machinery, or know anything going on up there, because I do not know if there is any progress or not.

Q. Tell us again the whole of the conversation between you and Mr. Armstrong prior - after your first visit to Surfers Paradise and before your second visit? (Objected to.)

HIS HONOUR: Is it about the dredges?

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MR. GRUZMAN: About the job.

Q. Is this the position, that on the basis of the conversation that you have told us, you felt that you had authority to pay money to Mr. Hawthorne; is that right? A. I feel that it was strictly between me and Mr. Hawthorne, and nothing to do with anybody else.

Q. How much did you pay him? A. I think - I am not sure - I think it was around \$100.

Q. Around \$100? A. Yes.

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Q. Out of your own pocket? A. Yes.

Q. It had not been given to you before? A. No.

Q. You had \$100 with you? A. Yes, on a big job like this, yes. I always have more than that.

Q. You regarded this as a big job? A. Yes, because I did not know how long I would have to stay up there, and of course I did not have a cheque account in Queensland, so I would have to have cash with me.

Q. How much did you take with you? A. Probably two or three hundred dollars.

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Q. To be used for the purpose of getting information? A. No. Mr. Hawthorne did not have any more information to give me. He was very helpful before, and I thought this was just thanks from me for the help that he has given me. I did not have to give Mr. Hawthorne anything, because he is the sort of man that does not even like accepting things.

Q. But he accepted this \$100? A. He did not like to.

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Q. But he accepted this \$100? A. Yes.

Q. And you had given him the \$100 because he had given you information; is that correct? A. I would not say that.

Q. Did not you tell us that he had given you all the information he could on the previous occasion? You told us that just now? A. Yes, he was a very helpful man.

Q. And as a thank you from you for the information you gave him \$100 did you not? A. For being

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a genuine man, and giving me genuine information.

Q. And then you sent a bill to Mr. Armstrong?

A. I sent a bill to a company, I believe.

Q. To what company did you send a bill? A. I would not know - some company - Mr. Armstrong told me to send it to this company, and I sent it to that company.

Q. You regarded it as one of Mr. Armstrong's company? A. I don't know who the shareholders in that company are, any more than I know the shareholders in any company. 10

Q. Why did you think that company should pay?

A. Because it was in some way connected with this other company.

Q. You did not inquire? A. No, it was not my business.

Q. It was good enough for you that Mr. Armstrong said, "Send a bill to that company"? A. Yes.

Q. And you sent a bill and you included the \$100 you paid to Hawthorne? A. Yes. 20

Q. And you got paid that back? A. My account was paid, so I must have got it paid back.

Q. I just want to follow through. I think your bill on the first Surfers Paradise matter was \$585?

A. I don't know. You have got the bill. I have not even got my diary books. They are gone too. I have not the diaries or anything, I have no bills, no nothing. You have got all that.

Q. The diaries that you normally keep in your business, and kept at that time showed your detailed movements from day to day did they not? A. 30
Not really, because it is always playing tennis, and I have no entry of playing tennis in the diary. So it is not detailed movements.

Q. I just want to ask you whether - and I open the book completely at random - I will open it on any large entry ... (Objected to; rejected.)

Q. (Approaching.) I have opened the book at this page, which happens to be Friday, 26th April, 1963. A. Yes. 40

Q. Does that record that at 12.20 p.m., you went to see somebody as asked by somebody? A. Where does it say "as asked by somebody"?

Q. "At 12.20 p.m., I went to see Mr. H., as asked by somebody"? A. Yes.

Q. "to bring him to his office"? A. Yes.

Q. "to sign some papers" etc? A. Yes.

Q. "I arrived at this address" - and the address is set out, a certain address at Bondi? A. Yes. 50

Q. "... at 12.25 p.m., and I found somebody at home, and he started telling me certain things."

A. Yes.

Q. Will you agree that in respect of your work you kept a diary with precise and exact details of A. Only in respect of the work.

Q. precise and exact details of times, dates, places and people in connection with the work. (Objected to.)

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Q. Will you agree that in 1963 you kept a diary in which you entered precise details of your movements including times, the places you went to, the people you saw, etc? A. Am I allowed to answer that, your Honour? (Objected to; rejected.)

Q. In 1966 you kept a diary which gave precise details of your movements, the places you went to, the people you saw and the things you did, didn't you? (Objected to.)

Q. In connection with your work? (Allowed.) A. Your Honour, only to the work that I would later on have to give evidence in court, mainly to this type of work.

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Q. Any work. Do I understand you kept such a diary in respect of any work in respect of which there was a possibility that you would have to give evidence in court, is that right? A. Yes, but there is a number of things I would not put in the diary, for instance, if I was interpreting at a doctor's surgery, or a solicitor's.

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Q. Any work that might lead to court appearances, is what you are telling us? A. Mainly divorce cases.

Q. And you know that Surfers Paradise led to court appearances, didn't it? A. No. Why?

Q. Wasn't there a big law case in Brisbane to your knowledge about the Surfers Paradise repossession? A. Nobody ever asked me.

Q. Did you make any entries about Surfers Paradise or not? A. About taking over - yes, the date I arrived, what I did.

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Q. ~~All-the-detail?~~

Q. And when you went up again to Surfers Paradise (Objected to; "all the detail" struck out.)

Q. I withdraw that. What you put in your diary was all the detail of what you did, didn't you?

A. No, there were no details to put down. I just said I arrived there on such-and-such a date and saw these people.

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Q. And where you went to? A. I would not put down where I went. I went probably two dozen times

to different hotels. A detailed account of what I went everywhere when I was up there.

(Luncheon adjournment.)

A 2.30 P.M.

HIS HONOUR: Sergeant Anderson, is anybody appearing as counsel or solicitor to assist on this?

SERGEANT ANDERSON: No, your Honour.

MR. GRUZMAN: Before we deal with that, I ask your Honour if I may just put one question to the witness. 10

Q. I would like you to have a look at this pistol which A. That is not the pistol.

Q. I know. Just have a look at it, though? A. That is the James Bond pistol. I have not got that one.

Q. You have got the Gestapo pistol? A. No. I have a lot bigger version of this pistol, and it is quite a lot bigger than this. This is a - as a matter of fact, I can describe it.

Q. Just bear with me for a moment. Answer my questions please? A. Yes. 20

Q. You have told his Honour this morning you had a Walther PPK pistol? A. That is right.

Q. Do you know what pistol you are handling now? A. It is probably a PPK Special.

Q. Mr. Hume A. Look, I have my licence here. You can have a look at it. It is a much bigger pistol to that. That is only a toy compared to my pistol. It does not give any description, it just says a Walther and the number of it, 9 millimetre. That does not look like a 9 millimetre to me. 30

Q. You may assume that is a Walther PP pistol? A. Not a 9 millimetre.

Q. You bought your Walther PPK pistol, didn't you? A. Yes, I bought it.

Q. Where did you buy it? A. At Mick Simmons.

Q. Do you recognise this gentleman here from Mick Simmons? (Indicating.) A. No, he did not sell it to me. It was the man that runs the Mick Simmons Target Shooting place. 40

Q. And when you bought it, did you get with it a handbook that I show you now? A. Not one like that - a lot bigger than that

Q. (Approaching.) ... A. But Mr. Gruzman...

Q. Please ... A. No, none of those in there.

Q. Please ... A. It does not look like it.

Q. But I am not showing you pictures. You see there are three pistols, the PP, the PPK and the PP Sport referred to here. (Objected to.)

Q. Just have a look at this? A. That is nothing like my pistol. Even a blind man could see that. It is about three or four inches longer that way, and it is about three or four inches longer that way, and the butt is about twice the size. 10

Q. What you indicated was that it was three or four inches longer in the butt? A. Yes.

Q. And you indicated that it was three or four inches longer in the barrel? A. That is right. It is about $9\frac{1}{2}$ inches that way, and about 9 inches that way, and about 6 inches

Q. You indicated it was about $9\frac{1}{2}$ inches long in the barrel? A. Yes.

Q. And about $9\frac{1}{2}$ inches long ... A. No, 9 inches long in the butt, with a big fat butt. 20

Q. You say it is a Walther PPK? A. I wouldn't know. I think it is a Walther PPK Special.

Q. It is not a Walther PP? A. It is not that pistol, whatever it is.

Q. And it is not a Walther Sport? A. If you show me a picture, I will show you the one that I have got.

Q. Yes ... A. I can even draw it for you if it helps you.

Q. Is that the pistol there? A. No, it is not that one either. 30

Q. It is not a PP Sport? A. No, it is not a PP Sport.

Q. Won't you agree with me that the PPK is known as the Gestapo Pistol? (Objected to; rejected.) A. No, I won't.

HIS HONOUR: You want to re-open the question of the subpoena?

MR. GRUZMAN: Yes, if I may.

(Witness stood down.) 40

HIS HONOUR: Mr. Gruzman, I think it is open to you to re-open this, and I think the method by which you ought to do it is by my granting you leave to re-open your cross-examination of Sergeant Anderson on the voir dire.

MR. GRUZMAN: Yes, I make application to do this.

HIS HONOUR: Mr. Staff, this has nothing to do with

the issues in the suit, but I am concerned that this should be cleared up so that there can be no mystery about what documents there are. I do not want it later to be said there are other documents.

MR. STAFF: The difficulty is, of course, in our understanding - and no doubt your Honour will make it plain, of course, that this is not evidence in the suit, and has nothing to do with the defendant.

HIS HONOUR: Yes.

MR. STAFF: And as we understood the matter, the subpoenas which were the subject of the February voir dire examination were dated prior to the date of this document. I may be wrong.

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HIS HONOUR: I think that would appear. I think it ought to be cleared up.

MR. STAFF: It perhaps should be made clear what examination on the voir dire this is that is being resumed, specifically. There was a number in this case.

HIS HONOUR: Mr. Gruzman, I can permit you to reopen the cross-examination on the voir dire which commenced on the 9th February, was continued on the 15th February, and continued yet again on the 27th February. This of course is not evidence against the defendants, but it represents evidence directed to seeing whether there has been a full compliance with the requirements of those earlier subpoenas.

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IAN BARRY ANDERSON

Sworn on voir dire:

CROSS-EXAMINATION:

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MR. GRUZMAN: Q. What is your full name? A. Ian Barry Anderson.

Q. Would you give us your position? A. Sergeant of Police, Officer in Charge of the Criminal Correspondence Branch in the Commissioner's Office, and I am attached officially to No. 20 Division.

Q. I think that you were personally deputed by the Commissioner of Police to answer subpoenas issued by this Court in this matter of Barton v. Armstrong? A. Yes.

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Q. I see you have some subpoenas there. It might be convenient if you would let me see them for the moment, (Handed to counsel) so that we can identify the subpoenas that you were answering. The first subpoena was a subpoena I think dated 11th January 1968, addressed to the Commissioner of Police to produce all documents and evidence and records relating to the investigations of the activities of Alexander Vojinovic, Michael Ziric and Frederick Hume regarding Alexander Barton, from January 1967? A. Yes.

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HIS HONOUR: Did you say "from" or "in"?

MR. GRUZMAN: Q. From January 1967. And there

was an affidavit also addressed in terms to Norman Allan, Commissioner of Police, to produce the file cover and contents, including all documents that had been placed in the file at any time since it was opened until the present, of the file known as Miscellaneous File No. 1963/71, and that subpoena was issued on the 26th February and returnable on the 27th February. You answered that subpoena? A. 10
You called it an affidavit in the first part of the question.

Q. I meant to say subpoena? A. Yes.

Q. You received and answered that subpoena on behalf of the Commissioner? A. Yes.

Q. Subsequently the Commissioner was subpoenaed, a subpoena was issued by this Court on the 9th May, 1968 addressed to the Commissioner of Police to produce (1) the file cover and contents, and including all documents that had been placed in the file 20
at any time since it was opened until the present, of the file known as Miscellaneous File 1963/71; and (2) all documents and evidence and records relating to the investigations of the activities of Alexander Vojinovic, Michael Ziric and Frederick Hume regarding Alexander Barton from January 1967. And you answered that subpoena did you not? A. I attended the court on the return date of the subpoena, but I was not called.

Q. Did you have any documents then? A. Not in 30
my possession, no.

Q. So that you were satisfied that the subpoena had been fully answered by the documents previously produced? A. Could I have a moment to think about that?

Q. Yes. A. There were certain documents which had come into existence after the 9th February as a result of some letters which were written by solicitors acting for Mr. Barton, and at some stage I brought those to court. I am not sure whether I 40
brought them to court on the return day of that subpoena or whether it was earlier. Those documents were brought to the court and were not required, and I took them away again.

Q. Those documents consisted solely of letters packwards and forwards between the solicitors for Mr. Barton, the Commissioner of Police and perhaps the Premier of New South Wales? A. And reports by Detective Sergeant Wild.

Q. Relating to that correspondence? A. To 50
that correspondence, yes. There was also a file of papers, if I may use that expression, which had been received from the Chief Commissioner of Police, Melbourne, and was also produced to the Court, but it was not required, and given back to me.

Q. Apart from that, there were no other documents

I. B. Anderson, xx
on voir dire.

brought to the Court in response to the subpoena on the 9th May, 1968, other than documents which had already been produced to the Court. A. Not on the 9th May.

Q. And I think on the 20th May a subpoena was issued to the Commissioner of Police to produce to the Court records and documents relating to an alleged robbery which occurred on or about 12th or 13th August 1967 at 77 Riley Street, Darlington. 10
A. Yes.

Q. I think you produced documents to the Court relating to that matter? A. Yes.

Q. Then I think on the 16th September a subpoena was issued to the Commissioner of Police to produce today, on the 17th September, the affidavit of Frederick Hume dated 10th February 1967 left at the desk of the Criminal Investigation Branch for the attention of Detective Sergeant Butler or Detective Constable Follington on or about 11th February, 1967. 20
A. That subpoena was served yesterday. There was another subpoena which I have not located, and I cannot recollect the date exactly. It was for the production of certain duty pad entries which were produced to the Court.

Q. What date was that, do you know? A. No, I do not recall.

Q. The subpoena which was served yesterday and which you answered today - is that the document which I now show to you, and is there attached to it the affidavit of Frederick Hume produced in answer to that subpoena? A. Yes, the document attached to it is the affidavit of Frederick Hume dated 10th February, 1968. 30

(Four subpoenas m.f.i. 72, 73, 74 and 75.)

(Affidavit with subpoena m.f.i. 76.)

Q. I do not want to go into this in detail, but you were aware that prior to you being called to give evidence on the 9th February, some concern was felt about the production of documents by the police? --- 40

HIS HONOUR: I do not think I should allow that. I am interested only in this -

Q. On the 9th February do you remember being cross-examined about what records may be available in the Police Department relating to Mr. Barton's complaint about Mr. Armstrong? A. Yes, your Honour.

Q. And it was put that the answer to the subpoena was unsatisfactory, and I rejected that submission, and asked you whether you would be good enough to seek out whatever documents there were and bring them back to the Court on the adjourned date. Do you remember that? A. Yes, your Honour. 50

I. B. Anderson, xx
1739. on voir dire.

Q. You came back to Court on the 15th February, 1968? A. Yes, your Honour.

Q. And you were cross-examined, and produced further documents? A. I do not remember being cross-examined on that date, your Honour.

Q. I may be in error on that date. A. My recollection is that on that date Mr. Forbes appeared before your Honour. 10

Q. Yes. A. And I do not recollect having given evidence on that date or having been cross-examined on that date.

Q. Yes. I am sorry. That is correct. You were not cross-examined. You made production from the floor of the Court? A. Yes, your Honour.

Q. And then Mr. Forbes was appearing at that point of time on the subpoena? A. Yes, your Honour.

Q. And some further documents were produced by Mr. Forbes in response to the subpoena? A. Yes, your Honour. 20

Q. On the 15th February, 1968 the affidavit dated 10th February, 1968 was not produced? A. No, your Honour.

Q. When did that come into the custody of the Police Department? A. I saw it on the 15th February.

Q. Why was it not produced to the Court on the 15th February? A. On advice given to me by Mr. Forbes. 30

Q. Have you informed Mr. Forbes that this morning I expressed some concern regarding the non-production of the document? A. Yes your Honour.

Q. It is not contemplated that he will be in attendance this afternoon? A. No, your Honour.

Q. You took this document to Mr. Forbes, did you? A. Yes.

Q. And showed it to him? A. Today?

Q. No, on the 15th February? A. Yes. 40

HIS HONOUR: I think I should permit you to continue now, Mr. Gruzman.

MR. GRUZMAN: Q. I just want to ask you whether you recollect this on the 9th February. I stated to his Honour: "The way we put it - we put it that the answer to the subpoena is unsatisfactory, and ask that further examination of the subpoena may be deferred. Could Sergeant Anderson - could further questions be deferred, to give Sergeant Anderson an opportunity to communicate with 50

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Detective Sergeant Wild and to make further inquiries as may be necessary to give proper answer to the subpoena?" His Honour then stated: "I do not concur in your statement that the answer to the subpoena is unsatisfactory". His Honour then addressed you, and said:

"Q. Sergeant Anderson, I am concerned to ensure there is produced - whatever ultimate use they may have remains to be seen, but I would like to ensure there is produced to the Court any document, whether it be a notebook or a diary or an extract, or an entry in an occurrence pad or a statement or file or whatever may be the description of any documentary material falling within this general description contained within the subpoena. So far as there may be entries in diaries or notebooks currently in use, if the notebooks or diaries can be produced together with Zerox copies then the copies can be retained and the originals released. You understand what is sought? A. Yes. I would only like to explain this. I only became aware of the existence of the subpoena the day before yesterday which was the 7th, and that is the case also with the Commissioner, and at his direction I made every effort to obtain whatever material was available and whatever was in existence." 10
20
30

His Honour then said: "I quite accept that. You have already heard me reject the invitation to describe the answer as unsatisfactory. I have specifically said I do not accept the answer as unsatisfactory. But it would be of assistance if these further inquiries could be made, so that you would then have knowledge to answer a somewhat searching cross-examination as to what documents there are in fact, other than what there might be, so that you can rule out different sources where there are no documents, and you can produce the documents with a Zerox copy to be left here, if that is more convenient. That would include, I would anticipate, inquiries from Sergeant Wild and from any other officers who may be able to throw light on this." 40
A. Yes.

His Honour then said: "It is most important that all relevant documents be obtained, collated and produced? A. Yes. The only other thing I would like to point out to the Court is that the subpoena itself is in most general terms, and it was not until this morning that the letter was received by the Commissioner indicating certain specific documents, and it was not therefore until this morning that I was able, on his direction, to make any further inquiries about it." 50

What I have just read to you is a correct transcription of what took place, as to what I said, and what his Honour said to you, and your answers, is it not? A. Yes. 60

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Q. And did not you understand by that, that the Court is concerned to see that all documents that might be relevant were produced to the Court in answer to the subpoena? A. Yes.

Q. At the time you returned to the Court on the 15th February you were aware that there was in the possession of the Commissioner of Police an affidavit by Frederick Hume? A. Yes. 10

Q. And you were aware that that affidavit touched directly the matters which had been the subject of police investigation? A. Ummm I do not agree that they touched directly.

Q. The affidavit purported to be an answer to part of the complaint made by Mr. Barton in the affidavit of which you had a copy at that time? A. Yes.

Q. And it related directly to those matters, did it not? A. To the matters in the affidavit, yes. 20

Q. And you decided to withhold that document from production to the Court? A. I did not decide to withhold it. I ...

Q. In fact you withheld production of the document from this Court? A. Yes.

Q. Where has the document been? A. I can only answer to the best of my knowledge. It is in the possession of Detective Constable Follington since the 15th February.

HIS HONOUR: Q. Sergeant Anderson, you understand that in this case it is claimed on behalf of the plaintiff that a police officer obtained a statement from Mr. Hume early in 1967? A. Yes, your Honour. 30

Q. And that the existence of that statement is a matter of somewhat heated contest in this suit? A. Yes, your Honour.

Q. And when I asked you on the 9th February to produce all the documents that might touch this matter, did you not understand that this affidavit when it reached you on the 15th February would fall within the type of material I had asked you for? A. That was a matter I discussed with the representative of the Crown Solicitor. 40

Q. You see, it creates a most extraordinary situation, in that the allegation is that the police have a document, namely, a statement from Mr. Hume of January, 1967 which they have not produced. You understand that is so? A. Yes, your Honour. 50

Q. By having a document of February 1968 and not producing that on legal advice, it necessarily attracts some attention to the primary contest as to whether there was a document in January, 1967.

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You see that? A. Yes, your Honour.

Q. What reason were you told when you were given this advice that it should not be produced to the Court? A. That it did not come within the specific terms of the subpoena. There was quite some argument put forward by Mr. Forbes on the 15th February, and a lot of it related to the terms of the subpoena, and a number of other things involved in that. 10

Q. Mr. Forbes on the 15th February asked me to set aside the subpoena, an application that I refused? A. Yes, your Honour.

Q. Then you came forward and from the floor of the Court produced certain further documents? A. Yes, your Honour.

Q. That was after I had rejected Mr. Forbes' attempt to have the whole subpoena ruled out? A. Yes, your Honour.

Q. Why did you understand that this affidavit of the 10th February could properly be withheld? A. It was put to me - I just put the matter to Mr. Forbes, it was fairly brief, and he said that in view of the terms - this is from my recollection of it - he said that in view of the terms of the subpoena and what is contained in the affidavit, he did not consider that it fell within the subpoena. I would add, your Honour, that the other document referred to and called for in these matters - that is the record of interview in 1967 - has been specifically subpoenaed, and specific search and inquiry has been made for it, of which I gave evidence in this Court. 20 30

Q. Yes, but I am concerned that, having sought your assistance in general terms on the 9th February, Mr. Forbes took it upon himself to give advice which frustrated the request I had made to you for assistance, and which necessarily creates an atmosphere of suspicion? A. I might add, your Honour, there was quite a lot discussed with Mr. Forbes on that particular morning prior to coming before the Court. A lot was discussed at length, and some things were discussed very shortly and I cannot add any more to it than that. 40

MR. GRUZMAN: Q. You were present in Court on the 15th February when Mr. Forbes said this:

"I have been directed to appear for the Commissioner of Police in this matter. Further to the proceedings on 9th February certain further subpoenas additional to the original subpoena in this matter were directed to Sergeant Wild and Constable Follington, and following on what had occurred here on the previous occasion in the cross-examination on the voir dire of Sergeant Anderson certain further documents have been located. There is no objection to producing these documents. 50

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on voir dire.

I have the documents here and I thought it would be convenient - although I also wish to make some submissions to your Honour on the general form of the subpoena and the procedure which has been adopted in this Court relating to the production of these documents - I thought it would be convenient to the Court if I hand up all the documents which have now been located as a result of the inquiries made in the cross-examination on the previous occasion, and as a result perhaps of the issue of the further subpoenas, and Sergeant Anderson has been good enough to prepare a list of the documents which sets them all out, with a sort of catalogue of the documents and their contents. I tender those documents to your Honour, together with the statement which has been prepared describing the documents." 10 20

It was your understanding, you told his Honour a moment ago, that the affidavit referred to fell within the sort of document which his Honour had asked you in the course of the cross-examination of the 9th February? A. I don't think I said that.

Q. I think you did say that. Did not you tell his Honour that you understood that this affidavit fell within the sort of material which his Honour had asked you to get? (No reply.)

Q. Didn't you say that here only a few minutes ago to his Honour. A. I don't think I said that in those words. 30

HIS HONOUR: I do not think this need be taken any further.

MR. STAFF: May I draw your Honour's attention to this? I only say this in fairness to the witness, that if your Honour looks at what your Honour said, and it was put to the witness by my learned friend on the 19th February - your Honour specifically directed the request to Sergeant Anderson - perhaps not intentionally, but no doubt your Honour had a wider field in mind. No doubt Mr. Forbes perhaps with that before him, and looking at the subpoena, came to the conclusion ... 40

HIS HONOUR: I think, in order to make it clear, there is no shadow cast on the Commissioner.

MR. GRUZMAN: Q. The document was handed to Mr. Forbes on the 15th February? A. Yes.

Q. And then where - at the time when you were producing documents in Court here, where was that actual document? A. Down in Mr. Forbes' office. 50

Q. Did you then recover it from there after the Court proceedings? A. Some two or three days later.

Q. What did you do with the document then? A. Gave it back to Constable Follington.

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Q. And he has retained it ever since? A. I understand so. I got it from him - well, I got in touch with him through the police last night and arranged for it to be on my table this morning, and it was there when I got to work.

Q. Where did Constable Follington keep it, do you know? A. No, I do not know.

HIS HONOUR: On the 9th February this year Sergeant Anderson on behalf of the Commissioner of Police answered a subpoena requiring the production of certain documents. The subpoena was obviously directed to obtaining production of a document said by the plaintiff to exist, namely a report of interview with Mr. Hume in January 1967. Sergeant Anderson was asked some questions on the 9th February this year regarding the sufficiency of the production made in response to the subpoena. I sought on that occasion his assistance in general terms in searching our what I intended to describe as all relevant documents in the custody of the Commissioner or any of his officers, and the production of those to the Court on the 15th February, 1968. 10 20

It seems that Sergeant Anderson thought it prudent, and this I can well understand, to seek the assistance of the Crown Solicitor's Office in connection with the production of documents on the 15th February. For some reason that escapes me on the 15th February, and that still escapes me, the Crown Solicitor's Office sought to prevent further proceedings requiring production of documents on that subpoena. Mr. Forbes appeared on the 15th February, addressed me at some length in support of an application he made to set aside the subpoena, and in support of a challenge he made to the proceedings that had thus far taken place upon it. 30

Having heard Mr. Forbes, I rejected his submissions, and as a mark of the view I took of them I ordered the Commissioner to pay the costs of the time that had been wasted by Mr. Forbes in seeking to prevent production on the subpoena. 40

On a date in September of this year a further subpoena was issued, directed to the Commissioner, requiring production of an affidavit sworn by Frederick Hume and left at the Criminal Investigation Branch on or prior to 15th February. The affidavit was dated 10th February, 1968. The existence of this document became apparent during the cross-examination of Mr. Hume, who said in evidence that he had left this document at the Criminal Investigation Branch early in February this year. When this further subpoena was called this morning, the affidavit was produced to the Court. 50

It now appears that the affidavit was in fact in Sergeant Anderson's custody before Mr. Forbes made his submissions on the 15th February, 1968, and that on Mr. Forbes' advice the document was withheld, and its existence not disclosed to the Court. 60

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on voir dire

I accept Sergeant Anderson's evidence that the withholding of the document and its concealment was due solely to the advice that Mr. Forbes gave. I specifically absolve the Commissioner and any of his officers, including Sergeant Anderson, from the real responsibility for failing to produce the document and concealing its existence.

When it seemed this morning that some criticism would be directed to the advice given by Mr. Forbes, I stood further proceedings on the subpoena down until half past two this afternoon, to give Sergeant Anderson an opportunity of seeking further advice from Mr. Forbes and, in particular, to give Mr. Forbes an opportunity, should he have seen fit, to attend at half past two this afternoon to explain and attempt to justify the advice that he gave on the 15th February. He has not seen fit to avail himself of this opportunity to offer any explanation. 10 20

As the existence of the alleged statement by Mr. Hume in January 1967 is of critical importance on one aspect of the suit, I permitted Mr. Gruzman to cross-examine Sergeant Anderson further on the voir dire this afternoon. Having heard this cross-examination I reiterate that I accept Sergeant Anderson's explanation, and I exculpate him, and of course the Commissioner and his officers, from the responsibility for not producing the document.

Ill-advisedly they acted on advice given by Mr. Forbes, consistent with the attempt that Mr. Forbes made on the 15th February to have the whole subpoena set aside. 30

It does not seem to me that it is necessary that the matter be taken any further, in view of my acceptance of Sergeant Anderson's explanation.

(Witness retired.)

FREDERICK HUME
On former oath:

MR. GRUZMAN: Q. By the way, when did you buy that pistol, roughly? A. I would not know, roughly. Two or three years ago I suppose it would be, roughly. 40

Q. About 1965 or 1966? A. I suppose that would be right, yes.

Q. By the way, you told us before lunch that your father was in a comfortable position and helped you a great deal financially? A. I did not say that. I did not say he was in a comfortable position. I said he could afford it when he gave me loans. 50

Q. And he as, you have told us, helped you all your life? A. Yes, he has.

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voir dire, ret'd.
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Q. I assume from that that your father has always been in a position to keep your mother? A. No, my mother ran a restaurant at some stage in Blamain.

Q. Your mother worked in a chocolate factory? (Objected to; rejected.)

Q. Mr. Hume, you told us before lunch also, I think, that you have never worked for Mr. Armstrong, is that right? A. I told you I worked on Mr. Armstrong's behalf. He told me --- 10

Q. But you made it clear to the Court that in your mind you never worked for Mr. Armstrong, that is true, isn't it? A. That is right. Not expressly for Mr. Armstrong.

Q. I beg your pardon? A. Not for Mr. Armstrong. He did not say, "Do this job for me and I will pay you for it." I never did.

Q. In your mind you never regarded yourself as working for Mr. Armstrong directly? A. Working for Mr. Armstrong? 20

Q. In your mind you never regarded yourself as working for Mr. Armstrong directly? A. That is correct.

Q. And you have never looked to Mr. Armstrong for payment? A. No, never looked to him for payment.

Q. Mr. Hume, that is completely untrue, isn't it? A. That is very true. 30

Q. Do you swear that? A. Yes, I do.

Q. You have never looked to Mr. Armstrong for payment? A. I have never looked to Mr. Armstrong for payment.

Q. And he never paid you? A. No, not to my knowledge. It was always through some company that I was paid. I was always paid through some company.

Q. Look, in respect of the work that you did at Surfers' Paradise, to whom did you send the account? A. Some company again. 40

Q. Some company? A. Yes.

Q. You swear that? A. To the best of my knowledge I believe it was some company. It was not to Mr. Armstrong.

Q. I am speaking now of the work that we had got up to before lunch. That is when you went to get information as to how the job was going on. Do you remember that? Do you remember we were discussing that before lunch? A. Yes. 50

Q. That you went up to Surfers to get information as to how the job was going? A. Yes.

Q. You say you sent the account to some company?

A. Yes. Mr. Armstrong told me what company to send it to, and I sent the bill to the company. He told me the company to send it to, and I sent it to that company.

Q. Is that your account? A. I don't know. I would not know. I would not know. I could not tell you that.

Q. Speak up, please. His Honour can't hear you. 10

A. I would not know from this. It looks like a sort of expenses thing. It has air fare there, air fare back, and an air fare - something about two tickets. All I can see is air fare to Surfers Paradise, air fare from Surfers Paradise, air fare to Surfers Paradise, two tickets, Keith Hawthorne, \$100, hire of car, petrol, meals and expenses, and my fees for Friday, \$98.40. That, I presume, would have been in relation to the third occasion. That would be in relation to the third occasion I was up at Surfers, Mr. Gruzman. 20

Q. That is the third occasion? A. I suppose so. I could not really say from this.

Q. Mr. Hume, just hold the document. You told us before lunch that you were asked by Mr. Armstrong to go to Surfers Paradise to get information and that on that occasion you paid Mr. Hawthorne \$100. Do you remember that? A. Yes, that is right.

Q. Will you deny that that document now in front of you is a copy of your account for that work? 30

A. I would not admit it or deny it. I don't know what it is. It is not addressed to anyone. All it says is "Expense account from Surfers Paradise".

Q. Mr. Hume, have you ever seen that document before that is now in front of you? A. I don't know, I could have.

Q. You could have. Look, sir --- A. I don't really know. Looking at it I don't know whether I saw it or not. 40

Q. Is that an honest answer? A. I don't do the typing in my office because I can't spell too well, Mr. Gruzman.

Q. Look, that document was produced by you to the Court, wasn't it, on subpoena? A. It could be. I don't know.

Q. Are you seriously saying that? A. I am serious. I don't know whether that document was produced by me.

Q. Will you tell me when you prepared the account for the work done at Surfers Paradise on the occasion you went to get the information? A. Mr. Gruzman, I have told you again and again that that work --- 50

Q. The work you did at Surfers Paradise on the occasion you went to get information was done for Mr. Armstrong - A. I have told you that the work I did was on Mr. Armstrong's behalf. I don't know who was paying for that.

Q. You don't know who was paying for that? A. No. I never received a cheque from Mr. Armstrong. It was always some company that was paying for it.

Q. Will you admit that you prepared the account in blank as to who the person was who was to pay for it? A. Well, if that is the account it is prepared in blank, because I did not know who was paying for it. 10

Q. Won't you admit that is a copy of the account - your carbon copy of the account? A. I won't admit it. I am not sure it is.

Q. But the one thing that is clear in your mind is that you never regarded yourself as working directly for Mr. Armstrong in this transaction. That is correct, is it? A. That is correct. 20

Q. That is correct? That is a complete lie? A. No, it is not.

Q. Have a look at this document and tell me what it is? A. It is the Commonwealth Trading Bank of Australia and it is a deposit slip.

Q. It is one of your deposit slips, isn't it? A. That is right.

Q. For the \$500 paid in respect of that account which is now before you? A. Yes. 30

Q. Who have you shown on the back as providing the money? A. I just didn't know who the company was. I don't know who the company is, and I put it under Mr. Armstrong, because there is a question mark as to who is the company. I don't know the company.

Q. So what you have shown for the \$500 deposit slip in that account - on the back of your own deposit slip you have shown "Armstrong, \$500"? A. That is only jotted down as a reference to Mr. Armstrong, \$500, because I don't know who the company is, and I can't help you there at all. You will have to ask Mr. Armstrong for what company it was. I don't know. 40

Q. The question which I directed to you was whether you regarded yourself as working directly for Mr. Armstrong? A. I did not.

Q. Can you explain why you wrote it on the back, "Armstrong, \$500" against the payment? Can you explain why you did that? A. Yes, I can explain that, because the only way you could find the company would be to ask Mr. Armstrong. My only knowledge of any company would be through Mr. Armstrong again. 50

Q. Did you get a cheque in payment? A. Yes, I believe it was, but again it was some company that paid me.

Q. But you regarded it as Armstrong, didn't you?
A. I did not regard it as Armstrong. It was not a cheque from Mr. Armstrong. It was some company. I don't know what the name of the company was. I could find out for you, Mr. Gruzman.

Q. Why did you write on the back, "Mr. Armstrong"? 10
A. Because I don't know the name of the company. What else am I going to write?

Q. When you got the cheque it had the name of the person writing the cheque? A. Yes. I don't remember the name of the company.

Q. Did you write out a receipt? A. Yes, I believe we did.

Q. The receipt would have gone to the person paying the cheque? A. The receipt would have gone to the company that paid the cheque addressed to the company. That would have been done by Miss Catt or whoever was doing it at the time. 20

Q. And that is another lie, Mr. Hume, isn't it?
A. That is not a lie, Mr. Gruzman.

Q. Have a look at that document. Look at that document, and tell his Honour what that document is. If I can help you, Mr. Hume - A. That is a receipt written out in Miss Catt's handwriting.

Q. Carbon copy of a receipt? A. Carbon copy of a receipt. 30

Q. What does it say? A. First of all it should not be here, because this is a cash receipt book, so I don't know how it even got in here, because it was paid by cheque, and here is a cash receipt for \$500, and Miss Catt put it again "A.E. Armstrong". Obviously she did not know what the name of the company was. That is all I can say.

Q. When she was writing out the receipt she must have had the cheque? A. Well, I don't know. You will have to ask Miss Catt if she did have the cheque itself. 40

Q. According to your receipt book of Hume's Investigations, on 9th November, 1966 a receipt was written out "Received from A.E. Armstrong \$500", being "for services rendered". That is correct, isn't it? A. That is what it says there, but that is not correct.

Q. That is what it says there? A. That is what it says there, but it was still paid by a company, and you can prove that by having the bank produce the cheques from the company. 50

(Copy account, bank deposit slip and copy receipt, tendered and admitted as Exhibit "CC".)

Q. Now, Mr. Hume, that receipt is dated 9th November? A. I did not notice it. If you say it is 9th November, it is 9th November. I did not take notice.

Q. And did you become aware at that time that there was trouble between Mr. Armstrong and Mr. Barton? A. No. No, I did not. No, I became aware of it when I saw Mr. Hoggett, who was a Director in Landmark Company. That was some time in December. 10

Q. December? A. Yes.

Q. December 1966? A. That is right, yes.

Q. What trouble did you become aware of? (Objected to; question withdrawn.)

Q. Mr. Hume, you became aware, you say, from Mr. Hoggett, of certain trouble between Armstrong and Barton? A. No, it would be more correct - (Question objected to; rejected.)

Q. Mr. Hume, did Mr. Armstrong tell you why he wanted information from Surfers Paradise through your efforts in November 1966? Did he tell you why he wanted that information through your efforts? A. No. 20

Q. He never told you? A. No.

Q. Did Mr. Armstrong never inform you at about that time that difficulties had arisen between himself and Mr. Barton? A. No.

Q. Had you no knowledge of that matter from any source? A. No, not until December. (Objected to; allowed.) 30

Q. You say you had no knowledge from any source until December 1966 that difficulties existed between Mr. Barton and Mr. Armstrong? A. Even then I didn't know whether it was Mr. Barton and Mr. Armstrong, but there was something in the company. Mr. Hoggett told me there was some trouble in the company.

Q. Don't tell us what Mr. Hoggett told you. His Honour has ruled that out. You understand what you are saying? A. Yes. 40

Q. That you never knew from anyone until you had a conversation with Hoggett of any trouble with Armstrong and Barton? A. I thought they were the best of friends.

Q. You thought they were the best of friends? A. Yes. I even warned Mr. Armstrong that I did not like Mr. Barton - all those things he was saying about "promise them anything". I said that he was promising things to poor people - "I imagine what he must be doing to you?" 50

Q. When did you say that to Armstrong?

A. November, or something like that. I would not know exactly when it was.

Q. What did Mr. Armstrong say to that? When you said that to Mr. Armstrong, what did he say to that?

A. "Go on. You don't know him. I have known him for years."

Q. In November you say that Mr. Armstrong was - correct me if I am wrong - in November Mr. Armstrong was defending Mr. Barton? A. Well, he was not exactly defending him. He was saying, "You don't know what you are talking about". In other words, that is what he was saying. 10

Q. What he was saying was that your suspicions about Mr. Barton were unfounded? A. Probably, yes. He was defending him. You could say that.

Q. You could say that? A. Yes.

Q. Do you remember whether that was early or late in November? A. I am only guessing at that. I would not know when it was. 20

Q. Did Mr. Armstrong ever say anything against Mr. Barton to you? A. No.

Q. Never? A. No.

Q. Right up to the present day? A. He has not been discussing it with me at all.

Q. So that what you say is that right up to the present time Mr. Armstrong has never said a word against Mr. Barton? A. No, nothing good or bad.

Q. The question I asked you before was whether you had any knowledge from any source of trouble between Mr. Armstrong and Mr. Barton prior to your conversation with Mr. Hoggett in December 1966; do you remember that question? A. Yes. 30

Q. You see, you said you had - (Objected to; allowed.) You answered that you had no knowledge from any source? A. That is correct.

Q. Didn't you read the newspaper? A. What year? What year are you talking about?

Q. I am speaking now of November 1966. A. I would not have read the newspapers then. 40

Q. Never read them then? A. Not in 1966. I only started reading them when I got in it.

Q. When did you start getting in the newspapers? A. I don't know. Someone pointed it out to me, and then I started reading the papers, Mr. Gruzman.

Q. Perhaps I have misunderstood you. Do you say you did not read any newspapers? A. I read newspapers, but I would not have read them as carefully as I am reading them now, Mr. Gruzman. 50

Q. You knew that the company which you had acted for in July 1966 was Landmark, didn't you? A. Yes. I put the sign up.

Q. (Approaching witness.) Just tell me whether you never saw any of these articles at all in the newspaper? A. No.

Q. The Australian, November 11th 1966? A. Would that be in the financial pages?

Q. Possibly, yes. A. Well, I don't read them, I am sorry. I am too small to read them. 10

Q. Too small to read the financial pages? A. Too small to read the financial page. I have got no shares; I have got nothing. I don't read the financial pages.

Q. I will ask you just the same? A. Mr. Gruzman, there is no sense in showing me the financial pages. I have never read the financial page.

Q. Never read any financial page? A. No, because I haven't got any shares. It doesn't make any difference which company and which is down, because I have nothing to benefit from it. I don't read any financial pages. 20

Q. This is the position, that you are telling his Honour never at any time have you read any financial pages in any newspaper? Is that right? A. Yes, that is right.

Q. I will turn over the page. There is a picture of Mr. Armstrong, with the heading - A. That is also a financial page? 30

Q. Yes, that is a financial page. I show you this one. "Mr. Armstrong no longer Landmark head", and a picture of Mr. Armstrong. A. If it was in the financial page it would not have been noticed by me, I can assure you. I have told you that I have never read the financial pages. The first pages and the sports pages, yes.

Q. "Writs abound at Landmark"? A. Yes. Never seen it.

Q. "Landmark to repay Chairman"? A. No knowledge whatsoever. 40

Q. "Chairman voted off Landmark Board"? A. No.

Q. "New Moves in Landmark Dispute", and a picture of Mr. Armstrong? A. Have I read the Financial Review, Mr. Gruzman? You have got my books there. You can see how financial I am.

Q. I show you this article from the Daily Telegraph. A. I have told you I don't read the financial pages. It would be ridiculous for me to read the financial pages, wouldn't it? 50

Q. This does not seem to be the financial page.

This is the Daily Mirror, November, 24th, "Landmark Paradise". Picture of Landmark Island. "Another Salvo in Landmark Dispute"? A. Which year is that?

Q. 1966. "Former Chairman" A. I never saw that. That would have been in the financial pages.

Q. I should not think so - a nice big picture of Landmark Island. Anyway, you swear ---

HIS HONOUR: - that he does not read the financial pages. 10

WITNESS: I don't read the financial pages.

MR. GRUZMAN: Q. You swear that you never became aware from any source of any difficulty between Mr. Barton and Mr. Armstrong prior to December 1966?

A. That is right. Prior to the conversation with Mr. Hoggett when he was asking me for some help to give him a tape recorder, and that.

Q. By the way, that tape recorder was not to tape Mr. Barton, was it? A. It was. 20

Q. Was it? A. Yes. Mr. Hoggett was taping Mr. Barton's conversation and he subsequently got his money back because of that, Mr. Gruzman. Why don't you subpoena Mr. Hoggett?

Q. Mr. Hume? A. Yes, Mr. Gruzman.

Q. Do you know that is untrue? A. I know that is very true.

Q. The tape recorder was to tape Mr. Leslie Senes, wasn't it? A. It was to tape Mr. Barton. It was to tape him mentioning something about Mr. Senes. Something about Mr. Senes, I think, or someone like that. I have never listened to the tape recording, because I never got the thing back again you see. He kept the recording, but he told me about it. 30

Q. So the tape was a tape obtained by Mr. Hoggett? A. Yes, and it was a conversation which was ---

Q. Which had something to do with Leslie Senes? A. Well, something to do with Mr. Barton, because he was referring to the matter of - he was recording Mr. Barton's conversation. He was discussing something about --- 40

Q. Something about Leslie Senes, wasn't it? A. It could be, yes. I believe so.

Q. Now I just want to press you a little further, if I may? A. Yes, you may.

Q. Was it your understanding that you were going to Surfers Paradise in November 1966 to get confidential information for Mr. Armstrong? A. There was nothing confidential up there. All those 50

workers know me, and they tell me everything straight away. As soon as I have a few drinks with them in the hotel they tell me anything.

Q. You are prepared to deny or classify that the work that you did at that time was the obtaining of confidential information? A. Yes, most certainly. It was not confidential. Everyone up there at the island knows what is going on.

Q. Mr. Armstrong never told you why it was necessary for you to go, and not him? A. Probably he was going water-skiing, or something. I would not know what he was doing. 10

Q. You don't think there was any special reason why you were going and not Mr. Armstrong? You did not think there was any special reason? A. I hardly think so. They know me as well as they know Mr. Armstrong up there.

Q. And you were never told that Mr. Armstrong had been refused information by the board? You were never told anything like that? A. No. 20

Q. Well, I just want to follow through on your accounts? A. Yes.

Q. Let me take - I just want to take your financial position as it developed in these months. We are commencing with the year - we have commenced on 1st July 1966? A. 1st July 1966, yes.

Q. The figures I am going to put to you now -
A. Mr. Gruzman ---

Q. Mr. Hume, please. The figures I am going to put to you now are your total receipts up to the dates that I mentioned? A. Yes. 30

Q. Right? A. Yes.

Q. Up to 10th July you had received nothing? (Objected to; allowed.)

Q. Up to 10th July you had received nothing for that financial year? A. That was the time that Mr. Melvey was struck off the roll, or was going to be struck off the roll, and he was my only source of income. 40

Q. What I put is correct, that by 10th July that year you had received nothing? A. Everything in here is correct.

Q. Take up to 24th July. Your total receipts for that financial year were \$106.75? A. Quite correct.

Q. The week ending 31st July you received nothing? A. No.

MR. STAFF: May I have the benefit of an objection to this evidence? 50

HIS HONOUR: I would have it noted that the line of cross-examination on Mr. Hume's income from his business is objected to. The questions are to be taken as being objected to, but I shall allow them, subject, of course, to the question of form or to particular objections.

MR. GRUZMAN: Q. The week ending 31st July you received nothing? A. No.

Q. So that your total takings up to 31st July were \$106.75? A. That is right. 10

Q. Then in the following week you received \$420, which you have got down as "Barton"? A. Well, you see what I mean. I have got down Armstrong and Barton. That just proves the point, that we didn't know the name of the company. That proves the point that we don't know the name of the company, doesn't it, Mr. Gruzman?

Q. When was the name "Barton" put there? A. At the time the rest was put there. 20

Q. By the same pen and at the same time? A. I think it would have been done by the same pen, as my father does all of this writing.

Q. Will you agree with me that there is not the slightest similarity between the writing of the word "Barton" and the writing of the figures "\$400" in size, shape, colour or ink? A. It is my father's handwriting.

Q. Will you agree? A. I will agree it is my father's handwriting, and I will agree that he has used a fountain pen and used a biro there. That is what I will agree with. 30

Q. So that by the end - by the 7th August your total takings were \$526? A. Yes.

Q. Of which \$420 came from - A. Mr. Barton.

Q. From Mr. Barton? A. Yes.

Q. Let us go on a bit further. A. Yes. All of this handwriting is my father's handwriting. It is all my father's handwriting. I have never even put one little dot in the book. 40

Q. For the week 4th September, for example, your total takings - the week ending 4th September your total receipts were \$11? A. Yes.

Q. And for the week ending 11th September -
A. I will have to watch you.

Q. You watch carefully. Every answer you give is being taken down. For the week ending 11th September your receipts were nil? A. No, nothing.

Q. And for the week ending 18th September your receipts were \$6? A. Yes, and my parents had just sold the premises at Balmain and I had moved 50

into Riley Street and no one knew where I was.

Q. For the week ending 25th September? A. That is right.

Q. Just a minute, please. For the week ending 25th September your receipts were nil? A. Correct. No one found me.

Q. For the week ending 2nd October your receipts were \$26? A. Quite right.

Q. Up to this stage - I will just carry on a bit further. For the following week, the week ending 9th October, your total receipts were \$12? A. Yes. 10

Q. Your total receipts up to that date were \$934.35? A. Yes.

Q. And your total expenditure up to that date was \$1511? A. Yes. I had been costing my father some money again.

Q. In subsequent weeks you received certain moneys and I take you now up to the week ending 13th November. Up to that time you had received a total sum for that financial year of \$1948? A. Yes. 20

Q. Of which you had received \$500 which is entitled in this account, "Armstrong"? A. Yes, and the other one "Barton".

Q. And \$420, which is shown entitled "Barton"? A. Yes.

Q. That is \$920? A. Yes.

Q. Of total receipts of \$1948? A. Yes.

Q. Including that week? A. Yes. 30

Q. And for the first time your income exceeded your expenditure? A. Yes.

Q. In this case by \$300? A. Yes. It went better and better as we went along. Once the solicitors knew where I was situated I started getting more and more business.

Q. So that it improved so much that for the week ended 20th November your gross receipts were \$14? A. That was only the next week, but we are not just talking about weeks. We are talking about future. 40

Q. For the week ended 27th November you received \$23? A. Yes.

Q. For the week ended 4th December you received a gross \$10? A. That is right.

Q. And for the week ending 11th December the gross takings were \$14.75? A. That is correct.

Q. For the week ending 18th December your gross takings were \$4? A. Yes.

Q. And at that stage you had taken gross receipts for the year of \$2014? A. Yes.

Q. But you had spent \$2611? A. Yes.

Q. You were very short of money at that time, were you? A. No, never. Never short of money. As long as my father is alive I am all right, Mr. Gruzman.

10

Q. Let me ask you about another little matter, Mr. Hume? You see, your withdrawals - as at 25th September your total withdrawals were \$310, weren't they? A. Yes.

Q. The following week you drew out \$100, so that your total withdrawals to that date were \$410, and the following week you drew nothing, apparently?

A. I did not need any money.

Q. And the next week you drew nothing? A. No, because I stayed at home with my parents, and my mother ran a restaurant. I did not need anything for food and I had all my own clothes? Why did I need any money?

20

Q. And the next week you drew nothing? A. That is right.

Q. And the week ending 31st October you drew nothing? A. Nothing again. I had money from before.

Q. And for the week ending 6th November you drew nothing? A. Drew nothing, yes.

Q. And for the week ending 13th November you drew nothing? A. Drew nothing.

30

Q. And for the week ending 20th November you drew nothing? A. Probably there was nothing in the bank. That is why I was drawing nothing. My mother and father would be giving me money.

Q. And for the week ending 27th November you drew nothing? A. You cannot draw then there is nothing there. I don't know what the situation was in the bank. Probably there was nothing.

Q. For the week ending 4th December you drew nothing? A. No, drew nothing.

40

Q. And for the week ending 11th December you drew \$30? A. Yes.

Q. The week ending 18th December you drew nothing? A. Drew nothing.

Q. The week ending 25th December you drew \$58? A. Yes.

Q. And the week ending 1st January you drew \$40? A. \$40, yes.

- Q. The week ending 8th January you drew nothing?
A. That is right.
- Q. The week ending 15th January you drew nothing?
A. Drew nothing.
- Q. The week ending 22nd January you drew nothing?
A. Drew nothing. Just a moment, Mr. Gruzman.
We also have got a cash receipt book where we give receipts when we get money paid in cash, and this money I kept in my own pocket. 10
- Q. I thought you told his Honour earlier that all your receipts were put in this book? A. Well, I don't know how my father does it but I know I don't bank cash money. I just give out the receipts and keep it with me.
- Q. There is an account here "Cash on hand at the end of the week", plus cash paid out for purchases? There is a cash account here? A. Yes.
- Q. It is for all the moneys received, isn't it? 20
A. I don't know whether it is all moneys because -
- Q. The figure I have put to you in each case of your receipts? A. Yes.
- Q. - it is bigger than the cash deposits? A. Yes. It would always be bigger than the cash deposits because most of my money is paid from cheques, not from cash.
- Q. So that when I have put it - the page happens to be open at the 31st week, the week ended 29th January? A. Yes. 30
- Q. According to this on 24th January you received cash \$10? A. Yes.
- Q. That makes your total receipts to date \$3400?
A. Yes.
- Q. But your bank deposits were only \$3250? A. Yes.
- Q. It looks as though all your money went in here, doesn't it? A. Yes.
- Q. And you drew nothing for the week ending 29th January, did you? A. No, I didn't draw anything. 40
- Q. And for the week ending 25th February? A. No, nothing, according to that, apparently.
- Q. Nothing for the week ending 25th February - I am sorry, for the week ending 5th February?
A. Not according to that. What is this here? I must have drawn something. Isn't there a withdrawal of \$33.40?
- Q. \$33.40. Where is that? Is that it there or isn't it?
- Q. \$24 for rent, and \$1.30 - A. It must have been withdrawn from the bank. 50

HIS HONOUR: What is the position with regard to this \$33.40? Was \$33.40 withdrawn or not?

MR. GRUZMAN: The particulars are bank cheques, \$2.17? A. Yes.

Q. "Rent, \$24"? A. Yes.

Q. "Repairs, motor vehicle, \$1.13"? A. Yes.

Q. "Salaries and wages, "\$6.10"? A. Yes.

Q. And that was paid to Terry Catt? A. Yes.

Q. So that you drew nothing for yourself that week, did you? A. I did not need to. I told you my parents always gave me everything when I needed it. 10

Q. And in fact you received no income that week? That is the week, 5th February? A. That is right. If it is there, that is correct.

Q. Is that correct? A. Yes, anything there is right.

Q. You drew nothing for the week ending 12th February? A. Drew nothing? 20

Q. Yourself, I mean? A. What is this here? I don't know. What is \$509.95? What is this?

Q. Let us see if we can work that out. By the way, do you remember I suggested to you that you were getting from Mr. Armstrong a lump sum of \$1000? Do you remember I suggested that what you were getting from Mr. Armstrong was a lump sum of \$1000? I suggested that to you, didn't I, Mr. Hume? A. You suggested to me ---

Q. That you were getting from Mr. Armstrong \$1000? A. There was no \$1000 lump sum, and it was paid by some companies, as I have told you, Mr. Gruzman. I don't remember one cheque for \$1000. 30

Q. What I am putting to you is that for the contract to arrange to have Mr. Barton killed you received an advance payment of \$1000? A. That is wrong.

Q. And I put it to you that the invoice for \$1094 is a fraudulent invoice in the sense that it is not an invoice for work done? A. We have gone through this, Mr. Gruzman. I have proven to you what it was for. Would you like me to go through all this again, Mr. Gruzman? Would you like me to go all over it again? 40

Q. Mr. Hume, did an amount of \$1000 as a figure ever mean anything to you at around that time? A. No. Why should it? \$1000?

Q. \$1000. That figure never meant anything to you? A. No. What is \$1000? As you would say, a paltry sum, sir. 50

Q. Did you agree to give Miss Catt one-third of \$1000? A. Did I agree to give Miss Catt one-third of \$1000?

Q. Yes? A. I gave Miss Catt \$300 for her work and for the help she gave me in the electioneering campaign. One-third of \$1000 is not \$300, for a start.

Q. What is one-third of \$1000? (Objected to; allowed.)

10

Q. What is one-third of \$1000, Mr. Hume, to the nearest dollar? A. It is \$339 ---

Q. Just think again, Mr. Hume? A. One-third of \$1000?

Q. Yes? A. \$333.

Q. To the nearest dollar it is \$333, isn't it?
A. Yes, \$333.

Q. I show you the book, and you tell me how much you paid Miss Catt in a lump sum - on this page you were looking at; the same page we were looking at when you referred to \$509.95? A. I have paid Miss Catt \$356.68, but that was not for one week's work, Mr. Gruzman.

20

Q. How much did you pay Miss Catt? A. Isn't that right?

Q. Can't you even read the book honestly? A. \$333.

Q. You paid to Miss Catt \$333? A. That is right. Her wages - \$300 plus her wages.

Q. \$333? A. Yes, \$300 plus her wages. At that time she was only getting \$33 a week.

30

Q. She was getting \$33 a week, is that right, at that stage? A. Her wages were \$37 later on, I believe, or \$40-something with the tax.

Q. But she was getting \$33 a week at that time, is that right? A. No, I don't know. If you show me the books I could tell you.

Q. You see, Mr. Hume, you have sworn here that the explanation of the \$333 paid in a lump sum was \$300 plus \$33 for her wages. Is that a true or a false explanation? A. I don't know what she was getting at the time. If you show me the books I can show you what her wages are. I believe her wage is somewhere round about \$40-something.

40

Q. Have you ever paid Mrs. Catt? A. No, she is not on my staff.

Q. A smart answer, wasn't it? A. No. You asked me the question if I ever paid Mrs. Catt.

Q. Have you ever paid Miss Catt a sum of

approximately \$300 apart from this sum? A. No, only paid her through the cheque account.

Q. Have you ever paid her, by cheque or otherwise, a sum as great as \$300, apart from this sum?
A. No.

Q. It is a matter that sticks in your mind, isn't it? A. Well, she just helped me with the election. Naturally I should pay her something for it.

10

Q. I want to know is it true or false, that the explanation of the figure of \$333 is that it was \$300 plus her wages? A. Plus her wages with the pocket money that she spent. She used to buy things and I had to pay her back - stamps, and other things.

Q. That is your explanation? A. That is the best of my explanation.

Q. You swear that the figure was \$300 plus certain other amounts? A. Yes.

20

Q. Was she getting a regular weekly wage at all at that time? A. Well, what month was that in?

Q. Don't you know what month it was? A. No, I don't know. If you showed me the book I could find out.

Q. It was paid to her in February 1967? A. Yes. I believe I started paying her somewhere around about February 1967.

Q. Never paid her anything up to then, had you?
A. Out of pocket expenses, and if she wanted some money I gave her some money.

30

Q. Let us get it clear, so far as any possibility of this being a wage. Take the three or four weeks before. Take the week ended 22nd January. In that week you paid her nothing? A. Paid her nothing.

Q. Take the week ended 29th January. In that week you paid her nothing? A. Where are the wages? Would you mind?

Q. You need some help? A. Yes, I need some help because it is not mine.

40

Q. No wages? A. There is this in the left-hand column. Terry Catt, her brother, got \$6.10.

Q. For the week, 29th January, Miss Catt got nothing? A. Got nothing. Didn't do any work.

Q. Didn't do any work? A. Probably not. Otherwise she would have been paid.

Q. For the week, 5th February, she got nothing?
A. Nothing. Didn't work.

Q. For the week ending 12th February she got \$333? A. That is right. That was for the help with the election. Besides, I could not pay her before I got the money for the elections. How could I pay her? Pay her with something I have not got?

Q. Had you agreed to split \$1000 with her so that she would get one-third? A. I gave it to her for her health. There was no agreement there. I did not even promise to pay her when she went on the election to the Snowy. 10

Q. For the week ended 19th February you paid Miss Catt \$20? A. \$20. Probably out of pocket expenses.

Q. For the week ending 26th February you paid her nothing? A. No. She did not do any work. She was in the modelling agency. She used to go around seeing her girlfriends. Why should I pay her? She was doing her own work. She was not employed by me all the time. 20

Q. The week ending 5th March you paid her nothing? A. No. She was not working.

Q. The week ending 12th March you paid her nothing? A. I paid her nothing.

Q. Mr. Hume, having refreshed your mind now from the book, can you offer any other explanation to his Honour as to how you came to pay Miss Catt on 10th February the figure of \$333? A. Because I got paid for the electioneering work, and then I had to give her some money because she helped me. Your Honour, I had to give her some money. It was only fair that I paid her. What else? I could not expect her to do the things ... (answer not completed). 30

Q. The amount you received for the total of the invoice was \$1094, wasn't it? A. But, Mr. Gruzman, look, I have told you that was not all for the electioneering work. You are constantly twisting that around; the electioneering part was only around, to my belief, \$600 or \$700. 40

Q. Something over \$700, wasn't it? A. Something like that, yes.

Q. Why didn't you pay her one-third or one-half of that? A. Why should I pay her one-third or a half? I thought that was what she was worth for helping me, so I paid her that much.

Q. And the thought of \$333 just came about? The thought of that just came to you, is that right? A. Well, it was \$300 I paid her plus other things that she probably spent. 50

Q. You kept invoices of the amount that she spent? A. She tells me, and I believe her. I don't ask her to prove to me how much she spends.

Q. What you say is that she claimed from

you \$33, and that is what you paid her? A. Yes, she asked me for \$33.

Q. And that was for money that she paid out? A. I believe so. She said she spent \$33. She must have paid for petrol, or something.

Q. She must have paid for petrol? A. She could have bought petrol while we were up there or something. She spent something. I take her word. If she said \$33, \$40 or \$50, I pay what she says. She does not have to prove it to me. It is a very poor relationship between someone you are going to employ if you --- (not completed). 10

Q. Well, you see, Mr. Hume, if money is paid out for expenses that is recorded in the book? A. Not necessarily. If they tell me they need so much money as they have spent it I just pay it. I don't distrust them. I just take their word.

Q. But, Mr. Hume, you see that petrol, for example, \$2.80 is written out on the same page as this entry of \$333? A. Yes. 20

Q. \$2.80; \$8.93? A. You can't tell by them. There must be other things, too. You can't say because it is written in there - there would be a number of things that are paid in expenses. They said "I paid so much". I paid them, and that is it. They don't even sometimes produce receipts.

Q. What you are saying is what was paid to Miss Catt was \$300 wages and \$33 reimbursements? A. No wages. There were no wages. It was \$300 for her help with the elections and for her help around - given me during the time. Little things she was doing around the place. I gave her \$300, and also she said that she spent \$33 on something, and I gave her the \$33, and so I gave her altogether \$333. 30

Q. Look at this document. Is that your cheque butt in respect of that payment? A. That is my cheque butt. That is my father's writing on the back of it. That is not my writing. 40

Q. Whose writing is on the cheque? A. Mine.

Q. For \$333? A. Yes.

Q. To Annette Catt? A. Yes.

Q. What is written on the back? A. "33rd week, 1968". He has got "Salary and Wages".

Q. "Salary and Wages Account." A. Yes.

Q. No suggestion of any reimbursement of out of pocket expenses, is there? A. No. Probably left it out. I didn't do that. My father did the books. My father keeps the books. 50

(Cheque butt, \$333, tendered and admitted as Exhibit "DD".)

(Mr. Hume's cash book tendered and admitted as Exhibit 76.)

Q. Now, Mr. Hume, by the end of 1966 you were in a desperate financial position, weren't you? A. No, I was not. Every time when I was short of money I asked my father. He just sold the property in 1966. He had quite a lot of money. He could have lent me any amount.

Q. Did you regard it as a reasonable way of life to live off your father? A. It is not living off my father. He tells me, "When you get it give it back to me". He was the one who wanted me to persevere with it. I would have given it up years ago, but he is the one who wanted me to persevere with it. He said, "You have started it; persevere with it." 10

Q. Don't you regard yourself as having a desperate financial position if you have to continually and as a matter of course borrow from your father to live? A. No. If Carl Melvey had not gone out of practice I would have done very well. If he didn't go out of practice I would have done very well. I was doing very well at that time. 20

Q. I put it to you that your actual financial position at the end of 1966 was desperate? A. Never any more desperate than at any other time when I was making money. Why should it be desperate in 1966?

Q. I put it to you that at that time you would have done anything? A. Oh no, I would not. No, you are wrong there, sir. 30

Q. You would have earned money dishonestly at that time if you could, wouldn't you? A. No. I would not. Why should I? My father would give me money. I have told you that. He sold the property, 352 Darling Street, Balmain. He got somewhere round about \$16,000 for it and he could have lent me any money I wanted.

Q. You were going to use it up for him? A. I was not going to use it for him. He said, "If you want some money ask me, and I will lend it to you". 40

Q. Did you know anyone at that time who wanted - who was prepared to earn money dishonestly? (Objected to; allowed.)

Q. Did you know anyone at that time who wanted to earn money dishonestly? A. No, I don't believe. I have nothing to do with people who want to earn money dishonestly.

Q. Is this the position, that at round about that time you are prepared to swear you did not know anybody who wanted to earn money dishonestly? (Objected to; allowed.) 50

Q. Did you know anyone who at that time wanted to earn money dishonestly? A. Not to my knowledge.

Why should I? I was not interested in any dishonest money.

Q. Was Vojinovic a man who to your knowledge is always looking for dishonest money? (Objected to; allowed.) A. Was Vojinovic?

Q. A man who to your knowledge was always looking for dishonest money? A. Well, this time I would not have known Vojinovic.

Q. Did you tell Sergeant Butler that Vojinovic is a man - did you say to Sergeant Butler about Vojinovic, "He is a man to my knowledge who is always looking for dishonest money"? A. Yes, that is right. I made a check into him and found that out. I check him up quite well. 10

Q. When did you do that? A. Once I started getting phone calls to appear at the C.I.B. I started checking about that man.

Q. What phone calls? A. From Follington.

Q. Phone calls? A. Yes, phone calls. There was one from Hammond and one from Follington and another one from Hammond. There were two from Hammond and one from Follington. 20

Q. Were you in and around your office during the week following 7th January? A. Was I in my office during the week ---?

Q. Were you available during the week following 7th January 1967? A. Yes, I believe I would have been in the office.

Q. Look, have you got a diary in existence now which would tell you what you did in October 1967? Detailed evidence? A. No. 30

Q. That is the document which was - that is one of the documents which was stolen, was it? A. No, the documents were stolen in August, I believe.

Q. So that the position is that you have no diary? A. Yes. I have the telephone diary.

Q. Apart from the telephone diary, which is in Court? A. No, the telephone diary is at home at my place. The 1968 one. Why should it be at Court? 40

Q. We are speaking of a specific period? A. The 1967 one is in Court.

Q. We are speaking of October 1967. Do you understand that? A. October 1967, yes.

Q. You have told us there is a telephone diary in Court covering that period? That is right? A. I believe so, yes.

Q. Have you any other diary showing what you did during October 1967? A. No. No, but it

could be checked up by all the things that Miss Catt - when I tell Miss Catt about something she writes out a bill to whoever it was, and she could check that through.

Q. Are there any detailed records in existence made at the time or near the time of what you did during October 1967? A. Yes, she would have them in the copies. She would have them, yes.

Q. That is notes which you made of what you did at the time? A. Not really notes. I dictated to her to whom she is to send out the bill, and then she does that. 10

Q. I am not asking that. A. Notes in my handwriting, no.

Q. No notes in your handwriting made at about the time of what you did during October 1967? A. No, not that I recollect.

Q. Your diary was stolen in August 1967? A. Yes, and I have never started another one since then. 20

Q. You have never started another one? A. I have never started another one since then. I have not got one now.

Q. Your diary was stolen in August 1967? A. Yes.

Q. It was in your diary that you would normally record your diary movements? A. Yes.

Q. And you have never started a diary since August 1967? A. From now on my inquiry agent keeps the diary - the one that goes on divorce raids with me. He keeps the diary, because I realise if this could happen a couple of times, which it has, it could happen in the future, too. 30

Q. You have not kept a diary since? A. Only the telephone diary.

Q. Who is the agent who keeps the diary? A. It is Kevin Keagan. He does nearly all the divorce raids with me.

Q. What is the date of your pistol licence? You have got it there with you? (Objected to; allowed.) A. 5th December. 40

Q. Issued from what police station? A. Lane Cove.

(Further hearing adjourned to 10.00 a.m., Wednesday, 18th September, 1968.)

BARTON -v- ARMSTRONG & ORS.

THIRTY-SEVENTH DAY: TUESDAY, 24TH SEPTEMBER, 1968.

MR. FORBES: A number of matters were mentioned when this matter was before the Court on 17th September - Tuesday last, 17th September - in connection with a further subpoena and the production of a particular affidavit document. As the Court knows, I was not present on that occasion. Your Honour, in view of certain things that your Honour has said I feel that I should take this opportunity to explain what the position has been in reality. Now, last Tuesday at about midday, which was the first occasion that I ever heard anything about this document, I was visited by Sgt. Anderson who said that - who first of all said that he was surprised that I was in the Crown Solicitor's office. He told me that he thought I had retired and, incidentally, I said to him, "What made you think that?" He did not say who, however. He then said that the Commissioner had been required to produce a further document and that he was very worried about it, and he said that your Honour had said in this Court on that very morning that your Honour was not satisfied with the explanation he had given for its non-production on a previous occasion, and then he immediately proceeded to say to me - and I repeat this verbatim - that your Honour had sent him over to check with me - to check with me - as to what advice I had given regarding this particular document, and then he proceeded also to say that your Honour had suggested that he might inquire from me whether he would be represented as a witness in the proceedings by me. I then told Sgt. Anderson in so many words that this was the first occasion that I had ever seen this document, and certainly that I had given no advice whatsoever regarding this particular document, and the upshot of it was that as he said to me that your Honour had sent him over to check as to what advice had been given, because your Honour apparently thought there was some misunderstanding, or the advice did not seem to be right, I then said, "Now that you have checked you will mention this to the Court?" and I naturally assumed that this would be one of the first matters - the information I had given to the Sergeant that morning on his checking with me - I naturally thought that this would be one of the first matters that he would mention to your Honour.

Apart from what he told me I had no knowledge that morning of what was said in this Court. I did not see the transcript of the proceedings until, of course, the next day. However, I did have a little doubt as to what - I had some doubt as to some of the things that Sergeant Anderson had said, and I thought that there might be some confusion and I took the opportunity almost immediately to ring your Honour's Associate and I inquires of your Honour's Associate whether your Honour had expressed the desire that I should appear in the matter and

whether your Honour - more or less in the words I used - whether there was some need, or whether your Honour desired me to appear, and I was informed, on behalf of your Honour, that I might please myself.

Now, your Honour, I was not worried at all about whether there was an obligation or whether I was bound to appear, because I was only too anxious to appear, but at that stage I was assuming, to begin with, that Sergeant Anderson, having told me that he was sent over here to check with the advice I had given to him, would come to this Court when given the opportunity, as appears from the transcript, to say whether he had seen me, and would say to begin with, or at some relevant point, that that was the effect of my advice.

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Having said that, may I point this out, further to what I have said, that when I appeared in this Court on the last occasion, which was the first time, on 15th February, and made various submissions I was personally instructed by the Commissioner of Police to represent him, and, incidentally, Sergeant Anderson as well, but I was personally instructed on behalf of the Commissioner, and the Commissioner knew that, subject only to the submissions which I made to this Court concerning the generality of the subpoena, the Commissioner knew that that was the only objection that was being made to any of the documents, and the Commissioner had personal knowledge of this. I said to the Commissioner himself, and to Sergeant Anderson, that, having advised them to get all the documents together - I advised them this on the evening of the previous day - to collate all the documents and duplicate them and index them and have them copied, and all of this was done. Having advised them that, I said to the Commissioner, and I said to Sergeant Anderson, "May I now then assure the Court that there are no other documents?" and I was told quite categorically that all the documents are now produced and there are no other documents.

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Now, following that, a week later I reported on behalf of the Crown Solicitor in a lengthy letter to the Commissioner on 22nd February, 1968. I wrote to the Commissioner reporting what had transpired in the Court and what had been done on the 15th February, and may I read a paragraph from p.3 of that letter, where I said this:

"The present proceedings have now been further adjourned until 27th inst. when your officers, as I assume from what the plaintiff's counsel has said, will be further cross-examined regarding documents which it is being alleged the police have failed to produce. However, as your officers have already indicated to the Court that all documents in question have been produced, and that they know of no further documents, in these circumstances, and as all the necessary legal production has already taken place, and having regard to the assurance given both to the Court and to my officer that all the documents have now been produced, I do not think that your officers ought to have any

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misapprehension about any further cross-examination by the plaintiff's counsel."

I don't know if your Honour wants me to tender that? I will tender that letter, dated 22nd February.

HIS HONOUR: I am quite content with your reading of it, unless you would like me to see it.

MR. FORBES: Further to that, I was on leave in May of this year when a further subpoena, as your Honour may recall, was issued. A further subpoena issued out of this Court on 9th May, and that subpoena combined, as it were, the terms of the two earlier subpoenas and also, if I recall rightly, added a request - a direction - for the production of some further documents, also combining verbatim the terms of the two earlier subpoenas. On that occasion during my leave another officer of the Crown Solicitor named Mr. Grannell was consulted by Sergeant Anderson regarding the production of further documents, which were produced, and I can only say that I would have expected that when a new subpoena is issued there would have been some mention made, in my absence, to Mr. Grannell that this one document - this affidavit which was the subject of discussion in this Court last Tuesday - had not been produced; that I allegedly advised Sgt. Anderson not to produce the document for some reason or other, and that Mr. Grannell, who was then being consulted, would have been given this information in any event. But I am informed and instructed that nothing was said about any such document on that occasion, and I need hardly remind the Court that in the proceedings on 15th February last when I appeared, it appears from the transcript, on p.16, that all the police officers in question, including Const. Follington, who is the officer who is now said to have had access or custody of this affidavit document, were all asked whether there were any further documents and had they produced the whole of the documents, and they all said, including Const. Follington, that they were the whole of the documents and that they had all been produced. One would have expected, if I had given certain advice - and there was no mystery about it - one would have expected that the Court would have been told "Except this one document" which I advised ought not to be produced. But nothing like that was said at all. An unreserved statement was made that the whole of the documents had been produced.

This is very briefly the position, and when one looks at the transcript of the proceedings on 17th September - last Tuesday - I suggest to your Honour, having regard to what I have now said, that there is room for reading some confusion, as it were, into the Sergeant's mind. When your Honour asked him at p.1367, your Honour specifically and clearly put to him why hadn't he produced this document, and on that page, just above the middle of the page, your Honour asked:

"Q. What reason were you told when you were given this advice that it should not be produced to the Court? A. That it did not come

within the specific terms of the subpoena. There was quite some argument put forward by Mr. Forbes on the 15th February and a lot of it related to the terms of the subpoena, and a number of other things involved in that."

I don't know what the Sergeant is referring to. Is he referring to argument in this Court? There was very little argument in the office that morning.

Further down on the same page there is a further question by your Honour:-

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"Q. Why did you understand that this affidavit of the 10th February could properly be withheld? A. It was put to me - I just put the matter to Mr. Forbes, it was fairly brief, and he said that in view of the terms - this is from my recollection of it - he said that in view of the terms of the subpoena and what is contained in the affidavit he did not consider it fell within the subpoena"

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Further down on the same page, your Honour asked the following question:-

"Q. Yes, but I am concerned that, having sought your assistance in general terms on the 9th February, Mr. Forbes took it upon himself to give advice which frustrated the request I had made to you for assistance, and which necessarily creates an atmosphere of suspicion? A. I might add, your Honour, there was quite a lot discussed with Mr. Forbes on that particular morning prior to coming before the Court. A lot was discussed at length, and some things were discussed very shortly and I cannot add any more to it than that."

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Well, furthermore, when one reads the transcript, it has been said that this document did not come into the possession of Sgt. Anderson until that morning - until that morning - and there is no suggestion, if I ever saw it, that I saw it before that morning, and surely if that was the only document which was being withheld on the basis of some legal advice, in the course of the many things I submitted on that day in this Court I would have mentioned this document. However, that is the way it was left, and that is the way it was put, and finally, just one other little straw, as it were, in the wind: This affidavit is an extracurial affidavit, and as soon as I saw this affidavit, when it was shown to me for the first time last Tuesday, I said to Sgt. Anderson, "This is an extracurial affidavit." He did not understand what was implied in that, and I explained that to him, and this would have been the very first thing that would have struck me about the affidavit, and there was no suggestion by Sgt. Anderson that I had ever told him before in regard to the position under s.20 of the Oaths Act in relation to an extracurial affidavit.

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If there was any misunderstanding on my part I quite unreservedly and sincerely apologise to

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the Court. It was only, as I have said, that I had reason to believe all along from what I was told that Sgt. Anderson would explain the position as far as I was concerned to the Court, and I did not know that he did not do so. In order to clear up whether he needed any representation I rang your Honour's Associate and, speaking personally, I could not see in the circumstances that I could represent him or what I was going to represent him about, but if the Court wanted my assistance to assist the Court, as I am trying to do now, then I would have done that at any time, because I am only a few minutes from here, and in any event I would be only too pleased to do so. That is the position your Honour.

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HIS HONOUR: Mr. Forbes, I am grateful to you for that explanation and account of what took place. It does seem to be quite clear that there was a misunderstanding last week in Sgt. Anderson's mind as to what was the reason why I commended him to consult you during the morning, and that he may well not have understood himself. At all events, it is quite clear that there was a misunderstanding last week, and I should say at once that I do not regard it as in the slightest degree any discourtesy to the Court that you were not here last week. But, going back to the more significant matter, that is to say the non-production of the document on 15th February of this year, the evidence is that it came to Sgt. Anderson on the 14th or on the morning of the 15th February. He was somewhat vague, as you pointed out, in his evidence about his recollection of having sought your advice on this document. I accept without reservation what you have told me this morning, and it is quite apparent that your attention was not in fact drawn to this document, nor did you specifically advise him to withhold it. At the same time I am quite clear, from having seen Sgt. Anderson in the witness box last week, that he is under the impression that he had been so advised. No doubt in the haste of the last-minute discussions on the morning of 15th February he erroneously gained the impression that he had been given some advice about it. I am quite satisfied that he was completely bona fide in his belief, but it is quite clear, from what you have told me, that his belief was due to a misunderstanding on his part.

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I am appreciative of your explanation for the reason that this Court has become accustomed to having the unreserved assistance of the Crown Law authorities in any of these problems and I am relieved to find that that assistance was given in full measure in this case. The impression I gained that for some reason or other the document was being withheld has now been explained away by what you have put to me, and that removes the impression that I had, that the assistance I had hoped to receive was being withheld by the Crown Law office. It does seem that the whole matter originated in a misunderstanding on 15th February on Sergeant Anderson's part - but I reiterate I accept it as a bona fide misunderstanding - and then there was a misunderstanding heaped upon that last Tuesday when it was not made clear that I was concerned to investigate whether a document had been withheld on

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advice, and, if so, the reason for the advice. But in the light of what you tell me, and which I accept, it does not seem to me that anything further need be said. I am grateful to you for having explained the matter from your point of view, Mr. Forbes.

MR. FORBES: Your Honour is aware, if I might mention this in passing finally - your Honour is aware that your Honour's remarks last week were given very wide publicity in the press. Even a couple of days after the event in one instance things I was alleged to have said were quoted and, your Honour, speaking personally, this has been the subject of much discussion, and I have been asked all sorts of things about this matter. I say no more than that. 10

HIS HONOUR: The proceedings last Tuesday were based upon evidence that Sgt. Anderson gave in the witness box last Tuesday, and the comments that I made were founded upon that evidence. It seems from what you say that Sgt. Anderson was mistaken or under a misapprehension in respect of some of the matters to which he deposed on Tuesday last. That misunderstanding having now been exposed, as I have said the matter which appeared to me to be a regrettable withholding of assistance by the Crown Law Office turns out to be not the withholding of assistance at all; it turns out that Sergeant Anderson was under a misapprehension, so that, the evidence upon which my comments were based having been now explained, and my having now accepted the explanation, it follows that the comments themselves should not be regarded as casting any reflection whatever upon your conduct of the matter. 20 30

MR. FORBES: I did not come here this morning to cast any reflections, and I have not done so, on Sergeant Anderson. I have merely come to state specifically what I know to be - and as your Honour has described it - a misunderstanding or misapprehension of the position on the part of Sergeant Anderson. I say no more than that. 40

MR. GRUZMAN: With all respect, we on behalf of the plaintiff are not satisfied. This document was a document vital to the plaintiff's case. It was admittedly deliberately withheld. That is Sergeant Anderson's evidence - that he deliberately withheld that document; a document vital to our case.

HIS HONOUR: I will permit you - I think I should do this in fairness to Sergeant Anderson and in fairness to the plaintiff - I will permit you to question Sgt. Anderson further, if you wish, in the light of what Mr. Forbes has told me this morning. I would regard what Mr. Forbes has said from the Bar Table as a factual account in the sense of not being merely a submission or argumentative matter. There is no necessity for that to be put in terms of evidence. I accept that. 50

MR. GRUZMAN: Yes, we are prepared to accept that.

HIS HONOUR: I accept what Mr. Forbes has put to me as a correct statement of the facts, but I think you should, if you wish, have an opportunity to 60

probe the matter further with Sgt. Anderson. I have expressly accepted that there was a misunderstanding on Sgt. Anderson's part. That was a consequence of my accepting him as having done his best to assist the Court last Tuesday. If you want to re-open that and probe it further with him I think I should permit you to do so.

MR. GRUZMAN: We desire to take that course, and the other question which arises is this; this was a matter apparently brought directly and expressly to the attention of Mr. Allan, the Commissioner.

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HIS HONOUR: Not this aspect.

MR. GRUZMAN: Yes, with respect.

HIS HONOUR: This affidavit document was not known to Mr. Forbes, and obviously he could not have sought the Commissioner's instructions on it. There is no suggestion that the Commissioner knew of this document.

MR. GRUZMAN: The Commissioner was aware of what was proceeding. The Commissioner apparently was personally advised by Mr. Forbes that all documents should be produced and this document which, in a sense, is a vital document, was handed back to Const. Follington apparently and deliberately - and I use the words of Sgt. Anderson - deliberately knowledge of the existence of the document was withheld from the Court. This is a most serious matter.

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HIS HONOUR: I will permit you to probe it with Sergeant Anderson, but I should re-iterate there is no basis whatever for suggesting that the Commissioner had any knowledge or inkling of the existence of this document. All that I know is what Mr. Forbes said this morning, that Mr. Forbes quite properly sought the Commissioner's instructions regarding the production of documents. As I understand it, the instructions were that everything ought to be produced and steps were taken to enable that to be done. There is not the slightest basis for anticipating that the Commissioner had any knowledge of the existence of this document. You may probe it further, but until there is some basis for it I do not think that ought to be suggested.

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MR. GRUZMAN: Would your Honour allow further cross-examination of Sgt. Anderson on this matter at 10 o'clock tomorrow morning? He is not present at Court.

HIS HONOUR: Yes. I don't want to get too far astray from the issue but, having opened this up, and as it does create a conflict regarding Sgt. Anderson's misunderstanding, I think I should permit you to pursue some further cross-examination but I do not intend to have this hearing diverted into an investigation in depth as to why this document was not produced.

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MR. GRUZMAN: We are only concerned for one reason. We say one document was destroyed. If

Sgt. Anderson gives evidence that he withheld a document on the advice of the Crown Solicitor that is the end of it, so far as any suggestion of misconduct on the part of the Police is concerned. When the Crown Solicitor says he did not give that advice it makes it an extremely serious matter to say the least of it, in the light of Sgt. Anderson's sworn evidence on the point. We do desire to take advantage of the opportunity given by your Honour.

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HIS HONOUR: As I have said, I will permit you to cross-examine Sgt. Anderson further on the voir dire on this aspect, but I am not going to have a great deal of time taken up on the voir dire examination. You may seek perhaps to re-open your cross-examination of Constable Follington as a witness in the suit. That is another matter altogether, and if you make such an application I will consider it on its merits. I will hear Mr. Staff on it. But Sgt. Anderson at the moment is not a witness in the suit.

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MR. GRUZMAN: Sgt. Anderson was called as a witness in the suit.

HIS HONOUR: But not on this aspect.

MR. GRUZMAN: On a different aspect. I did have in mind at a later stage tendering, as part of the evidence in the suit, the evidence on the voir dire.

HIS HONOUR: You are in a difficulty with Sgt. Anderson, because he is your witness in the suit.

MR. GRUZMAN: Perhaps we may deal with it tomorrow morning.

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HIS HONOUR: I will permit you to deal with this question that Mr. Forbes has dealt with from the Bar Table on the voir dire with Sgt. Anderson on this aspect but, as I say, I shall confine within fairly rigid limits the pursuit of this on the voir dire in the interests of one thing only, and that is in the interests of confining the hearing to the contest between the parties. I am not going to have time taken up following out every incidental aspect. Whether you further cross-examine Constable Follington I will rule on if and when you so apply.

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MR. GRUZMAN: There is one matter in the transcript on p.1376. I am quoted as saying, "I don't read the financial pages." Whether that be fact or not, I don't think that I said that. I think that that was an interjection by Mr. Hume.

HIS HONOUR: I think you were quoting what the witness said. I quoted it in the third person, and you, correctly, put it in the first person. I will not alter the transcript.

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(Philip Malouf & Co., called on subpoena duces tecum by Mr. Gruzman. John Bede Harrington, a partner in the firm, appeared in answer to the subpoena. Mr. Harrington produced a copy of the subpoena together with the document called for therein.)

MR. HARRINGTON: I am asked to claim privilege in respect of the document referred to in the subpoena.

HIS HONOUR: It is a legal professional privilege you claim?

MR. HARRINGTON: Yes.

HIS HONOUR: Mr. Harrington, who is the client on behalf of whom you claim privilege?

MR. HARRINGTON: None of the parties to the action.

HIS HONOUR: It is a document falling within the subpoena which is in the custody of your firm as solicitors to some other client? 10

MR. HARRINGTON: Yes. If I may answer your Honour more fully and categorise the matter, it is a report made by a third party after litigation in respect of evidence in respect of that litigation.

HIS HONOUR: I think at the moment the document should remain in Court, Mr. Harrington, and I will ultimately see what ought to be done in regard to it.

I note that you claim privilege, and I defer ruling on the privilege. The ground is that it is a report by a third party after the litigation had commenced? 20

MR. HARRINGTON: The litigation is still proceeding.

HIS HONOUR: Referable to the affairs of a client for whom your firm was acting in litigation?

MR. HARRINGTON: It was obtained in order to further his case, yes.

HIS HONOUR: Obtained by your firm?

MR. HARRINGTON: It is addressed to our firm, but was arranged by the client. 30

MR. GRUZMAN: Could I ask this - did the document concerned come into his possession from Frederick Hume, or Hume's Investigations?

MR. HARRINGTON: Yes.

(Mr. Harrington released.)

(Walker Gibbs & Donald called on subpoena duces tecum by Mr. Gruzman. Mr. D. J. Fisher appeared in answer to the subpoena and produced a copy of the subpoena together with the documents called for under the subpoena and a photostat copy of such documents. Mr. Fisher requested that the original documents be released and that the photostat copies be regarded as sufficient compliance with the subpoena. Mr. Fisher stated that there was no objection to counsel, other than Mr. Purvis, inspecting the documents so produced. Mr. Fisher released.) 40

(The Manager, Commonwealth Trading Bank, King's Cross, called on subpoena duces tecum. Irene Elizabeth Allen appeared in answer to the subpoena. Miss Allen produced a copy of the subpoena together with the documents called for under the subpoena. Miss Allen stated that there was no objection to the documents produced being made available for inspection. Released from further attendance.)

(Bank of New South Wales, William Street, called on subpoena duces tecum by Mr. Purvis. Mr. A. J. Keppo, an officer of the Bank, appeared in answer to the subpoena. Mr. Keppo produced a copy of the subpoena, together with the documents called for thereunder, and stated that there was no objection to the documents produced being inspected by the parties to the litigation. Released from further attendance.)

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FREDERICK HUME
On former oath:

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HIS HONOUR: Q. Mr. Hume, you are still on your previous oath to tell the truth? A. Yes, your Honour.

MR. GRUZMAN: Q. Mr. Hume, you told us some days ago that your knowledge of Vojinovic was limited to, I think, seeing him in the Sonata Coffee Lounge, seeing him around the Cross, and knowing something about transistor radios? A. That is right.

Q. You regarded him as a new starter? A. I did not regard him. I was told that he was a new starter by the people there. I was told that by the people there.

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Q. What I put to you is that in October 1966 you became aware of certain exploits of Mr. Vojinovic? A. No. What were the exploits?

Q. Were not you aware that he was involved in a gun fight with the Police? A. I am not even aware of it today. I can hardly believe it.

Q. You can hardly believe it? A. Yes, I am afraid so, yes.

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Q. He is not that sort of man? A. The way he appeared to me on the day I saw him in the Sonata - on the day I was with him in the Sonata I hardly believe that. I am still doubtful about that.

Q. Just look at this photograph, and tell me, first of all, is the man in the middle Vojinovic? A. Yes, it looks like Vojinovic.

Q. And he is in the act of being arrested in that photograph by two police, isn't he? (Objected to; question withdrawn.)

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Q. Have you seen a photograph like that before? A. No. They appear to be posing.

Q. They appear to be posing? A. Yes. I can't see any gun, either.

Q. You can't see any gun? A. That is right. There is no gun there.

Q. I suppose you read other pages of the newspaper apart from the financial pages, didn't you? (Objected to; allowed.)

Q. You read newspapers apart from financial pages, don't you? A. Yes.

Q. I am going to show you now the Daily Mirror of Thursday, October 27th, 1966? (Objected to; rejected.) 10

Q. I show you a document. Look at this document. A. That appears to be the same photograph.

Q. In size about what? Eight inches by six inches - published in the newspaper? (Objected to; rejected.)

Q. Just have a look at the document in front of you, and I will ask you to read to yourself the typescript under this heading (indicating). A. Yes.

Q. Will you agree, Mr. Hume, that to your knowledge in October 1966 Vojinovic was involved in a gun fight with the police? A. Not to my knowledge. I was not there. 20

Q. But you read that in the paper, didn't you? A. No, I did not read it in the paper. This is the first time I saw it. It is the first time here that I saw this photograph.

Q. No one ever told you about it? A. No. Why should they?

Q. Because Vojinovic was a man around the Cross known to you, wasn't he? A. He was known to me. 30

Q. You were aware that he was a man who would give the police a run for it? A. No.

Q. You were aware that he was a man who jumped through a plate glass window? A. No.

Q. Did you ever become aware that he was arrested by the police? A. No.

Q. Never? A. No, never.

Q. Never? A. All I knew of Vojinovic was what I told you, when I saw him in the Sonata. 40

Q. Did you know that in respect of a charge involving this gun fight he was on bail? A. No. I don't keep track of the people around the Cross, whether they are arrested or not.

Q. Were you aware that on 16th January 1967 he was to appear at Paddington Court to answer charges arising from this incident? A. No.

Q. You never became aware of that? A. No.

Q. And never became aware that he had skipped bail? A. No.

Q. But you are aware that he went to Melbourne?

A. Later on, yes. When Snr. Const. Hammond rang up the first time, and the second time again, when they recovered the car.

Q. And that is the first you knew about it? A. Yes.

(Noted that Daily Mirror, 27th October 1966, p.29, was the copy of the newspaper shown to witness on p. 1396 of transcript.) 10

(Photograph shown to witness on p. 1396 of transcript m.f.i. 77.)

Q. Did you see Momo or Novak on 21st January 1967?

A. 21st January?

Q. 21st January 1967? A. I don't know.

Q. Will you just try and help? A. This is a day that you give me, and expect me to tell you whether I saw him on that particular day. I am not a computer. I can't tell you the date - 21st January. What is so important about 21st January? 20

Q. I am suggesting to you that you, over this period from 16th January when Vojinovic skipped bail, were well aware of Vojinovic's whereabouts?

A. (Objected to; rejected.)

Q. I suggest to you that during the first three weeks of January 1967 you were well aware of Vojinovic's whereabouts? A. No idea.

Q. And of Novak's whereabouts? A. Yes. From time to time when he used to call down to Riley Street of course I knew where he was. 30

Q. And you were actively working with Novak during that period, weren't you? A. Well, if he was doing some jobs, yes, he was actively working for me.

Q. So that during the first three weeks of January 1967, Novak was actively working for you? That is right, is it? A. I don't know. It would be in the books if he was working or not.

Q. Irrespective of what appears in the books, you are not prepared to deny on your oath, are you, that during the first three weeks of January 1967, Novak was working for you? A. If it is in the books he was working for me, because he was being paid for it. 40

Q. Have you no memory for any events which occurred round about that time? A. What is there to remember about that time or any other time?

Q. So that you can't remember anything particularly that occurred at that time? A. No.

Q. Not unless someone tells you to say so in Court? 50

Q. No one tells me what to say in Court, Mr. Gruzman. I am not a puppet.

Q. So that the position is that you cannot tell his Honour of anything specific that occurred during January 1967? A. On the second week in January I was at Jack Murray's shack, if that is what you mean. That was a big occasion for me.

Q. That is the only event you can remember?

A. Yes, because that was a big occasion for me. I liked going over there. 10

Q. Will you look at this document I show you and tell me whether that is a document prepared by you? Without reading it, do you know whether that document was prepared by you or not? A. I don't know whether it was prepared by me.

Q. You don't know? A. By my office. I suppose Miss Catt would have typed it out. I would not have typed it out.

Q. Do you recognise it as a document emanating from your office, or not? A. Yes. 20

Q. Addressed to Messrs. Walker, Gibbs & Donald?
A. Yes.

Q. It is a report taken from the diary of Frederick Hume, Licensed Private Inquiry Agent, is that correct?
A. Yes.

Q. Is this a copy of what appeared in your diary?
A. Yes, it would be.

Q. On Saturday - is this the fact, that on Saturday, 21st January 1967, at approximately 1 a.m., you arrived at 130 Union Street, Erskineville, where you were joined by a man, an agent, and a friend of that man, Michael Novak? A. Yes. 30

Q. Then there was a divorce raid at that time?
A. No, there was no divorce raid. There was no co-respondent in the place.

Q. No co-respondent? A. No, there was no co-respondent. You need a co-respondent for a divorce raid.

Q. Did you ask someone, "Do you admit committing adultery with him?" and did that person answer "Yes, of course"? A. There was still no co-respondent there. I asked the woman, but the whole thing is of no relevance - no relevant evidence - because there was no co-respondent. He was not there. 40

Q. Was it intended to be a divorce raid? A. It was intended, yes, but it was not.

Q. You entered the premises at five past one in the morning? A. Yes, if it says so. I would not remember the time. 50

Q. As part of the procedure of conducting a divorce raid? A. Yes.

(Document shown to witness m.f.i. 78.)

Q. Mr. Hume, did you give this evidence at p.1312 in connection with a question as to whether you were carrying a gun in Queensland? Did you say something about being licensed, and were you asked: "Q. You are not licensed up there to carry a gun? A. No, I am not. There is another thing. In Queensland I do not wear a coat, I go around in an open-necked shirt and shorts and you cannot have a gun on you with shorts and an open-necked shirt because where would you put it, and if you saw my gun - it is about that size" (and you indicated) "so where would I put it?" A. That is right.

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Q. Do you remember giving that evidence? A. That is right.

Q. You indicated a size about 16 inches long? A. No, I did not. I indicated a size. I didn't measure it.

Q. Is this the evidence that was given? I put it to you "Q. You indicated a size about 16 inches long? A. Yes. Do you know how a Walther PPK looks? Q. Yes. How many millimetres is it? A. Nine millimetres. Q. Not a very big gun, is it? A. It is a very big gun, it is one of the biggest and probably the most powerful. I will bring it for you."

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By the way, have you brought it? A. No, I have not brought it. I believe Mr. Grant might have it in his possession.

MR. GRUZMAN: If the gun is in Court I would call for it. I call for Mr. Hume's gun. (Produced.)

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Q. Take this pistol. A. Yes.

Q. Is that the pistol that you say you had in Queensland? A. I did not have any pistol in Queensland, Mr. Gruzman.

Q. Is that the pistol that you owned at the time that you were in Queensland? A. I would not know.

Q. Oh, Mr. Hume? A. I would not know what pistol. I only had two pistols in my history as a private eye. I don't know whether it was that one or the other one.

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Q. Don't play with it. A. I am trying to point out something to you.

Q. Just close the pistol up and place it on the table in front of you and take your hands off it. A. Yes.

Q. You see, you told his Honour that you had a large gun at the time that you were in Queensland, didn't you? A. No, I did not say that.

Q. You didn't say that? A. I said I did not have a gun when I was in Queensland.

50

Q. You said that the gun that you owned was such a large gun that you could not have concealed it in Queensland, didn't you? (Objected to; allowed.)

HIS HONOUR: Q. You said something to that effect.

A. I think there was talk about revolvers or pistols at the time, and I said that I have not owned a revolver.

MR. GRUZMAN: Q. Mr. Hume, did you say this: "There is another thing. In Queensland I do not wear a coat, I go around in an open-necked shirt and shorts and you cannot have a gun on you with shorts and an open-necked shirt because where would you put it, and if you saw my gun - it is about that size" - and you indicated a size - "so where would I put it?" Do you remember saying that? A. (Witness nods.)

10

Q. You answer "Yes"? A. Yes.

Q. And you then indicated the length of the pistol as some 16 inches, didn't you, in the witness box?

A. I don't think so.

20

Q. I put to you, "Q. You indicated a size about 16 inches long?" and you answered "Yes. Do you know how a Walther PPK looks?" Do you remember that?

A. Yes. I think I remember it, yes.

Q. Then you indicated again another distance, and I put to you "Q. That is 11 inches? A. That is about the size of the gun and it is also very wide and it is impossible to have it on you unless you have a coat and even then it would be bulging, which it does." Do you remember that? A. Yes.

Q. What you were telling his Honour was that it was impossible for you to have carried this gun?

30

A. Or any other gun.

Q. Just a moment, Mr. Hume. What you were telling his Honour was that it was impossible for you to have carried your gun in Queensland because your gun was a very large gun. Is that true or false? A. Any gun, Mr. Gruzman, because unless it is a little toy you cannot just put it in a pocket. There is no gun that small unless it is a lady's gun.

Q. You told his Honour a pack of lies about this gun, didn't you? A. I did not.

40

Q. This is the gun you owned in Queensland - this is the gun you owned at the time you were in Queensland in July 1966, isn't it? A. I don't know what gun I owned in July 1966. I only had two guns - this one and a Browning. The Browning I had before this one. It is a .32 Browning.

Q. This weapon I now hold up in Court is the gun which you owned, and the only gun which you officially owned in July 1966, wasn't it? A. I don't know. I would not know. But, Mr. Gruzman, even this gun you cannot put in a pocket.

50

Q. Will you answer the question? The gun which

I have now shown you - the Browning .32 - is the only gun which you legally owned in July 1966, is that right? (Objected to; rejected.)

Q. Mr. Hume, the weapon which I now show you - the Browning .32 - is the only gun which you owned in July 1966, wasn't it? A. I don't know. It could have been, or not. I don't know exactly what date I changed. It was not a big occasion in my life.

10

Q. You say you have only ever owned two guns in your life? A. Yes, that is right. That is why should it be such a big occasion? Why should it be a date to remember? I would not have any idea of the date. I would not know what month, what day or what year I changed the gun.

Q. You gave sworn evidence about when you changed the gun? A. No, I did not.

Q. Didn't you? Didn't I ask you? A. We only just brought it up in the last three minutes about changing the gun.

20

Q. Didn't I ask you when you bought that gun - and you were then talking about the large gun? A. Yes, you asked when I bought the gun and I said "Two or three years ago".

Q. Two or three years ago? A. Yes.

Q. So you were trying to pretend to the Court that you had bought a large gun before the July 1966 visit to Queensland, weren't you? A. No, I was not, because I don't carry a gun up there. It was a matter of the gun I had in Sydney - I didn't have a gun up there. There is no way you can carry a gun up there, not even that gun.

30

Q. You deliberately misled this Court by your evidence that your gun was a very large gun at the time you were in Queensland, didn't you? A. No, I didn't.

Q. Will you admit now that the only gun you had at the time you went to Queensland was the .32 Browning? A. I cannot admit or deny it. I don't know when I changed the gun, Mr. Gruzman.

40

Q. That is another lie, isn't it? A. No, it is not.

Q. Did you get an invoice when you changed the gun? A. Invoice?

Q. Yes. Did you get an invoice from the shop when you changed the gun? A. Yes, I would have got a receipt for paying the money for it, yes.

Q. (Approaching witness): Is this the invoice, the actual invoice that you received when you traded in the .32 Browning and got the Walther P38? A. Yes, that could be it.

50

Q. That is it? A. Yes.

Q. And that was done on 8th August 1967? A. In 1967. That is right.

Q. You paid \$130 for the Walther P38? (Objected to; allowed.)

Q. You paid \$130 for the Walther P38? A. Yes.

Q. And you received a trade-in allowance of \$20 on the .32 calibre Browning? A. That is right.

Q. Will you agree with me that the size of the Browning is overall along the barrel six inches, and overall over the butt approximately four inches? 10

HIS HONOUR: I think Mr. Hume should have a ruler if you are going to put figures to him. (Witness handed ruler.)

MR. GRUZMAN: Q. Mr. Hume, will you agree with me that the overall measurement along the barrel of the Browning is less than six inches? A. It is exactly -

Q. Less than six inches overall? A. About six inches. 20

Q. Will you agree that the overall measurement of the Browning - A. It is just on to six inches.

Q. Just on to six inches? A. Yes.

Q. And the overall measurement on the butt is approximately four inches? A. Yes, approximately four inches.

Q. And you swore here that the gun that you owned at the time you were in Queensland had a barrel length of $9\frac{1}{2}$ inches and a butt length of 9 inches, didn't you? (Objected to; rejected.) 30

Q. Did you swear this in connection with the pistol? I showed you a Walther PPK? A. Yes.

Q. Similar to the one you have mentioned? A. Yes.

Q. And you said, "That is nothing like my pistol. Even a blind man could see that. It is about three or four inches longer that way, and it is about three or four inches longer that way and the butt is about twice the size. Q. What you indicated was that it was three or four inches longer in the butt? A. Yes. Q. And you indicated that it was three or four inches longer in the barrel? A. That is right. It is about $9\frac{1}{2}$ inches that way and about 9 inches that way and about 6 inches - Q. You indicated it was about $9\frac{1}{2}$ inches long in the barrel? A. Yes. Q. And about $9\frac{1}{2}$ inches long - A. No, 9 inches long in the butt, with a big fat butt". A. Yes, it is a big fat butt, and it has got a long barrel. 40

Q. The pistol you owned when you were in Queensland was a miniature pistol compared to the one you described in your evidence, wasn't it? A. Mr. Gruzman, I don't know what pistol I owned at the time I was in Queensland.

Q. Do you still tell his Honour on your oath that you don't know what pistol you owned at the time you were in Queensland? A. Yes, most certainly.

Q. Have you any idea of what it means when you swear to tell the truth? A. Of course I have. 10

Q. Do you know that you can go to gaol for perjury?

HIS HONOUR: Mr. Gruzman, I think it is sufficient to underline the distinction between answers.

MR. GRUZMAN: Q. I will ask you once more, and I will not ask it again. Do you still tell the Court, having been shown your own invoice, that you do not know what pistol you owned at the time you went to Queensland in 1967? (Objected to; rejected.) 20

Q. I will show you again the invoice of 8th August 1967. You can keep it in front of you. Do you still tell this Court that you don't know what pistol you owned at the time you were in Surfer's Paradise in July 1966? A. Yes, I still inform the Court. According to this invoice, I must have owned the Browning, but then that is only this invoice, I don't keep that in my head. I would not know the date that I changed the pistol.

Q. So that is this the position, holding the invoice in your hand, as you are now -? A. If that is a correct invoice, I would have changed the pistol on 8.8.67. That is right. 30

Q. Will you now admit that in July 1966 when you went to Surfer's Paradise you owned a Browning .32 and not the other pistol? A. Yes, according to this document I would say I owned the Browning, yes.

HIS HONOUR: Q. Mr. Hume, disregarding the document - you are not being asked according to the document, you are being asked in September 1968 what pistol you had two years ago. That is, in July 1966. A. Yes. 40

Q. The suggestion is being put to you that it was about midway between now and July 1966, namely August 1967, that you acquired the Walther. What do you say to this suggestion? Are you unable to tell me whether you had the Browning or the Walther in July 1966? A. Well, I must have had the Browning. That is all I can say. I must have had the Browning. 50

MR. GRUZMAN: Q. And the Browning is a weapon that you can easily conceal, isn't it? A. No, it is not. You can't conceal that. Would you like me to demonstrate it? I have got my trousers here.

Where would you put it? I will take off my coat, and if you cannot see the pistol on me you have got very bad eyesight.

Q. The pistol was not only visible, but you showed it to Mr. Barton, didn't you? A. No.

Q. You told Mr. Barton that you would use it?

A. No, I did not. I never had anything up in Queensland with me. I don't carry a gun up in Queensland.

10

Q. You realise, Mr. Hume, that the evidence that you gave just could not have added up with Mr. Barton seeing a comparatively small gun, don't you? A. Mr. Barton could not have seen anything because he said I had a revolver, and this is a pistol. Both of these are pistols, and he said I had a revolver. Mr. Barton must have a great sense of imagination.

Q. You carried that Browning .32 pistol in a shoulder holster under your arm? A. I did not, no.

Q. Did you own a shoulder holster? A. Yes, of course I did. How else are you going to carry a gun?

20

Q. You do own a shoulder holster? A. Yes.

Q. And you carry a shoulder holster so that you can carry a weapon concealed, don't you? A. You have to wear a shoulder holster or a gun of any of these sizes. There is no other way.

Q. And the purpose of that is so that you can carry the weapon in a concealed position? A. Yes, but you need a coat to wear a shoulder holster.

Q. You were wearing a coat? A. No, I was not. I was with the workers on the Island. I was not wearing a coat - I would look out of place.

30

Q. You wore a coat in July 1966 - mid-winter - didn't you? A. No, I would not have worn it in Queensland in Surfer's Paradise. You look out of place when you are wearing a coat.

(Invoice, Mick Simmons Ltd., 8.8.67, tendered and admitted as Exhibit "EE".)

HIS HONOUR: The measurements in regard to the Browning are on record. I will note in regard to the Walther P38 9 mm. - counsel can indicate after the adjournment if they do not concur in these measurements - that it is $8\frac{1}{2}$ inches overall along the barrel, $5\frac{3}{8}$ inches overall from the bottom of the butt to the top of the back sight, and the hand grip can be described as significantly more bulky on the Walther than on the Browning.

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(Short adjournment.)

MR. GRUZMAN: Q. Mr. Hume, I am going to ask you now a series of very serious questions. Do you understand? A. All the questions are serious, Mr. Gruzman.

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Q. I want you to carefully - most carefully - consider your answer to each of these questions? A. Yes.

Q. Have you ever watched Mr. Barton's home? A. No, never.

Q. Has anybody ever asked you to watch Mr. Barton's home? A. No, no one has ever asked me to watch Mr. Barton's home.

Q. Are you completely sure of that? A. Positive about that. 10

Q. There is no possibility of any mistake? A. No possibility.

Q. Do you know where Mr. Barton lives? A. No. It is easy to find out, of course.

Q. But you in fact don't know? A. No, not off-hand. I would not know off hand.

Q. Has anybody ever told you where Mr. Barton lives? A. No, I believe Mr. Hoggett once gave me the telephone number because ~~at that time when there was this bit about the tape recorder -- lending the tape recorder -- Mr. Hoggett came back with the tape recorder and he kept the casket -- and he told me Mr. Barton was well aware that he was being taped and that Mr. Barton told him I have been working for him all the time and that I am in the employ of Mr. Barton -- Mr. Hoggett was most upset -- He told me what Mr. Barton told him, and I told him, "But this is not true".~~ 20

HIS HONOUR: Mr. Gruzman, you are not bound to accept this. 30

MR. GRUZMAN: I ask that it be struck out.

(By direction portion of the preceding answer struck out as indicated.)

HIS HONOUR: Mr. Hume, a lot of the difficulty in getting your evidence down comes from your tendency to run on in your answers. The whole of the difficulty regarding the size of the pistol came from something you volunteered which was not a necessary answer to the question at all. In your own interests you would be much better advised to listen to the question and answer it. 40

MR. GRUZMAN: Q. By the way, when did this incident with the tape recorder take place? A. December 1966, I believe, or late in December 1966.

Q. And you regarded that as a job which you did against Mr. Barton? A. I regarded this as a favour for Mr. Hoggett. He wanted a tape recorder. I did not regard it as anything against Mr. Barton. Maybe Mr. Barton regarded it as that. I did not. 50

Q. Did you swear this: "The only job that I did

which was against Mr. Barton was to lend a tape recorder to a man"? A. Yes, I swore that.

Q. So that you regarded yourself in December 1966 as doing something against Mr. Barton, didn't you?

A. Well, that could be in his mind. I don't know whether it was against him. I lent the tape recorder to Mr. Hoggett.

Q. Did you swear that the only job that you did which was against Mr. Barton was to lend this tape recorder? A. That is right.

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Q. In your mind at that time were you doing something against Mr. Barton? A. Well, according to the evidence that Mr. Hoggett told me he got ---

Q. At the time that you lent the tape recorder were you doing something which you regarded as against Mr. Barton? Yes or No. A. Yes, I suppose it could have been.

Q. You bought the tape recorder especially for the job, didn't you? A. I don't know whether it was especially for the job. I bought the tape recorder because I didn't have a tape recorder and on this particular job it had to be a small one, and easy to operate for a novice.

20

Q. Who provided the money for the tape recorder? A. I did.

Q. Out of your cheque account? A. I would not know.

Q. Paid for it by cash, didn't you? A. Yes, probably.

Q. Is this the invoice under which you bought this tape recorder? A. Yes, I believe that would be the invoice, yes.

30

Q. You agree you bought the tape recorder on 14th December 1966? A. That is right.

Q. And you paid approximately \$75 cash for it? A. Yes, that is right.

Q. And that was for a job which you regarded as being against Mr. Barton? A. It was a job - it was a job to me at that time. Mr. Hoggett asked me for a tape recorder.

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Q. It was for a job which you regarded as being against Mr. Barton, wasn't it? Yes or no? A. It was a job for Mr. Hoggett.

Q. It was a job which you regarded as being against Mr. Barton? A. I did not know at the time that (sic) the evidence was going to be favourable or not.

Q. Do we have to go through it again? You have already sworn that you regarded this job as being

against Mr. Barton? A. Later on when I found out what it was all about, yes - what Mr. Barton said, and what was recorded, yes, I did.

Q. Who gave you the \$75? A. Nobody. I bought it.

Q. You could not afford \$75 at that time? A. I am sorry, I could afford \$75. If I needed money I asked my father and he would lend it to me.

Q. Your father gave you \$75? A. No, I probably had that money. Why should he have to give me \$75? 10

(Invoice for tape recorder, 14.12.66, tendered and admitted as Exhibit "FF".)

Q. Mr. Hume, I want to get this perfectly clear so that there is no room for misunderstanding? A. Yes.

Q. What you have told us up to the present is that nobody has ever told you Mr. Barton's address; that Mr. Hoggett in December 1966 told you his 'phone number? A. Yes.

Q. And that is the whole of your knowledge of where Mr. Barton lives, is it? A. That is right. 20

Q. What about Mr. Barton's motor cars? Has anybody ever told you the makes or numbers of Mr. Barton's motor cars? A. No. I only saw Mr. Barton in one motor car. That was in a Mercedes Benz. He was driving up William Street.

MR. GRUZMAN: Q. When was that? A. I could not tell you the date. It was a long time ago. I suppose about a year or something.

Q. About a year takes us back to about when - September of 1967? A. Well, I could be wrong for a few months. I think it was about a year. 30

Q. About a year? A. Yes. I am only guessing that.

Q. Well, certainly do you say that prior to January 1967 nobody had ever told you the make or number of any motor car owned by Mr. Barton? A. No.

HIS HONOUR: Q. That is what you say, is it? A. Yes. I would not remember that, your Honour. I don't know why anybody would mention a number of Mr. Barton's motor car to me. 40

MR. GRUZMAN: Q. Let us get it perfectly clear, Mr. Hume, and I warn you these are serious questions. A. Yes.

Q. Do you tell his Honour that prior to, shall we say, the middle of 1967 nobody had ever told you the make or number of any motor car which Mr. Barton drove? A. I do not remember anybody telling me anything about Mr. Barton's motor car. I only saw Mr. Barton in one motor car, and that was a Mercedes Benz and he was accompanied by two elderly ladies and another elderly gentleman, and that was 50

approximately a year ago. That was the only motor car I ever saw Mr. Barton in.

Q. Have you ever had any occasion to ascertain from any source Mr. Barton's address? A. No. I told you that the only time would have been when Mr. Hoggett was there because I was very angry for what Mr. Barton said, that I was working with him, because it would appear as if I was working for both sides. I lent Mr. Hoggett the tape recorder and Mr. Barton told him I was working for him, so that is what made me very angry. 10

Q. Do you say that in December 1966 you did or you did not ascertain Mr. Barton's address? A. I would have asked Mr. Hoggett "Where can I get in touch with Mr. Barton to clarify that I am not working with him?" That made me very angry.

Q. Well, being angry with Mr. Barton in December, 1966, did you try to communicate with him? A. I would have thought of communicating, but I did not. 20

Q. You told us before that Mr. Hoggett told you Mr. Barton's 'phone number, did you not? A. 'Phone number, and told me how I could get in touch with him. He said, "He is in the telephone book".

Q. Did you look up Mr. Barton's address? A. I would not remember that.

Q. But you understand, Mr. Hume, that here in this Court it is being suggested that you were a party to a conspiracy to murder Mr. Barton? A. Yes.

Q. And that this came to fruition on the weekend of 6th/7th January 1967. Do you understand that? (Objected to; rejected.) 30

Q. I will put it to you this way: You know that there is a suggestion being made in this Court that you were a party to a conspiracy to at least terrorise Mr. Barton? You know that suggestion is being made? A. Yes, I was told that by Sgt. Wild on the 18th.

Q. And you know that something happened with Vojinovic on the weekend of 6th/7th January 1967? A. I know that something happened - what happened? 40

Q. Don't you know that Vojinovic threatened, or told Mr. Barton about these threats on the weekend of 6/7th January 1967? A. I would not know. I was not there. If you are going by the papers, yes, there must have been something about it.

Q. I am warning you again to be careful in respect of your answers to questions around this date. Do you understand that? A. Yes. Which date is that?

Q. I am asking you now whether in December 1966 you ascertained Mr. Barton's address from any source? A. Whether I ascertained Mr. Barton's address in December? 50

Q. Yes, 1966. A. No, only what Mr. Hoggett told me, that is all.

Q. And all that Mr. Hoggett told you was his 'phone number? A. He told me the 'phone number and he said, "You can find him in the telephone book if you want to go and see him about that. You can find him in the 'phone book."

Q. But you never did look up his address in the telephone book? A. I don't know whether I did or not.

Q. Do you think you might have? A. Yes, I would say, probably, "I will probably go and see him over that, saying I was working with him, and I wasn't." It is a terrible thing to say to somebody that a man is working for him and he is working for the other person too. 10

Q. You regarded the accusation as an accusation that you had double-crossed Hoggett? A. Well, I regarded this as a terrible accusation because that means that you are working for both sides. You know how bad this accusation is. You probably remember the Miss Patricia Miller case when she was saying the same thing. 20

Q. You regarded yourself as being charged with double-crossing? A. I don't know whether it is double-crossing, but it is something that is very unethical and it is something that should never be done, working for two sides at the same time.

Q. Well, did you go out to see Mr. Barton's place?
A. No, I did not.

Q. (Approaching witness.) I want to show you some photographs if I may. Do you recognise that as a photograph of Mr. Barton's home showing the station at some distance in front of it? A. I don't know Mr. Barton's home. 30

Q. But you knew the address, did you not? A. I don't know whether I knew the address. If I looked it up in the 'phone book I would have known that address.

Q. Did you write down the address? A. No, not to my knowledge. I never went to see Mr. Barton. 40

Q. Would you recognise that as the view looking from Mr. Barton's home out? A. I would not recognise it as anything. I have never been there. I have never been to Mr. Barton's house.

Q. Do you recognise that (shown) as another view of Mr. Barton's house? A. It is no use showing me these photographs. I have never been there. I have not been to Mr. Barton's house.

Q. So it is no use showing you any of these? A. No. 50

Q. You have never been there? A. No, I have not been there.

Q. Are you prepared to swear that you never wrote

down his address? A. I am not prepared to swear that. I don't know whether I wrote it down or not. I was angry at the time. I probably could have written it down but I never went to see Mr. Barton.

Q. Were you angry enough to watch him? A. No. Who was going to pay me for that?

Q. Mr. Armstrong? A. Why should he do that?

Q. You cannot work that one out? A. No, I can't work that one out. 10

Q. We have been dealing at the moment in a period of December of 1966? A. December 1966, yes. That is the time when Mr. Hoggett came over.

Q. Prior to that time, had you ever from any source ascertained Mr. Barton's address? A. No, only the office where he paid me the cheque.

Q. That is Landmark Office in Pitt Street? A. That is right, yes.

Q. So do we have it as absolutely certain and beyond any possible doubt that prior to December 1966 you never knew Mr. Barton's address? A. Yes, I think that would be. I don't think I would have known Mr. Barton's address. 20

Q. Well, Mr. Hume, you keep on adding these things, so I will ask you again: Do we have it as absolutely certain and beyond any possible doubt that prior to December 1966 you did not know Mr. Barton's address? A. Yes, I don't think I knew Mr. Barton's address prior to Mr. Hoggett, no. I wouldn't have bothered to, even. 30

Q. Do we have it as absolutely certain that prior to December 1966 you never wrote down anywhere Mr. Barton's address? A. Yes, I think that would be so.

Q. At any time have you been interested to know the makes and numbers of Mr. Barton's motor cars? A. No.

Q. Has anybody ever told you the make and number of the motor cars at any time? A. No. I saw him in a white Mercedes. That is the only one I saw Mr. Barton in. 40

Q. You see, if you were following someone or watching them you would want to know the make and number of their motor cars, would you not? A. Yes, if you were following and watching somebody you would.

Q. But you say that never at any time or for any reason have you watched or followed Mr. Barton? A. That is correct.

Q. So that apart from the Hoggett incident in December 1966, you had no interest whatever in knowing Mr. Barton's address? A. That is right. 50

Q. And never at any time have you had any interest in knowing the make or number of any motor car which Mr. Barton drove? A. That is right. Well, according to what I know is, he only drove the Mercedes because I only saw him in that.

Q. You have told us that your father gets the accounts? A. Yes, but they are here in Court.

Q. And what happens - you get invoices for petrol and such matters, out-of-pocket expenses? A. Yes. 10

Q. Would you tell his Honour how they get to your father? A. I give them to him.

Q. And how often does that happen? A. I would not know. Once every two or three months, or month. No specific time.

Q. There is no specific time? A. No.

Q. Are the receipts and vouchers which you get from day to day kept in any special place? A. No.

Q. Where do you keep them? A. Everywhere, all over the - like, in the office, put them in a drawer. Miss Catt handles that, I don't handle that. 20

Q. Do you sometimes keep them in your pocket? A. I don't know whether I keep them in my pocket. I hardly think so. They would be too many to keep in my pocket.

Q. I suppose if you get petrol while you are out on a job you put the docket in your pocket? A. Yes.

Q. And it would stay there for a few days or longer before you took it out and put it in the office? A. I wouldn't do that. 30

Q. Well, how long would it stay in your pocket? A. Well, I personally don't get any receipts. It is only the people who are working for me, they get receipts because I usually go to the same garage where I fill up and if by any chance I have to get it from a strange garage I do not bother to get a receipt for \$1, say.

Q. And after the receipts are brought to the office, they stay in a drawer there, do they? A. I do not know where they are put. I don't know - I suppose in a drawer, yes. 40

Q. By the way, do you know now the address of Mr. Barton? A. No, I don't know now the address of Mr. Barton.

Q. You do not know? A. No.

Q. Does it come as a surprise to you if I tell you the address is 137 Edinburgh Road, Castlecrag? A. It doesn't ring a bell in my mind at all. It does not mean a thing.

Q. You have never been there? A. No, I have never been there.

Q. You cannot recollect having anything whatsoever to do with that address? A. No.

Q. Would you write down for me, on this piece of paper which is handed to you, 187 Edinburgh Road, Castlecrag? A. Castle -?

Q. Do you find difficulty writing Castlecrag? You write it as two words, do you? A. No, no difficulty. 10

Q. Have you ever written that address before?
A. Not that I can remember. Maybe at the time when Mr. Hoggett was there, I don't know.

Q. Has anybody ever handed you a piece of paper on which is written that address? A. No, Mr. Hoggett did not hand me a piece of paper.

Q. So that there has never been in your possession any piece of paper on which is written that address?
A. No.

Q. Your docketts are put in envelopes, are they not? 20
A. That is right.

Q. (Approaching witness.) I have taken from the documents produced on subpoena this envelope headed "14th week 1966-67" (Shown). A. Yes, "14th week" - that is my father's handwriting.

Q. Covering the period from 26th September to 2nd October, 1966? A. Yes, that is right.

Q. That is what it says, is it not? A. Yes.

Q. You do not think your father told any lies when he wrote that, do you? A. No. 30

Q. I now take out the documents in it and I show you here an invoice from the Esso Service Centre, corner Pacific Highway and Duff Street, Turrumurra, dated 2nd October 1966, for \$2.20 worth of gas. Would you just look at the front of it for the moment? A. There has been some change with the month here.

Q. You think that the month which is written in pencil has been altered? You point to a thickening of the "1" in the figure "10"? A. No, there is something else there too, I think, if you have a look. 40

Q. You suspect the date of the invoice, do you?
A. I don't know. I usually have a round number when I ask for petrol. I ask for a round number you know, like \$3, \$2, \$1. I don't go for amounts like that.

Q. Are you prepared to deny that you got that petrol at that date? A. I don't think I did.

Q. Will you have a look at the writing in the invoice in ink - is that in your father's writing?

A. That is right.

Q. It says, "14th Week, 1966-67 Account No. 15 Motor Running Expenses"? A. Yes.

Q. And you would have no doubt, would you, that that invoice was one of the invoices of your business at about that time? A. Yes, that would be correct.

Q. And until it was brought to Court the document has been in the possession of your father and yourself? A. I don't know. Anybody who broke into the office could have taken anything out. 10

Q. You have now turned the document over without being asked to do so, but would you read out what is written on the back of the document? A. It is "187 Edinburgh Road, Castlecrag, North Sydney".

Q. Who wrote that A. I don't know. It appears to be my handwriting. It looks like that.

Q. You write Castle crag with two words, don't you? A. Yes. 20

Q. You wrote it in the document you wrote in the Court? A. Yes.

Q. And it appears the same way on the back of the invoice? A. Yes.

Q. There is no doubt at all that you wrote that address on the back of that invoice? A. Well, I could have, yes.

Q. Mr. Hume, there is no doubt whatever that you wrote that address on the back of that invoice, is there? A. Well, it appears to be my writing. I am not an expert in handwriting. I believe it is my handwriting. That is all I can say. 30

Q. What else is written there? A. "M.G. and White Mercedes 230", that is all.

Q. That is enough, isn't it? A. What is enough?

Q. You see, that constitutes your instructions to watch Mr. Barton, does it not? A. No, it does not.

Q. Will you offer any explanation that you like to his Honour as to how you came to write on the back of that invoice Mr. Barton's address, and a reference to his motor car? A. I have already said that before, at the time that Mr. Hoggett was there he told me where I could get in touch with Mr. Barton, and that is probably what I did - I took it out of the telephone book and wrote it down. Nothing sinister about this, Mr. Gruzman. 40

Q. Nothing sinister? A. Probably had I gone over there to see him I probably would have hit him after what he said. 50

Q. You probably would have hit him? A. Yes, I probably would have.

Q. Would you have shot him? A. I wouldn't have shot him but I probably would have hit him because of what he said.

Q. Do you mean you would have punched him? A. I was angry enough at the time.

Q. Would you have hit him with an iron bar? A. No, I would never hit anybody with an iron bar. 10

Q. But people hit you with an iron bar? A. That is their business.

Q. You would have hit Mr. Barton? A. I suppose at the time I would have been angry and if he said he said this, what he said, I probably would have hit him. That is probably why I didn't go over there.

Q. Do you think you might have broken his leg, or something like that? A. No, just angry for the moment, you know.

Q. Tell me, did you get the white Mercedes out of the 'phone book too? A. No, I probably would have asked Mr. Hoggett and he said "You'll see his white Mercedes there". 20

Q. Does it not look to you as though these were instructions to follow or watch Mr. Barton? A. No, it would not be. These instructions would be taken in a notebook. You wouldn't very well write instructions on the back of an Esso Service Station thing.

Q. But in October 1966 did you have a diary? A. I would have a notebook which is a book which I kept in my pocket and in which I wrote things down. 30

Q. Your instructions from people? A. My instructions - addresses, yes.

Q. Where is that book? A. Well, I don't know. Where it would be - after you are finished with the book, we just throw it away. What is the good of it? They are only unimportant notes in there.

Q. But you tell us these are your instructions from clients? A. Yes, but they are unimportant notes. When we finish the job we usually present it to the solicitors with a bill, or an invoice as you call it. 40

Q. Do I understand you to say that the instructions, or the writing contained on the back of that document arose from your interview with Mr. Hoggett? A. They are not instructions.

Q. Whatever the writing is you say it came into existence as a result of your interview with Mr. Hoggett? A. Yes, I believe so.

Q. Do you suggest that Mr. Hoggett told you to watch Mr. Barton? A. No. 50

Q. What is the reference to the M.G.? A. I have got no idea. That is probably my M.G.

Q. Does that mean you were going to watch him in the M.G.? A. No, that is my M.G. I don't know what reference it would be.

Q. Did Mr. Barton at that time have a Mercedes 230? A. I don't know if it was a Mercedes 230, 250, 270 or what it was. It was a white Mercedes. I saw him in a white Mercedes. 10

Q. What explanation can you offer to his Honour as to how you came to write some details in December 1966 on the back of an invoice dated 2nd October, 1966? A. Well, they were probably close by near the telephone and I had nothing else around there to write on so I wrote it on the back of this.

Q. But that invoice would have been in your father's possession by then, would it not? A. Who said that? I didn't say that.

Q. You might just give us your full explanation now and I will not stop you. Is this what you want to say, that you keep the invoices in the office for some months? A. Yes, quite possibly for more than some months. Sometimes five, six or seven months. I don't know how long it would be. 20

Q. And you keep them near the telephone? A. Yes. It was quite a cramped little office there and we had a lot of these receipts in boxes there.

Q. You say you used the back of the invoice as note paper? A. Well, it was an unimportant thing so I would not have to write it anywhere else and it was not a job, so why should I bother going to all the trouble? 30

Q. So let us get it clear. What you are positively swearing now is that what is written on the back of that docket was written after your interview with Hoggett in December 1966? A. Yes. Probably the same time when Mr. Hoggett was there or after the interview.

Q. It was certainly not written in October? A. No, certainly not written in October. 40

Q. And prior to your interview with Hoggett you never had any interest in Mr. Barton's home or his motor cars or anything else? A. Not prior or later on. Not before or after, no interest.

Q. That is a complete lie, isn't it, Mr. Hume? A. That is the whole truth, your Honour. I have never been to his place. I have never watched his place. I have never followed him and I am willing to go under any lie detectors, as I have said before. Your Honour, I am willing to go under any lie detector that is in this world, that I have never followed Mr. Barton. 50

Q. And never taken any note of his cars; that is what you said, was it not? A. I did not say that.

Q. You told us - A. According to this I have already taken a note of his car.

Q. But before I showed you that document you told us that neither you nor anyone else had told you anything about Mr. Barton's cars, did you not? A. I would not have remembered that.

Q. But it was a lie? A. No, it is not a lie. 10

Q. You see, you have been caught, have you not, by the document you wrote yourself? A. I have not been caught in anything.

Q. You cannot see it? A. No, I can't see it.

Q. Let us get this next point clear now. Your explanation for this document is related to Mr. Hoggett and it took place in December 1966; that is right?

A. Yes. I believe it took place at exactly the same time as Mr. Hoggett told me that.

Q. You have no doubt about it, have you? A. No doubt. 20

Q. And the fact that that it is written on an invoice dated in October is explained by the fact that these invoices remained in the office and you used them as note paper? A. That is right. They were around there and I picked up any piece of paper and I jotted down the address. It was nothing of great importance.

Q. (Approaching witness.) Let us now have a look. I will just put this on one side at the moment and I show you now this envelope. You will agree this is your father's writing? A. Yes. 30

Q. "15th week 1966-67, 3rd to 9th October 1966"? A. That is right.

Q. I open the envelope and I show you an invoice dated 6th October 1966? A. Yes.

Q. For Normanhurst Service Station, for Petrol for \$3.20, is that right? A. Yes.

Q. Was that petrol that you got? A. No.

Q. Well, who got it? A. I don't know. Somebody would have got it. 40

Q. Just leave it in my hand. Do you agree that your father has written on that invoice "15th week 1966-67 account No. 15 Motor running expenses"? A. Yes.

Q. There is no doubt that is one of your invoices, is there? A. Well, according to this, his handwriting, yes. It must be one of our invoices, that is right.

Q. Would you read out to his Honour what is written on the back of that document? A. Your Honour, that is not my writing. Whoever wrote this, he is having trouble writing.

Q. It is Novak's handwriting, is it not? A. I would not know Mr. Novak's handwriting.

Q. It is Novak's handwriting, isn't it? A. I don't know. It does not look like it.

Q. You are not prepared to deny that it is? A. 10
I don't know Mr. Novak's handwriting, seeing he never has to write any reports.

HIS HONOUR: Q. You said a moment ago it does not look like it? A. It doesn't look like it.

MR. GRUZMAN: Q. What his Honour is pointing out is how can you know what it looks like if you have never seen it? A. Well, I have seen some notes he has jotted down, and it does not look like it.

Q. You are not prepared to deny on oath that it is Mr. Novak's handwriting? A. I could not say whose 20
handwriting it was.

Q. You are not prepared to deny on oath that it is Mr. Novak's handwriting, are you? A. I can't say. I am not an expert and besides, I can't say whose writing that is.

Q. Will you now read out what is written on that document? (Objected to; question pressed; allowed.)
A. It has "Sunday".

Q. Come now, you are not having that much difficulty? A. I am having trouble here. 30

Q. "Sunday 9th October 6.30 p.m.", is that right?
A. "Sunday 9th October 6.30 p.m."

Q. "EAZ-654 Mercedes"? A. Yes.

Q. "DJY-211 Blue Valiant"? A. Yes.

Q. And then the letters "DNO"? A. But it appears to be written in two different handwritings, this. The one that is writing in here is an experienced writer and the one below is somebody who can't write at all and he is just scribbling it.

Q. So that we get it clearly on the record, the writing to which you refer as an experienced writer 40
comprises the words - do you mean the whole lot? A. No, this here, "EAZ" - it looks as if it has been written in in experienced handwriting.

Q. The experienced handwriting comprises "EAZ-654" Mercedes". Do you include the figures here? A. No, I would not. I would just say this part here.

Q. Only the "EAZ-654 Mercedes"? A. And this here possibly, too.

Q. And also "Blue Valiant", possibly in experienced handwriting? A. Yes, but this is definitely somebody scribbling. It is very bad handwriting.

Q. You are referring to the letters now "DJY-211"?
A. Yes.

Q. What about the "DNO" here? A. I don't know.

Q. You do not know about that? A. No.

Q. But certainly the letters and figures "DJY-211" are in an inexperienced handwriting? A. Definitely, definitely. 10

HIS HONOUR: Q. What about the date? Is that experienced handwriting or in which handwriting is that classified? A. It looks to be experienced again.

MR. GRUZMAN: Q. You say it looks to be experienced?
A. Yes.

Q. And the "6.30 p.m." - is that experienced? A. Yes.

Q. That is Novak's report of watching Mr. Barton on 9th October, is it not? A. No. Mr. Novak never had any instructions to watch Mr. Barton. 20

Q. Well, whom did you instruct? A. I beg your pardon?

Q. Who did you instruct? A. To watch Mr. Barton?

Q. Yes? A. No one.

Q. Are you aware that EAZ-654, a Mercedes, is Mr. Barton's motor car? A. No, I am not aware of that.

Q. Are you aware that DJY-211, a blue Valiant, is Mr. Barton's motor car? A. No, I am not aware of that either. 30

Q. What I put to you, to be accurate, is that EAZ-654 is a motor car owned by Landmark at the time and driven by Mr. Barton continuously? A. I would not know that.

(Two certificates of registered ownership under s.12 of the Motor Traffic Act tendered and marked Exhibit "GG".)

Q. You may assume that EAZ-654, a Mercedes, is a car owned by Landmark and driven by Mr. Barton, and that DJY-211, the blue Valiant is owned by Mr. Barton. (Objected to; rejected.) 40

Q. You appreciate that two certificates have been issued and tendered in evidence? (Objected to; question not pressed.)

Q. I pass two documents to you? (Exhibit "GG" shown to witness.) Would you just have a look at them and read them through yourself? A. Yes.

Q. You told us before that you were not aware that EAZ-654, the Mercedes, was owned by Landmark and driven by Mr. Barton? A. That is correct.

Q. Do you still adhere to that answer? A. I beg your pardon?

Q. Do you still swear that you are unaware as to who owns that car? A. Well now - (Objected to; allowed to put the actual fact, not as an assumption.)

Q. Will you agree that the Mercedes EAZ-654 was at that time owned by Landmark Corporation? (Objected to.) 10

HIS HONOUR: I think you are entitled to put questions to Mr. Hume specifically on the basis that the Mercedes was owned by Landmark Corporation, though that may not be what you need.

MR. GRUZMAN: Q. Can you offer any explanation as to why there - appears amongst your records a reference to EAZ-654, a Mercedes motor car? A. Where does it appear? 20

Q. (Approaching witness.) I will start again. I show you now again the invoice of, I think it is 6th October, 1966, with Normanhurst Service Station, and the writing on the back? A. Yes.

Q. Will you agree that amongst your records there appears a reference to EAZ-654, a Mercedes motor car? A. That could have been put in at any time, Mr. Gruzman.

Q. Will you agree that amongst your records there appears a reference to EAZ-654, a Mercedes Motor car; Yes or No? A. Well, that is not in my writing and I don't know when it was put there and I don't know by whom, so I could not say that among my records here, according to this, there is a reference to EAZ-654, a Mercedes, written in someone's handwriting, and it certainly is not in mine, and I can't tell you in who's handwriting it is. 30

Q. And there is also a reference to DJY-211, a Valiant, amongst your records, is there not? A. Yes, there is a DJY-211 written down here too. 40

Q. And the word "Valiant" after that number DJY-211? A. "Blue Valiant" up at the top, that is right.

Q. And in relation to that number, isn't it? A. I don't know in relation to what number. I do not know who wrote it and I can't tell you whose handwriting it is but it is an experienced handwriting.

Q. Are you swearing here that looking at that document from amongst your papers, you will not agree that DJY-211 appears to be the number of a Valiant, from that document? A. Would you mind repeating that? 50

Q. Are you telling the court that looking at that

document you will not agree that it appears from the document that DJY-211 is the number of a Valiant?

A. Yes, according to the certificate of the Motor Transport Department, DJY-211 is a number of a blue Valiant. Is it a Blue Valiant? It does not say here. It has "Chrysler" here, according to this - a Chrysler sedan.

Q. That was owned by Mr. Barton? A. Yes, according to this, it is owned by Mr. Barton, but that is already different. This is a Chrysler sedan and there you have a blue Valiant. 10

Q. And according to the document from your records there is a reference to DJY-211, a Valiant, is there not? A. According to what?

Q. According to the invoice which you are holding in your right hand, from your records, there is a reference on the back of that invoice to DJY-211, a Valiant, is there not? A. It says here it is a blue Valiant but I am still saying I cannot say in whose handwriting that is. It is nobody that I know. 20

Q. By the way, a Chrysler is a Valiant, is it not? (No answer.)

HIS HONOUR: I think it is the other way round.

MR. GRUZMAN: Q. Or a Valiant is a Chrysler? A. I think there are a number of Chryslers. There is a big one.

Q. The Valiant is one of the Chrysler family is it not? A. Well, I suppose the Valiant is one of the Chrysler family, yes. 30

Q. Would you turn and face his Honour, and what explanation do you give his Honour as to how that document which you are holding in your right hand comes to be in your possession? A. It is not in my possession. It is now in my possession.

Q. Are you suggesting that it never was in your possession? A. Well, I certainly have not seen the document before.

Q. Is that what you are swearing? A. Yes, I have not seen the document before. 40

Q. Do you think somebody must have planted it there? A. Well, I don't know. It looks like somebody wrote something on the back of that.

Q. What, to incriminate you? A. It could be.

Q. To frame you? A. I don't know what the reason is behind it, but it looks something like that.

Q. Who do you think would have done that? A. I have got no idea, but this is written quite well and Novak is not such a good writer, and it is not his handwriting. It does not look like it. 50

Q. Well, the best explanation that you can offer

to his Honour for the circumstance that that document came from the envelope produced to the court by you is that somebody planted it there? A. No, I can't say how it got there. I don't know who wrote this on the back of it.

Q. Mr. Hume, is the best explanation that you can offer as to how that document comes to be in one of your envelopes that somebody planted it there? A. I do not know how it got there.

10

Q. Well, is this the position, that you offer no explanation? A. No explanation. I have got no explanation. I don't know how it got there. This is the first time I have seen it.

Q. May I have the document please? A. Yes. (Handed to Mr. Gruzman.)

Q. You see, this looks like a report from an agent saying that on Sunday 9th October at 6.30 p.m. he observed these two motor cars, does it not? A. No, that does not look like a report from an agent. That would be a very poor report, scribbled on the back of a petrol bill and saying - what exactly does it say - it just puts down a couple of numbers. That is all it says. Some report.

20

Q. Well, I suppose if you wanted to follow a man it would be very important to find out the make and numbers of the cars he drives, would it not? A. Yes, that is right. I suppose that would be very important unless you knew the person.

Q. Well, of course you did not know Mr. Barton then, did you? A. I met Mr. Barton when I was up at the repossession of the machinery.

30

Q. At that stage you had met him twice in your life, had you not? A. Yes - the time when he paid me the cheque and the time when it was on the repossession of that machinery.

Q. So if you were going to follow him you had to know something about his motor cars, did you not? A. No. I would know Mr. Barton anywhere.

Q. What, from meeting him twice? A. He had got most outstanding features, and he wears a moustache. There are not too many people like Mr. Barton around. You would not have to see Mr. Barton more than twice to know him anywhere.

40

Q. So you are quite familiar with Mr. Barton's appearance? A. Of course I am.

Q. And in October 1966 were you familiar with his appearance? A. October -

Q. In October 1966 were you familiar with Mr. Barton's appearance? A. Yes, of course I was familiar. I had met him before on the island.

50

Q. And were you familiar with his cars then?

A. No, I was not familiar. I am still not familiar with his cars. You are just making me familiar now with his cars by presenting me with these certificates from the Motor Transport Department.

Q. (Approaching witness.) Let us now go back to the earlier invoice. You see, the information on the back of the first docket, dated 2nd October, 1966?

A. Yes.

Q. Which you wrote? A. That is right. It appears to be in my handwriting, yes. 10

Q. It is simply the address and then a reference to White Mercedes 230 with no number - no registration number of the motor car? A. That is right. There was probably no need to. He probably told me you would see his white Mercedes there and you know it is Barton's, so why do I need the number? I had an address there so why do I need the number?

Q. But the later document contains the registration number of the Mercedes? A. Do you say this is a later document or an earlier document? It could have been written out today for all I know. Where does it state, because you have got on one side that it is a petrol bill that was bought on 8th October, that means it is a later document, and there is something on the back, who says when it was written on the back page? Where does it state that? 20

Q. If you look at the top it says "Sunday 9th October"? A. Well, that is what somebody wrote on it, "Sunday 9th October 6.30 p.m.", but who is to say that that was written on Sunday 9th October? 30

Q. What, you think it may have been forged by somebody? A. I am not saying it was forged or not forged. I do not know when it was written or by whom it was written. It does not mean a thing.

Q. But your father's handwriting is on the front? A. It is not my father's handwriting. This is a bill written out by the garage, whoever sold the petrol, and there on the bottom of it, the 15th week my father puts down in his handwriting a few notes "15th week 1966-67 account No. 15 Motor Running expenses". That is what he says. 40

Q. Will you agree with me that the first document which I showed you was in your handwriting? A. Yes, in my handwriting, I agree with that.

Q. That it is deficient in that it does not give the registration number of the car? A. What do you mean it is deficient? Why do I need the registration of the car?

Q. Well, just supposing you were going to follow Mr. Barton, you would want the registration number of his car, would you not? IA. I would not need it. I know Mr. Barton. I could follow Mr. Barton no matter what car he was in. I would know what he looks like. So why would I need the registration number? 50

Q. Well, how would you know about it if you did not know the registration of the car? A. If I had seen Mr. Barton, I could easily follow him.

Q. How could you follow him? A. Just by looking at him.

Q. But where would you start? You would not know where he was in Sydney, would you? A. Well, I knew his Landmark office. It would be easy enough for me to start. That is easy enough, isn't it? 10

Q. What would you do then? A. Well, if I was following him I would probably follow him from the office. That would be simple enough.

Q. But then it would be handy to know his car number, would it not? A. No. Why? What would be the need of having his car number? If the car is parked somewhere in the street, you have got to follow Mr. Barton not by the car, if you are following him.

Q. But supposing he had his car parked in a parking station, you could not follow him from there, could you? A. Well, you could not very well go and stay with the car, you would have to follow Mr. Barton. How would you know he would go to the car? 20

Q. If he went into the parking station you could not follow him; it would not be practical to follow him then, would it? A. Well, it would be very difficult but you still have to follow him if he is the subject whom you are following.

Q. But if you let him go into the parking station and then waited for the car of the right number to come out, that would be all right, would it not? A. I suppose that would be all right, yes, but would you need the number? You know the person. What do you need the number for again? 30

Q. Let us suppose for argument sake that Mr. Barton made a practice of parking his car in a parking station and let us suppose you were waiting outside Landmark's office, you saw him come out and he disappeared into the parking station; you could not follow him in there, could you? A. You could not follow him in the parking station? 40

Q. No. A. Well, no, I don't suppose you could follow him in the parking station.

Q. But what you could do was to wait outside the parking station until the car came out? A. It all depends how many entrances the parking station has got. You can't cover them all. But I did not follow him, so I have got no worries there.

Q. By the way, if you were going to get Novak to follow him you would have to get Novak to write down numbers, would you not? A. You would not get Novak to follow anybody because he can hardly drive. He is a shocking driver, so you would not get him to follow anybody. 50

Q. Wouldn't you trust Novak with a car? A. Trust him with a car?

Q. Yes. A. You trust him with a car, yes - if he were making the payments for it you trust him with a car. I certainly would not trust him with a car that I was paying for.

Q. You would not? A. No.

Q. What about a car that you bought and gave to him - which you bought with your money and gave him? Would you trust him with that? A. Well, I don't give him a car - any money for a car. I told him to keep up the payments. 10

Q. This is serious again. Do you tell his Honour that you never bought a car for Novak? A. For Novak?

Q. Yes. A. Bought a car for Novak?

Q. Yes. A. I have bought an old bomb for about £50, I think, or something like that, because he needed to do the jobs, like going to certain places for the addresses - he was doing a lot of checking for me of addresses. They were mainly Yugoslavs, he was checking for me. (Last answer read by Court Reporter.) 20

Q. Is this what you are now telling us, that you in fact bought a car with your own money and provided it for Novak to drive around? A. Yes, to do the work. Yes, that is right.

Q. And this is in addition to the other cars you have mentioned that Novak drove? A. Well, he smashed them up, so ---- 30

Q. By the way, did you not tell his Honour that Novak did not come down from Surfers Paradise until the end of 1966? A. I did not say that. I do not know when he came down. He used to come down quite a lot and every time he came down he would call into my office.

Q. Did you not tell us that Novak did not come down until the end of 1966? Did you tell us that? A. I don't know when he came down. I suppose he must have come down in 1966 a few times. He must have over the year - when he was around he would come down a few times. 40

Q. He was doing a lot of work for you in 1966 and 1967 was he not? A. I don't think it was a lot. He did some work but he never did a lot of work, no. When he did not have a job he used to call down and I would give him something to do.

Q. He was your principal employee in the business was he not? A. No, he was not. 50

Q. (Approaching witness and showing document.) I think in October 1967 you bought this Holden. You

bought this Holden for \$150 in the name of Michael Novak? A. That is right. That was the old bomb. It was a utility and we had to use that because I was going to move over to Wollongong and we had to shift a lot of things.

Q. And Novak was your permanent employee in the business, was he not? A. Not permanent - he used to come down and get a job, only when he didn't have a job. That was the idea of the parole officer, that I would keep him always busy, having something to do. 10

Q. When Novak checked addresses did he give you written reports? A. No, he is just telling me "I went over there and the people don't live there", that is all.

Q. But you would send him to do a number of jobs, would you not? A. Yes, but a number of jobs for a period of time, not in one day.

Q. Wouldn't you let him do more than one little job in one day? A. Maybe one or two. That would be the most he would ever do and if someone had moved from there to another place he would tell me. 20

Q. And would he not write it down and tell you where they had moved to? A. To tell you the truth, I don't think he could write much, your Honour. He has not got very much education - very little education, even in Yugoslav. I think in English he can't write at all, but even in Yugoslav he has a very poor education. 30

Q. Did he write reports to you in Yugoslav? A. No, because Miss Annette Catt does not read Yugoslav. It would be no use writing reports to me because I would be on the tennis court. She handles the business side.

Q. Business is so good that you play tennis? A. I like playing tennis whether business is good or bad.

Q. So that any reports Novak wrote would be in English? A. Definitely in English, but there would be no reports he would write. 40

Q. What, did you burn them or destroy them? A. Why should I burn or destroy these reports?

(Receipt for Holden dated 6th 10/67 tendered and marked Exhibit "HH".)

MR. GRUZMAN: In view of the doubt that has been cast on the documents, I would seek to tender in each case the envelope together with the contents so that the tender of the first one is the envelope marked "14th week 1966-67" including contents, and the tender of the second one is the envelope marked "15th week 1966-1967" together with the contents. I have left the relevant documents out. 50

(Envelope marked "14th week" including contents admitted and marked Exhibit "JJ".)

(Envelope marked "15th week" including contents admitted and marked Exhibit "KK".)

(His Honour granted Mr. Gruzman access during the luncheon adjournment to bank statements which have been produced.)

(Luncheon adjournment.)

(Mr. Purvis called on subpoena duces tecum G.T. Hartigan and Company. Mr. Hall appeared in response to the call.) 10

MR. PURVIS: Q. What is your full name? A. Charles Reginald Hall.

Q. What is your address? A. 35 Thurligona Road, Engadine,

Q. Do you attend court to answer a subpoena addressed to G.T. Hartigan and Company, Chartered Accountants? A. Yes.

Q. Do you produce the subpoena served upon that firm and the documents referred to in that subpoena? A. I do. 20

HIS HONOUR: Q. Does your firm have objections to these documents being seen by the parties? A. Well, normally these would only be available to my principal's client and the taxation office.

Q. These concern the affairs of the firm, do they? A. That is right.

Q. Are they original documents that are required back as a matter of urgency? A. No, no original documents. 30

Q. Are they needed in the day to day running of the firm's affairs? A. They are used in the preparation of the current tax affairs for 1968. (Documents shown to his Honour.)

HIS HONOUR: Mr. Purvis, if these documents are currently in use in the course of the firm's professional activities for its client, I do not wish to have them retained here any longer than is necessary. For how long do you wish to have them retained. 40

MR. PURVIS: I would think they would need to be retained until approximately Tuesday next week on present indications.

HIS HONOUR: Q. Mr. Hall, would they in the ordinary course be in use between now and next Tuesday? A. Well, they could defer them until then without embarrassment.

HIS HONOUR: I think efforts should be made to finish with them between now and next Tuesday. In the meantime they will be retained here in Court 50

and at a later point of time I will consider whether all or any of them should be made available for inspection.

(Mr. Hall retired from court.)

HIS HONOUR: Mr. Hume, you are still on oath? A. Yes.

MR. PURVIS: In respect of the documents produced by Mr. Hall, we would seek to have access to them.

HIS HONOUR: How do you suggest this question of objection should be dealt with? There is a fairly ready way by which I could obtain some assistance in dealing with the objection. I am referring to these documents just produced by Mr. Hall. The only question of whether they should be produced would concern the client whose documents they are, and it may be the client would or would not wish to raise objections. That is the matter I had in mind. Is there a practical way to deal with this question? I do not want to say more than that at the moment.

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MR. PURVIS: It may be that in the first instance that could be done so far as the company is concerned, and if that does not elicit the necessary result I have no objection to indicating what these documents are.

HIS HONOUR: I was seeking to preserve anonymity of the documents.

MR. PURVIS: There is no objection in that regard.

HIS HONOUR: Mr. Staff, these documents produced concern the affairs of Southern Tablelands Finance Pty. Limited and I think the best course is for me to pass them down to you to see whether objection is taken to any of them being seen, and the matter can then be dealt with later in the afternoon.

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MR. CRUZMAN: It may help my friend if I indicate that the point is as to how this matter of \$1,094 in Southern Tablelands was dealt with.

MR. STAFF: If your Honour looks at the return, your Honour will see the matter is not dealt with; there is no deduction claimed.

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MR. GRUZMAN: If my friend is prepared to say that no deduction was claimed, I accept that. Mr. Armstrong said in evidence that it is the fact that Southern Tablelands Finance Pty. Limited claimed no deduction in respect of an amount of \$1,094.30.

HIS HONOUR: If that is so, the documents can be returned to Mr. Hall, although I suppose he has left the court. But they need not be retained here any longer.

MR. GRUZMAN: May we have leave to inspect the documents produced by Phillip Malouf - Mr. Harrington?

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HIS HONOUR: What do you say about the question of privilege?

MR. GRUZMAN: We say there is none. It was a statement made by a witness.

HIS HONOUR: I will look at the documents and see what they are. I do not think these are in the ground of absolute privilege Mr. Gruzman, but so far as possible any questions that you ask in reference to the documents ought to omit the names.

MR. GRUZMAN: Yes.

HIS HONOUR: And of course, the documents being made available to counsel for both sides, I would ask counsel for both sides to ensure that regard be had to the confidential nature of the terms of the documents, although not privileged. They ought to be regarded as confidential matter. 10

MR. GRUZMAN: Yes.

Q. Mr. Hume, I am going to suggest to you that you have told the court a series of lies on two subject matters. Firstly, that you never did a divorce raid with Novak, and secondly that your diary was stolen in August 1967. Do you understand that? A. Yes. 20

Q. First of all, I suggested to you, did I not, that you and Ziric - you employed Ziric in the divorce raids, and you denied that? A. Yes, that is right.

Q. That is at p.1,356, just before half way down, and I asked you at that page "Q. In October 1967 did you and Ziric go and obtain divorce evidence together? A. No. Ziric could not obtain divorce evidence, as he was not an agent"? A. That is right.

Q. And then I put to you the name of a client? A. That is right. 30

Q. And I said to you "Q. You still deny that you and Ziric together sought divorce evidence in a case? A. I was there to obtain the divorce evidence. I don't know what this other man and Mr. Ziric were doing"? A. That is right.

Q. "He was employing Ziric. That was nothing to do with me". Is that right? A. That is right.

Q. And you also swore towards the top of p. 1387 that your diary was stolen in August 1967? A. That is right. 40

Q. You answered "Yes, and I have never started another one since then", is that right? A. That is right.

Q. Is that true? A. That is true.

Q. Mr. Hume, I again warn you of the consequences of false swearing? A. I do know the consequences of false swearing.

Q. Is it not true that on 11th October 1967, together with Michael Novak, you conducted a divorce 50

raid in respect of a person whose name I wrote down on a piece of paper on the last occasion? A. I have already mentioned, your Honour, last time in regard to this case. I have had three agents on this particular job and then the client said he could not afford to pay the agents' fees and would I find out if I could get somebody else to watch his wife. Then I got in touch with Mr. Novak and I made an arrangement between him and the client to meet each other and then the client said he would put Mr. Novak through his books and that it would be a private arrangement between them, and finally we went through the divorce raid. I did the raid and the client would not then pay the fees and then Mr. Novak felt that I was responsible for his fees and I put an account in - I sent an account to the client's solicitors in which I am also claiming for the fees of Mr. Novak. 10

Q. How much was Novak claiming from you? A. I would not know. 20

Q. Did he not tell you? A. It must be in there, in the account.

Q. Approximately how much? A. I would not have a clue.

Q. Is it true that at 7 p.m. on 11th October 1967 in the company of Michael Novak you commenced observations in the vicinity of Elizabeth Bay Crescent, Elizabeth Bay? A. I was on my own and he was on his own. It was in two cars. 30

Q. Is it true that at 7 p.m. --- A. Yes, it is true that I was there.

Q. Just a moment, Mr. Hume. Is it true that at 7 p.m. on 11th October 1967 in the company of Michael Novak you commenced observations in the vicinity of Elizabeth Bay Crescent, Elizabeth Bay? A. Yes. That would be so, yes.

Q. You and Novak together were obtaining this evidence, were you not? A. Not together. He was working for the client, as his employee, put through his company and I was working as an inquiry agent as the client said he could not afford an inquiry agent's fees. 40

Q. Were you working with Novak obtaining evidence in this divorce matter on 11th October 1967? A. No, I was not working with him.

Q. You deny that? A, Yes, because he is not an inquiry agent. I could not be working with him. He was doing the shadowing for the client himself. That was no help to me. 50

Q. You say Novak was no help to you, is that right? A. That is right.

Q. And he had nothing to do with you? A. Nothing to do with me and ---

Q. Just a moment. Why did you then write "At 7 p.m. in the company of Michael Novak I commenced observations"? A. Well, because he was there too.

Q. And did the observations continue with Novak till 11.30 p.m. that night? A. I don't know. I suppose they would do, yes.

Q. Just you and Novak? A. Well, I think the client was there too at some stage.

Q. The client did not arrive till 11.30 p.m.? 10

A. That is possible. I don't know what time he arrived.

Q. (Approaching witness.) Is this true, "At 11.30 p.m. Mr. Michael Novak and myself were joined by Mr. Otto Eckstein, by this man at the Roosevelt Apartments"? A. That is right. I probably rang up the client and he came there.

Q. And then the obtaining of evidence continued, did it not? A. Yes.

Q. And at 10 past three in the morning did you knock on the door of the apartment? A. I don't know. I suppose so. 20

Q. Well, you tell me whether you agree with this; is it true that at 3.10 a.m. you knocked on the door and said, "Private Inquiry Agents here in the company of your husband, Mrs. Eckstein. Open the door or we will break it down"? A. I would have said "Private Inquiry Agent", not "Agents". There was not "Agents" it was only one Agent.

Q. Is it true or false that you said "Private Inquiry Agents here"? A. That is false. 30

Q. It is false? A. Yes - "Private Inquiry Agent here".

Q. But this is a copy of your diary, is it not?
A. No, I don't have a diary. That was just jotted down by memory. I do not have a diary. My diary was stolen and I have never started another diary and I have told you that, Mr. Gruzman. I am not telling lies here. Your Honour, I have got no reason to tell lies here. I have never started another diary. That is false. That was by my memory. I am going back on my memory. I would not start another diary because they can get stolen and then it is very embarrassing for a lot of people I have done raids for, so I have an agent who keeps diaries and no one knows where to find the agent. That is the best way. 40

Q. You think someone would steal the diaries?
A. It could happen again and you could cross-examine over my stolen diaries. 50

Q. So this document which is now open in front of you at p.3 was a document composed from your memory and not from any diary? A. Not from any diaries.

Q. Can you explain why the document is headed "Extracts from the diary of Frederick Hume licenced private inquiry agent"? A. Because all the divorce evidence is headed like that.

Q. Well, that is a false statement, is it? A. I don't know whether you call it a false statement but it is incorrect. That is incorrect.

Q. You say that the statement at the top of this document, "Extracts from the diary of Frederick Hume Licensed Inquiry Agent", is a false statement? A. It is incorrect and I have never given evidence in this divorce case. You should check that. It is incorrect. 10

Q. It is wrong, is it? A. It is wrong because I didn't have a diary and I did not have a diary from that time it was stolen.

Q. But this document was prepared on 13th October 1967, was it not? A. Certainly. That is quite so.

Q. And it relates to events on 11th October 1967? A. That is correct, it relates to that. 20

Q. And it says that the document comprises extracts from your diary? A. Well, that is false because there was no diary.

Q. Why did you prepare a false document? A. I didn't prepare it. Miss Catt just types it out. It is a certain thing that in every divorce case we type the same thing out, it is "extract from the diary". She probably copies from another divorce raid, but I have never given evidence in the divorce case and this document here that says "Extracts from the diary", that is incorrect because I have not had a diary from the time it was stolen. 30

Q. You would not dispute that this document here on your note paper was sent to Phillip Malouf and Company, would you? A. No.

Q. "Attention Mr. Harrington"? A. Yes, and I am even asking for my fees. I would not dispute that. You have not pointed that out yet.

Q. Would you let the document go; we are not having a tug of war here? A. No, I am not having a tug of war. 40

Q. You understood that the solicitor would accept this document as being a statement of the evidence you would give? A. No, not exactly. He would call me into his office, which he did. I told him I would not give evidence because I don't give evidence unless I am sure of the case.

Q. Do you say that some of the facts contained in this report are false? A. No. Most of the facts are correct but certain things here, for instance where you say "extracts from the diary", that 50

is false. But those things are true which have been stated there.

Q. Is this what you are saying, that having prepared this report - A. I don't even know whether I prepared it. It could have been prepared by Miss Catt.

Q. It must have come from information from you, mustn't it? A. That is right.

Q. And do you say that having authorised this report to go to the solicitor, part of the contents were false? Is that true? A. Yes. I would say that, yes. 10

Q. Why did you authorise a document to be sent to Phillip Malouf and Company with this false statement that it comprised extracts from your diary? A. I didn't take much notice of it at the time.

Q. Can you explain where Miss Catt could possibly have obtained this information from except from your diary? A. No. I would have told her. There was no diary. You are not going to invent a diary, Mr. Gruzman. There just was no diary and no matter what you say there never was a diary after that time it was stolen, and there wasn't one. 20

Q. This gives an account of the events first of all at 7 p.m., then at 7.30 p.m., then at 7.35 p.m., then at 7.45 p.m.? A. That is right.

Q. Then at 7.55 p.m.? A. That is right.

Q. Did you remember all of that? A. That is right, all by memory. 30

Q. All by memory? A. All by memory, because we usually do it the same day or the same evening or the same morning of the raid so that it is in the solicitors' hands before somebody can get a hand on it.

Q. And did you remember all the names? A. There were only a couple of names.

HIS HONOUR: Q. You said before somebody could get a hand on it - on what? A. Get a hand on the evidence that we have gathered because somebody could always come and burgle the place. If they knew who was the agent they could come and burgle the place so they could always get their hands on it, so we immediately have it typed out and sent away before someone could get their hands on it. 40

Q. But what is it that you fear - is it that someone could get hold of it prior to dictating and making a report of this nature? What is it you fear someone may get hold of? A. Once they knew who was the agent who made the raid, they could then come and burgle the place and get hold of the evidence and the pictures so I wouldn't have the evidence in the photographs. So what we usually do is that we 50

immediately have it typed out and sent to the solicitor. That is a standard procedure that we go through.

MR. GRUZMAN: Q. It never was your standard procedure for a long time, was it? A. It was.

Q. Your standard procedure was to keep a diary?
A. Until it got stolen, yes.

Q. And the diary seems to read the same as this document, does it not? A. That is right. That is probably how Miss Catt copied it. 10

Q. Copied it from what? A. From other divorce proceedings, other divorce cases.

Q. But how could she copy all these facts? A. Well, the heading is always the same.

Q. What - "At 7 p.m. in the company of Michael Novak"? A. No, not the timing but the heading would be the same, "Extracts from the diary of Frederick Hume". That would be the heading of every divorce raid. 20

Q. And I suppose all your other reports after August 1967 are all headed "Extracts from the diary of Frederick Hume licensed private inquiry agent", are they? A. No, I think some of them would be headed with the agent's name who was with me on the job. You see, what we do now is they send one of the men and also the other agent who is accompanying me on the job and he keeps his diaries. He has been an agent for a long time and he has got all his diaries and they can always refer back to his diaries. 30

Q. In respect of the second half of 1967 you sent out a number of reports similar to the Eckstein v. Eckstein report, did you not? A. No, I think that was the only divorce raids I had at that time. I don't remember many divorce raids at that time.

Q. That was your business, was it not? A. No. I have done very few divorce raids. You should know. You have got my books there. All you have to do is look it up.

Q. You mentioned this was a standard procedure after your diary was stolen? A. That is right. 40

Q. Well, was it not your standard procedure to send out a report headed "Extracts from Diary of Frederick Hume"? A. It probably was, yes.

Q. Even though that was a false statement? A. Yes. There was no diary.

Q. And what was the point of misleading the solicitor? A. Not misleading him, because it is a diary telephone book in which I jotted down what I was doing on that particular day. 50

Q. But you understood, did you not, that you would be giving evidence in the divorce court about these raids? A. Yes.

Q. And that it is unusual for private inquiry agents to keep a diary? A. It is.

Q. And that it would be regarded by the divorce court as suspicious that an inquiry agent gave evidence without having a diary to support him? A. Not suspicious. You go on memory. 10

Q. You claim to be an experienced private inquiry agent? A. Well, I have not done many divorce raids if that is what you mean but I usually go by memory. I never bring in the book with me, anyhow.

Q. Are you telling his Honour in all seriousness - A. I am.

Q. - that in your opinion it would not be regarded as a suspicious circumstance by a divorce court judge if a private inquiry agent gave evidence and had no diary? A. No, because the other agent who is accompanying me has got a diary, and I was not going to start another diary since that one was stolen. 20

Q. Will you please answer my question. Do you tell his Honour that in your view it would not make a divorce court judge suspicious - A. No, I do not think so.

Q. If you gave evidence about a raid and had no diary to support you? A. I don't think it would make your Honour suspicious because I have got a diary telephone which states what day I went where and whether I did a raid or not. 30

Q. Well, where is that document? A. I don't know. Where is it?

Q. You say you have a diary telephone. I think you mean a telephone diary? A. Yes, a telephone diary.

Q. In which it states what you did each day? A. Well, if I was on a serious job, yes, I would put it in. If it was nothing serious I would not put it in, but if it was something serious - a divorce job would be something serious enough to put it in. 40

Q. And by reference to that diary you could confirm your evidence? A. No, I would check it with the other agent.

Q. You have just told his Honour that you had a diary, a telephone diary, in which you put important matters such as divorce raids? A. That is right.

Q. And I understand from that that you mean that from that diary you could check your movements, prove them at a particular time? A. Not from that diary. You would know the date of when the divorce 50

raid was conducted but you would not know the names but you could check it with the other agent who was with me on that particular job.

Q. Did you in October 1967 have anything which could be called a diary which would confirm the statements contained in this document of 13th October 1967? A. A telephone book, I suppose.

Q. A telephone book? A. Yes.

Q. Would that have mentioned where you were at 7 p.m. and 7.30 p.m. and so on? A. Yes. I suppose it would have, yes. 10

Q. Where is that document? A. I don't know. You should have it. Have you got it?

Q. Have you produced that document to the court? A. I don't know. I suppose I have. I have produced nearly all the documents that I have.

Q. Do you say nearly all the documents? A. Well, all the documents that you have asked me for. I will bring you the documents from the restaurant very soon, from Balmain Restaurant, that I was having there. 20

Q. Do you claim that you have produced a 1966 diary? A. A 19- what?

Q. A 1966 diary of any kind? A. I think I have a telephone diary. Have I produced it?

Q. Do you see this document that is now shown to you? A. Yes.

Q. That is your 1967 telephone diary, is it not? A. That is the 1967. 30

Q. Do you claim that you produced to the court a 1966 telephone diary? A. Well, I don't know. If I produced it it must be here.

Q. Mr. Hume, do you claim that you produced and handed into the custody of this court a 1966 telephone diary; yes or no? A. I am not claiming it. I have produced all the documents that I have. I don't know what I have produced. I have produced everything that is in my possession.

Q. You see, at p. 1386 your only claim was that you said the 1967 one is in court, did you not? A. Maybe. I don't know how many of them are here. I do not know. You have got them all. You know better than me. 40

Q. Is this what you are telling us now, that ---- A. I am telling you I don't know how many of these telephone diaries I have produced. Your Honour, I would not know.

Q. And you are claiming now that you have produced

to the Court a 1966 telephone diary? A. I am assuming, I am not claiming. I am assuming I have produced it. I don't know.

Q. That is a lie, isn't it? That is a lie? A. That is not a lie. I am assuming I have produced it. I do not know whether I have or I have not. If I have produced it, it should be here. I have not got any other relevant documents except the ones I have brought today and this is up to date. 10

Q. Do you say then that there is in existence, and you believe it is at this Court, a diary which will confirm the statements contained in this document of 13th October, 1967; yes or no? A. I don't know. I don't know.

Q. But I understand you to be saying that you had a telephone diary which would confirm the contents of this document of 13th October 1967? A. Yes. I suppose I should have had a telephone diary to confirm it, yes. 20

Q. And that document certainly was not stolen, was it? A. I don't know.

Q. But Mr. Hume --- A. I do not know. If I had it it should be here.

Q. You are not claiming that that telephone diary was stolen, are you? A. I am not claiming. I know the things were stolen and that was it. There were a lot of documents that were stolen.

Q. Which way do you want it? Do you say it was produced to the court or that it was stolen; which is it? 30
A. The things that were not stolen I have produced.

Q. Will you please answer my question. Do you claim that the telephone diary for 1966 was produced to the court or was stolen?

Q. Answer my question, please? (No answer.)

HIS HONOUR: There is a third alternative, that Mr. Hume is unable to say one way or the other. I think you should put to him the third alternative.

MR. GRUZMAN: Q. Do you say that as to your 1966 telephone diary either it was produced to the court or that it was stolen or that you did not know what happened to it? A. That is right, that is right. 40

Q. Which one is it? Which one would you like? A. I don't know whether it is here. Maybe it is here, maybe it is not; I do not know.

Q. But if it is here it means that it will confirm the statements in this ---- (Objected to; question withdrawn.)

HIS HONOUR: Q. While Mr. Gruzman is looking at that, may I ask you this question: You said in evidence last Tuesday that you had never started another diary since the theft of your existing diary in August 1967? A. Yes, that is right, your Honour. 50

Q. Now Mr. Gruzman has just shown to you what I understand is a document that went out from your office in October 1967? A. That is right.

Q. Which bore at its head the words "Extracts from the Diary of Frederick Hume"? A. Yes.

Q. And it purported to recount events in October 1967? A. That is correct.

Q. Were you aware that that document had gone out with that description on it? A. I don't know. It could be a misunderstanding that it was a diary - telephone book or a diary. I didn't type that document and I believe it could possibly have been a mistake that it was a diary telephone book that it was being typed out of, or I don't know how it happened. 10

Q. You see, last Tuesday you said quite specifically words to the effect that you had never started another diary since August 1967? A. That is quite correct. 20

Q. Is that right? A. That is correct. That is definitely correct, your Honour. There are no Ifs and Buts.

Q. So you had no diary in October 1967? A. No. From the time that diary was stolen I have never had another one, only those diary telephone things.

Q. I am putting this to you to make sure that you understand what is being challenged against you, do you understand? A. Yes.

Q. For the moment I do not understand your explanation for having sent out in October 1967 a document described as "Extracts from the diary of Frederick Hume" recounting events of October 1967. Do you follow what I am putting to you? A. Yes, I follow. 30

Q. Now I do not understand how that came to go out in October 1967 if the fact be that you did not have a diary after August 1967? A. The only way I can explain it is that Miss Catt always uses the same heading for a divorce case, and that is the way it happened. 40

MR. GRUZMAN: Q. But you must have dictated the document? A. I would not have dictated it. I would have given her some notes and she would have drawn it up from them.

Q. Well, it was your document? A. How do you mean, my document?

Q. It was a document sent out by you to the solicitors? A. It was a document sent out from my office, yes. It wasn't my document.

Q. And do you say there were notes in existence? A. Yes. 50

Q. From which Miss Catt typed? A. Yes. There would have been notes, yes. There would have been times and she would have had to compose it from those notes - the times.

Q. Well, I will read a paragraph to you and would you tell me what you say is Miss Catt's composition and how much is your own. I take this one, for example, "At 7.45 p.m. the subject in the company of a man approximately 45 years of age with grey hair and about five feet eleven inches tall left the Roosevelt Apartments and entered the vehicle previously parked by the subject in Ward Avenue, Kings Cross". A. That would be all mine ---

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HIS HONOUR: Mr. Gruzman, I do not think I want too many of the details of what is in this report. The case has not yet been heard in the other jurisdiction.

MR. GRUZMAN: The question was answered, your Honour and I will not take it any further than that.

Q. You say that was all yours? A. Yes, definitely.

20

Q. So that that means you must have written that out for Miss Catt to copy from? A. That is right.

Q. Well, do you think you might have written it out in the telephone diary? A. No, definitely not. Not enough space in that. It would have been in an ordinary booklet, a little white booklet that I keep in my pocket and we change them from time to time as after a few jobs it is full, and throw them away. They are of no importance. And therefore Miss Catt would have composed this letter.

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Q. A little while ago you told the court that you entered in your telephone diary --- A. Just that I was on a divorce job.

Q. Important matters like divorce raids? A. Well, that is an important matter, yes.

Q. Another time you said you wrote down people whom you saw and important aspects of it, did you not? A. Would you mind repeating that? A. I am not quite clear there.

40

Q. Did you not tell the court that you wrote in your telephone diary important events that occurred? A. Important?

Q. Important events such as required attendance at court? A. Important, yes. Events that I would have to give court evidence on or even if there was an interpreting or something like that that I had to do at a doctor's specialist's or barrister's rooms. I would put that in because otherwise I would not know what was the date I would have to go there.

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Q. And you were doing this during 1967? A. Doing that all the time.

Q. All the time? A. Yes.

Q. I now show you your 1967 telephone diary (handed to witness) and I ask you to open it under date Wednesday 11th October 1967? A. Wednesday, the 11th yes.

Q. Would you tell me what you have written there or what anybody has written - that is Wednesday 11th October 1967? A. There is nothing in it. There are no entries on any of those dates. 10

Q. So if you wrote anything about a divorce raid of 11th October 1967 in a diary, you must have written it in a different diary from that one? A. No, not different one.

Q. You never wrote it in that one, did you? A. No, I didn't. I probably only had it in my notebook that is all.

Q. You what? A. I probably only had the thing in my note book, and gave it to Miss Catt and she forgot to put it in here. 20

Q. You have just sworn that you wrote these important events in your diary not only in 1967 but all the time? A. Yes, but sometimes of course I do make mistakes. I admit it. There must have been a number of times when I did not put it in this telephone book, not just this particular occasion, Mr. Gruzman. I don't know how many times I didn't put it in.

Q. Which did you do - did you prepare notes which Miss Catt copied, as you have just told us? Is that how this document came into existence? A. That is right. At the time on the job I would have my little note book and I would just write out what happened and what time and then I would give it to Miss Catt and then of course she would compose the document and then it would go to the solicitors' office. 30

Q. Did you dictate it to her? A. No, no. Hardly ever I dictated. It takes too long.

Q. At p.1386 I asked you, "Q. That is notes which you made of what you did at the time? A. Not really notes. I dictated to her to whom she is to send out the bill, and then she does that." A. Sometimes I dictated, yes, if it is short enough. If it is long evidence like that I would not dictate it. 40

Q. I asked you "Q. No notes in your handwriting made at about the time of what you did during October 1967? A. No, not that I recollect." A. Well, there would have been notes at the time, but, of course, once the book is finished it would have been thrown into the rubbish, because it was of no importance at all. 50

Q. I asked you were the notes in your handwriting, and you said "No". A. There must have been notes, otherwise she could not compose them.

Q. You see, Mr. Hume, your diary was in existence in October 1967, wasn't it? A. No.

Q. It is a lie to say that it was stolen in August 1967? A. It was. It was stolen, and from then on there was never another diary and there never shall be another diary.

Q. Were you aware that Mr. Staff had advised Mr. Armstrong to destroy his diary? A. Your Honour --- (Objected to.)

10

Q. Were you aware that Mr. Staff advised Mr. Armstrong of the consequences of keeping his diary? A. No. Your Honour, I am not aware, and I am not interested in what Mr. Staff advises Mr. Armstrong. I have nothing to do with Mr. Armstrong's business, nor did Mr. Armstrong tell me what Mr. Staff advised him, or any of his other legal advisers.

Q. I put it to you that you destroyed or concealed your diary after these proceedings started in this Court? A. No, Mr. Gruzman. I think you are probably cross-examining me from my books.

20

Q. You were going overseas in early 1967, were you - 1968? A. That is right. You have got the year wrong. Yes, I was probably going overseas, yes.

Q. What was the purpose of that? A. I could have got a tennis coaching job there and made more money than as an inquiry agent. That was the reason.

Q. Did you have one? Did you have a coaching job? A. I could have obtained one, yes.

Q. Please answer the question honestly for once. Did you have a job? A. I am answering the questions honestly all the time, Mr. Gruzman.

30

Q. Did you have ---

HIS HONOUR: I don't think it assists anyone to get into personal recriminations.

MR. GRUZMAN: Q. Did you have a job? A. I could get a job as a tennis coach overseas, as I have done well in some tournaments, Mr. Gruzman.

Q. Answer my question. Did you have a job overseas in January 1968 or February 1968? A. Of course I didn't have a job. I was going there. Why should I have a job before I went?

40

Q. Why were you leaving the country then? A. No particular reason. I only stopped because I wanted to see how far you were going with this case, Mr. Gruzman.

Q. You were trying to get out of the country, then, because of this case? A. Mr. Gruzman, I would not go as far as Manly to get out of this case.

Q. Why did you just remark that you only stayed to see how far this case would go? A. Well, I probably would have gone overseas if I was not in a Court action, to put it bluntly, because I was not making much out of being an inquiry agent, so I probably would have gone overseas, but because of this case I didn't go.

Q. I put it to you that after these proceedings started you destroyed or concealed your diaries and sought to get overseas? A. Your Honour, I would never bother to conceal or destroy any of my books because they are of no importance whatsoever. 10

Q. Mr. Hume, if the dockets which I showed you this morning relate to instructions to watch or follow Mr. Barton that would have been recorded in your diary, wouldn't it? A. To follow Mr. Barton? Most certainly it would have been recorded, and I would have sent out a bill to whoever was asking me to do the job. I would not be doing it gratis. 20

Q. Tell me, were you receiving moneys from Mr. Armstrong at about that time - October-November-December-January? A. I was never receiving moneys from Mr. Armstrong. I have told you on previous occasions that through Mr. Armstrong I suppose I have got some jobs from certain companies. I don't know the shareholders of the companies. I don't know what shareholders belong to which company. I am not terribly interested who the shareholders are in these companies. All I can say is that I got paid for what I did, and that is all. 30

Q. Did you ever borrow money from Mr. Armstrong?
A. No, I most certainly did not.

Q. Do you swear that? A. Yes, I do swear that.

Q. Have you told the Court of the whole of your financial transactions with Mr. Armstrong or any of his companies? A. That is right.

Q. Do you say that the only moneys you ever received from Mr. Armstrong, Mr. Barton, or any company with which Mr. Armstrong was associated were three amounts - first of all \$395 in respect of July ---? A. \$395 plus wasn't there some money given to me by Mr. Kilmartin? 40

Q. \$200. \$395 and \$200. A. Yes. That is \$500 and something - not \$300 and something.

Q. \$595? A. That is different from \$395.

Q. Did you put that in your book? A. How do you mean?

Q. In your cash book. The \$200? A. I had to sign for it to Mr. Kilmartin. Otherwise he would not give me the money. 50

Q. You received \$595 ---

HIS HONOUR: \$585.

MR. GRUZMAN: Q. You received \$585 in respect of the job at Surfer's Paradise? A. I believe so.

Q. \$1094.30 in respect of, you say, these matters contained in that invoice? A. That is right.

Q. And \$500 in respect of the other visit to Surfer's Paradise? A. That is right.

Q. And apart from that you say you have had no financial transactions of any kind or description with Mr. Armstrong, Mr. Barton, or any company with which Mr. Armstrong or Mr. Barton is associated? A. Well, it would all be in the books. 10

Q. Will you answer the question? A. Yes. Everything that is in the books is correct.

Q. I want you to swear on your oath. Do you tell his Honour that apart from those three sums of money you have had no financial transactions of any kind with Mr. Armstrong, Mr. Barton, or any company with which either of them is associated? (Objected to; rejected.) 20

Q. Mr. Hume, apart from the three sums of money that have been mentioned have you had any other financial transaction at any time of any kind with Mr. Armstrong? A. No, it would have been always some company.

Q. I will insist, Mr. Hume - subject to what his Honour may say - on a direct answer to a direct question. Apart from the three sums of money that have been mentioned, have you had any other transaction of any kind at any time with Mr. Armstrong? Yes or No? 30
A. No, not that I can remember now.

Q. I am sorry, I missed the last part. A. Not that I can remember now.

Q. Are you prepared to say on your oath ---? A. Of course I am on my oath all the time, Mr. Gruzman. Why do you keep on saying "under oath, under oath"? I am under oath all the time. I am not under oath for five minutes and then out of oath.

Q. As long as you remember that. A. I remember that 40 all the time.

Q. Do you say that apart from the three sums of money which have been mentioned you have had no financial transaction of any kind at any time with Mr. Armstrong? A. Not that I can remember.

Q. Do you think there may have been others that you can't remember? A. Well, sometimes I could have paid for a meal, because Mr. Armstrong does not carry any money in his pocket sometimes from time to time. I suppose I have been reimbursed for that. 50
I don't know.

Q. Let us exclude amounts of \$5, \$10 or \$20. Apart from any such minor sums have you had any financial transactions of any kind at any time with Mr. Armstrong other than the three sums of money that have been mentioned? A. No. On one occasion I wanted to buy a unit from a company that Mr. Armstrong was in. It was over at Glebe Island. That was on instructions from my mother. My mother said, "You should not always pay rent. You should get a unit so that you don't pay rent." At the same time I was trying to sell these units to the Croatian community. Most of the Croatians were going to go into it, but this fell through. At that stage I believe I would have had intentions of buying this unit from Mr. Armstrong. Better to say from the company that was holding these units for sale. But all of this fell through. 10

Q. These were the Rozelle units? A. Yes, that is right. 20

Q. That was your only connection with the Rozelle units, wasn't it? A. Yes. I was trying to sell them, and I had some of the Croatian agents trying to sell them, too.

Q. You were proposing to buy one of them from Mr. Armstrong's company? A. Well, I don't know whether it is Mr. Armstrong's company but I think he is one of the shareholders in it. I don't even know the name of the company.

Q. Did any money pass hands permanently, temporarily or otherwise in relation to that transaction? A. No, I drew out the money and then the sale fell through and I gave the money back to my parents because they lent me the money in the first place. 30

Q. How much was that? A. I would not have a clue. I am still owing them a lot. I don't really know. It went into over 1000, I am sure of that.

Q. Pounds or dollars? A. Dollars. Dollars.

Q. No money? A. No money changed hands.

Q. No money changed hands? A. No. 40

Q. No money was paid to Mr. Armstrong or any company of Mr. Armstrong's? A. None whatsoever. It fell through when I could not sell these units to the Croatians. I thought it would be good for business to be in the same building.

Q. To come back to this, do we, that at no time in respect of any matter have you had any financial transactions with Mr. Armstrong, apart from the three sums of money that have been mentioned? A. That is right, and probably small ones like if he forgot -- 50

Q. A few meals, or something like that? A. Yes, that is right.

Q. Secondly, can I take it that at no time in respect of any matter have you had any financial transaction with any company with which Mr. Armstrong is associated except for the three matters that have been mentioned? A. Except for the matters that were brought before the court. I don't think any others.

Q. Except for those three matters? A. Three matters? There were a lot more. You mentioned about the Double Bay shop, and that was not Mr. Armstrong - 10

Q. We are including all of those - \$1,094, \$585 and \$500? A. Yes.

Q. Apart from those three amounts, I take it that you have had no financial transaction of any kind at any time with any company with which Mr. Armstrong is associated? (Objected to; rejected.)

Q. Apart from the three amounts of \$1,094, \$585 and \$500 you say that you have had no financial transactions with any company in respect of which you believed Mr. Armstrong was associated? A. Yes, to the best of my knowledge, yes. 20

Q. Does the same apply to any company with which Mr. Barton is associated - with which you believed Mr. Barton was associated? A. I don't know how many companies those people are involved in. I could not really answer that one.

Q. The question is will you agree that you have had no financial transaction at any time in respect of any matter with any company with which you believed Mr. Barton was associated other than those three matters mentioned? A. Yes, I don't know how many companies are involved. I would not have a clue. 30

Q. I will have to have a direct answer if it takes all day. Will you tell his Honour that apart from the three sums of money that have been mentioned, you have had no financial transaction of any kind with any company with which you believed Mr. Barton was associated? A. Well, I don't know how many companies he is associated in. If some companies are paying me money I don't know whether they are some companies Mr. Barton is involved in. I don't know. 40

Q. Are you trying to be obstructive, or does it just happen that way? A. All I can say is I don't know.

Q. The question is in respect of companies with which you believed Mr. Barton was associated have you had any financial transactions apart from the three that have been mentioned? A. Mr. Barton I believe was connected with the Goondoo company. That was up at Surfer's Paradise. And also Landmark. They are two. I don't know whether he is connected in any other companies. So far as Mr. Armstrong --- 50

Q. Mr. Hume, have you had any financial transaction, apart from the three that have been mentioned,

with any company with which you believed Mr. Barton was associated? Yes or no? A. Well, I don't know. I don't know how many companies he is associated with. I don't know how I can answer that one.

HIS HONOUR: Q. Mr. Hume, I don't understand what your difficulty is. You remember these three invoices? A. Yes.

Q. One for \$585? A. Yes.

Q. One for \$1,094? A. Yes.

Q. And one for \$500? A. Yes.

10

Q. Those are all invoices in respect of particular work that you have already been questioned about? A. Yes.

Q. Well now, leaving aside the work covered by those three invoices, what Mr. Gruzman is asking you is whether you have ever had any financial transaction with any company with which you believe Mr. Barton is associated. Leaving those three invoices aside, any other financial transaction with a company with which you believe Mr. Barton is associated?

20

A. Well, in those three invoices that are there I don't believe in one of them - yes, one of them is for Mr. Barton. Surfer's Island. The Island. Apart from that, no. No, I have not had any apart from those.

MR. GRUZMAN: Q. You see, Mr. Hume, I put it to you that during 1966 - early 1967 Mr. Armstrong was paying you large sums of money in cash? A. No.

Q. You told us that you never borrowed any money from Mr. Armstrong? A. I never borrowed any money from Mr. Armstrong, that is right.

30

Q. (Approaching witness). Mr. Hume, I show you a cash book, which is Exhibit 76. Will you agree that on 23rd January 1968 you paid a cheque to Mr. Armstrong for \$440 as repayment of a loan? A. No, that is incorrect. That is incorrect.

Q. Will you agree that according to your cash book for the 31st week under the heading "Personal Expenditure" there appear these words "23.1.68. Cheque 12136. Loan repayment Armstrong", and in the appropriate column "\$440". Would you agree that appears in your cash book? A. That appears in the cash book, but it is incorrect. I only have made one cheque, and that was for the time when I was going to buy the unit. That is all.

40

HIS HONOUR: Q. I didn't hear that. A. I have only made one cheque to my knowledge in a large sum, and that is when I was going to buy a unit, as I previously stated.

MR. GRUZMAN: Q. You have already sworn that in respect of the unit transaction no money passed hands?

50

A. No money, but I have made a cheque and I have cashed it and given the money to my parents. I told you that before.

Q. But you have never paid any money to Mr. Armstrong? A. No, never. I have never paid any money to Mr. Armstrong.

Q. And you have never received any money from Mr. Armstrong? A. Only on those occasions.

Q. Those three occasions? A. Yes. 10

Q. I show you your invoice - cheque butt, rather, corresponding. Will you agree that the cheque was actually drawn for \$440 to cash, and was entitled at the bottom, presumably by your father, "loan repayment"? A. Well, it was wrong.

Q. Will you agree that is what your cheque butt shows? A. There are two different writings. One is by Annette Catt and the other one by my father. Annette Catt wrote out the cheque for \$440 and there there appears to have been put my father's handwriting, which says "Loan repayment". It does not say to whom or to what. 20

Q. And your cash book shows it was paid to Armstrong, doesn't it? According to your cash book it was paid to Armstrong? A. Well, I don't know. According to that - it shows it was paid to someone - Mr. Armstrong. But it certainly was not. It definitely was not paid to Mr. Armstrong.

Q. Do you say that is a false entry in the cash book? A. I would say it is wrong. Whatever is in there, that is definitely wrong. I have never had any cash money transaction with Mr. Armstrong except those three. 30

Q. Mr. Hume, do you think there is any possibility of any other mistakes like that in the cash book? A. Cash book?

Q. Yes. A. That is not a cash book.

Q. Isn't this the cash book? A. That is a book of all my financial records.

Q. Do you think there are any other mistakes like that in the book containing all your financial records? A. I have never had a look at this book, as I have told you before. I don't know how many mistakes there are. 40

Q. Can you offer any explanation to his Honour as to why an entry should appear as a loan repayment to Armstrong of \$440? A. All I can say is it is incorrect.

(Cheque butt tendered and added as part of Exhibit 76. Butt pinned on to page for 31st week, 1967/68.) 50

Q. I now show you an entry in the 35th week, showing that - will you agree that according to your cash book cheque 12144 was paid to Armstrong for loan repayment, and the amount involved is \$500? A. Well, it was not paid to him at all. It was not paid.

Q. Will you answer the question, please? Will you agree that according to your cash book cheque No. 12144 was paid by way of loan repayment to Mr. Armstrong, and the amount is \$500? A. Well, according to this here, but it was not. He never received it. 10

Q. I show you cheque butt 12144. Will you agree that the cheque for \$500 was in fact drawn? A. Yes. Self expenses.

Q. And the entry at the bottom, presumably by your father, is "loan repayment"? A. "Self-expenses" is written in my handwriting. I drew out the money. Now how would my father know what I drew out the money for?

Q. At the bottom, it says, "Loan repayment". What explanation do you offer to his Honour as to why this entry appears in the cash book that \$500 was paid to Mr. Armstrong as loan repayment? A. I have no idea. All I can say is that he is an old man, and he is making mistakes, because it is not true. It is impossible. That is all I can say. 20

(Cheque butt tendered and admitted as part of Exhibit 76. Butt pinned to page for 35th week, 1967/68).

Q. Well, what do you tell his Honour happened to these two sums of money totalling \$940? A. I think that is the amount that I was going to pay for the unit. I think that would be - if you would get all the cheques together - if you got the cheques together you would see that that is the amount I was going to pay for the unit, but I have never bought the unit. It was the deposit for the unit that I was going to spend on it. 30

Q. Did you tell your father that you were going to buy a unit? A. My mother told me to buy a unit. I suppose she would have told him that, too. 40

Q. If you were repaying a loan ---? A. I was not repaying a loan. There was no loan. I was going to buy a unit.

Q. Why did you swear before that you never paid any moneys to Mr. Armstrong? A. I never paid any moneys. That is right. I never paid any moneys. I have never paid him any money. The transaction never took place. I never bought a unit.

Q. You told us that your father loaned you the money to buy the unit? A. No. 50

Q. Mr. Hume, didn't you tell us that within the last ten minutes? A. My parents.

Q. Mr. Hume, did you tell us within the last ten minutes that your father lent you the money to buy a unit? Yes or no? A. Yes,, at some stage before he got together with my mother and they lent me the money, yes. Beforehand.

Q. Didn't you say you cashed the cheque and then gave it back to him? Did you say that? A. Yes, that is right. But there was some previous ---

Q. Mr. Hume, will you answer the question, please? Will you answer the question, please? A. Yes. 10

Q. Was your evidence in that respect true or false? A. That I returned the money?

Q. Yes. A. Yes, I did.

Q. The position is that your father gave you a cheque with which to buy the home unit? A. No, he didn't.

Q. You cashed the cheque? A. No, he did not give me a cheque at all. 20

Q. That is not true? A. That is not true. This is the way it went. My father gave me the money, together with my mother, to buy a car, and then when I finally sold the car - that was the car that I had to trade in - that was the Falcon, which all the dispute was about - I owed quite a bit of money on the Falcon, and I traded the Falcon on a brand new Holden so that I could get out of it financially, and then I sold the brand new Holden. For this transaction I needed money, and that is when my parents helped me and gave me the money for this transaction. It is when I finally sold the car - then I had this money lying in the bank, and then my mother said "You should buy yourself a unit". That is what happened. Then when the final sale of the units fell through I gave the money back to my parents. Not all of it. 30

Q. You sold the car in July 1967, didn't you? A. That is right. That is the Holden. This money was deposited into the bank, wasn't it?

Q. And these loan transactions with Mr. Armstrong took place in February of 1968? A. There was no loan. There never was any loan. 40

Q. What do you say happened to the money that was drawn on those two cheques totalling \$940? A. Well, that would have been - I am assuming this would have been money that I would have given back to my parents.

Q. So that your father told a lie in the book; he, knowing that he had received the money, said that Mr. Armstrong received it? A. I don't know whether he told a lie, but certainly Mr. Armstrong never received anything of that money. 50

Q. Mr. Hume, did you draw out any other large sum

of money at round about that time? Did you draw out any other large sums of money round about then?

A. You have got the bank statements. You are asking me.

Q. Will you answer the question, please, or I will ask his Honour to deal with you. At round about this time, did you draw out, to your recollection, other large sums of money? A. What time is that?

Q. This is towards the end of 1967 - early 1968? 10
A. In what bank?

Q. In any bank. A. In Wollongong there was a man who was buying a house, and ---

Q. That was the \$1,000 holding deposit which you received, and paid back? A. Yes, that is a large amount for me.

Q. That is a large amount for you? A. Yes.

Q. Any other amount of similar size that you dealt with during the latter half of 1967? A. I could not say. I could not really say. 20

Q. Did you draw out an amount of \$1400 in September, 1967? A. Yes.

Q. What did you do with that? A. That also went to my parents.

Q. That went to your parents? A. Yes.

Q. What was that for? A. It was their money. It was money that they lent to me, and I had to give them back. I can't just keep on getting money from them and never giving it back again.

Q. You see, Mr. Hume, I show you your cash book for the 12th week, 1967/68. You see in this case it shows "Loan repayments, \$1400". A. It does not show anything. There is a green bit of pencilling there, and it says \$1400. 30

Q. Will you agree that against the printed - Mr. Hume, will you agree that against a printed heading, in a book containing your financial records, against the printed heading "Loan repayments" there appears the amount of \$1400? A. That is right. It would have been a loan repayment. 40

Q. No mention of Mr. Armstrong there? A. Most certainly not, because he never got any money from me.

Q. So that you tell his Honour, I think - you paid back to your father \$1400 in September 1967? A. Father or mother. Either of them. They both came in handy.

Q. And you never paid them back any more money, did you? A. No, I don't think so. Not that I can think of. 50

Q. And the \$500 and the \$440 went to Mr. Armstrong? A. No, it did not. It went back to my parents again.

Q. Mr. Hume, in connection with the arrangements with Vojinovic - A. Your arrangements with him - since I never had any?

Q. In your arrangements with Vojinovic I put it to you that you received \$1,000 to be paid as an advance payment to Vojinovic from Mr. Armstrong? A. That is a lie. 10

Q. And I put it to you that after this case started you repaid Mr. Armstrong. Mr. Armstrong asked you to repay that money? A. I never received any money apart from those three invoices or bills. Apart from those I have not received any money from Mr. Armstrong, and I have never given back Mr. Armstrong any money.

Q. You told us before that all the money you received goes into this cash book. I have called it a cash book. It is a book of account? A. To the best of my knowledge it all goes in there, yes. 20

Q. I asked you on the last occasion whether certain sums of money had been withdrawn by you. Do you remember that? A. I don't remember what you said. If you say so, yes.

Q. If I can refresh your memory, I took you through the cash book from July 1966 to ---? A. Yes, I can remember that. I told you that it was very bad during that period. 30

Q. July 1966 to January 1967? A. I didn't make much money, because I just moved to the premises. That is quite right.

Q. Will you agree that your total withdrawals from 31st July - I am sorry, from 1st July 1966 to 8th January 1967 was \$538? A. It must be right, if it says so.

Q. And is that what you lived on for that period of more than six months? A. Which year was that in?

Q. The second half of 1966 and the first week of 1967? A. Yes. It would be very easy for me to live, because my parents were running a restaurant, so that there was no need for any money for food. I would not need any money for food. 40

Q. You had Riley Street going? A. I beg your pardon?

Q. You had Riley Street going for the last two months? A. That is right, rented. Paying rent. Before that, of course, we had the Balmain property, and there my mother ran a restaurant, so that I don't think I would have any need for money. 50

Q. On what you say - you say that you lived and kept yourself and went out with Miss Catt and whatever other things you did for a period of more than six months on this \$538 shown as withdrawals in the book, is that right? A. I believe I just met Miss Catt at that time, and I was not going much around with Miss Catt. She was up at Surfer's.

Q. You brought her down from Surfer's in August, 1966, didn't you? A. When? 10

Q. August 1966. A. Yes, it could have been that time. And she was staying also at that time over at her parents, or she was down at Balmain at the property, and she would also be - I mean, we would not need any money, or not much. I think \$500 would be more than sufficient.

Q. So that what you say is that you lived - you used this \$538 and no more for your living expenses during that period? A. Yes, that would be right. Just pocket money. You could say that. Just for going out, as I don't pay any board or anything at home at all. I never have. 20

Q. You never used that money for living expenses at all, did you? A. I beg your pardon?

Q. You never used - I will correct that - you never used the bulk of that money for your living expenses at all, did you? A. I don't know what you mean by that. I told you it was pocket money because we did not need any money because we were living there and there was the restaurant. We could have as much food as we liked. It was just my pocket money, my spending money. 30

Q. Mr. Hume, that is a lie. A. No, I have not told a lie at all.

Q. Do you have a child in Melbourne? A. Yes.

Q. And the greater part of this \$538 was sent to your child in Melbourne, wasn't it? A. No.

Q. To support it? A. No. I paid my regular payment there, but that is incorrect.

Q. We will just go through and see. That total figure which I put to you of \$538 is the addition of the various withdrawals that took place during that period, is that right? A. Yes. 40

Q. I show you, for example, in the eighth week. There is a withdrawal of \$100? A. The eighth week?

Q. In 1966/67 financial year or, to be precise, for the week ended 21st August 1966 there is a withdrawal shown as \$100, and that was in fact not used by you for your personal expenses at all, was it? A. No. 50

Q. It was paid by you to the Director of Family Welfare in respect of your son? A. That is right.

Q. Will you agree with me - I will take you right through, if you wish - will you agree with me that the great bulk of that \$538 was moneys paid in respect of your son? (Objected to; rejected.)

Q. I show you a page open at the twelfth week, where it shows a withdrawal of \$100. That was not an amount for your personal expenses, was it? A. No.

Q. I had shown you an entry for the eighth week, a withdrawal of \$100, and in fact it says in the cash book for so-and-so, to the Director of Family Welfare? A. Yes. 10

Q. Is that right? A. Yes, that is right.

Q. Now I have shown you the entry for the 12th week, which merely shows a withdrawal of \$100? A. Yes.

Q. When you look at the cheque for 10th September, 1966 it is a cheque to M. Slifken, for your son, is that right? A. Yes. 20

Q. \$100? A. Yes.

Q. That is not an amount that you used for your living expenses at all? A. No.

Q. I show you the cash book under the fourteenth week. It shows a withdrawal of \$100? A. That is right.

Q. And in fact that also went to Slifken for your son? A. That is right.

Q. By cheque dated 14th October 1966? A. That is right. 30

Q. At that stage I think \$300 of your total withdrawals to that time of \$410 had gone to your son? A. Yes. My parents would have then given me money. That is all.

Q. Do you say that you lived for that period - that is from July to October on \$110? A. Mr. Gruzman, my parents had money and they would give me money. They don't write down on a piece of paper when they give it to me. They don't write down when they give me money. I ask for money and they give it to me. They realised that I had obligations to pay for my son and they were only too pleased I was paying for him. They would have given me more money than I was paying for my son. He was their pride and joy. 40

Q. There is no doubt that you were receiving substantial cash moneys over this period, is there?

A. From my father, yes, and my mother I was receiving money. Not substantial money, but sufficient for me to get by, as always since the day I was born - if I was ever in difficulty I could turn to my parents. 50

Q. Did you put this cash in the bank, or deal with it in any way? A. What cash in what bank?

Q. Whatever amount you received. Did you put it in the bank? A. He only gave me whatever I needed. My father just gives me what I need. He does not give me any large sum of money. He says "You would spend it if I give it to you." He does not give me any large sum of money; just whatever I need. He jots it down, and says "You owe me roughly" so-and-so. 10

Q. How much do you say you owe him now? A. I suppose between five and six. I don't know.

Q. Thousands, you mean? A. Yes.

Q. And that has been adding up over how many years? A. That is only in cash. He does not charge me for board or anything like that. That is free.

Q. Mr. Hume, the position is that your mother was working in a chocolate factory in Balmain, wasn't she? A. That was a long time ago. Then she opened up the restaurant. When the Tasman Dry Cleaners moved out of the premises - they were only tenants - then she opened up the restaurant, and she was self-employed and ran the restaurant. 20

Q. She was working as a moulder in a chocolate factory for a substantial period, wasn't she? A. I would not know for how long it was, but at some stage she was. From the day that they arrived in the country they have been working. 30

Q. Your mother and father are really poor people, are they not? A. Not really poor. I don't know what you mean by "poor". Poor probably in your estimation, but not theirs. He was a chemist. He has property, and some money in the bank. Not really poor. Poor in your estimation, probably, yes.

Q. The house at Lane Cove was bought for a total price of £2,500, wasn't it? A. I think the value of it was about 7 or 8 now - £7,000 or £8,000. 40

Q. Will you agree that the actual cost of the house was £2,500, of which about £2,000 was provided on mortgage? A. Well, I don't know what it was. I probably was not in the country when they bought the house.

Q. And over a period of years, they have finally paid off the house at Lane Cove? A. They probably did. They had another property at that time. One at Balmain.

Q. You have always led a pretty expensive life, haven't you? A. Well, when I was overseas playing tennis everything was paid for me. Naturally I lived well. 50

Q. By the way, did you give evidence here, that because you arrived in this country at the age of 13, that therefore you could not have a criminal record for violence overseas? That is what you said, isn't it? A. That is right. (Objected to.)

Q. What you said was - at p.1240 - you were asked: "Q. When you arrived you were about 15 years of age? A. Yes, I just turned 15. I did not have a passport at that time. Q. It has been alleged in this Court that you had a criminal record in Europe for violence. Is that true? A. No. That is impossible." A. That is right. 10

Q. What did you mean by saying it was impossible? A. It would be impossible for a 15 year old boy to have convictions for violence and then still be permitted to come into Australia, because they make a thorough check before you are permitted to come into the country.

Q. You were overseas for two years from 1957 to 1959, weren't you? A. Yes. 20

Q. And it was not ---? A. From when to when? You are very incorrect. You have got the dates there. 1959 to 1961, wasn't it?

Q. 1959 to 1961? A. Yes.

Q. How old were you in 1959? A. About 26 I suppose.

Q. 26? A. Yes, about 26.

Q. Well, it was not impossible, by reason of your physical age, that you could have had a criminal record for violence while overseas during that two years, was it? A. It would be. I mean, it would be front page if a tennis player got into criminal activities over there while playing tennis. It would be known to everyone. 30

Q. You were a pretty small-time tennis player? A. Still good enough to win good tournaments.

Q. Were not you warned off White City Tennis Courts? A. No.

Q. Did you play cards and cheat at cards at White City? A. I did not. 40

Q. Were not you warned not to come back there? A. To White City?

Q. Yes. A. No, they don't play at White City tennis courts.

Q. Did you play cards at White City club? A. You mean White City drinking club?

Q. Yes. A. Yes.

Q. Were not you warned not to come back, for

cheating at cards? A. I was not warned not to come back. We were playing - there were four of us, and three of those were card sharps, and I was playing with them.

Q. You won £400, didn't you? A. I don't remember that I won £400. Someone won £400.

Q. And it was then that you played with marked cards, wasn't it? A. No, not me.

Q. You were told not to come back? A. No, I was not told. 10

Q. And you did not come back? A. No, I was not told not to come back.

Q. Detective Sergeant England told you not to come back, didn't he? A. No, no policeman was ever involved. It was a sheer matter in the club itself. We were playing cards there and they said, "We don't want any one to play cards any more". That is all. There was nothing about any caution or any conviction or any mention of it. 20

Q. Who were the three card sharps? A. One was called Mario Stanley. Another one was called - do I have to name them, your Honour?

HIS HONOUR: Yes. A. Warren Woodcock, and the other one was Max Anderson.

MR. GRUZMAN: Q. These three people that you have mentioned ---? A. They are professional card players. Professional.

Q. They are respectable citizens, aren't they? A. Those three? 30

Q. Yes. A. They could be, but they are professional card players also.

Q. It was found that you had used marked cards, wasn't it? A. I didn't use them.

Q. And you were ordered not to come back again? A. No, I was not ordered not to come back by anyone.

Q. Why didn't you come back? A. Why didn't I come back to where?

Q. To the club. Why didn't you come back to the club? A. I was not a member over there. They just told us not to play cards, and that was it. 40

Q. You have never been back again, have you? A. No. I don't play cards at all. I have never played cards before that, or after.

Q. You were also a paid gigolo, weren't you? A. No.

HIS HONOUR: Mr. Gruzman, that name may mean something to you; it doesn't to me.

MR. GRUZMAN: You were paid by women to take them out, weren't you? A. No, it is news to me.

Q. Do you remember mentioning an Austin Healey car in the course of your evidence? A. Yes, that was my car.

Q. Who gave it to you? A. I bought it. No one gave it to me.

Q. Didn't a lady in Melbourne provide that car?
A. A lady in Melbourne? I wish she had. But I am sorry, I had to pay for that car. 10

Q. When did you buy that car? A. Well, you have got the details. I don't know. Some time ago. I was driving a taxi at the time that I got the car, and I was working at the time.

Q. You were driving a taxi and you bought yourself an Austin Healey car? A. Only the deposit. It was not paid out.

Q. I put it to you that the car was a payment made to you by a woman in Melbourne? A. That is fabrication. 20

Q. Nothing like that ever took place? A. Never. I don't even know a lady in Melbourne. Which lady are you talking about? I don't know any ladies in Melbourne.

Q. Let us get back to your record overseas. By reason of your physical age it is not impossible that you had a criminal record overseas, is it?
A. You mean when I was playing tennis?

Q. Yes. A. Impossible. 30

Q. Impossible? A. Yes, because it would be hot news. I would have been sent back to Australia, so it is impossible.

Q. It was not a successful tour financially, was it? A. It was. I had everything paid. I lived in the best places. I lived as well as the top players. What is the difference?

Q. When you came back to Australia the best you could do was to apply to join the Commonwealth Police Force? (Objected to; rejected.) 40

Q. Mr. Hume, when you came back to Australia your greatest financial aspiration was to join the Commonwealth Police Force? A. Well, there was a recession here and, of course, it was very hard to get a job.

Q. What I am putting to you generally is that your father was not in the financial position to provide you with the sort of money you had been spending over the past few years? A. I have not been spending ---

Q. You are well dressed, aren't you? A. Yes. 50

Q. You travel quite a bit? A. No.

Q. For example, you travelled ----? A. All for the job. Always on the job I travel, except when I go somewhere. Except to Melbourne, when I go to see my son down there. That is when I go.

Q. You go frequently to Melbourne? A. Not frequently. I have not been there for the last eight months. Seven or eight months.

Q. You took Miss Catt on a weekend to Katoomba? 10
A. I did, yes.

Q. And you told us that you went up privately to Surfer's Paradise on some occasions and just had a look in? A. That is right. I was paid for part of it.

Q. Part of it? A. Yes.

Q. You played with people like Mr. Armstrong? A. Tennis, yes.

Q. Tennis? A. Yes.

Q. He does not pay you for it, does he? A. He 20
does not pay me for it. I don't expect him to.

Q. I beg your pardon? A. I don't expect him to. We have a good game.

Q. You play with lots of people in that way? A. Quite a number.

Q. You play handball? A. Yes, quite a lot. For money, too. For money, we play handball. We have bets on a game of handball.

Q. And the life that you lead is a fairly expensive life, isn't it? A. No, not a very expensive 30
life. You don't need money to play tennis, and you don't need money to play handball. It is only 2/- at the moment to go to Redleaf Pool and play handball there. What is expensive about that?

Q. Your mother and father don't lead the sort of life you do, do they? A. I think my father lives quite well now since he is retired. Before he was a chemist, and used to work hard.

Q. Your mother and father live a very humble life, don't they? A. I would not say humble. They have 40
a nice house. They don't go out much, but they usually have visits every weekend - they go somewhere for a trip. They don't live badly. They live quite well. I think they live quite well.

Q. I put it to you that this cash money that you had access to from the middle of 1966 has come to you from Mr. Armstrong? A. No, it most certainly did not. It was always my father that gave me money - my father and mother from the day I was born have been helping me. 50

Q. I think you were served with a subpoena to produce some documents? You were served with a subpoena duces tecum to produce some documents? A. Yes. I was not served. Someone left it last night at 33 Garling Street and this morning when I got there I found the two subpoenas.

Q. You mentioned it was this morning when you got there. Where did you sleep last night? A. Do I have to disclose all this, your Honour. 10

HIS HONOUR: I don't think I am interested in where Mr. Hume was last night, Mr. Gruzman, unless there is particular significance attaching to it.

MR. GRUZMAN: Q. Do you normally sleep at 33 Garling Street? A. Sometimes yes, sometimes no. That is my residential address.

Q. How often do you sleep there?

HIS HONOUR: Mr. Gruzman, unless there is a suggestion that Mr. Hume is in premises with some person concerned in this case I don't really think it is a matter that I ought to require him to answer. 20

MR. GRUZMAN: Q. Pursuant to the subpoena duces tecum do you produce to the Court certain documents and a copy of the subpoena duces tecum? (Objected to; witness retired to the floor of the Court.)

(Frederick Hume called on subpoena duces tecum by Mr. Gruzman. Mr. Hume produced a copy of the subpoena, together with the documents called for under the subpoena. He stated that he had no objection to the documents produced being seen by the parties, but requested that they should be returned as soon as possible, as Miss Catt could not run the office without them.) 30

(Mr. Hume returned to the witness box.)

FREDERICK HUME
On former oath:

HIS HONOUR: Q. You are now on your oath, Mr. Hume?
A. Yes.

Q. These don't concern the affairs of strangers in any way? A. Well, they are mainly companies that have paid me moneys, as well as private people and so on. 40

HIS HONOUR: I think, having seen the nature of them, I will allow you to inspect them, Mr. Gruzman.

MR. GRUZMAN: Q. What is the other document you have? A. The other subpoena was also left there and it is for Charles Harasty. Of course, my father is not in Sydney, and has not been for the last five weeks. 50

Q. Has not been for how long? A. About the last four or five weeks.

Q. Didn't you tell us last week that your father had just come out of hospital and had gone away for a week? A. Well, he had come out of hospital some time ago and he is under doctor's supervision, and they told him he should go for a holiday, and that is where he went.

Q. Where has he gone to? A. I believe he is with some friends up Newcastle way. 10

Q. What is the address there? A. I don't know. I have never been there.

Q. Are you seriously telling us you are unable to communicate with your father? A. Well, I am. I am seriously telling you.

Q. Where is your mother? A. She is at Lane Cove.

Q. Your mother is at Lane Cove? A. Yes.

Q. Your mother knows where your father is, I suppose? A. I don't know. 20

Q. You don't know? A. No, I don't know.

Q. Is this the position, that with all that your father has done for you, and your father is sick, you don't know where he is? A. I don't know where he is. He is not under my care. He is under doctor's care.

Q. You have never inquired where he is? A. No. I suppose he is having a good time. He is with his friends. Why should I inquire or interfere?

Q. Perhaps overnight you may make inquiries. Tomorrow morning I will ask you where your father is, do you understand? A. Yes, I understand. 30

HIS HONOUR: Mr. Gruzman, I don't think you are entitled to require Mr. Hume as if it were an obligation imposed on him by the Court.

Q. You understand, Mr. Hume, that you are not being required by the Court to make inquiries as to where your father is? A. I understand that.

Q. So that there may be no mystery about it, you have given evidence about moneys passing from your father to yourself? A. Well, yes, my father and my mother. 40

Q. Just a moment. It would seem to be likely that the plaintiff is endeavouring, by the process of a subpoena duces tecum to produce records, to require your father to produce some records which might support your evidence? A. Yes.

Q. Regarding the payment of money? A. Yes.

Q. You are not obliged to make inquiries to find out where your father is. You are, of course, obliged to answer truthfully if you do know where he is?

A. I don't know. I would have answered that.

Q. Whether you choose overnight to find out where he is is entirely a matter for you, but you understand that Mr. Gruzman is challenging the veracity of your evidence that this money or these sums of money came from your father to you? A. Yes, father and mother. 10

Q. From your father and mother? A. Yes, because the money for the car came mainly from the mother, because she wanted to buy a car herself, and she lent me the money to pay out that car and buy another one.

MR. GRUZMAN: Q. What hospital was your father in?

A. He was in the Royal North Shore some time ago, and he has been under some doctors that have been treating him. He has had a number of those heart complaints, I think they call them. 20

Q. What is the doctor's name? A. I believe at one stage Dr. Puflett and ---

Q. How long was he in the Royal North Shore Hospital? A. I don't know. I saw him there some time ago. He goes there quite frequently. He goes there from time to time; he is always getting this same complaint.

Q. This year or last year did you see him at the hospital? A. I saw him there quite some time ago. He was there for a long time at that stage. 30

Q. That was what? Some years ago? A. Last year? I am not sure when it was. It could have been last year, or the year before then.

(Report which states that it is an extract from Mr. Hume's diary m.f.i. '79.)

(Further hearing adjourned until 10 a.m., on Wednesday, 25th September, 1968.)

IN EQUITY

No. 23 of 1968

CORAM: STREET J.

BARTON -v- ARMSTRONG

THIRTY-EIGHTH DAY: WEDNESDAY, 25TH SEPTEMBER, 1968.

IAN BARRY ANDERSON

On Voir Dire:

HIS HONOUR: Q. You have previously given evidence in this suit? A. Yes, your Honour.

MR. GRUZMAN: Q. Sergeant, you appreciate that these questions I am about to ask you relate to the withholding of production to the Court of the affidavit of Frederick Hume, sworn, I think, on 9th February 1968? A. Yes. 10

Q. Sergeant Anderson, you are aware that over a period of now some nine months efforts have been made by the plaintiff to procure from the Police Department documents relating to this matter? A. Yes.

Q. And it is within your knowledge that the plaintiff has even sought the assistance of the Premier of the State to compel the Commissioner of Police to produce documents and give other assistance? A. I know that letters were written. 20

HIS HONOUR: I should indicate the basis upon which I am permitting this, Mr. Gruzman. Proceedings on the voir dire are to enable the party who issues the subpoena to probe the sufficiency of the answer to the subpoena. That may be done both by questions directed to ascertaining whether the subpoena has been fully answered, that is to say, the credit attaching to the oath of the person who makes production. I am only allowing you to re-open this with Sergeant Anderson and to ask some limited questions upon the non-production of this affidavit of February 1968 upon the basis that it may have some relevance to the evidence of Sergeant Anderson that full production has been made in response to this subpoena so far as concerns other documents. In other words, I am not concerned to investigate the reasons for the non-production of this document, but I am prepared to give you an opportunity to ask questions of Sergeant Anderson on the subject of the non-production by reason of the possible relevance of that non-production in relation to the sufficiency of the answer made to the subpoena. 30 40

MR. GRUZMAN: I appreciate that. But in addition, the plaintiff caused the process of this Court to issue, in the sense that a subpoena was issued. That subpoena was not complied with, and I propose to ask your Honour on good authority to commit the Commissioner of Police and Sergeant Anderson for contempt of Court. I will come to that, if I may, a little later. I do not desire to ask a great number of questions, but there will be enough to show that this is a serious matter. 50

I.B. Anderson, on
1843. voir dire.

HIS HONOUR: I have indicated the limited basis on which I shall allow this at the moment. At the moment I have not rejected any question you have asked, but I make clear the basis upon which at this stage I am permitting cross-examination.

MR. GRUZMAN: Q. Sergeant Anderson, you informed his Honour on 17th September, at p.1348 of the transcript, that this particular document - referring to the affidavit - was discussed with the Crown Solicitor. You said, "This particular document was discussed with the Crown Solicitor and it was advised in view of the fact that it had not been in existence at the time of the subpoena and that it had not been made or come into existence- had not come into our possession as a result of police inquiries - the document did not fall within the subpoena." You told his Honour that, did you not? A. Yes. 10

Q. Was it true? A. That was true. If I may add --- 20

Q. I will ask you further questions. On p. 1367 of the transcript you gave sworn evidence in these terms: In answer to a question by, I think, his Honour: "Q. Why did you understand that this affidavit of the 10th February could properly be withheld? A. It was put to me - I just put the matter to Mr. Forbes, it was fairly brief, and he said that in view of the terms - this is from my recollection of it - he said that in view of the terms of the subpoena and what is contained in the affidavit he did not consider that it fell within the subpoena." Was that evidence true? A. Both of the statements were to the best of my recollection. 30

Q. Sergeant Anderson, I will ask the question again. Is the evidence which I have read to you true or false? A. It is true, to the best of my recollection.

Q. You are an experienced police officer, aren't you? A. As to that, Mr. Gruzman, I have been engaged on purely clerical duties for many years. 40

Q. In charge of the Correspondence Branch of the C.I.B.? A. No.

Q. Aren't you? A. No.

Q. Isn't that your position? A. In charge of the Correspondence Branch in the Commissioner's Office.

Q. In the Commissioner's Office? A. Yes.

Q. And you were deputed by the Commissioner as the officer to answer these subpoenas to the Court? A. Yes. 50

Q. On his behalf? A. Yes.

I.B. Anderson, on voir dire.

Q. And you felt that the answering of the subpoenas required the legal advice of the Crown Solicitor, did you? A. That was the Commissioner's view.

Q. The Commissioner of Police, I suppose, receives dozens of subpoenas to produce documents to the Court each day? A. Many subpoenas.

Q. In this particular case the Commissioner directed that you seek the advice of the Crown Solicitor? A. After I had been to the Court on the first occasion. 10

Q. And the Commissioner then directed that you take the advice of the Crown Solicitor? A. Yes.

Q. And was that for the purpose of withholding whatever documents could be withheld? A. No.

Q. You see, if the Commissioner was going to fairly produce to the Court all documents, can you say why the advice of the Crown Solicitor would be necessary? A. I am sorry, can you repeat the question, please? 20

Q. If the Commissioner was going to produce or cause to be produced, to the Court fairly all documents why, in your mind, was the advice of the Crown Solicitor necessary? A. Because of the manner in which I was cross-examined on the first day that this matter came before the Court.

Q. That was only to suggest that documents had been withheld, wasn't it? A. That is a matter of interpretation. I cannot remember all that was said on that occasion. 30

Q. Sergeant, is this what you say, that a particular document, namely this affidavit, came into your possession before you saw the Crown Solicitor? A. Yes.

Q. Did you discuss that document with the Commissioner? A. No.

Q. Not at any time? A. Not until recently.

Q. What do you mean by "recently"? A. Last week. Tuesday. The day on which it was produced in Court. 40

Q. Where did you obtain that document from? A. It was on my desk on the morning of the 17th, I think - the date of the Court. I had - (interrupted.)

Q. I am sorry? A. I had been in touch through the Police with Det. Const. Follington, and asked that the document be sent in to me.

Q. If I may take you back a little bit, I am 50

referring now to the time when you saw the Crown Solicitor. How and when did that document come into your possession prior to seeing the Crown Solicitor?

A. It was given to me by Detective Constable Follington.

Q. It was given to you by Detective Constable Follington? A. Yes.

Q. How did that happen? A. At my office I asked for all the documents connected with Barton and Armstrong. 10

Q. And one of the documents produced was the affidavit? A. That is so.

Q. Was anything said by Follington to you about that affidavit? A. It is a long time ago. There was something said but I can't remember exactly what it was.

Q. What was the gist of it? A. That the document had been given to him by somebody at the C.I.B. I can't remember who he said. He said that it was an affidavit by Mr. Hume which had been made some few days earlier, and he said he considered that it should go with the other documents. 20

Q. Well then, you were handed then what? You were handed a large bundle of documents, were you? A. Yes.

Q. Was this on the same day as you appeared at Court? A. No.

Q. You went with all of these documents to the Crown Solicitor? A. Yes. 30

Q. In the person of Mr. Forbes? A. Yes.

Q. And you took all the documents with you? A. Yes.

Q. And did you produce this affidavit to Mr. Forbes? A. Yes.

Q. Did he appear to you to read it? A. I can't remember really.

Q. Well, what discussion took place on this affidavit with Mr. Forbes? A. There again, it is too long ago. 40

Q. Sergeant, you were in no doubt about it on Tuesday, were you? A. I was in some doubt on Tuesday, and I indicated that to the Court.

Q. You came here on Tuesday to tell the Court both by verbal statement and by sworn evidence that you had not produced the affidavit because you were advised not to by the Crown Solicitor, didn't you? A. That is so.

I. B. Anderson, on
voir dire.

Q. What did Mr. Forbes tell you about that affidavit? A. When? In the original ---

Q. When he gave you the advice which you passed on to the Court? A. I can't remember the exact words, but it was to the effect that the document was one which had not been made as a result of Police Inquiries; that the general terms of the subpoena did not cover a document of this nature. That is my recollection of it. 10

Q. And that the document should be concealed from the Court? A. No, he did not say that.

Q. The document should not be produced to the Court? A. That is my recollection of it.

Q. And that the existence of the document should not be disclosed to the Court? A. No, he did not say that.

Q. In fact, the existence of the document was not disclosed to the Court, was it? A. In fact it was not. 20

Q. Yes? A. That is correct.

Q. I am going to ask you whether these events occurred ---

HIS HONOUR: Mr. Gruzman, before you do, there is one question - and, indeed, this is the critical question so far as the Court is concerned - there is one question I would like to ask Sgt. Anderson.

Q. Were any other documents, and, if so, what other documents, not produced on 15th February? A. On the 15th? 30

Q. That is the day when the affidavit was not produced? A. That were in existence at that time?

Q. Yes. A. I think the only documents were the duty pad entries, which were overlooked, and which were subsequently produced to the Court. Those are the only documents of which at this stage I have any knowledge of not having been produced, apart from the affidavit.

Q. Are you quite clear of that? There is no qualification of any sort? A. The only qualification to it is that it is within my knowledge. There may be documents which existed and have existed and still exist of which I have no knowledge, but those are the only documents of which I had any knowledge which were not produced to this Court. 40

Q. That is the affidavit itself? A. The affidavit itself.

Q. And the duty pad entries, that were not known to you at the time but were later? A. Well, they were overlooked. 50

I.B. Anderson,
1847. on voir dire.

I. B. Anderson, on
voir dire.

Q. They were overlooked at the time? A. Yes.

Q. That is quite clear? I ask you only from your own knowledge of the matter. You cannot speak beyond your own knowledge? A. No.

Q. It is quite clear that nothing else was withheld on 15th February? A. I am quite positive of that.

MR. GRUZMAN: Q. What made you single out this affidavit to seek the advice of Mr. Forbes? A. Well, that is not a correct statement, Mr. Gruzman. 10

Q. You obtained the advice of Mr. Forbes on this particular document? A. On all the documents.

Q. On all the documents? A. All of the documents were produced to Mr. Forbes.

Q. But there was a specific discussion with Mr. Forbes on this particular document? A. There was specific discussion in respect of each document that I gave to him, and there were a lot of documents. 20

Q. But you say that is the only one that he advised not to be produced? A. That is my recollection.

Q. Well, I am going to ask you about some other facts. Following last Tuesday, did you see Mr. Forbes again? A. You mean did I see him after last Tuesday?

Q. Yes. A. No, not until today.

HIS HONOUR: Q. "Not ----"? Q. Not until today in Court here. 30

MR. GRUZMAN: Q. I am sorry. After you gave your evidence - after the matter was dealt with on the 17th - did you see Mr. Forbes? A. Yes.

Q. And did he then tell you, in relation to this affidavit, that this was the first occasion that he had ever seen this document? A. What Mr. Forbes said ---

Q. Did he tell you that, first of all? A. Well, I don't agree that is an interpretation of what he told me. 40

Q. Did he tell you that he had given no advice whatever regarding this particular document? A. Again I don't agree that is an interpretation of what he told me.

Q. Look, whether interpretation or not, let us not mince words. Mr. Forbes said that he said that it was the first occasion - he told you it was the first occasion he had ever seen this document. Is that true, or not true? A. That is not exactly correct. 50

HIS HONOUR: What Mr. Forbes said was that he told Sgt. Anderson "in so many words". I think if you want to ask Sgt. Anderson, ask him what was said.

MR. GRUZMAN: Q. What did Mr. Forbes say in relation to whether or not he had ever seen the document before? A. I showed Mr. Forbes the document, and he said to me "I have no recollection of having seen this document before. Reading it does not assist me. I have no recollection of having given any advice on this document." 10

Q. Did he say that he had certainly given no advice whatsoever regarding that particular document? A. No, he did not. He said what I have said.

Q. Sergeant, I put it to you that the Commissioner of Police has followed a policy of preventing the production of documents and other evidence to the plaintiff in this matter as far as possible? ----

HIS HONOUR: I don't think you can ask Sgt. Anderson that question, Mr. Gruzman. I know that he is the deputed representative of the Commissioner, but I don't think the making of the challenge necessarily takes the matter any further. 20

MR. GRUZMAN: Q. You are aware, are you not, that the Commissioner has followed a deliberate policy of preventing, as far as possible, the production of documents or evidence to the plaintiff in these proceedings? A. That is not so.

Q. Sergeant, you are aware, are you not, that a series of letters have been written from the early part of this year pleading with the Commissioner to make available documents and evidence, are you not? A. I know a number of letters have been written, Mr. Gruzman. 30

HIS HONOUR: Q. Sergeant Anderson, can you assist me with this information? This is something which has occasioned me some concern ever since February of this year? Why was it that, on the Commissioner's instructions, an attempt was made in this Court in February to avoid having to produce any documents at all? An attempt to have the subpoena set aside. Do you recollect that? A. I recollect that. 40

Q. Why was that attitude taken? Can you assist me there? A. Well, it was done on the advice of Mr. Forbes, your Honour.

Q. Mr. Forbes' evidence, as I understand it, is that he did it on the instructions of the Commissioner? A. Well, the Commissioner went in my presence to Mr. Forbes and put to Mr. Forbes - I cannot remember the exact conversation; it is too long ago, and I had no real reason to specifically try and commit it to memory at the time - the Commissioner was concerned that I had been subjected to cross-examination in this Court, and that suggestions 50

had immediately been made on that day that the Commissioner was endeavouring to conceal, or to refuse to produce, the documents to the Court.

Q. Yes? A. There was quite a lengthy discussion with Mr. Forbes by the Commissioner, and as a result of that Mr. Forbes was of the opinion that the subpoena was in too general terms to be of - I can't recall the exact words - to be a valid subpoena, and that objection should be taken to it. The Commissioner was more concerned, or it appeared to me that the Commissioner was more concerned that the suggestion was being made that I was not being of as much assistance to this Court as I should be, and as I consider that I have been, and it was as a result of that that Mr. Forbes made the submission to your Honour, on the Commissioner's instructions. If I might go further? The matter of correspondence has been raised, and this particular question of the production or non-production of documents. Now, this first arose out of the service of that subpoena upon an officer of the Commissioner - not myself - and it was not until some considerable time after - some two or three weeks - that the matter actually came to my notice, and to the notice of the Commissioner. 10 20

Q. Yes? A. When it did, it was very, very close to the first date of the hearing. I am not sure of the date. I think it was 9th February, but I am not sure of the date. I rang the then instructing solicitor for Mr. Barton, and I had a conversation with him, which apparently at that stage was misunderstood, and the next thing - almost the next thing that happened was that a letter was received from the solicitors raising the question as to why privilege should be claimed in relation to these documents. 30

Now, what I had said to Mr. Moore was that the Commissioner had considered the subpoena which had been served, and that in cases of this nature with documents of this nature it could be a matter in which a claim of privilege could be raised, but that in view of the fact that the proceedings were in equity, and in particular that Mr. Barton at that time had a copy of one of the police documents, the Commissioner could not see why any question of privilege should be raised. Now, that was definitely misunderstood. I don't know how, or why. But the next thing that came was this letter indicating about the privilege. Now, there has never been any attempt - deliberate - by the Commissioner or by myself to conceal any documents in relation to this matter. I have spent hours going through documents, questioning police, and endeavouring to obtain everything which could be produced to the Court. Now, in the present particular instance, it is unfortunate that I cannot remember the exact details of the conversation - the exact words of the conversation - but there was something said to me by Mr. Forbes in relation to this particular document which caused me not to produce it. 40 50 60

I.B. Anderson, on
voir dire.

Q. But, Sgt. Anderson, the matter of concern is that if all of these attempts have been made, as you say, to make sure that every document was obtained so that it could be produced to the Court, it is directly inconsistent with that attitude for Mr. Forbes, on instructions, to ask the Court not to require production of the documents. Do you follow that? A. Yes.

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Q. That was either extremely imprudent or perhaps it has some other overtone? A. That was after the cross-examination which was put to me on the first day, and, as I say, I have given your Honour the reason why and what took place, to the best of my memory, and I can say this, that it was as a result of the advice received from Mr. Forbes that the original objection was taken to the subpoena.

MR. GRUZMAN: Q. Sergeant Anderson, I put it to you that what the Commissioner is seeking to do is to shelter behind the alleged advice from Mr. Forbes? A. That is not so.

20

Q. And in relation to the misunderstanding which you say occurred with Mr. Moore, isn't this what happened, that Mr. Moore, who was then the instructing solicitor, telephoned you, and in the course of the conversation you told him that the Commissioner, far from producing documents, was proposing to take action against him or Mr. Barton because he had possession of Vojinovic's statement. Isn't that what happened? A. No.

30

Q. Didn't you inform Mr. Moore, solicitor, that the Commissioner was concerned at the fact that Mr. Moore or Mr. Barton had possession of a copy of Vojinovic's statement? A. Yes.

Q. And didn't you tell him that the Commissioner was considering taking action in respect of that matter? A. No.

Q. Well, why did you tell him that the Commissioner was concerned? A. I also asked him ---

40

Q. Why did you tell him that the Commissioner was concerned? A. Because I wanted - because I and the Commissioner wanted to find out how he had got the document.

Q. You realise that if the first document had not become available to Mr. Barton this case probably could never have been brought, don't you? A. I don't know that I can answer that, your Honour.

HIS HONOUR: Mr. Gruzman, you cannot take this too far. As I said at the outset, this aspect of the proceedings is solely directed to whether there has been a compliance with the requirements of the subpoena.

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MR. GRUZMAN: I will not take it any further.

I.B. Anderson, on
1851. voir dire.

I.B. Anderson, on
voir dire.

Q. There is just one other question I would like to ask you, Sergeant Anderson. Is it a matter of police procedure for a copy of records of interview to go to the modus operandi section? A. In some cases. There is no specific instruction as to what is to be done to them.

Q. What are the circumstances which lead to a copy of the record of interview going to the modus operandi section? A. Well, the matter of a record of interview is only something which has come up in the last few years, and the instruction relates to statements obtained, and it is that where an inquiry is made and statements are obtained and the investigations concluded, that a modus operandi form should be submitted. That is, where a person is named, or suspected, that the modus operandi form should be submitted, and that the statement should go with that. 10

Q. Have you checked with the modus operandi section to see whether copies of any statements in this case exist there? A. I have not recently, but I did. 20

Q. You did at the time? A. Previously, yes.

Q. There is just one other matter. Who was the officer in charge of the Barton-Armstrong matter so far as the police were concerned in February this year? A. February this year?

Q. Yes. A. Well, this I cannot answer with just a name, because there were certain matters which took place in February this year. 30

Q. Who was the man who would be regarded as the senior officer in charge of the investigations in this matter in February this year? A. I don't know whether he is the senior man, or not. It would be Det. Sgt. Wild.

Q. It was either Det. Sgt. Wild or Det. Sgt. Butler? A. That is right.

Q. Isn't it the practice of the Police Department that documents in a case are kept by the senior officer in his locker, locked up? A. It is a matter for the individual, Mr. Gruzman. 40

Q. But isn't that the practice? A. Not always the senior officer.

Q. Does that mean it was quite open at any time in this case for either Wild or Follington to have possession of the documents? A. Yes.

MR. STAFF: No questions.

MR. FORBES: Your Honour mentioned concern about the Commissioner's instructions to set aside the subpoena. If the Court pleases, I might say a brief word about that because it may be that what I have 50

I.B. Anderson,
on voir dire.

to say on that aspect might throw some light on your Honour's expressed concern about that particular matter. My instructions were to produce all documents to the Court, and I was assured - as I said yesterday - I was assured on behalf of the Commissioner and by the Commissioner that all documents were being produced to the Court. However, I did point out personally to the Commissioner that the particular subpoena - subpoenas - were in very general terms, and it was open to submit to the Court - I put to the Commissioner - that it was so wide that this was creating difficulties; the very width of the subpoena was creating difficulties, and it would be more helpful, I put to the Commissioner, if the subpoena were in more precise terms, and the Commissioner then said "Well, very well. It is a matter for you. It is your advice. It is a matter for you to submit to the Court", and that was his understanding of the matter.

Now, when I attended this Court and made submissions on the subpoena, in the first instance I did say - of course, the argument is not reported in the transcript - I did say to your Honour that all documents were being produced; there was no objection to producing any of the documents. But then I did proceed - firstly I made some submissions about the voir dire. In the second instance, I made some submissions about the subpoena, and after I had proceeded for some time I did say that what had been done up to that point had been done, but suggested to your Honour that there ought to be some limitation on the width of the subpoena, and after I had made some submissions for some time your Honour said to me, "Well, ought you not" - and this is my recollection, your Honour - "Ought you not to move to set aside the subpoena?" and I did say that I had not come here instructed in the first instance to move in that particular way to set aside the subpoena, but, if your Honour suggested - although I intended the submissions in a general sort of way, without moving to set the subpoena aside - if your Honour suggested I do that I would be guided by your Honour's suggestion in this regard and not leave the submissions sort of in the air, and I accordingly moved that way, but I had not intended in the first instance to move to set aside the subpoena: I intended merely to make submissions about the generality of the subpoena in a general sort of way in the hope that I might be of some assistance to the Court, and perhaps limit the width of the subpoena, but it was never intended by the Commissioner nor by me at any stage that there be any objection to the production of the documents. That is my recollection of how that matter developed on that day, 15th February.

(Witness retired.)

(Mr. Gruzman moved that the Commissioner of Police or Sergeant Anderson be committed for contempt of Court and presented argument to the Court in support of the application.)

I.B. Anderson, on voir
dire, ret'd.
1853.

HIS HONOUR: I see no reason to change in any respect the view that I formed and stated yesterday. I have permitted Mr. Gruzman to re-open the cross-examination of Sgt. Anderson on the voir dire for the purpose of investigating further the sufficiency of the production made by Sgt. Anderson on behalf of the Commissioner in response to the subpoena issued out of this Court many months ago.

In addition to hearing the evidence of Sgt. Anderson on this examination, I have heard what Mr. Forbes of the State Crown Solicitor's Office has put to me from the Bar Table. The situation, although unusual in its gravity in this particular case, is one which is in some respects not uncommon. Sgt. Anderson is firmly, and, I am satisfied, completely bona fide, of the belief that he was advised by Mr. Forbes that the affidavit of Mr. Hume need not be produced, and pursuant to that belief Sgt. Anderson did not in fact produce the document on 15th February this year. Equally, Mr. Forbes is firmly and bona fide of the view that he did not give any such advice. Both Mr. Forbes and Sergeant Anderson have stated that the question of production of documents was discussed between them on the morning of 15th February this year; a number of documents were under discussion, and there is to my mind nothing inherently improbably in this genuine misunderstanding having arisen between them. The non-production of the document was, as I suggested earlier, either something which might have suggested some sinister inference, or it was merely ill-advised. I do not see any basis upon the evidence which has been given - and I have permitted this to be probed at perhaps inordinate length - for inferring that any sinister reason underlay the non-production of the document. I reject that inference.

The reason why the Court was asked on 15th February not to enforce the subpoena has been explained to me this morning. I am still of the view that it would have been more prudent not to have followed that course, but I accept what Mr. Forbes has put to me, that the course was followed as a bona fide and legitimate procedure, and not in any sense in pursuit of an attempt to keep back documents for any ulterior purpose.

It has been put to me by Mr. Gruzman that some steps should be taken consequent upon non-production of the document, which is now admitted to have taken place, but I see no necessity whatever for the matter being taken any further. The whole unfortunate and somewhat complex situation arose from this coincidence of misunderstanding. The Commissioner's own personal part, so far as the evidence goes, was confined to obtaining legal advice from Mr. Forbes and authorising Mr. Forbes to proceed as he thought proper, and there is no jurisdiction whatever for casting any reflection upon the Commissioner's attitude regarding the production of the documents on this subpoena.

The matter has now, I hope, been taken to its ultimate conclusion. It is to be hoped, now that

the whole matter has been ventilated and misunderstandings cleared up, that further time need not be taken in pursuing this particular aspect.

FREDERICK HUME
On former oath:

HIS HONOUR: Q. You are still on your former oath, Mr. Hume. A. Yes.

MR. GRUZMAN: Q. Mr. Hume, have you ascertained where your father is now? A. No. I have not seen my mother. I was not there last night, and this morning when I got there she was not there. I just went there for a few minutes to obtain my clothes, and she was not there. 10

Q. What time was that? When did you go there this morning? A. I went there at nine o'clock this morning.

Q. And your mother had gone out already? A. Yes, she had gone out. She had probably gone shopping.

Q. You still don't know where you can find your father? A. No. 20

Q. Did you make inquiries as to who the doctor is who is treating him? A. I think the recent one is one in Lane Cove. I don't know who it is, but I could find that out.

Q. You could find that out? A. Yes, I suppose I could.

Q. Well I suppose - will you see your mother tonight, do you think? A. Yes, I think so.

Q. She will know where your father is, won't she? A. I suppose she will. 30

Q. Now, Mr. Hume, do you remember this story which you told the Court about Mr. Barton trying to sell a dredge to Mr. Armstrong for \$14,000? ---

HIS HONOUR: Mr. Gruzman, if you are referring to the evidence I think it should be described as "evidence". If it is not evidence it should not be referred to.

MR. GRUZMAN: Q. Do you remember telling his Honour that Mr. Barton had tried to sell a dredge to Mr. Armstrong for \$14,000? A. That is incorrect, Mr. Gruzman. I said that Mr. Vaggelas, a friend of Mr. Barton's, with Mr. Barton's approval, was trying to sell the dredge to Mr. Armstrong in the office of Mr. Kilmartin, and I was present there. 40

Q. You said that the dredge was worth, to your knowledge, \$4,000? A. Correct, because the man who made the dredge told me that, and his name is Mr. Hawthorne - Keith Hawthorne.

Q. Now, the man who was selling the dredge was a man called Peter Vaggelas? A. Yes. 50

Q. You have never even seen Mr. Vaggelas in Mr. Barton's company, have you? A. But I knew he was his friend, because Mr. Hawthorne told me. He said ---

Q. That is not true? A. That is very true.

Q. There is no association whatsoever between Mr. Vaggelas and - A. I am sure there is. There was some mention of some flats Mr. Hawthorne told me had changed hands.

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Q. You went into all these personal matters between these people? A. No. I was interested only in the dredge, and I wanted to find out exactly what was the value of the dredge, so I probed into it, and found out from the man who made the dredge what was the value of it, and I saw the plaintiff trying to get all this money for it, and plus that I was informed that the very same dredge was for sale for about two years, and no one wanted to buy it, for only \$4,000, I think it was.

20

Q. Having probed the matter and gone into it, I suppose you found out what the transaction was that took place, did you? A. To my knowledge no transaction took place after I told this to Mr. Armstrong.

Q. Have a look at these documents. Just look at this document, and tell me whether you will agree that Landmark Corporation bought the dredge from Vaggelas for \$5,815 on 14th September 1966? A. Mr. Gruzman, would you like me to say that this is the same dredge? How would I know it was the same dredge? There is a piece of paper. It does not even have a signature on it. It could have been made by you, or by anyone, for that matter. And now you want me to say that is the dredge. I don't know the dredge. The only person who could tell you is Mr. Keith Hawthorne, who made the dredge. I would not know a dredge from an automobile only - (balance of answer interrupted.)

30

Q. You see this printed paper - Peter Vaggelas? A. It is very difficult for a friend to obtain a printed piece of paper from another friend, isn't it? Peter Vaggelas, yes.

40

Q. You see "Paid" stamped all over the document, don't you? "Paid, 14th September 1966". A. Yes, and then I see the signature of Mr. Barton. That would be also very difficult to obtain.

Q. Will you agree now that the allegation that Mr. Barton was involved in the sale of a dredge for \$14,000 is untrue? A. Your Honour, the allegation that I have just said is so true. Why don't you call Mr. Hawthorne here - the man who made the dredge?

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Q. The man you have bribed? A. The man I bribed? I never bribed anybody.

Q. What did you give him \$100 for? A. I have

explained why I gave him \$100, and it was not sufficient. I should have given him a lot more. He was a very helpful person, and if I had not found this information this dredge probably would have been brought for that amount of money, because no one else knew the value of it. It is not very funny, Mr. Gruzman. I don't think that is funny.

Q. Do you think he would help you again - Mr. Hawthorne? Do you think that Mr. Hawthorne would help you again? A. I don't know whether he would help me or not. 10

(Document shown to witness bearing date 14th September, 1966, m.f.i. 80.)

Q. Mr. Hume, I think that you told his Honour that in connection with the Falcon you traded that in in order to get a better deal with it? I think that is what you told his Honour? A. That is right. I traded it in on a brand new Holden, because I got quite a good trade-in on it, in my opinion, yes. 20

Q. Did you pay cash for the Holden? A. Yes.

Q. Where did you get that money from? A. Where did I get the money from?

Q. Where did you get that money from? A. I mentioned that before. I got that from my mother. She was saving up to buy herself a car, and she gave me that money.

Q. Was not that the M.G.? A. No, there was no mention of the M.G. I had the M.G. before that car, didn't I? 30

Q. How much did your mother give you to buy the Holden? A. How much did she give me? The amount of money that was necessary for the Falcon to be paid out, and then I had to buy - pay some other money to pay for the Holden.

Q. Approximately how much? A. I could not really say. I think I owed on the Falcon - it would be guessing. I could not say. You have got the documents there.

Q. You have not got the faintest idea? A. No, it would be quite a large sum I should imagine, because it was only a few months old - that car - and there had not been many payments made on it, and it was on a small deposit of £200 and something. 40

Q. I thought you told his Honour that the object of the Falcon deal was so that you could get out of the Falcon as well financially as you could? A. That is right, because if I was selling the Falcon I probably could not have got more than about £400 or £500 for it. As it turned out, I think they gave me a trade in of £700-something. That was £200 better than it would have been if I had tried to sell it straight out. And it took them about a year to unloan the car, so I believe, so it was not a very good deal for them. 50

Q. In order to effect this deal on 24th May 1967 you had to pay \$1,099.33 in cash to Muir's Motors?

A. Yes, that would be correct. Just a second. Yes, that would be correct. Mr. Taylor was the salesman.

HIS HONOUR: Q. Mr. Taylor was the salesman? A. Yes.

MR. GRUZMAN: Q. How did you pay that? By cheque?

A. No, by cash.

10

Q. You paid that by cash? A. Yes.

Q. Notes? A. Yes, notes.

Q. Does your mother keep \$1,000 in notes at the home? A. Yes, she did. She ran a restaurant, and like most Europeans they keep these large sums at home. I don't know why. They think the banks are going to break down, or something like that. I have been trying for years to get my mother and father out of this habit. I have been telling them that it is dangerous, and that they should not keep it in the house. I have been trying to get them out of the habit. At this moment I think that I have just about got them out of the habit.

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Q. How many thousands of dollars do you think your mother would have had at the home at this time?

A. Not many thousands, because she was trying to get herself a car. She was trying to get a car for herself. She got a licence. She was going to buy a Valiant. I don't know how much money she had, but she had some money.

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Q. Did she have a safe at home? Did she keep it in a safe at home? A. No, she did not have a safe.

Q. No safe? A. No. Probably under a floor board, or somewhere where a woman would keep it. You know where women would keep it. I don't know where they keep it.

Q. You went along and said, "I would like \$1,000"?

A. No, that is not right at all. I told my mother what the position was, and that I was going to lose quite a lot of money on the car, and that I could do a better deal that way, and she lent me the money.

40

Q. She lent you the money? A. Yes.

Q. Did you give it back to her? A. Yes, some of it. Not all of it. I still owe money. I mentioned that before. I give them money from time to time. When it accumulates in the bank I pay them back money.

Q. When you sold the car - you sold the car only about two months later, didn't you? The Holden?

A. I don't know just when I sold the car. I don't know whether it was two months, a month, or three months. It was a short period.

50

Q. I suppose you immediately gave your mother back that \$1100? A. I did not, no.

Q. You didn't? A. No, because she didn't want it. She said that I should go and buy a unit, or something - that she was not really pressed hard, and that she was a bit old to start driving a car. She was not pressing me for it, and then finally I did not buy the unit, so I gave them back some of the money. Not all of it. Some of it I spent. 10

Q. It is money marked down to Mr. Armstrong, isn't it? A. That is money you say was paid to Mr. Armstrong. That was money supposed to go to a unit of Mr. Armstrong's, or one of Mr. Armstrong's company, or a company that he has a shareholding in.

Q. Mr. Hume, I don't know whether you have agreed with me yet, but over the period from July 1966 to January 1967 Mr. Armstrong or persons or companies associated with him were your best clients? A. That could be so, yes. 20

Q. That is so, isn't it? A. It could be so according to the books, yes. Mr. Melvey, as I have mentioned before, owed me quite a large sum of money, and he was then struck off the roll and I was not doing any more work for him. But before that I was doing quite a lot of work for Mr. Melvey.

Q. I would like your client admission on that, Mr. Hume - not that it might be so. If necessary, we will go through it? A. Most of my transactions go in cheques. You have got the records there. 30

Q. According to your book up to - I am looking at the 28th week. Up to 8th January 1967 your gross takings from all sources was \$3184.44, wasn't it? A. Yes, but, your Honour, I will have to explain something. Last night I was rung up by a solicitor, and he told me ---

Q. Mr. Hume, you will just answer my questions, please. Up to the 8th January 1967, your gross takings from all sources was \$3184.44. True or false? A. That is right, but there is money outstanding. I don't get paid immediately for the work I do. Sometimes I have to wait six months. There is money outstanding. 40

Q. Please answer the question. The total amount you had received from all sources from 1st July 1966 to 8th January 1967 was \$3184.44? A. That is right. But you did not mention how much was outstanding at the time.

Q. Mr. Hume, if you keep adding bits like that, I will ask his Honour to deal with you. Answer the question. A. I have received \$3184.44. 50

Q. From all sources from 1st July 1966 to 8th January 1967? Correct? A. Yes.

Q. And of that amount you had received from

Southern Tablelands, \$1094.30, from the item on 9th November marked "Armstrong, \$500" - A. It was a company. My father would know ---

Q. That makes \$1594? A. Yes.

Q. And an item marked "Barton" on 3rd August, \$420? A. That is right.

Q. Is that right? A. Yes.

Q. So that you had received ---? A. That \$420 is already incorrect. 10

Q. Is that right? A. I think it would have been more. \$300 plus \$200 I received in the office of Mr. Kilmartin. That would have been \$500.

Q. If the book was honest, perhaps. A. My father can make mistakes. He is an old man. It is possible.

Q. Did you tell him about the cash you received in Surfer's Paradise? A. I think I would have told him. I don't know. I could have. I could have forgotten it. 20

Q. But the entry is false, isn't it? A. Well, the entry is wrong. It is more than \$420. I think it is \$500 and something.

Q. We will come back to that in a moment. A. This is the first time I am looking at this book, Mr. Gruzman.

Q. The amounts you received from Mr. Armstrong or people associated with him during that period, according to your book, were \$420, \$500 and \$1094, which totals something over \$2,000? (Objected to; rejected.) 30

Q. Included in your gross takings of \$3,184.44 are these three items shown in the book as "Barton, \$420" on 3rd August? A. Incorrect. Incorrect. It is incorrect. I mean, it shows \$420, but it is more. I am sorry, but it is incorrect.

Q. You have told us three times your book is false in that respect, in that it does not show the full amount. You have told us that? A. It is a mistake. 40

Q. And that is because your father is an old man, I suppose? A. Well, he must have made a mistake.

Q. It could be that you concealed from him the cash that you got, could it? A. No, no reason for it. No reason for it.

Q. I am asking you will you agree that according to your book out of your gross takings of \$3184.44 up to 8th January there are included \$420 ascribed to Barton on 3rd August? A. That is right.

- Q. \$500 ascribed to Armstrong on 9th November?
A. That is right.
- Q. And \$1094.30 ascribed to Southern Tablelands on 5th January? A. That is right.
- Q. You will agree with that? A. Yes.
- Q. So that out of your gross takings of \$3000 odd, more than \$2000 came from those three payments, didn't they? A. Yes, that is right.
- Q. And each of those payments arose from your connection with Mr. Armstrong, didn't it? A. Yes, I suppose that would be so, because he, after all, got the jobs for me, or he asked me ... (answer not completed.) 10
- Q. So that it is true to say that Armstrong was your best customer? (Objected to; allowed.)
- Q. It is true to say that in your mind Armstrong was your best customer? A. No, because Armstrong was not the customer. I was not directly working for him. I did not know who was paying me. I have mentioned that before. He was just one of the persons who helped me probably to obtain jobs. I was not directly working for him. 20
- Q. If someone had asked you some time after that period - a week later, or even a day later - if someone had asked you shortly after the 8th January who was your best customer, what would you have said?
A. Which date?
- Q. I gave you figures up to the 8th January. Now, if someone had said to you on 9th January, "Mr. Hume, who is your best customer?" what would you have said?
A. Well, I would have said a firm of solicitors who I am getting quite a lot of work through. They would be my best customers. 30
- Q. Are you seriously saying that you would not have regarded the source from which you got - as a result of which you got \$2,000 out of \$3,000 as being your best customer? A. Probably if you would say over the period of time, but not the best customer. 40
- Q. You would call him your best client, wouldn't you? A. No, he was not my client.
- Q. He was the person from whom you received the most? A. I have mentioned before I was paid by companies. Company cheques. Armstrong never paid me anything.
- Q. Was it true as at 9th January that Mr. Armstrong gave you a lot of investigating to do and you earned good money from him? A. As at when?
- Q. Assuming we are speaking now as at 9th or 10th January 1967. Would you have said about Mr. Armstrong, "He gives me a lot of investigating to 50

do, and I earn good money from him"? A. That is ridiculous. I would not have said that because he is not giving me any investigating to do.

Q. According to your own evidence, you see, it was Mr. Barton who telephoned you from Surfer's Paradise in the first instance, wasn't it? It was Mr. Armstrong who telephoned you from Surfer's Paradise? A. Yes, he telephoned me. But he was not the man I was supposed to get instructions from, and he was not the man who was going to pay me. He didn't say anything about paying me. He said that Mr. Barton was going to pay me, and Mr. Barton did pay me. Mr. Armstrong did not pay me; Mr. Barton paid me. 10

Q. As a result of that phone call from Mr. Armstrong, you received \$585, didn't you? A. I don't know whether it was because of the result of the 'phone call. I suppose it was because I did the job. I don't know that it was because of the 'phone call. If I didn't do the job I would not have got paid at all. 20

Q. It was as a result of the 'phone call from Mr. Armstrong that you did the job which resulted in your getting \$585, wasn't it? (Objected to; rejected.)

Q. Now, Mr. Hume, I want to take you back now to these dockets that appeared in your papers which I showed you yesterday. Did you receive any instructions from anybody in relation to Barton in October 1966? A. No. 30

Q. Did you receive a letter from Mr. Armstrong?
A. No, I don't remember receiving a letter from him. I don't ever remember ever receiving any letter from Mr. Armstrong.

Q. Did you receive a 'phone call from Mr. Grant?
A. I don't remember ever receiving a 'phone call from Mr. Grant until recently, when I was supposed to come to Court as a witness. I don't remember receiving a 'phone call from Mr. Grant until then. 40

Q. You know Mr. Grant quite well, do you not?
A. I have seen Mr. Grant in Surfer's at the same time as Mr. Barton and Armstrong, when I was taking over this machinery, or Island.

Q. Mr. Grant was up there then? A. Yes, Mr. Grant was up there then.

Q. Where did you see Mr. Grant up there? A. He also came into the suite of Mr. Barton's.

Q. Mr. Grant? A. Yes.

Q. He came into the suite? A. Yes. 50

Q. I see. And he was present during these conversations, was he? A. He only came in for a few minutes. I believe he was living at the Chevron at

the time, and he just dropped some documents and went away again. I think Mr. Grant has got an office up there.

Q. You have been to Mr. Grant's office since, haven't you? A. How do you mean? Have I been to Mr. Grant's office here or there? Which office do you mean?

Q. Do you understand the question? You have been to Mr. Grant's office since? A. Do you mean his office here, or in Surfer's? 10

Q. Have you been to an office of Mr. Grant's in Surfer's? A. Yes.

Q. You have? A. Yes.

Q. What office has he got up there? A. There was an office - I think it is on the corner of the main street, and also not far from Mr. Kilmartin's office.

Q. That is an office of Mr. Grant in Surfer's Paradise? A. Yes, I think he has got an office there, or had one at that time. I don't know whether he he has now. I think he had an office there at that time. 20

Q. Have you ever been to his city office? A. Yes.

Q. On how many occasions? A. I don't really remember how many occasions. I suppose four or five. Four or five occasions.

Q. Have you seen Mr. Grant on those occasions? A. Not always. I didn't always see Mr. Grant. We were working actually on opposite sides. Mr. Grant is representing the companies and I am usually representing the plaintiff in insurance things - industrial accidents. It would have been Miss Mulligan. I think he has got a solicitor there working named Miss Mulligan. It would not have been always Mr. Grant every time I went there. It could have been someone else. Altogether I went there about four or five times. 30

Q. You went there altogether about four or five times? A. Yes. 40

Q. On how many occasions did you see Mr. Grant? A. I could not recall how many occasions I saw him. I didn't mark down every time I saw Mr. Grant.

HIS HONOUR: Q. Keep your voice up. A. I could not really say. I didn't jot down every time I saw Mr. Grant. It all would be recently. Not before. Quite recently.

MR. GRUZMAN: Q. Did you see Mr. Grant after the police interviewed you in January 1967? A. January? No, no, not in 1967.

Q. Never saw him at all in 1967? Never saw Mr. Grant at all in 1967? A. I don't remember when it was, but I believe at one stage I took Mr. Novak to Mr. Grant's office. I don't know when that was. I took Mr. Novak to Mr. Grant's office and Mr. Grant then took a statement from Mr. Novak.

Q. When was that? A. I think it was 1968. I am only guessing. I think it was 1968.

Q. Some time this year? A. Yes. 10

Q. How long ago? A. This is only a guess, again. I think it would be - it could be March or April.

Q. And for how long was Novak there? A. He was there for about half an hour, I suppose.

Q. That was with Mr. Grant? A. Yes, that is right.

Q. Were you there at the same time? A. Yes, I was there.

Q. And you heard what Novak told Mr. Grant? A. Yes. 20

MR. GRUZMAN: Q. I want to take you back now to the events from October onwards. I put to you that from October 1966 onwards you were actively engaged in following and watching Mr. Barton? A. I was not, your Honour. I have never been at that time or at any time before that or after.

Q. Were you aware that Mr. Barton had a bodyguard in November 1966? A. No idea.

Q. You have no idea? A. No idea whether he had a bodyguard or not. 30

Q. Did Mr. Armstrong discuss with you the problems he was having with Mr. Barton? A. No. Mr. Armstrong does not discuss business with me. He plays tennis with me and all the discussion we have is when we are changing sides on the tennis court. That is all our discussions. We don't have any serious discussion. Mr. Armstrong does not consider me to be a man who could advise him in his problems.

Q. You had a very close relationship with Mr. Armstrong and his family, did you not? A. Yes, I was friendly with the family but I would not say it was a very close relationship. I have only attended one of their parties and that was a party when a lot of people were invited there. 40

Q. Did you go out with Mr. Armstrong's daughter? A. On two occasions, yes, and it was always in the company of other people, when Mr. Armstrong was overseas.

Q. Which daughter was that? A. The elder one. (Objected to; question pressed; allowed.) The elder daughter. 50

Q. What is her name? (No answer.)

HIS HONOUR: The name does not matter.

MR. GRUZMAN: It will in a moment, your Honour.

Q. The initial will do. (No answer.)

HIS HONOUR: I think they are both of the same initial, "M" from previous evidence.

MR. GRUZMAN: Yes.

Q. Well, what is the name of the elder daughter?

A. Mary.

10

Q. And on either of those occasions did you hire a car to take Mary out? A. Did I hire a car to take Mary out?

Q. Yes. A. No, I probably would hire a car if I didn't have a car - not to be taking out Mary. I believe Mary has a number of cars - the family has got two or three cars.

Q. Well, just tell me this: Did you ever hire a car with Mary? A. Did I ever hire a car with Mary?

Q. Yes. A. Not that I can remember.

20

Q. Is that a thing you might have done? A. No, I hardly think so. Why would I hire a car?

Q. Well, was there an occasion when you hired a car that Mary Armstrong had something to do with?

A. No, I don't remember that.

Q. I put it to you that your association with Mr. Armstrong and his family was much closer and much more continuous during the latter half of 1966 than you have told us? A. It is not, your Honour. I have only attended one party at Mr. Armstrong's place where there was a lot of people. At any other time it was always through tennis or through chess. I played tennis with him and I played chess with him. I don't attend parties - the only time I ever went out with Mr. Armstrong was also in the company of other people, and one of them is your associate, Mr. Cedric Symonds.

Q. (Approaching witness and showing document.) Would you have a look at this document? First of all, on 24th September 1966 did you hire a motor car from Avis? I have got the document turned over half-way; please leave it so. A. Yes, I would have hired that. Yes, in my name.

40

Q. Can you explain why you would have hired it then? Leave the document as it is? A. I probably did not have a car so I hired it.

Q. On 24th September 1966 you hired a car? A. Maybe the car was in the garage. I don't know.

Q. I am sorry, 23rd September, to be returned by the 24th; is that right? A. Yes, that is right. My car was probably broken down or in the garage. That new M.G. I had at the time was not very good. When - 23.9.66, yes. I don't think I had a car because the Falcon was smashed up I think in the same month.

Q. That is when you bought the M.G., was it not? A. Yes, but I bought the M.G. quite a few - I didn't buy the M.G. My father bought the M.G., but he didn't buy it on the day, the same day. He bought it quite some time after - a week or two weeks, I don't know when exactly. 10

Q. Did not your mother buy the M.G.? A. No. You know very well ---

Q. Please do not answer me back, Mr. Hume. Did Mary Armstrong have anything to do with that car in respect of which I have shown you the top half of the docket? Please leave it alone? A. I can't remember. I hired the car. I do not know what occasion it was. 20

Q. I now open up the docket. Tell us who returned the car? A. Well, there is a signature here but I don't know Miss Armstrong's signature, so I can't say.

Q. It has a signature "M. Armstrong" as the person who returned that car, has it not? Is that true? A. Yes, it is written here. I don't know whether it was Mary Armstrong or not. I would not know. 30

Q. By the way, that is a document from your records, isn't it? A. Well, yes, if I hired the car - it is obvious.

Q. And it has got your father's handwriting on it showing it was entered in the book under the 28th week Travel Expenses? A. That is right.

Q. What is your explanation as to how you hired a car which Mr. Armstrong returned? A. I was probably too busy and I left the car and Miss Armstrong returned it. I have no other explanation. What other explanation is there? I don't know. I probably had something to do and maybe I had to catch a plane somewhere. I have no explanation there, your Honour. 40

Q. I suppose the explanation is very simple, and that is that you had such a close and continuous association with Mr. Armstrong and his family that this sort of thing would happen at that period, wouldn't it? A. Well, it is quite possible, yes. Why not? I went out with Mary Armstrong a few times. I have mentioned this. 50

(Above document tendered.)

Q. Did Mr. Armstrong approve of Mary going out with you? A. I don't know if he was in the country at the time.

HIS HONOUR: As the document stands I think it is inconclusive. This "M. Armstrong" is inserted in the printed line opposite "Checked in by", and I would not be justified in inferring that it is the signature of a member of Mr. Armstrong's family. I could not treat this as being evidence that Miss Armstrong signed it. It purports to say "Checked in by M. Armstrong Station KX". I think it is more consistent with it being an employee of Avis. I think I should indicate that if it goes no further than this I would not feel justified in inferring that "M. Armstrong" is a member of Mr. Armstrong's family. If you look at the document, yourself, you will see, Mr. Gruzman, that other evidence would be necessary. 10

MR. GRUZMAN: It could be an amazing coincidence, yes; I would agree with that, your Honour. We will not press it at the moment. We will check it out.

HIS HONOUR: I reject the tender unless it is later renewed in conjunction with other evidence which would demonstrate that the document has probative value. If you wish, the document can be marked for the time being. 20

(Document m.f.i. 81.)

MR. GRUZMAN: Q. Mr. Hume, I want to come back to the invoice contained in Exhibit "JJ" on the back of which is written in your handwriting Mr. Barton's address. Do you understand? A. Yes.

Q. Would you just take that invoice in your hand. I suggest to you that that was written as a direction to Novak to watch Mr. Barton? A. No. That is false. 30

Q. That is false? A. Mr. Novak never had any direction to watch Mr. Barton.

Q. On 2nd October 1966 did you see Novak? A. I would not know. I could have. I don't really know. I could have seen him. He used to come in quite frequently.

Q. Is it possible that on 2nd October 1966 you gave Novak a sum of money? A. Oh yes, quite possible. 40

Q. (Approaching witness.) You see on that same day, 2nd October, you gave Novak, \$40 did you not? A. It is possible, yes.

Q. It is not only possible, it is true, is it not? A. Well, yes, it says there it is true.

Q. Where did that \$40 come from? A. How do you mean, where did that \$40 come from?

Q. Where did the \$40 come from that you gave Novak on 2nd October? A. Probably out of my pocket, I suppose. 50

Q. It was paid by cash, was it not? A. I don't know how it was paid.

Q. Well, I will hand to you the invoices for the 14th week or you may take my word if you care to, that there is no cheque butt for the \$40? A. That is quite possible.

Q. And you will see, possibly in your father's handwriting? A. It is all in my father's handwriting. 10

Q. Well, is the entry in these terms "2nd October Michael Novak Surfer's Paradise" - I think that is what it is, "Account No. 25 Job Cash? \$40"? Does that appear in your cash book in your father's handwriting? A. Yes.

Q. You may check your cheque butts if you care to. You notice here under Salaries and Wages, the only salaries paid that week were "CSH. Cash \$40"? A. That is possible, yes.

Q. So you will agree that you paid Michael Novak \$40 in cash on 2nd October? A. Well, not seeing the cheque book I don't know. I suppose I would have paid him certainly, otherwise it wouldn't be there. 20

Q. In cash? A. Yes, possibly in cash, I could.

Q. Who lent you the cash - your mother or father? A. No need to lend me the cash, I have got cash in my pocket.

Q. My friend wants me to show you this. I appreciate this. (Document shown.) Did you send \$30 to Surfer's Parade by telegraphic money order on 2nd October 1966? A. I did. 30

Q. And was that sent by cash? A. Well, how else do you send it by telegraphic money order?

Q. And from where did you get the cash? A. Out of my pocket. Where would I get it from.

Q. But you see, the week before you had taken no money at all in the business, had you? A. But that does not mean anything, that I have taken no money. I would have had money. 40

Q. For the week ending 2nd October you took a total of \$26? A. That is possible.

Q. Well, where was the money coming from, for example, to pay the \$40 to Novak? A. Well, if I was short of money I would have asked my mother or father for a loan and they would have given me a loan of whatever I needed.

Q. For the week ending 4th September you took \$11 in the business? A. You are always on that half of the year. 50

Q. We are talking about this period? A. It was 1868. F. Hume, xx

a slack period. The company went out of business, I went out of business, too.

Q. You went out of business except for doing Armstrong's work, didn't you? A. Not Armstrong's work. Work for the companies.

Q. You had nothing else to do except anything that Mr. Armstrong wanted you to do? A. That is wrong. I could have done some interpreting for the Croations. If I am short of any money I could always go down to the Croation Club and there is always somebody who would want me to do some job like interpreting or something like that. I never have any problem getting some money. 10

Q. You were permanently employed by Mr. Armstrong over this period, weren't you? A. I was never employed by Mr. Armstrong, permanently or otherwise.

Q. Weren't you employed as his strong-arm man? A. I was never employed as strong-arm or soft-arm, or anything kind of man. 20

Q. You were employed to do his dirty work, weren't you? A. I was never employed by Mr. Armstrong to do dirty or any other type of work. I was employed by the company. I keep on saying that.

Q. By the way, whereabouts is the Croation Club? A. It is Bedford and Buckingham Streets.

Q. Just look at your account book for the week ending 4th September. Will you agree that your gross takings were \$11? A. Quite possible.

Q. And for the week ending 11th September will you agree that your gross takings were nil? A. It is quite possible. 30

Q. For the week ending 18th September your gross takings were \$6? A. Possible, yes.

Q. For the week ending 25th September your gross takings were nil? A. Yes.

Q. For the week ending 2nd October your gross takings were \$26? A. It is possible, yes.

Q. And on 2nd October you sent to Novak \$40? A. That is right. 40

Q. Was the \$40 intended to provide the wherewithal for Novak to come to Sydney? A. I beg your pardon?

Q. Was the \$40 sent to Novak to get him to come to Sydney? A. No. I suppose he did a job for me and I had to pay him the money for it. That is probably why.

Q. Why did you pay it at that particular time? A. Probably because that was when I had to pay him.

Q. But the job he had done was I think in the 50

preceding July, was it not? A. I don't know. He could have done something else up there. Probably I wanted to have somebody traced or had to serve a petition on somebody up there; do something.

Q. Why do you say you paid him the \$40? A. Well, I must have paid him for something that he did up there, I suppose. He might have had to ---

Q. Did he do anything else apart from what he did in connection with the repossession of the plant? 10

A. Yes, I suppose he would have had to trace some people for me.

Q. Did you pay him for re-possessing the plant?

A. Yes, I think at the time when I was up there I paid him.

Q. How much? A. I don't really know.

Q. Did you get a receipt from him? A. No, he does not give receipts.

Q. What do you mean, he does not give receipts?

A. Well, he hasn't got the receipt books, and he didn't give me receipts. 20

Q. He is not that sort of person? A. He is very poorly educated, in the first place. He does not have any schooling, he doesn't write in English, so ---

Q. I put it to you that on 2nd October you received your instructions to follow or watch Mr. Barton, you wrote them down on the back of that docket, and you sent \$40 to Novak at Surfer's Paradise to get him to come to Sydney? A. That is false. I have never received instructions to follow Mr. Barton, and I have never sent money to Novak to come down. I think he had sufficient money as he was working up there at Surfer's Paradise to go anywhere. He was working as a waiter at the Chevron at the time. 30

Q. Did Novak come down to Sydney following the receipt of that \$40? A. I don't know whether he came down or not.

Q. I put it to you --? A. I don't think he would need \$40 for a fare down since he was fully employed up there. 40

Q. Earlier in your evidence you told us that he came down to Sydney from Surfer's Paradise and wanted a few dollars from you, did you not? A. No, I didn't say that. Every time when he came to my office he usually wanted a few dollars so he wanted a job, or he was fired from a job. That was the usual.

Q. You told us that he left the job he was at at Surfer's Paradise of his own accord, to the best of your knowledge? A. Yes, that is what he told me. 50

Q. I put it to you he came down to Sydney at your request? A. That is false. What would I need him for? There are plenty of inquiry agents I have got a number of them working for me whenever I need any job.

Q. Look, you would not find many crooked inquiry agents, would you? A. I don't need any crooked inquiry agents.

Q. And Novak was the very man for you for the sort of job you were engaged on against Mr. Barton, wasn't he? A. I was not engaged on any job against Mr. Barton. 10

Q. When do you say Novak came to Sydney in the second half of 1966? A. I have got no idea. I could not say the date when he came down.

Q. What is the best of your recollection? A. I have got no idea. I don't know.

Q. Well, if I may help you, didn't he smash up your car? A. Well, that is when he came down then. When he smashed up the car he was certainly in Sydney then. 20

Q. How did you come to give him a car? A. He asked me for a loan of it.

Q. What, just for a loan? A. Yes.

Q. What, a man with no money who is short of a few dollars - you would lend him your car? A. Yes, certainly - why wouldn't I lend him the car since he was working for me from time to time? I would not lend him my very good sports car but that was just an ordinary car. 30

Q. It was only 12 months old, the Falcon, was it not? A. It was not in very good shape.

Q. Can't you help us at all in relation to the payment of the \$40 as to when he smashed up the car? A. I can't help you. I know he was in Sydney when he smashed up the car, but when he came down I don't know.

Q. I think you told us before that he came to Sydney in September, did you not? A. Well, when he smashed up the car he was in Sydney. I believe the car was smashed up in September and he must have been there in September. He goes up and down all the time. He travels extensively around the country. 40

Q. Would you just leave those alone? A. I am sorry, I thought you wanted me to have a look.

Q. You would not have sent him \$40 just after he had smashed up your car, would you? A. Why wouldn't I?

Q. If you were going to pay him for the job at Surfer's Paradise, you would have paid him when he 50

was in Sydney? A. Well, maybe he did something up there for me and I had to pay him the money. That is why I was sending him money up there.

Q. Well, I put it to you that Novak came to Sydney and you put him on to the job of following Mr. Barton and then on the following week he made that report on the back of the other invoice which I showed you? A. I have never put him on any jobs of following Mr. Barton and he has never made any reports to me about following Mr. Barton. 10

Q. Did he do much work for you in the next few months - October, November, December? A. A bit, I suppose. He did a bit of work.

Q. Nothing much, I suppose? A. Well, it is in the books there. To know what he did, I can't go by memory.

Q. You are a bit frightened of what is in the books? A. No. Why need I be frightened?

Q. Well, you just tell his Honour how much work Novak did for you between the 2nd October and the middle of December? A. I would not know. 20

Q. He was the sort of man you would only put on a few little inquiries wasn't he? A. Yes, that is right - when he was short of money, and as I promised his parole officer or probation officer that I would look after him and try to keep him out of trouble, certainly I would give him something to do.

Q. A few dollars worth of work? A. Not a few dollars, sometimes \$20, \$30, \$40, \$50. 30

Q. \$20 to \$50? A. Maybe it could go into \$100.

Q. \$100? A. Why not? That is not such a large amount of money if anybody is doing work.

Q. What is the most you ever paid him? A. I would only be guessing. I suppose about \$150, \$160, something like that.

Q. Well, would you tell us what it was that Novak was doing between 2nd October and the middle of December by way of earning money from you? A. Well, I am guessing, but I think he would have been going round tracking some people for me. 40

Q. Who? A. Well, certain people that I wanted to find.

Q. What people? A. Mainly of the Yugoslav community because I always employed him on those jobs because he could speak the language.

Q. In connection with divorce evidence? A. No, not in connection with divorce evidence.

Q. In connection with getting information for the police? A. No. 50

Q. On what was he employed? A. Well, if they owed some money and there was time to serve a summons on them, or something like that, or if we couldn't find their whereabouts, I suppose I would send him there.

Q. (Approaching witness.) On 24th December, 1966 you paid Novak \$135? A. That is right.

Q. And this document I now show you is the cheque butt? A. Yes. 10

Q. And that is paid as salaries and wages, job work? A. Yes, that is right. One side is my handwriting and the other side is my father's.

Q. Have you told his Honour the best explanation you can give as to what Novak did to earn that \$135? A. Yes, I did.

Q. Have you got any records at all from which you can establish how that amount was arrived at? A. No, I thought that so much work he did by hours, probably, and I paid him. 20

Q. Did you have any reports from him? A. No. I told you he does not write English.

Q. But that is not true? A. He does not write. His English is appalling.

Q. You told us before he did write English, did you not? A. No, I did not.

Q. Well, there is no other explanation for this \$135 other than what you have told us? A. No other explanation.

Q. I put it to you that the \$135 was paid to Novak for work done in following and watching Mr. Barton from the time he arrived in Sydney after 2nd October up till 24th December, 1966? A. No. He has never been instructed to follow Mr. Barton and he has never followed Mr. Barton. 30

(Cheque butt tendered; Objected to as irrelevant; admitted and pinned on to the 25th week of Exhibit 76.)

HIS HONOUR: Q. There is one question I would like to ask you about that \$40. I understood you to say that you sent \$40 up to Mr. Novak at Surfer's Paradise on 2nd October? A. Yes. 40

Q. And that was for some work you say he had done previously? A. No - some work up there. I suppose he would have said, "Well, I want to get paid for it".

Q. I see in the documents Exhibit "KK", a copy of an air ticket in your name in respect of a flight from Brisbane to Sydney at 11.30 a.m. on 4th October? A. Yes. 50

Q. That is two days after you say you sent the money up? A. Yes.

Q. Does that help you to identify what the money was for or how it came about that you sent it up just two days before you went up there? A. Well, I probably did not know I was going up there at the time. Had I known I was going up there I would have taken it with me.

HIS HONOUR: Mr. Gruzman, the witness has identified this date as 2nd October and apparently you and Mr. Staff are agreed that the date on this document is 2nd October, but I myself would have some doubts. It looks to me as though it is the 21st. 10

MR. STAFF: Looking at it now with the magnifying glass, it would appear to me to be clearly the 21st.

MR. GRUZMAN: It accords with the cash book. That is something we will have to check out to assist your Honour.

Q. Following on his Honour's question, this may clear it up: Did you go to Brisbane on or about 4th October? A. I wouldn't know. 20

Q. You do not know? Well, the system is that you record in your book the travel expenses? A. Well, it isn't my book. My father is doing it. If you show me the ticket - I don't know.

HIS HONOUR: Please keep your voice up? A. If I went to Brisbane I think I would have paid Ansett-A.N.A. a cheque and they would have a record of it.

MR. GRUZMAN: Q. But this particular ticket was issued in Brisbane and paid for by cash, was it not? A. Well, that appears to be so. I don't know whether it is. Yes, it could be. 30

Q. And you will notice I am showing you your cash book in respect of first of all, the 13th week which ends on 25th September? A. Yes.

Q. There is no reference to any travel expenses? A. Well, my father probably left it out.

Q. And for the 14th week which is the week ending 2nd October there are no travel expenses, is that correct? A. That is correct, yes.

Q. For the next week, the week ending 9th October, there is one flight, \$23.40, a flight from Brisbane, No. 305, which appears to be this ticket? A. Yes. 40

Q. How did you get to Brisbane? A. By another flight.

Q. Well, where is the ticket? Where is the expenses? Where is the cheque for it? A. I would either have gone up there by car, or flight, and somebody would have brought back the car for me. If I was in a hurry I would go up by flight and if I was not in a hurry I would go by car. I must have got there somehow. 50

Q. But you see, when you go by car you show your

petrol expenses, do you not? A. Not necessarily. If I hadn't paid the petrol receipts I wouldn't present it to my father.

Q. Just let us have a look. In the middle of September you drove your car up to Brisbane, did you not? A. When - the middle of September?

Q. Yes? A. I suppose so. I don't know.

Q. And we can see in your petrol expenses that you bought petrol at Armidale, at Singleton, at Glen Innes and at Coff's Harbour? A. Yes, well, some of the time maybe I probably did not keep the receipts. 10

Q. How did you get to Brisbane so as to be able to fly back on 4th October? A. By car or by plane. I don't go by train so it must have been one of those two ways.

Q. And there is no record of it anywhere in your book, is there? A. No.

Q. I put it to you that that ticket was used by Novak, wasn't it? A. Why would it be written in my name? Was it paid by cash or cheque? 20

Q. Cash. That ticket has been used by Novak to come to Sydney to do the job? A. No. That would be silly.

Q. You sent up the money, he came to Sydney, and then a few days later we have got the next invoice showing this; that is what happened, is it not? A. No, that is not right.

Q. And I put it to you that from that time onwards until 7th January, you and Novak were permanently engaged in following and harrassing Mr. Barton? A. We have never been engaged. 30

Q. And I put it to you that you arranged with Novak to make a deal with Vojinovic for Vojinovic to shoot Mr. Barton? A. I have never arranged, made any deals at all with Novak on anything of the sort that you are saying, Mr. Gruzman.

Q. I would like to come forward now a little bit to the day of 4th January, 1967.

HIS HONOUR: If you are leading this I think they ought to go back into the envelopes, Mr. Gruzman. 40

MR. STAFF: Perhaps my friend might deal with each of the weeks before 4th October; those my friend omitted.

MR. GRUZMAN: We want to put the whole of the facts before your Honour. There are four weeks which I showed the witness and there are none omitted.

Q. 4th January, 1967 is that a date that comes to your mind? A. No.

Q. Not at all? A. Not at all. 50

Q. Is not that the day that you received the largest sum you ever received in your life for a job of work? A. I would not have taken any notice of that.

Q. That means nothing in your short life? A. No.

Q. (Approaching witness.) I just want to take you through and show you what your takings were in the weeks prior to 4th January. You see that you received \$500, noted in the book as from Mr. Armstrong, on 9th November? A. One of the companies. 10

Q. And from that date onwards these were the only amounts you received; \$8 on 10th November, \$14 on 15th November, \$23 on 24th November, \$10 on 30th November, \$6.75 on 8th December, \$8 on 9th December, \$4 on 14th December, \$20 on 19th December, and \$25.75 on 22nd December? A. Yes.

Q. And the next payment you received was \$1094.30 on 5th January? A. That is right. That is nothing unusual. We sell the property in Balmain and nobody knew where we had removed to and they did not ring me up, I did not even have the phone connected at that time, so they could not have got in touch with me. 20

Q. It was a pretty poor Christmas you had, wasn't it? A. It was all right. The same as every other Christmas, I played my handball and tennis.

Q. Where did you get the money for that? A. I don't need any money for that, and I certainly wasn't hungry. 30

Q. From the time you received the last \$500 from Mr. Armstrong --- A. I said one of the companies.

Q. From the time you received that \$500 until the time you received the \$1094, you had taken only about \$100 or \$150 gross? A. I said it was a bad time of the year. We changed the premises. They were sold, we had to remove to new premises - no telephone. Nothing out of the ordinary.

Q. Well, doesn't that help you to remember, receiving this sum of \$1094? A. No, it still does not mean a thing to me. It was the work I did and I had to get paid for it. 40

Q. How did you get that money? A. By a cheque.

Q. Who gave you a cheque? A. It was sent to me I think.

Q. Are you sure? A. Pretty sure.

Q. Did you see Mr. Armstrong about it? A. No.

Q. Did you ever discuss it with Mr. Armstrong? A. No, Mr. Armstrong just said, "send the bill to this company and that's it". 50

Q. Well, were you not worried that you needed the money and wouldn't you speak to Mr. Armstrong about it? A. No, I was not worried. As I mentioned before, if I was ever short of money I would go to my parents. I was never worried about money.

Q. According to your version, it was work you had done in November, you had never send an account till December, and it was not paid till January? A. That is right. It is good etiquette, as I said, to wait a month for your accounts. 10

Q. And you say you never spoke to Mr. Armstrong?
A. No.

Q. Did you thank Mr. Armstrong? A. No.

Q. You never thanked him? A. No.

Q. Did you speak to him about it? A. No. I got paid. I didn't know who paid me. I did a job and got paid and that was it.

Q. Are you telling his Honour you never said "thank you" or anything of that kind to Mr. Armstrong in respect of that payment of \$1000-odd? A. I have never said "thank you" to Mr. Armstrong in regard to this payment of \$1094. 20

Q. You never discussed it with him in any way?
A. Never discussed it with him.

Q. With anyone? A. No. He said "Send the bill to this company" and that was it. I got paid and I never ever thanked him.

Q. Not only have you not thanked him but you have never discussed it with him in any way? A. No. 30

Q. Did anything else happen on 4th January 1967?
A. Not that I can think of.

Q. Well, just think carefully? A. Was it a sunny day? Then I would have been down at Redleaf playing handball or I would have been playing tennis, I don't know.

Q. What is your recollection? A. Well, that is a general routine with me.

Q. Is that what you do every day? A. No. I usually, if I have some appointments to do interpreting with some of the specialist doctors for some of the Croatians, then I go with them in the morning. That is the usual appointment times that I have. If I haven't got any then I get up and go to Redleaf and swim and play handball in the summer time. Otherwise in the office the summons I serve at night time, and then at three o'clock I usually go to play tennis at Cooper Park or down at Jensions, we used to play at this time. I think we were playing at Jensions. 40

Q. You do an hour's work a day on the average, do 50

you? A. Two or three, I think, at night time. It all depends how many summons I have to serve.

Q. Two or three hours work a day? A. That is right, but I am not the only one there. Miss Catt is there now, so she does eight hours work. She does obtain all the accident reports - in fact, she does most of the work there. I only do the things she can't do like serving summons and divorce petitions and obtaining statements and that sort of thing. 10

Q. Did you have any discussion at all with Mr. Armstrong on 2nd January 1967? A. Not that I can recall - no discussion at all. Probably maybe we played tennis. I don't know whether we played tennis that day.

Q. That is the best you can tell us? A. Definitely.

Q. When was the discussion with Mr. Armstrong about going skiing? A. I think he rang up that same day, but I knew beforehand. I think he went there with his wife and left the boat there and then Mrs. Armstrong, I think, told me I might go and ski there the following week. That would have been - I think I was informed some time the 2nd, 3rd, could be the 4th, yes, but I don't think it was Mr. Armstrong. I think it would have been Mrs. Armstrong came back from the River on her own. She did not like it, and Mr. Armstrong stayed there and then I was told by Mrs. Armstrong that I would probably go the next week there which would have been the week after New Year and that I would be skiing then and we would bring the boat back. 20 30

Q. Do I understand you when you said "that same day" that you mean it was on 4th January 1967 that Mr. Armstrong spoke to you about going skiing? A. I can't say what day it was but I think it was Mrs. Armstrong, because I saw her first before he even came back. I think he was still at the River.

Q. What did you mean when you told his Honour you think it was that same day that you spoke to Mr. Armstrong? (Objected to.) 40

Q. What did you mean when you said it might have been the same day? A. It may have been the fourth day. I don't know what day it was.

Q. Well, do you remember what evidence you have given on this aspect? A. Yes, I think I do.

Q. What do you now say is the day that you spoke to Mr. Armstrong about going skiing? A. Well, I definitely knew I was going skiing --- 50

Q. Will you answer my question? A. When he rang me up in the morning the same day.

Q. Which day? A. That was the Saturday.

Q. Had Mr. Armstrong spoken to you about it before? A. Mr. Armstrong or Mrs. Armstrong, but I think at first I was told by Mrs. Armstrong before he was still up the River when I was already told that we would have to go up there and get the boat back.

Q. You are being deliberately obstructing, aren't you? Q. No, I am not.

Q. Did you have a conversation on 4th January 1967 about going skiing? A. I don't know. 10

Q. You do not know; that is the truth, is it? A. I do not know. That is the truth. I don't know what day I had a conversation about going skiing.

Q. You have no recollection of any conversation on 4th January? A. No. I know when I was there.

Q. What day of the week did you discuss going skiing with anybody? A. I don't know. I do not know what day of the week it was. 20

Q. You do not know? A. I don't know.

Q. You see, if I put it to you that you had a discussion about going skiing on the same day that you received the cheque for \$1094, would you be prepared to deny it? A. I do not know whether it was the same day or what day it was. I can't see any connection between the cheque I had received for the work that I did and doing skiing.

Q. I put it to you that you were aware that something was going to happen to Mr. Barton on the weekend of 6th-7th January? A. I was never aware that anything is going to happen to Mr. Barton. I am not even aware of it now. 30

Q. Is that a serious statement? A. That is a serious statement.

Q. I put it to you that you knew during that week that some attack of some kind would be made by Vojinovic on Barton during that weekend? A. No.

Q. And I put it to you that you and Mr. Armstrong conspired together to create an alibi for both of you for that weekend? A. No. 40

Q. You were paid that \$1094 during that week, were you not? A. I was paid the \$1094. I don't know when it arrived. It arrived by letter.

Q. And that \$1094 was really an exact sum of \$1000 made to look like an odd sum, wasn't it? A. That is a strange thing to say. It is a cheque for \$1094 or however many it was, and you say it is \$1000. How can that be? A. It can't be \$1000 when it is \$1094. 50

Q. I put it to you that there was an agreed figure

to be paid to you by Mr. Armstrong of \$1000? A. There was no agreed figure. There was nothing ever said to Mr. Armstrong. They sent it to the company. It was paid for the job I did and I put down how much I am expecting to get paid, I put in a bill and they paid me for it. There was no agreed figure for anything.

Q. I put it to you you were told to prepare an account for an odd sum to cover it so that it would go through the books of the company? A. That is not true. I don't do that sort of thing. 10

Q. There is one question I would like to ask you and I would like you to think seriously of the answer. If you - and this is Miss Larkin, Miss Catt and Mr. Armstrong - were all going to get to the Hawkesbury River so that Mr. Armstrong and Miss Larkin would take the boat back, why were two cars taken to the Hawkesbury River? A. Well, that is simple. We did not know who was going to take the boat back. It could have been Armstrong himself who was going to take the boat back and then Miss Larkin would have driven the car back. 20

Q. Is that your best explanation? A. Definitely.

Q. What about Miss Larkin? A. She could have brought the boat back and Mr. Armstrong could have driven the car back.

Q. I put it to you that you never went to the Hawkesbury with Mr. Armstrong? A. Your Honour, I was most certainly was there. There are a lot of people who can prove that. I can go into the details again of what happened that day and on the next day. 30

Q. We know you have learnt your story off pat?
A. I haven't learnt anything.

Q. But I will ask you to answer these questions.

(At Mr. Gruzman's request and his Honour's direction the above question was read by Court Reporter as follows: "Q. I put it to you that you never went to the Hawkesbury with Mr. Armstrong".) 40

Q. Did you hear that question? A. Yes.

Q. What is your answer to it? (Objected to.)

Q. You see, what I am putting to you is that you never went to the Hawkesbury at the same time as Mr. Armstrong? A. At the same time. I even followed him there because I did not know where it was.

Q. I put it to you that it was necessary for you to remain in Sydney to see that the attack on Mr. Barton was successful? A. There was no attack on Mr. Barton. 50

Q. I put it to you that you were present in Sydney when Vojinovic telephoned your office during the afternoon of 6th January - 7th January? A. First of all, I was not in Sydney on 7th January, and number two ---

Q. Thank you, Mr. Hume. I put it to you ---
A. You asked me the question.

HIS HONOUR: The question can be answered yes or no. Put the question again. 10

MR. GRUZMAN: Q. I put it to you that you were present in Sydney on the afternoon of 7th January and that Vojinovic telephoned you?

HIS HONOUR: Q. Do you agree or disagree with that suggestion? A. Disagree.

MR. GRUZMAN: Q. I put it to you that you spoke to him on the telephone? A. I did not. Never. Never at any time.

Q. And that you made an appointment to see him at eight o'clock for approximately that time on that evening? A. Impossible. I was not in Sydney. 20

Q. And I put it to you that at some time after Vojinovic failed to keep that appointment, you went up to the Hawkesbury? A. I never spoke to a man called Vojinovic. I had gone to the Hawkesbury in the morning, following Mr. Armstrong and Mrs. Larkin, and Miss Catt was with me in the car. I was driving the car there and I have never been before or since.

Q. And I put it to you that the reason why this peculiar situation arose of four people going up in two cars when there was also the boat to come back was because you never went to the Hawkesbury with Mr. Armstrong? (Objected to; rejected.) 30

Q. I put it to you that you took your M.G. to the Hawkesbury because you went at a different time from Mr. Armstrong? A. No, I followed him there because I did not know the way and it was around ten o'clock in the morning that we left.

Q. You were perfectly able to explain to his Honour how to get to that property, weren't you, in your evidence? A. No, only because I followed him, otherwise I would not have been able to find it. 40

Q. In other words, that you have been there once only and you are able to give evidence here some 18 months later of how to get there? A. No, I did not describe how to get there. I described the property.

Q. And are you suggesting that nobody could have told you how to get there? A. It would be hard to find for somebody who has not been there - very hard. 50

(Luncheon adjournment.)

(Mr. Gruzman called on subpoena duces tecum the Commissioner of Police, Sgt. Anderson answered the call.)

MR. GRUZMAN: Q. What is your full name? A. Ian Barry Anderson.

Q. I think you are a sergeant of police and you have been asked to bring with you a subpoena served on the Commissioner of Police, and do you produce to the Court a certain document and a copy of the subpoena served on the Commissioner? A. That is so. 10

MR. FORBES: I have been asked to represent the Commissioner, if your Honour pleases, in connection with the production of these documents. May I tender the subpoena?

HIS HONOUR: Yes. I shall reiterate what I said to you on 15th February, Mr. Forbes, but apparently it was misapprehended. A party who is subpoenaed is not at liberty to press arguments on the Court unless there is some application before the Court by that party. I do not know whether you want to address any arguments to the Court, but so that it may be clear I am not inviting you to address any argument nor am I asking you to make any application. 20

MR. FORBES: I understand that.

HIS HONOUR: If you want to make submissions you can only make them in support of some formal application.

MR. FORBES: May I say that what I propose to say now very briefly may assist in connection with the production of these documents. Your Honour sees that two of the documents subpoenaed - one is a warrant and the other is a record relating to the antecedents of the party named in the subpoena. Now the Commissioner has asked Sgt. Anderson to approach me to obtain some advice on his behalf and he submitted the matters, subject to what your Honour rules, for my advice. As regards the two documents I have just mentioned, namely the warrant and the record of antecedents, there is not the slightest difficulty whatever in producing those and accordingly they are produced. (Documents handed to his Honour.) I only say finally that with regard to the other document which is described as the prosecutor's brief, this is a prosecution that has not yet been dealt with and not yet heard. Your Honour may be aware that the Court of Appeal ruled on 25th October 1967 that the police prosecutor has no legal privilege in a brief, in his brief, and this is the position. In Ex parte Dustings re Jackson, which so far as I am aware is unreported but I have the judgment here, there is no argument about it - I merely say that in Ex parte Dustings re Jackson the Court of Appeal on 25th October 1967 said this, and the Court of Appeal comprising the President, Wallace, P., and 30 40 50

Walsh and Jacobs, J.J.A., all agreed that the police prosecutor could not claim, and that was claimed in that case, and they held that the Magistrate was in error there - that the police prosecutor had no legal privilege in the prosecution brief and there is no question then of any kind of privilege so far as this brief is concerned.

On behalf of the Commissioner I only say this, 10
that having regard to the nature of the documents and
the fact that they relate to a prosecution that has
not yet been heard, the Commissioner submits the
matter entirely to your Honour, and while producing
the documents to the Court he desires me at the same
time to say - and this is the advice I have given -
that it is a matter entirely for your Honour as to
what extent the documents of this kind should be
disclosed to any parties in this case. This is en- 20
tirely a matter for your Honour. There is no objec-
tion as such but it is a matter for the discretion
of the Court having regard to the nature of the
documents, and as a matter of fact I produce - one
is an original document included in a brief and the
other is a copy of the same document.

HIS HONOUR: They are all the documents mentioned in
the subpoena?

SERGEANT ANDERSON: That is so, your Honour.

HIS HONOUR: Mr. Gruzman, do you wish to make some
application concerning these documents? 30

MR. GRUZMAN: Yes, to inspect those documents.

HIS HONOUR: Before Mr. Forbes leaves the Court I
will look at the documents and look on that question.

MR. GRUZMAN: Following what Mr. Forbes has said,
whilst it may be true that this is a prosecution
against Vojinovic which has not come to fruition,
the fact is that on our instructions it never will
and we have the extraordinary circumstance that
Vojinovic absconded from bail and as far as we know
no effort has been made or ever will be made to bring 40
him back to this State. That is the reason we would
like to see the documents and see what inquiries
were made, and your Honour will see that it all oc-
curs at a relevant time.

HIS HONOUR: I will look through the documents to
see what their relevance is. Mr. Forbes, you say
the first two documents do not raise any difficul-
ties at all?

MR. FORBES: No.

HIS HONOUR: Notwithstanding that there is no objec- 50
tion to those documents being made available, I
will first look at those.

Mr. Gruzman, so far as concerns the first two
documents - that is to say, the warrant and the

file relating to that - what relevance have they to this litigation?

MR. GRUZMAN: Well, your Honour, of course, not having seen the documents one does not know what is in them.

HIS HONOUR: Are you seeking to establish an association?

MR. GRUZMAN: That is right, and this matter was pending from November or so - October/November 1966 - till 16th January 1967. Now one might conceive that the record of antecedents and so on may either confirm or refute various matters which have been given in evidence. We simply do not know. We do have instructions that following Vojinovic's departure, Det. Sgt. Mackie made certain investigations at certain addresses and so on and we feel that the contents of the documents could contain evidence relevant to Vojinovic's movements over this relevant period. I would add this, that your Honour will remember the suggestion that has been made that Vojinovic was framed on a charge of car stealing for the purpose of getting him out of the way after he had made these disclosures to the police.

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Now in our view it is significant as to what efforts were made to bring him back to Sydney, having in mind the evidence of Sgt. Wild and Const. Follington and generally the attitude taken by the police towards bringing Vojinovic back to N.S.W. We know that in fact he has never been brought back to this State to answer this charge. But in those circumstances we submit that we may fairly assume that the contents of the documents do contain matter relevant to this inquiry.

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HIS HONOUR: Mr. Gruzman, I do not see what the warrant file or the antecedents have to do with the matter but as it is not suggested that it is undesirable in any way that counsel and counsel alone should see them, I am prepared to allow you to see those two files. I reiterate, not that I am satisfied they have any relevance but Mr. Forbes does not suggest there is anything undesirable about their being seen, nor do I myself see anything undesirable in your being allowed to see those two files. As to the other files, at the moment, although I have not finished looking through them, I am not satisfied they have any bearing on matters that arise in this case.

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MR. GRUZMAN: If your Honour has looked at them and is so satisfied, we do not press it.

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HIS HONOUR: I do not see anything in these other two files which could fairly be regarded as relevant and I do not think they should be made available for inspection, and unless you seek to have them retained in Court I think it is preferable that they be returned. I should also like to have the other two files handed back unless you say there

are some matters on which you would like them to be retained in Court.

MR. GRUZMAN: There are one or two matters in these files for which I would like them retained in Court. We would ask that since neither of these documents are in use at this time, they be retained in Court.

HIS HONOUR: Mr. Forbes, I will release back into your custody the other documents you produced. They can be returned to the Commissioner. They are not further required. 10

MR. GRUZMAN: May I point out that in respect of the antecedents there are three identical copies on the file.

HIS HONOUR: Then would you take one carbon copy off the file, Mr. Gruzman, and the warrant file, Mr. Forbes, is not in current use as a matter of day to day requirement?

MR. FORBES: No, but it may be required.

HIS HONOUR: If it is required as a matter of urgency application can be made at any time; otherwise it will be returned when this litigation is finished. Thank you for appearing, Mr. Forbes, and neither you nor Sgt. Anderson need wait. 20

(TO WITNESS.) Mr. Hume, you are still on oath?
A. Yes your Honour.

MR. GRUZMAN: Q. I was putting to you the series of events which occurred during that first week in January 1967. Do you remember that? A. Yes.

Q. I put to you that during the week prior to that, to your knowledge Novak saw Vojinovic? A. No, I don't know anything about that. 30

Q. And that during that week an arrangement was made for Vojinovic to take some action against Mr. Barton? A. No.

Q. And I put it to you that Novak told you that Vojinovic wanted \$1000 and a gun? A. No. Nobody ever told me that.

Q. By the way, was Novak at that time driving your blue Falcon? During that week prior to the last week in 1966 was Novak driving your blue Falcon? A. He was driving the blue Falcon from the time it was finished from the panel beater's shop as I had the M.G., so I wasn't driving it any more and he was driving the Falcon and making payments for it. 40

Q. So that certainly during, shall we say the last week, weeks of 1966, Novak would have been driving your blue Falcon? A. Yes. I believe so, yes. He or his friends or his girl friend. I don't know who was driving it. Anyhow it was in his possession. 50

Q. And during that period did Novak by arrangement drive down to Riley St., where you were waiting

for him on the corner of the street? A. No. There was never any such arrangement. Besides, why should he meet me on a street corner when he used to come into the office nearly every day when he was in Sydney? He used to come quite frequently into the office. There was no reason why he should meet me on any corner.

Q. That is the Riley Street corner? A. Yes - especially on the corner of Riley Street. 10

Q. And over this period Novak was coming to the office nearly every day? A. Nearly every day when he was there, yes.

Q. And he was there during this period? A. I don't know exactly what date, but when he comes down to Sydney he comes to the office quite frequently.

Q. And I put it to you that to your knowledge Vojinovic was in the car with Novak on the occasion to which I have referred? A. No. I have never seen anybody in the car with Novak, because I would not be outside in the street, I would be in the office. What would I be doing on the street corner? 20

Q. You see, you were trying to keep yourself as separate as you could from Vojinovic, weren't you? A. I did not know a man named Vojinovic at that time. The first time I heard that man's name was when Senr. Const. Hammond rang up on the seventeenth day of January and he said that the man Vojinovic took the car from Novak in Melbourne. Then he rang me up a few days later and he said the car was recovered and that Novak should go to Melbourne and give evidence. 30

Q. Look, sir, you made these arrangements through Novak and avoided seeing Vojinovic so that Vojinovic could not give direct evidence against you, didn't you? (Objected to; rejected as double question.)

Q. I put it to you that you avoided speaking to Vojinovic so that he could not give evidence against you? A. No, I did avoid to speak to anybody. I didn't know a name called Vojinovic. 40

Q. And I put it to you that when Vojinovic telephoned you on the afternoon of 7th January, you realised that unless you agreed to see him he would not go through with the job? A. Your Honour, no-one telephoned me on the 7th January as I was on the River and there was no telephone there. It would have been impossible for anybody to telephone me there. There is no telephone on Mr. Armstrong's boat and there is no telephone in Jack Murray's shack. 50

Q. And I put it to you that either late on the night of 7th January or early in the morning of 8th January you went up to Murray's shack? A. No, I went down there with Miss Catt in the car, following Mr. Armstrong and Mrs. Larkin. That is the first time I got there.

Q. By the way, you have a recollection, have you, or some skis being fitted to you? A. That is right.

Q. Where did that occur? A. I think it was supposed to be done over on Riley Street before we went there but then it was decided that Jack Murray would be better equipped and that he should finally adjust the skis.

Q. You have changed your story on that, haven't you? A. No. 10

Q. Have you not, Mr. Hume? A. No, I haven't changed my story.

Q. Have you discussed your evidence with Mr. Armstrong and found there was a discrepancy? A. I have never discussed the evidence with anyone.

Q. Did you tell his Honour before that the skis were adjusted before you left Sydney? Did you tell his Honour that? A. They were supposed to be adjusted before we left Sydney, but actually I think it was Jack Murray who finally did the adjustment. 20

Q. Are you aware that Mr. Armstrong gave evidence that the skis were provided by Mr. Murray? Are you aware of that? A. No, I don't think the skis were provided by Mr. Murray. I think the skis would have been of Mr. Armstrong.

Q. The evidence on this starts on p.1259. Was this what was done: The question preceding the one asked by his Honour: "Q. Did you have a conversation about it, with Mr. Armstrong? A. I think it was around eight o'clock in the morning and Mr. Armstrong told me to be ready about ten and that he is going to come with Mrs. Larkin and have a look at the ski, adjust the ski, they wanted to adjust the ski". Is that true? A. That is true. 30

Q. Did that happen? A. No, I don't think they finally did. They left it for Mr. Murray as they thought he would know best as he was a better skier than they were and he is more experienced.

Q. Did you tell that to his Honour in your evidence in chief? (No answer.) 40

MR. STAFF: Yes, two answers down.

MR. GRUZMAN: That is right.

Q. Is this what you say, compared with what Mr. Staff said, that there was no adjustment of the skis in Sydney, it took place at the shack? A. Yes, to the best of my recollection.

Q. That is a lie, isn't it? A. No, that is not a lie.

Q. I put it to you that outside the building, that is at Riley Street, there was some adjustment 50

made to skis for you? A. No. We would have had a look at it but we did not make any adjustment. Finally Mrs. Larkin or Mr. Armstrong said, "Jack Murray will know best and we will leave it up to him".

Q. I put it to you that according to your evidence there was an adjustment of skis on you at Riley Street. Is that true or false? A. Well, we would have attempted to make some adjustment but then we finally left it for Mr. Murray. 10

Q. Let us just get it clear. You say that before you left Riley Street there were skis for you in the car? A. That is right.

Q. And they were partially adjusted on you? A. Not partially adjusted. I was trying to fit them on with the help of Mrs. Larkin and Mr. Armstrong and then they said, "Oh, Jack Murray would know best, and besides, there are a lot of skis down there" and we left it at that. 20

Q. And do I understand from you now that these skis were fitted to you eventually by Jack Murray? A. I don't know whether it was these skis or some other skis but there were a lot of skis there and I think Jack Murray chose some skis and he said, "They would be the best suitable to you" and that was it.

Q. You are aware that Mr. Murray's evidence does not accord with yours aren't you? A. I am not aware of anything. I don't know what Mr. Murray told you. 30

Q. Is this what happened, that at the time you arrived at the shack you never had any skis at all? A. Not in the M.G. They were in the big car, in the Valiant.

Q. But I put it to you that at the time you arrived at the shack there were no skis allocated to you at all? A. Yes, there were.

Q. I put it to you --- A. We brought them there in the Valiant. 40

Q. I put it to you that Jack Murray said to you, "Have you ever skied? A. I don't remember that.

Q. Did you not have a discussion with Jack Murray about skiing? A. No, I think he was told that I was a novice and could he get me on to one ski. That was the whole idea.

Q. Novices do not usually try one ski, do they? A. Well, I have been doing a lot of snow skiing so it would not take me very long to pick up on two skis, but it was very difficult in the harbour, but of course on the River it was easy. 50

Q. Did this conversation take place: Did Mr. Murray say to you (p.1133) "Have you ever skied?"

and did you say, "No, but I would like to have a try"? A. I think he would have asked me had I ever skied on one ski and I would have said, "No, but I would like to try on one ski".

Q. You are quite clear on that? A. Yes, because I have tried on two skis before.

Q. Did Mr. Murray say to you, "I have a pair of old flat-back skis. I don't think you could fall off those"? Did he say that? A. Could be. 10

Q. You see, it is not true that there was any adjustment of skis outside Riley Street, is it? A. It is true. We were attempting to adjust the skis.

Q. You have tried to adjust your evidence to Mr. Murray's, have you not? A. No. I would not know what Mr. Murray's evidence is, nor am I interested in what his evidence is. I am telling you my evidence, not Mr. Murray's evidence. Whatever he has told you is his business. All I am telling is what I know, what I saw and what I heard. 20

Q. And did Mr. Murray have to tell you how to ski at all? A. No, he was trying to - he realised I could ski a bit on two skis but he was trying to help me with the balance on one, but I was no good because there were always two on the back of a boat, and they just couldn't keep on picking me up all day long so they left me with two skis because I could ski quite reasonably on two.

Q. Did Mr. Murray say this to say, "If you just do as I tell you and keep your knees bent and your arms straight you will ski all right". A. Yes, but it didn't work like that. I one ski I just couldn't do it. No matter whether I was bending the knees at all, I kept on falling off. 30

Q. There was no question of one ski, was there?
A. Oh yes.

Q. The advice to keep your knees bent and your arms straight was the advice given to a person first starting to learn to ski on two skis; is that right?
A. I don't know, but I have skied on two skies and I was doing all right on two skis but not on one. 40

Q. Is it true that as far as Mr. Murray was concerned he actually taught you to ski on two skis?
A. No.

Q. That is not true? A. Not true, no. He helped me but he did not teach me.

Q. I put it to you that you have concocted the story of going up to the shack together with Mr. Murray? A. Mr. Armstrong, not Mr. Murray.

Q. Mr. Armstrong? A. Yes, Mr. Gruzman. 50

Q. You concocted that story, haven't you? A. No, I have not, but I went there with Mr. Armstrong, not with Mr. Murray.

Q. And I put it to you that the reason for the plan to have you sleep on Mr. Armstrong's boat was so that whatever time you came there the other people would not necessarily know? A. Your Honour, we were playing chess before I went to sleep.

Q. Do you understand what I am putting to you?
A. Yes, but I am just saying that I just didn't turn up there, I came from Sydney and I stayed there the whole day and were playing chess and the boat is only tied up a few yards down from the hut, so all this is ridiculous. 10

Q. What I am putting to you is that on the Wednesday, 4th January, you received this \$1000 and a plan --- A. There was no \$1000. There is a cheque for \$1094 - is that correct - and you keep on saying \$1000 all the time.

Q. I put it to you that you received this money on the Wednesday and the scheme was then arranged for this alibi for the weekend? A. I don't know when I received the cheque. The cheque came by post. It would have then been put in the bank. I was told about going first to the shack, I think it was by Mrs. Armstrong, and then rung later on on Saturday morning at about eight o'clock by Mr. Armstrong, and that is it. 20

Q. When was the first you heard about going to the shack? A. Mrs. Armstrong, she told me I think it was, that we had to go and pick up the boat because they took the boat there before, a week before that, and they left the boat there. 30

Q. When did Mrs. Armstrong tell you that? A. I don't know what day. She came back. She didn't have a good time there. She did not enjoy it and she came back early.

Q. You were seeing her quite frequently over this week? A. No, not quite frequently.

Q. There was no special occasion that she told you anything about this? A. Well she told me on that occasion when I saw her. 40

Q. Well, when was that? A. I do not know. That would have been at the time immediately after she came back from there, I think.

Q. What is that - the week before? A. Well, that would have been some time just after New Year, I think. One or two days after the New Year I suppose.

Q. One or two days after the New Year? A. Yes.

Q. And that was the first you knew of it? A. That was the first I knew of Mrs. Armstrong being up the River and the boat being left there and that I would probably go there the next week and ski. 50

Q. You mean that weekend? A. The weekend, on the 7th.

Q. You were told one or two days after the New Year for the first time that you might be going up the weekend of the 7th; that is right, is it not?

A. Probably, yes.

Q. That is right? A. That is right, by Mrs. Armstrong, yes, and then Mr. Armstrong rang me up at eight o'clock on the morning of the 7th and he told me to be ready and wait outside and that was it.

Q. Why did you suggest to Miss Catt on the New Year's Eve, that you would take her water skiing? 10

A. Well, because I knew at that time they were doing a lot of water skiing and I thought that the next time I got invited water skiing I would take her along.

Q. It just came to you like that? A. Why not? I have tried it before in the harbour.

Q. But Miss Catt was not interested in water skiing? A. But I was, and I was complaining about that party she invited me to and she said, "Well, you don't take me anywhere better" and I said, "Well, how about going water skiing?" 20

Q. I put it to you that after that weekend you found out that Vojinovic told the police all about it? A. I found out nothing. The first time I heard of Vojinovic was on the seventeenth day of January when Senr. Det. Hammond from the Victorian Motor Squad rang me up and said that a man stole a Falcon number so-and-so, Mr. Michael Novak.

Q. I put it to you that on the Monday or at the latest within a day or so after that, you were called upon by Sgt. Wild to make a statement in connection with this matter? A. Most certainly not. The first time I heard of the name Wild mentioned was on the 18th when Const. Follington rang me up and said that a Sgt. Wild would like to see me in his office at the C.I.B. 30

Q. I do not want to sort of press the button and every time you go off with this sort of thing, will you please just answer my questions? You were in the office on the Monday, Tuesday, Wednesday and Thursday of that week following 7th January, were you not? A. For some of the time, yes, I suppose so. 40

Q. And I put it to you that during the early part of that week you made a statement to Sgt. Wild? A. No, I have never made a statement to him.

Q. And I put it to you that having found that Vojinovic had confessed to the police, you then decided to get rid of Vojinovic? A. No, your Honour. I have never heard of Vojinovic, that name mentioned, before the 17th. 50

Q. Well, you have told his Honour that Novak was coming almost daily into your office around this period? A. Yes, from time to time he used to come in, almost daily.

Q. Did you know Novak was going to Melbourne?

A. Yes, I think before he went to Melbourne he would have told me that and I told him to go and see his parole officer.

Q. And did you know where he was going to get the money from to finance this trip to Melbourne?

A. No. He told me that he was taking somebody down there and that he would pay for the petrol and he asked me could I lend him some money. 10

Q. Did you give him some money? A. I think I did.

Q. How much? A. I don't really know how much.

Q. Approximately? A. Not much. I suppose £10 or so, something like that.

Q. And did you ask him who this man was who was going with him? A. No, I did not.

Q. Were you concerned to know who it was? A. Why should I be concerned? I am not his keeper.

Q. But I thought you were his keeper? A. No, I was not. 20

Q. I thought the probation officer ---? A. He told me to look after him and see that he has got something to do all the time, but I was not his keeper.

Q. Were you not concerned to know whether they were going off on some criminal activity? A. Criminal activity?

Q. Yes? A. I did not think he was going on any criminal activity? 30

Q. Well, would it have been consistent with keeping an eye on him if he had gone to Melbourne with a man with quite a long criminal record? A. I wouldn't know.

Q. But if Mr. Gibbons, the probation officer, had sufficient confidence in you to ask you to keep an eye on him ---? A. Yes.

Q. Did you not think you should repay that by inquiring as to who he was going around with? A. I could not follow him all day. What do you think I could do about it? 40

Q. But when he came to you and said he was going to Melbourne in your car with a man who was providing money for the trip and so on, did you not ask him? A. Just a moment. You are always mentioning my car. He was making the payments for that. I was only too happy that someone was making payments on the old bomb.

Q. When Novak told you he was going to Melbourne in the blue Falcon EBD-703 - is that right? A. EBD-703, that is right. 50

Q. That is right, is it not? Are you happy now?

A. Yes, but sometimes you give me wrong numbers and dates.

Q. Now when Novak told you he was going to Melbourne in the blue Falcon EBD-703 with a man who was going to pay for the petrol, did you ask him "Who is this man?" A. No, I didn't.

Q. If you had known that he was a man with a criminal record, would you have approved of the trip? 10

A. No, I do not think I would.

Q. Well, Novak was a man who to your knowledge was likely to stray from the straight and narrow path unless he was looked after, was he not? A. No, he wasn't doing so - (Objected to; question not pressed; rejected.)

Q. You see, you had been asked by by the probation officer to keep an eye on him? A. Yes, but he did not mean literally that I would walk behind him all day. 20

Q. No, but to keep him, I suppose you would imagine, away from known criminals? A. Mainly to keep him busy doing something, because most of these fellows get into trouble because they have got nothing to do.

Q. I will ask you once more; did you never inquire of Novak who was going in the car to Melbourne and paying for the fuel? A. I did not.

Q. But if you had inquired and found it was Vojinovic, a man with a criminal record, you would have stopped it? A. I don't know whether I would have stopped it. I would have told him not to go with somebody who has got a criminal record because he will get into trouble by associating with criminals. 30

Q. I put it to you that you organised the trip to Melbourne for the purpose of getting Vojinovic put out of the way? A. Your Honour, Novak was going to Melbourne to do some abalone diving. He heard that there is good money down there in this abalone diving and he loves spear fishing and abalone diving and chasing sharks, and this is why he was going down there. Now, everything else you are talking about is like all the other allegations. 40

Q. After Vojinovic had been arrested you were quite interested, were you not? A. No. Why should I be interested? What has that got to do with me?

Q. You see, I put it to you that you were the organiser of the job of getting Vojinovic out of the way? A. Your Honour, this putting to me, it is ridiculous. I don't know one policeman in the whole of Victoria. Not one policeman. I have never even seen this Senr. Const. Hammond and I would not know what he looks like. 50

Q. Will you have a look at this deposit slip (shown to witness) and tell me whose handwriting it is? A. On the back of it or on the front of it?

Q. Either side? A. Yes, there is some in my handwriting, that is right, and some in my father's, that is right.

Q. (Approaching witness.) If you might just tell us which is which? A. The one in pencil is in my father's and the one in pen is mine. 10

Q. Both on the front and the back? A. Both on the front and the back.

Q. And the front says "4th May 1967"? A. Yes.

Q. You received \$43? A. Yes.

Q. Paid to the credit of Hume's Investigations re Michael Novak?

Q. That is right. That was the money he was paid from the Victorian Court for giving evidence there. I think they were his expenses, that is all.

Q. And on the back it has got, "M. Novak for attending Court as witness re Alexander Vojinovic \$36.50"? A. That is right, and another thing is a Mr. Ray Rose, \$6.50. 20

Q. That has nothing to do with Vojinovic? A. No, nothing to do with Vojinovic.

Q. So far as Vojinovic is concerned, the fact is that you have received Novak's witness's expenses for attending Court to give evidence? A. No, this is wrong. He put it through the bank. In other words, I put it through the bank and gave it to him, otherwise he would have to wait because he has not got a bank book or a cheque book or anything of that sort. 30

Q. Well, you were pretty closely associated with him at that time, were you not? A. No closer than at any other time.

Q. And at about the same time you paid to Novak by cheque \$46, did you not? A. That is right.

Q. And that was wages, wasn't it? A. I don't know what it was. 40

Q. What does it say on the cheque butt? (Shown to witness.) A. Well, it says here "wages" but it is not my handwriting.

Q. That is in the 45th week? A. That word "wages" is not in my handwriting.

(Above two documents tendered; objected to; admitted and pinned on to the page of the 45th week in Exhibit 76.)

Q. The \$46 was paid on 3rd May to Mr. Novak as

wages? A. No, there must be a mistake in the book.

Q. Another mistake? A. I am afraid he has made some mistakes.

Q. The cheque is for \$46, is it not? A. That is right.

Q. And the amount you received by way of refund of expenses if \$36.50? A. That is right.

Q. And it would not be wages? A. Apparently not.

Q. Unless it was blood money for giving evidence against Novak? A. Against Novak? 10

Q. Against Vojinovic. It was blood money for giving evidence against Vojinovic? (No answer.)

HIS HONOUR: I do not understand that expression.

MR. GRUZMAN: Q. It was money paid to Novak to give false evidence against Vojinovic, wasn't it? A. No. It is of no importance to me what the Victorian authorities did with Vojinovic one way or another.

Q. And on the same day you paid another cheque to Novak for \$6 for wages, did you not? A. That is probably for wages but the other one is only the money he received from this - it was put in the book. It was the money he got from there and it was put in the book and the mistake was "wages", that is all. My father has made a mistake. 20

Q. Your father has made an awful lot of mistakes? A. What can I do about it? I am responsible for it, that's all. He has the job to do the books, that's all. I have got an account and I don't know what I am paying him for. My father is doing the books. 30

MR. GRUZMAN: Q. By the way, Mr. Hume, did you from time to time give your business cards to Mr. Novak? A. He had access to them. He could have had 10,000. I think that we had 10,000 printed, and we dropped them in letter boxes around the area of King's Cross, Paddington, and all over that area, but it was not very successful. I got a lot of abusive letters.

Q. I want to put this to you, that in early February - I want to put to you that in the early part of this year, this was the sequence of events. First of all, on 1st February, Mr. Barton's allegations were published in the newspaper? A. I would not know about that. 40

Q. On the 5th February you were interviewed by Sgt. Butler? A. That is correct.

Q. On 9th February you were subpoenaed to this Court? A. Well, a subpoena was left when I came from Wollongong. When the man served the subpoena, as usual he does not know anything about it - he left it at Lane Cove, and I came from Wollongong. 50

Q. On 10th February you made that affidavit?

A. That is right.

Q. On 19th February you transferred your business to Miss Catt and your father for the purpose of going overseas? A. That is right.

Q. Your uncle, rather, and Miss Catt? A. Yes.

Q. And I put it to you that your object in making this affidavit was to leave some evidence here; you thought this would save Mr. Armstrong while you were overseas? A. No. I don't think Mr. Armstrong needs my saving, Mr. Gruzman. 10

Q. By the way, did you ever discuss with Mr. Armstrong your views on Vojinovic? A. No, no.

Q. Never? A. I don't think so.

Q. You don't think so? A. I don't think so.

Q. Have you got some doubts? A. I don't think Mr. Armstrong would ever know people like that.

Q. Like you, you mean? A. No, like Vojinovic.

Q. Mr. Hume, did you have a discussion with Mr. Armstrong in which you suggested to him what had really happened about Vojinovic? A. No, no discussion. 20

Q. No discussion? A. No discussion to my knowledge.

Q. Did you tell Mr. Armstrong in effect that really Mr. Barton wanted to kill him? Did you tell Mr. Armstrong that - that Mr. Barton wanted to kill him? A. No.

Q. At any time? A. No, not to that effect, no. I may have thought about it, but I didn't tell him that. 30

Q. When did you think Mr. Barton wanted to kill Mr. Armstrong? A. Actually this is how events took place. After I was interviewed by Sgt. Wild I wanted to find out what was behind all these accusations and I started making my own inquiries. I found out from Novak that he knew a man called Vojinovic and that he spoke to him in regard to repossessing of this machinery up at the Island and he told me that his knowledge is very limited of this. I did not believe Novak. I started making some other inquiries and I found out then that there was a meeting at King's Cross Rex that took place between three people - in fact, four, but the fourth one took no part in it. It was Mr. Alexander Barton, Mr. Vojinovic and a man called Caruga. I then located Caruga after some time. I believe he was in the meantime charged with some offence in Newcastle, and he spent some time at Maitland - Newcastle or Maitland - and then when I finally located Caruga at the Cross he told me his version of what happened. 40

He said that he was instructed by a man called Vojinovic to wait outside for a man that would arrive in a white Mercedes Benz with a moustache and lead him into the Rex Hotel, where Vojinovic was sitting. He then did that and then he was asked by Mr. Barton to leave. He went not far away, and had a drink. There was a conversation between these two people. Caruga could not overhear it, but he said after Mr. Barton left he was most inquisitive because 10
a man who was obviously of some substance was meeting a man like Vojinovic in the King's Cross Rex Hotel, and he asked then Vojinovic what was this all about, and Vojinovic replied "The man is paying me good money and he has got a big job for me - a job which involves a half-million pounds." I asked Caruga "What more do you know about this?" and he said, "No, I don't know much more". I said, "I don't believe that this man would have so much money", and that is all that Caruga told me. 20

Q. Is that what made you think that Mr. Barton wanted to kill Mr. Armstrong? Is that what made you think that he wanted to kill Mr. Armstrong? A. Well, it could be a number of things. Either Mr. Barton had some building that he wanted burnt down, and since the only think I knew Vojinovic ever did was to burn down a big store in Newtown I thought he may have some building that he had insured and wanted burnt down. That is one of the reasons, and the other one would be that he could have - I don't know - this is my opinion - he could have tried to do something to Mr. Armstrong. 30

Q. Kill Mr. Armstrong? A. Possibly.

Q. You really thought that? A. Yes, quite possibly.

Q. Did you speak to Mr. Armstrong about that? A. Well, Mr. Armstrong is not the sort of man you can discuss things like that with. He would sort of say, "You are dramatising. Go away, and keep to playing tennis", or something like that. 40

Q. Did you discuss with Mr. Armstrong the suggestion that Mr. Barton wanted to kill him? Did you discuss that with Mr. Armstrong? A. No, I did not discuss that.

Q. Not at all? A. No. I did ask around the family. I think I did ask whether Mr. Armstrong was insured or something like that - the usual questions I would ask in a case like this. Then I was told that Mr. Armstrong was insured for quite a substantial amount of money. I think it was half-a million pounds. 50

Q. Did you also find out that in case Mr. Armstrong was killed. Barton would stand to gain a lot of money? A. Well, I worked that out in my mind, as Mr. Hoggett told us on the previous occasion that Mr. Barton was the largest shareholder in the company.

Q. The second largest. Isn't that what you worked out? A. The second largest.

Q. That is what Mr. Armstrong told you? A. No, Mr. Armstrong never discussed anything like that with me. He would think I flipped my lid or went mad if I started talking things like that with him.

Q. Did you or did you not discuss with Mr. Armstrong the fact that in your view Mr. Barton would have him killed because of the insurance policy? Did you or did you not discuss that with Mr. Armstrong? A. No, I did not. Definitely not. 10

Q. Do you swear that? A. Definitely I swear that. I have never said this to any man. I would only make him frightened. That is the sort of thing you would not tell anybody. I keep my opinions to myself. I certainly would not be going around saying things like that. I have not got any privileges.

Q. (Approaching witness with document.) I show you this document, Mr. Hume. Is that your signature? A. That is right. That is my signature. 20

Q. And did you swear this document as an affidavit on 10th February 1968? A. That is right.

Q. Is that your initials on each page of the document? A. That is right.

Q. You swore it before a Justice of the Peace? A. Yes.

Q. And in that affidavit did you say this "Later on, I found out that Armstrong was insured for half a million pounds, and in case of death Barton would stand to gain a lot of money"? A. Yes. 30

Q. "As he was the second largest shareholder in the company"? A. That is right.

Q. "I mentioned this to Mr. Armstrong"? A. Not to Mr. Armstrong, but someone in the family.

HIS HONOUR: Q. What did you say? A. Not to Mr. Armstrong, but to someone in the family I would have mentioned it. I don't think it was Mr. Armstrong.

MR. GRUZMAN: Q. That is a lie, isn't it? A. No, it is not. It is not. I don't think I would have mentioned it to Mr. Armstrong because it would only worry him. You would not mention it to someone like that. 40

Q. You took this very seriously, didn't you? A. Not seriously, no.

Q. You did not take it seriously? A. Not seriously, no.

Q. Why did you think Mr. Armstrong would be frightened? A. Well, I don't know whether he would take it seriously. After all I was not insured. He was. I didn't take it very seriously. It did not affect me one way or the other. 50

Q. Mr. Hume, you spoke about this matter precisely to Mr. Armstrong, who is sitting in Court now?

A. I did not. I did not. I would have mentioned it to someone in the family, and that was it.

HIS HONOUR: Q. Will you speak up please? I did not hear that. A. I would have mentioned it to someone in the family. I would not have mentioned it to Mr. Armstrong, because that would worry a man. After all this ----

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Q. You mentioned it to his wife or one of the daughters? A. I think I mentioned it to his wife.

MR. GRUZMAN: Q. That would not worry anyone?

A. Well, it would worry certainly someone who was personally involved more than someone else.

Q. You didn't think it would worry his wife? A. Well, it would worry her, but then, it would worry him a lot more, and, since it was not very serious, or I didn't think it was very serious anyhow - knowing the people involved I certainly was not taking it very seriously. Caruga has never been anything else but a man passing forged £5 notes around the place, and that sort of thing, so I can't see him being a dangerous criminal.

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Q. But it was not Caruga who was going to kill Armstrong, was it? A. Well, Cargua was involved in it.

Q. But he was only an innocent bystander? A. Not really, was he?

Q. Did you think there was a conspiracy with Cargua and Vojinovic? A. There could have been? Why not? They are good friends.

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Q. To kill Mr. Armstrong? A. That is my thoughts. You are examining me on my thoughts, Mr. Gruzman, now. They are not facts. You are examining me on my thoughts.

Q. You never told Mr. Armstrong A. No, I didn't tell him.

Q. Did you swear this in your affidavit? I will read some further portion to you, but I will first read some of what I read to you before: "Later on I found out that Armstrong was insured for half a million pounds"? A. Yes.

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Q. "And in case of death Barton would stand to gain a lot of money"? A. Yes.

Q. "As he was the second largest shareholder in the company"? A. That is right.

Q. "I mentioned this to Mr. Armstrong"? A. That is a mistake. I think that is a mistake.

Q. Don't interrupt this time, please. I will read it out, and you tell me how many mistakes

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there are in it: "I mentioned this to Mr. Armstrong. He ignored it and said 'Barton loves drama, but just in case I will have my insurance policy revoked'".

A. No. I think that would have been said probably at some other stage in the conversation between his wife, me and Mr. Armstrong present. Mrs. Armstrong gently let Mr. Armstrong know about this whole thing, and this is a conversation that took place at some later date.

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Q. You might just tell his Honour all about it. You suggest there was a conversation in which Mr. Armstrong, Mrs. Armstrong and yourself were involved, dealing with the insurance policy? A. I don't know what Mrs. Armstrong told Mr. Armstrong, but I think it was to the fact (sic) of this. That was what I was told later on.

Q. A moment ago you told us that later on there was a conversation with Mrs. Armstrong, Mr. Armstrong and yourself? A. No, it was not a conversation. It was just that Mr. Armstrong brought something out I think about this - what I was telling his wife before - and that is the sort of sentence that he said.

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Q. You say Mr. Armstrong did say, "Barton loves drama, but just in case I will have my insurance policy revoked"? A. Yes, I think he did say that.

Q. He did say that? A. Yes, later on at some stage.

Q. When was that? When did he say that? A. I don't know when it was he said it. It was at some stage later on I heard him say that.

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Q. Well, when? A. I don't know.

Q. Where? A. At his place. Where else?

Q. And Mrs. Armstrong was present? A. Yes, she was present.

Q. Just how did the conversation come up? A. I don't know. Probably finished playing tennis and we were all around there, and I was having my usual drink of beer and this was unimportant - something that just came up. No one took it very seriously, Mr. Gruzman. You are the only one that takes it seriously.

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HIS HONOUR: Q. I missed that. A. "You are the only one that takes it seriously". We never took it seriously.

MR. GRUZMAN: Q. I would like you to help the Court if you can, as to when the first conversation with Mrs. Armstrong took place when you told her about your views? A. I am sorry. I would not remember that. It was of no great importance. It was just something that I overheard by Caruga saying that, and I don't put great importance on what people like Caruga tell me. If it was something serious I would

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have gone to the C.I.B. and told them. That is when I consider something serious. That is what I do then. But this was just a rumour, about someone like Caruga, and that means nothing to me, anyhow.

Q. You knew Vojinovic was a gunman? A. No, I didn't. I don't believe it even now. Even with the photograph you showed me yesterday I have strong doubts. There is something wrong there. I cannot see any guns there at all.

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Q. You now know from your investigations that Vojinovic has actually been convicted of gun offences, don't you? A. I don't know.

Q. You don't know? A. No. It comes as a surprise. I think he could have been convicted for stealing a transistor radio. That would be more in his line. He must have been selling the gun to somebody.

Q. Mr. Hume, I put it to you that you made up this story? A. No, your Honour I have not.

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Q. About your belief that Mr. Barton would kill Mr. Armstrong? A. I have not made up. This is what I was told.

Q. And you say that you were not only told this, but you believed it? A. I had my doubts, but belief is - if I thought it was serious I would have taken some steps towards it. I can assure you that I would not permit anyone in this country to be killed, and certainly not someone who has played tennis with me. If I thought it was serious I would have stopped it.

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Q. How would you stop it? A. Quite easily. Even if I had to watch the person I would have stopped it.

Q. Watched who? A. Watched the person who was going to have some harm done to him. And I certainly would have first reported it to the police, because they are more capable of handling anything like that.

Q. You would have acted as his bodyguard? A. No. I would have gone to the police, and if they had not taken it seriously and I took it seriously I would off my own bat have gone along and probably tried to protect the person.

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Q. By "protect the person" you mean protect Mr. Armstrong? A. If I thought it was serious. But I didn't.

Q. But you see, Mr. Hume, didn't you realise that to say things like that to a man's wife would be an upsetting and frightening thing? A. Well, it could be, but this is what I was told, and it was the best thing to say it to someone. It is no good keeping it to yourself.

50

Q. You would not say it unless you believed

there was some truth in it, would you? A. If I was told something like that I would say it. I would not say it to the person himself, but I would say it to someone.

Q. And you told Mr. Armstrong later on, didn't you? A. No. His wife did.

Q. In the conversation with Mr. Armstrong, his wife and you, you did not deny you said it, did you? A. But I also said I did not take it very seriously. 10

Q. But Mr. Armstrong apparently took it seriously enough to say that he would have his insurance policy revoked? A. I don't think Mr. Armstrong takes things like that very seriously. He was laughing.

Q. Is not this what he said: "Barton loves drama, but just in case I will have my insurance policy revoked"? A. Yes, if he took it seriously, he would have been on the 'phone very fast ringing, I can tell you that. 20

Q. You think that would be Mr. Armstrong's natural reaction? A. I think everyone's natural reaction would be to call the Police. It certainly would not be just worrying about an insurance policy.

Q. You think that if Mr. Armstrong had been told that there was someone planning to kill him he would have got in touch with the police? A. Definitely.

Q. But you did tell him that you heard someone was planning to kill him, didn't you? A. Yes, but I said that I did not consider it very serious. 30

(Affidavit of Frederick Hume, 10.2.68, tendered and admitted as Exhibit "LL".)

Q. Mr. Hume, you mentioned that Vojinovic burnt down a place at Newtown? A. Yes. That is what I was told, yes.

Q. What place was that? A. I don't know. I think it was a store.

Q. You understand that it was deliberately burnt down? A. I think they were trying to open up a safe, and they didn't know anything about it and they burnt it down by accident. The place caught fire. That is what happened. That is what I was told. 40

Q. When did you find that out? A. I suppose once I started checking into this man Vojinovic. That is when I found it out.

Q. Do you know who his associate was in that? A. Yes. I think a man serving time now in Long Bay. 50

Q. Who was that? A. Do I have to mention his name?

HIS HONOUR: Mr. Gruzman, where are you up to now? I regret that.

MR. GRUZMAN: Q. Did you tell the Police that Vojinovic was involved in that matter? A. No, I think they would have known that as they already had the other man in their hands. They already had the other man, so I think they would have known that.

Q. Mr. Hume, did you tell Sgt. Butler that you had been threatened with being shot? A. Yes, I have. 10

Q. Have you been? A. I have been threatened many times.

Q. With being shot? A. Shot, yes. Sometimes blown up. People have threatened me. I get 'phone calls all the time. When this case started people were ringing me up and saying, "Don't say a thing or you know what will happen". I don't take any notice of them. I just say "You have just wasted sixpence, sir". 20

Q. People whom you regard as criminals have threatened to shoot you? A. Some of them, yes.

Q. Have you been told that gelignite was going to be put in your car and it would be blown up? A. Yes.

Q. Was that told you by another criminal? A. Someone. A criminal's associate or someone around the Cross would have told me that in confidence.

Q. Mr. Hume, I showed you a document headed "Interview between Det. Sgt. 1st Class Butler" and yourself "at the C.I.B. on 5th February 1968". Do you recognise your signature on each page? A. Yes, that is my signature. 30

Q. That is a statement you made to Sgt. Butler? A. Yes, that is right.

Q. By the way, was everything you said to Sgt. Butler true? Was everything you said to Sgt. Butler true? A. Yes. I think there is a typographical error there. They have got the name wrong on the fourth page. They have got the name of "Hoggett" instead of "Barton" put in. One or the other. That is the only thing I can remember. 40

Q. In its corrected form is the whole of that statement true? A. Yes, to the best of my knowledge it is.

(Statement tendered; objected to; rejected.)

Q. Mr. Hume, on 5th February 1968, when you were interviewed by Sgt. Butler did the following take place? I will read you question and answer, and if it is as you said it - if the question is as the question was asked and the answer is as the answer was given you can just say "Yes". A. Yes. 50

HIS HONOUR: Q. Mr. Hume, you understand what you are going to be asked is whether these were asked of you and whether you made the answers. Mr. Gruzman is going to read the questions and answers to you, and you are going to be asked whether the questions and answers are correct. You are not being asked to discuss the matters that are complained in the document - you are merely being asked whether the questions were asked of you and whether you made the answers. Do you understand that? A. Yes, I understand it. 10

MR. GRUZMAN: Q. I will ask you now to read the document which you previously identified, comprising four foolscap pages of the record of interview with Sgt. Butler, and after you have read it I shall ask you whether it correctly records the questions asked and the answers given? A. Yes, I have read it.

HIS HONOUR: Q. Apart from the mistake of "Hoggett" for "Barton" in one place, does that correctly record the questions asked of you and the answers given by you? A. Yes. 20

Q. On 5th February 1968? A. Yes.

(Record of Interview, F. Hume, 5.2.68 tendered and admitted as Exhibit "IM".)

HIS HONOUR: It is noted that with reference to the document m.f.i. 81 inquiries made during the day indicate that at the relevant time there was an employee of Avis Rent-a-Car named M. Armstrong, no connection with the first defendant. 30

MR. GRUZMAN: Q. I just want to press you to tell us when it was you discussed with Mrs. Armstrong what you had ascertained about the possible killing of Mr. Armstrong. Approximately when did you speak to her? A. That would be hard to say. The early part of this year or - the very early part of this year or late last year, I think. That would be the closest I can go.

Q. You see, Mr. Hume you spoke to Caruga after you had had your interview with Sgt. Wild, didn't you? A. No, Caruga was - I had to wait for Caruga to get out of Maitland. He was there for some time. 40

Q. In gaol, do you mean? A. Yes. Oh yes.

Q. Anyway, do I take it that as soon as you found out from Caruga you spoke to Mrs. Armstrong? A. No, no. I would not have as soon as I found it. It could have been any time after that. I don't know when it was.

Q. Mr. Hume ---? A. It was not a very important thing. 50

HIS HONOUR: Q. What was that? A. It was not a very important thing, so I would have mentioned it at some stage.

MR. GRUZMAN: Q. Mr. Hume, you had this conversation with Caruga within certainly - certainly during January 1967, didn't you? A. Oh no. No. Well after that.

Q. Will you swear that? A. Yes, well after that, because he was at Maitland for quite some time, I think.

Q. What date do you say you spoke to Caruga? A. I could not say. 10

Q. Come come, Mr. Hume? A. I could not say.

Q. Well, would you say approximately the end of 1967? A. I really could not say. I know that I had to wait for him to get out before I could speak to him.

Q. The middle of 1967? A. I don't know. If you check the records you will find out when he came out.

Q. And it was soon after that that you spoke to Mrs. Armstrong, wasn't it? A. No, I spoke to Mrs. Armstrong, either very early this year or late last year. 20

Q. Mr. Hume, I put it to you that this discussion with Mrs. Armstrong referred to in your affidavit took place in approximately January last year? A. No.

Q. January 1967? A. No. It would have been late last year or very early this year.

Q. I put it to you that your discussion with Caruga took place not later than 20 or 21st January 1967? A. Well, after that. When he came out of Maitland. That is why I remember, because I asked him, "Where have you been all this time?" and he said that he had been at Maitland - he was there for quite some time. 30

Q. This is probably the last lie for the afternoon? A. There have not been any lies on my side, Mr. Gruzman.

Q. Did you swear this in your affidavit: "A few days later over the telephone I was told by Senr. Det. Hammond that Vojinovic was apprehended"? A. That is right, and that Michael Novak should go down to give evidence. 40

Q. And that, you tell us, was when? A. That would have been about 22nd or 23rd - something like that. 21st, 22nd or 23rd.

Q. You have got a convenient memory, haven't you? A. No. The first time he rang me was on the 17th to tell me the car was stolen, and then he rang me to say the car was found, Vojinovic was apprehended, and Michael Novak should go down and give evidence. 50

Q. Did you swear this "A few days later I spoke

to a man called Caruga"? A. Yes, but I was - my timing could be wrong there, because Caruga was at Maitland for quite some time.

Q. You were out by many months in your affidavit?
A. Quite possibly, yes.

(Further hearing adjourned to 10 a.m. on Thursday, 26th September, 1968.)

IN EQUITY

No. 23 of 1968.

CORAM: STREET, J.

BARTON -v- ARMSTRONG

THIRTY-NINTH DAY: THURSDAY, 26TH SEPTEMBER, 1968.

EVAN CLIFFORD SIMONS GREEN

Interposed:

Sworn, examined, deposed:

TO MR. BAINTON: I reside at 64 Willandra Road, Beacon Hill, and I am Public Relations Officer with B.M.C. 10

Q. Will you look at the four slides, m.f.i. 60? Will you look at them? Have a brief look at each, with or without the apparatus. A. Yes.

Q. Are they slides which, I think in the case of three, you took, and in the case of the other one did your wife or your mother-in-law take it? A. They are all taken by my camera. Three of them were taken by myself, and one was taken by my mother.

Q. Will you tell us when and where they were taken and how you came to be there on that occasion? A. They were taken at Jack Murray's shack at Sackville. 20

Q. Yes. A. We visited there on that particular weekend primarily to see a boat that he suggested I would be interested in. That was a Bertram belonging to Alec Armstrong.

Q. Just pausing there, when was the suggestion made to you that you should go up and look at this boat? When was that suggestion made to you? A. During the preceding week. 30

Q. During the preceding week? A. Yes.

Q. Had you seen either the boat or met Mr. Armstrong prior to that occasion? A. No.

Q. I think you had known Mr. Jack Murray? A. Yes, I have known him for a number of years.

Q. Are you able to fix the occasion of your going up there with any certainty at all? A. Yes. It was the Sunday following the weekend of the New Year in 1967. That would be the 8th January, I think it would be. The Sunday of the weekend following the New Year weekend. 40

Q. How are you able to fix that as the date of your visit? A. A number of points. One was the slides. The previous slides I had taken were taken on January the 1st.

Q. Just pausing there, I think that those slides are numbered 32, 33, 34 and 35, aren't they? You might just check on that. The four you just looked at are numbered 32, 33, 34 and 35? A. Yes.

E.C.S. Green, interposed, x
1907.

Q. I think you have with you two prior slides from the same reel? A. I have them in my bag, yes.

Q. Perhaps if you could take them out, and tell us what slides 30 and 31 are taken of, and when and where they were taken? A. Slide 31 shows my young son being nursed by my niece. This was taken at Manly, and it is dated 1st January 1967. The preceding slide, slide No. 30, shows my family and my sister's family - the children, that is - taken at Manly, again on 1st January 1967. 10

Q. Is the visit to Manly on New Year's Day of some significance? A. It is so far as the family is concerned. We visit an aunt at Fairlight and usually have a picnic lunch on the beach.

Q. That is one factor that enables you to identify that weekend? A. Yes.

Q. What are the others? What are the other factors that enable you to identify that weekend? A. Another point was that when we arrived at Sackville, Jack Murray showed me with some pride a tree that he had devastated with gelignite the previous weekend. He said, "You should have been here". Apparently he had blown the top of the tree to celebrate the New Year, and the tree was fairly heavily scarred. That was a typical sort of way for Jack Murray to celebrate the New Year. 20

Q. Was there a third matter? A. He also mentioned that he was wondering what sort of effect this had had on the farmer across the river. The noise apparently reverberated on the cliffs across the Hawkesbury River. 30

Q. Were you early in that year on holidays? A. Yes, I was on holidays at this time.

Q. Are you able to tell us where you spent - how long were you on holidays for? A. I was on holidays for three weeks.

Q. Can you tell us how you spent the three weeks of the holidays? Where did you spend the three weeks? A. The previous weekend was that Sunday at Manly, with my aunt and other members of the family. This Sunday was the weekend at Sackville, and the following weekend I was in Melbourne. 40

Q. Well now, who went with you on this trip to Sackville on Sunday the 8th? A. My mother, my wife and our three children.

Q. I think you had been previously to Mr. Murray's shack at Sackville? A. Yes.

Q. You knew your way there? A. Yes.

Q. When you arrived will you tell us who was there? Who were the people you had already met for a start? A. ~~The-only-person-I-knew-was-Dorothy Resewall,---There-were-a-couple-of-other-people-there.~~ (Objected to; by direction struck out as indicated.) 50

Q. When was it you arrived? Can you fix the time of arrival? A. Not precisely. I can't fix it precisely. Round about 10.30. Somewhere in this vicinity. Round about 10.30 in the morning.

Q. Who was there that you knew? A. Jack Murray, Dorothy Rosewall and some others whom I did not know that were there.

Q. Were you introduced to these by name? A. Yes.

Q. Can you remember who you remember - I am sorry 10
- can you tell us who you remember being introduced to? A. I remember being introduced to Alex Armstrong.

Q. Yes? A. To a woman who I can recall was Joan. I don't recall the surname. And there were two others there - a young man and a young girl. I could not recall their names. I might have been introduced to them, but I could not recall their names.

Q. Would you recognise either of them? A. I 20
think so, yes.

Q. (Mr. Hume instructed to stand up.) Do you recognise this man? A. I think that is the young man that was there.

(On the application of Mr. Gruzman the witness Hume was instructed to leave the Court during the pendency of this witness' evidence.)

Q. Do you remember how these other people were introduced? Were they introduced by name, or in some other way? A. I can remember Alex Armstrong by name, and Joan. I can't recall whether Jack did introduce 30
me to the girl and to the young man by name, or not. We tended to be separate groups there, if you understand. I had my children with me, and I had gone to see Jack. There were strangers there. They were engaged in playing chess, I think, at the time, and I did not want to disturb them. But we did meet. Whether by name, I don't recall.

Q. I think you had some particular purpose in going down there on this day? A. Yes. I had been invited to take the family there for a number of 40
years. While I had been there myself I had never had the chance to take the family there. That was one reason. But the prime reason was to see the Bertram that was there. Jack and I had in the previous year been involved in a car trip across Australia. We had done a number of journeys together, and we had been thinking about doing a journey by boat around the country - around the coast. We discussed the question of motors and hulls and so on. He thought this particular type of Bertram would be 50
the ideal craft for it, and that is why he said to come and have a look at the boat - to see what I thought of it.

Q. Did you go out on the boat? A. Yes, we did.

Q. Who took you out, and who went? A. Alexander

Armstrong, Joan, my wife and children, and Jack and myself.

Q. Will you just go to the photographs again?

A. Yes.

Q. Start with the one numbered 32? A. Yes.

Q. That may help you - that box device. Will you tell us who that photograph is of, and where it was taken? Start with that one, No. 32. A. I don't think the device is going to be of much help to me. The light is not coming out. I may be able to identify them from here. This one shows a group sitting on the terrace immediately in front of the shack. From left to right, my son -

10

Q. I think that it is a family group? A. Yes, a family group.

Q. A group of your family? A. Yes.

Q. Will you go to the next one? (Objected to.)

Q. Is there anybody else other than your family shown in it? A. No.

20

Q. Now will you go to the next one? A. 33?

Q. Yes. Will you go to 33 now? A. It is a river scene taken from the beach. It shows two of my children in the foreground, with the Bertram in the background. Judging by the froth at the back it is just starting to move off from the shore.

Q. Are there any people on the Bertram? A. Yes.

Q. Do you know who they are? A. I think the second one is the younger man - the young man. It is a little hard to see.

30

HIS HONOUR: Q. I did not hear that. A. There are two people I can see there. The second man I can see more clearly. I think he is the younger man I had met there.

MR. BAINTON: Q. Yes. And the other person? A. I cannot quite see. One is distinct, and the other is partly hidden.

Q. Now will you turn to No. 34? A. Yes.

Q. What does that show? A. 34 shows Jack Murray with provisions in one hand, and a container. I think it would be water. It is a yellow plastic container, in the other hand. It is on the higher level above his shack, with the shack in the background, and two boats passing in different directions, one of which has skiers on the back.

40

Q. Now will you look at No. 35? A. Yes.

Q. What does 35 show? A. 35 is again my family, with myself. That is the photograph taken by my mother. That is the Bertram moored at the beach.

Q. Can you distinguish in that the registration number of the Bertram? A. Yes, KW88 N.

Q. Whose Bertram is it? A. Alec Armstrong's.

Q. Well now, was there any other boat being used from Mr. Murray's shack on the day that you were there? A. Not that I recall. When we arrived there he apologised - Jack Murray apologised that his own boat was out of action; it had been swamped, or something occurred to it the previous day, I believe. But he was apologising that the one day the family arrived he could not take us out in his boat. 10

(Four slides, formerly m.f.i. 60, tendered and admitted as Exhibit 77.)

Q. Did you yourself do any water-skiing on this day? A. No.

Q. Would you tell us the order of departure on this Sunday? Who went, and how they went? A. The first to go of the group was the young man and girl. I didn't see how they went, except they drove away. We were at the river level - the family and I. We had returned in the Bertram, and I know Mr. Armstrong was anxious to leave to go back to Sydney. The man and the girl went together, he saying something like "I will be going on now. Is that all right?", or words to that effect. I don't recall the exact words, but that was the suggestion. Mr. Armstrong said, "Yes". They left. Within five minutes Alex Armstrong left in the Bertram with Joan, and then we stayed - the family stayed - with him - with Jack - for some little time. Jack and I talked a little about the boat. He fed some draft horses that were in a nearby paddock to amuse the children. He whistled and they came and he fed them bread, or something like that, and we left. 20 30

Q. I think in the first of this series of slides, which would be No. 32, in the top right-hand corner you will see part of a motor vehicle? A. No. 32?

Q. Yes. There appears to be part of a white motor vehicle. What sort of vehicle is it? A. It is a white Valiant station waggon. 40

Q. When you left yourself that afternoon, was that vehicle still there? A. I don't think so. I think only Jack Murray's vehicle was there.

Q. When you arrived what were the vehicles that were there? A. My recollection is that there were two parked to the right of our entrance. We came along a fairly rough track through an orchard. I think there were two on the right and the sports car on the left, Jack's car and another. We were parked, I think, under a shady tree near there. 50

Q. What sort of a sports car, have you any recollection? A. I think it was an M.G.

CROSS-EXAMINATION

MR. GRUZMAN: I ask to see the slides subsequent to the ones that have been tendered, and I accept the penalty.

Q. Mr. Green, in a normal spool of films there are 36, aren't there? A. Yes.

Q. Where is film No. 36? A. I think you are holding the explanation in your hands - the amount of leader strip that was wasted before the film began to register. 10

Q. Are you suggesting with this much leader with a Kodak film you do not get 36 films? A. Those are all that were returned.

Q. This box as it now is - the condition it is now in, with these bits of film - that is the whole of what you got returned from sending a normal complete film to Kodak's, is that right? A. I assume that is right, yes.

Q. You know it is right, don't you? A. Yes.

Q. I would like you to think very very carefully about this. I realise it is taking your mind back a long way. On the other hand, you have thought about this Sunday. Who else was at the shack on that Sunday? A. Those are the only people - the ones I have mentioned - that I can recall being there for a period of time. There were a number of people who either passed on the river in boats or called out. I don't recall other visitors. I can't recall anyone else having stopped in at the shack on that day. 20

Q. But, you see, you did not recall Mr. Hume by name either, did you? A. That is right. 30

Q. I put it to you that there were two other people present as part of the group at the shack on that day? A. I don't recall this. We were for some time down - the family was for some time down at the lower level of the river. I was conscious of the fact that with young children I had some obligation to keep them separate from the adults, particularly as they seemed to be playing chess, or relaxing, and a two-year-old child can be quite distracting. We spent quite some time at the lower level of the river, where activities at the shack are not visible. 40

Q. Is this the position, that you are not prepared to swear that the complete party at the shack comprised only the people whom you have mentioned? That is the position, is it? A. The position is that those are the only ones I can recall meeting when we arrived there, yes.

Q. There may have been others in the party whom you cannot recall? A. There may have been. I doubt this, but - there is some doubt so I would not swear otherwise. 50

Q. You would not swear otherwise? A. No.

Q. Did you change your film at Sackville? A. No.

Q. You did not? A. No.

Q. You remember that, do you? A. I don't remember - I don't recall putting new film in.

Q. What sort of camera have you? A. Konica 35 mm.

Q. What model? A. I don't know the serial number.

Q. How long have you had it? A. I have had it for approximately five years. 10

Q. What sort of lens has it got? A. A general description of the camera? A. I am trying to think of the speed. It comes down to F2. -

Q. 2.8? A. No, it is better than that. 2.4, I think.

Q. It is quite a good camera? A. Yes.

Q. And the camera goes to a what, 1/1000th? A. 1/500th.

Q. As Publicity Officer for B.M.C. I suppose you have something to do with photography? A. Yes. 20

Q. As part of your work? A. Yes.

Q. You know of your own knowledge that you often get 37 and even 38 slides on a roll of film, don't you? A. That is right.

Q. And when the film comes back I suggest to you there is often as much leader as is now shown here? I am showing you the leader from your box? A. I normally don't have as much as that in my own slides, but that is not an abnormal amount of leader. The reason I hesitated when answering the earlier question was that I cannot remember whether some of the leader strip has been lost, or not. I am sure none of the slides are missing. 30

Q. You know you did not take any additional photographs? Is that what you mean? A. I mean I would have recalled if any had been missing, when the film was returned.

Q. With your specialised knowledge of photography such as it is, have a look at this piece of leader and tell me whether you can deduce from it from what part of a film that came? A. I can see numbers on the bottom of the film. 40

Q. You see some numbers, 25, 25A, 26? A. Yes.

Q. What does that tell you? A. That suggests that was the sequence in which the films should have been exposed.

Q. Do you usually carry a spare film with you?

A. Not always, no. I often run out. I try not to but it sometimes happens.

HIS HONOUR: Q. Does it follow that the small piece Mr. Gruzman has handed to you has come out of the middle? A. Yes. With these numbers there - with those numbers it would suggest it. I think you will normally find if there is a failure to expose during the central part of the film, they will frame it, anyhow. I think there is in fact one non-exposed piece in the roll there. 10

MR. GRUZMAN: Q. There is one numbered 24, which is perfectly black? A. yes.

Q. When do you say this suggestion was made to you that you should come up? A. When?

Q. Yes. A. During the week. I don't recall the precise date.

Q. Who made the suggestion to you? A. Jack Murray.

Q. Was your trip up there something to do with your work? A. Not really. I was on holidays at the time, and the prime purpose was to look at this craft to see if it would in fact be suitable for the type of journey we had in mind, which had as its prime aim making a movie of such trip around Australia. 20

(Witness retired.)

RICHARD EDWARD LENDRUM
On former oath:

HIS HONOUR: Q. You were sworn earlier to tell the truth, Inspector? A. Yes, your Honour. 30

FURTHER CROSS-EXAMINATION:

MR. GRUZMAN: Q. Inspector Lendrum, I suppose, when this complaint of Mr. Barton's was first made to you in the presence of Mr. Muir, Q.C., - now his Honour Judge Muir - and other people you regarded it as a matter which could be serious? A. Yes.

Q. And you entrusted the investigation to two officers whom you regarded as competent officers? A. Yes. 40

Q. And honest officers? A. Yes.

Q. And the subsequent trend of Police inquiries would depend solely on the reports of the senior officer, Sgt. Wild, wouldn't it? A. Yes, plus any other circumstances that might come to the Department's knowledge from any other source.

Q. But primarily if Sgt. Wild said "This is a

E.C.S. Green, xx,
ret'd.
R.E. Lendrum, further
xx

serious matter which must be fully investigated" that would be done? A. I beg your pardon?

Q. If Sgt. Wild reported back that it was a very serious matter which must be thoroughly investigated that would have been done by the Department, wouldn't it? A. Of course.

Q. If, on the other hand, Sgt. Wild reported back that there was really nothing in it then the Department would not worry further? A. Unless there was information from some other source which indicated the contrary the matter would not develop. 10

Q. Prima facie if Sgt. Wild said in effect, "There is nothing to worry about in this matter", then the Department would take no further steps? A. Speaking generally, that would be so, yes. He would not have said - that there is nothing to worry about.

Q. If he said "I have looked into this and I don't think that Mr. Barton has any cause for alarm", or something of that kind, then the Department would take no further steps? A. That is so, unless some other information came to hand to indicate to the contrary. 20

Q. And I suppose you, and, above you, the Commissioner, are always in the hands of officers to whom you entrust investigations? A. To a great extent, yes.

Q. And, Inspector, you remember that in January of this year, I think, I personally telephoned you? A. I do. 30

Q. And I told you that this appeared to be a serious matter, and asked could you personally come to my chambers, where my junior and solicitor were, and discuss the matter with me? A. Yes.

Q. And you said that you personally did not have time, but you would send Sgt. Wild and Const. Follington down? A. I told you I had other commitments that day and that I would send a senior sergeant along.

Q. You said you would send Sgt. Wild? A. No. I beg your pardon. Mr. Wild was not available. 40

Q. He was in Tasmania? A. I said I would send a Senior Detective to see you.

Q. Did I tell you at the time that we did not trust Sgt. Wild or Constable Follington? (Objected to; not pressed.)

Q. Did I ask you to send down an honest policeman whom we could trust, to speak to me ---

HIS HONOUR: I reject that.

MR. GRUZMAN: Q. Inspector, eventually you sent, to be interviewed by the legal representatives of 50

Mr. Barton, Sgt. Butler, didn't you? (Objected to; allowed.)

Q. And at that time Sgt. Butler was an officer in whom you had confidence, wasn't he? A. Absolutely. (Objected to; rejected.)

Q. Now, Inspector, in the normal course of events if a complaint is made by a citizen that his life has been threatened that is a complaint which you or the Department would take seriously? A. Certainly. 10

Q. And if as a result of your instructions a criminal was caught, and made a statement about the matter, that would certainly require full investigation, wouldn't it? A. Yes.

Q. And you know that in this case within a matter of hours of the initial complaint the man Vojinovic was taken by the police whom you had assigned to the case, and had made a very full statement? A. Yes.

Q. And the effect of that statement was to allege a conspiracy against Mr. Barton by a number of persons? (Objected to by Mr. Bainton; question withdrawn.) 20

Q. You regarded the statement by Vojinovic as alleging a conspiracy by a number of persons against Mr. Barton, didn't you? A. No.

Q. Didn't you? A. No. I did not examine the statement.

Q. Have you never examined Vojinovic's statement? A. I have read it, yes. But, you see, I don't know whether I said this in evidence in chief, but Vojinovic was interviewed late on the night of 8th January 1967. The following day I resumed my normal duties in my own district. I did not examine Vojinovic's statement on the night of 8th January or immediately after that, and I never assessed the material in that statement for the Police Department, and was never asked to do so. I was carrying out other duties in my own district. 30

Q. Well, Inspector, is this the position, that, so far as the Police Department is concerned, nobody except Sergeant Wild and Const. Follington have assessed Vojinovic's statement? (Objected to by Mr. Bainton; rejected.) 40

Q. Inspector, during January of 1967, to your knowledge, did anybody other than Sgt. Wild and Const. Follington assess Vojinovic's statement? A. I would expect the Superintendent in charge of the C.I.B. would have - Superintendent Blissett.

Q. I beg your pardon? A. Superintendent Blissett.

Q. Do you know whether he did, or not? A. No, I don't. 50

Q. Right up to to-day? A. I know that Sgt. Wild was reporting to him the result of his investigations.

Q. The question was whether you are aware whether or not Superintendent Blissett was up to to-day has ever assessed Vojinovic's statement. A. I don't know.

Q. But at the time of the original complaint you were actually sitting in Mr. Blissett's office, were you not? A. Yes.

Q. Well, so far as you are aware during January 1967 nobody except Sgt. Wild and Const. Follington assessed Vojinovic's statement. That is correct, isn't it? A. As I said, I would have expected Mr. Blissett would have seen it. 10

Q. Of your own knowledge you cannot say yes or no to that? A. No, I cannot.

Q. So that, to the best of your knowledge, nobody except Sgt. Wild or Const. Follington assessed the document at that time? A. I think, with respect, that is the incorrect way to put it. I am not in a position to say whether they did or not. 20

Q. You don't even know whether they did? A. Who?

Q. Wild and Follington. You know that Wild and Follington had charge of the case and had the document? A. Yes, I am sure they would have. I feel sure they would have.

Q. So far as Superintendent Blissett you don't know one way or another? A. I don't know.

Q. I want you to assume - I want you to assume that Vojinovic made a statement in which he implicated Mr. Armstrong, Frederick Hume and Michael Novak in a conspiracy to cause some harm to Mr. Barton. Will you make that assumption, Inspector? A. Here now? 30

Q. Yes. A. Yes.

Q. You would expect, wouldn't you, that immediately steps would be taken to interview each of these persons implicated, wouldn't you? A. Yes, unless the trend of the inquiry suggested some other course was necessary before this.

Q. If you had ---? A. This would depend on what was operating in the minds of the detective, of course, and the question of what other evidence might be available to support what Vojinovic was saying. 40

Q. But the first question - the first step would be to see whether you could obtain admissions from the persons implicated, wouldn't it? A. No, the first step would be to see if you could get something to stand beside this story and support it.

Q. Inspector, if you had been in charge of the investigations, and on the assumption which I have put to you, would not you have caused Hume to be interviewed? A. Yes. At the appropriate time. 50

Q. The appropriate time would be as soon as possible, wouldn't it? A. Not necessarily, no.

Q. But if you gave a man like Hume time he might concoct a story, might he not? A. I don't know what you mean by "a man like Hume".

Q. Are you defending Mr. Hume, Inspector? A. No. And I am not black-balling him either, Mr. Gruzman.

Q. Inspector, why are you concerned as to Hume's character or what is said about him in this Court? 10

A. Well, you put the statement to me "If you gave a man like Hume time", and you are asking me to agree with that, you see. Well, I would like to know what you mean by that when you say "A man like Hume".

Q. You see, Inspector, if someone said that a man had conspired with someone else to commit physical harm to an apparently respectable citizen, would not you regard that person as a person who should be investigated by the Police as soon as possible? 20

A. Perhaps. You see, I was in the position that I knew something about Hume at that time.

Q. When the complaint was made? A. Yes. Hume was not entirely unknown to me at that time.

Q. And did that factor cause you to deviate from proper investigation of the matter? A. Well, I was not investigating the matter for a start.

Q. Did you give instructions to Wild about it? A. I would have said to Wild, I am sure - I can't recall having said it now, but I am sure I would have said to Wild --- 30

Q. Just a moment, Inspector. You are on your oath here. A. I am aware of that.

Q. What did you say to Wild, if you can swear to it. If you can't swear to it, don't speculate?

A. Well, I will not speculate. But I will say this, that Hume was known to me, and I am sure I would have conveyed this fact to Sgt. Wild, if it was already not known to him. 40

Q. What about Mr. Armstrong? Was he known to you? A. No, he was not.

Q. By reputation or otherwise? A. No.

Q. What about Novak? A. Not known to me.

Q. Not known to you? A. No.

Q. Do I understand that Hume was known to you favourably? Is that what you are conveying to his Honour? A. Well, I would say so.

Q. Not the sort of man you would suspect of being involved in a thing like this? Is that what 50

you are conveying? A. I would have been greatly surprised at that time.

Q. Was not that all the more reason for you getting on to Hume straight away, and asking, "What is your version of this?" A. Not necessarily.

Q. It would be the best course, and the fairest course? A. Not necessarily.

Q. What about Novak? Was he known to you favourably? A. I just said he was not known to me at all. 10

Q. Did you immediately check to see whether Novak was a known criminal? A. No.

Q. Well why not, Inspector? A. I said to you, Mr. Gruzman, I was not conducting the inquiry.

Q. Well, was it Wild's duty to immediately check whether Novak was a known criminal? A. Wild would do this in the normal course of his duties.

Q. Immediately, wouldn't he? A. I would not say immediately, Mr. Gruzman, but this is a precaution you would take. 20

Q. Look, Inspector, here you have a serious allegation made by respectable people to the senior man at the C.I.B.? A. Yes.

Q. At that time? A. Yes.

Q. Would it not immediately come to your mind that there should be an immediate investigation of the people against whom allegations were made? A. In conjunction with other aspects of the inquiry, yes. 30

Q. But would not the first thing be to see whether the allegation was being made against a criminal or not? A. Yes.

Q. And if you found out that Novak was a man who was a man with, I think, three convictions, on probation at the time, would not that immediately make you suspicious? (Objected to by Mr. Bainton; rejected.)

Q. Whilst the document in relation to that is being found, assuming that it was found that Novak had a criminal record and was on probation at the time - assuming that, Inspector - would not you regard that as a matter which would make you further suspicious? A. It is something that would have to be kept in mind during the inquiry. It would not necessarily make you suspicious. 40

Q. Well, what does it take to make you suspicious if someone says their life has been threatened? (Objected to by Mr. Bainton; rejected.)

Q. Inspector, would you go so far as to say this, that unless a man is shot you don't get very 50

suspicious? (Objected to by Mr. Bainton; rejected.)

Q. Inspector, I will put it to you this way: If you found that one of the persons against whom the allegation was made was a man with a criminal record, and on probation, would that aspect call for immediate investigation? A. It would call for careful consideration in the light of the story alleged against that person and any others with whom he was associated. I would not expect any person that an allegation of this nature was made against to be a Sunday School teacher. I am not being facetious when I say that. It would normally follow that persons who had the story alleged against them were persons who had criminal records, or who at some stage or other came unfavourably under the notice of the Police. 10

Q. If the allegation is made by an apparently respectable citizen in the presence of Queen's Counsel and a solicitor and, I think, the senior officer of the C.I.B., and it is then found that the allegation is made, amongst others, against a man with a criminal record, on probation, would not that require immediate investigation? A. Well, it all depends on what you mean by "immediate investigation". The matter was being investigated, Mr. Gruzman, and this would have been kept in mind, I am sure. 20

Q. Would it have been right, in your view, to do nothing for a week on this investigation? A. No.

Q. No? A. No. 30

Q. Steps should have been taken to investigate Novak as soon as possible, shouldn't they? A. I am not saying that they should have been. I don't know what occurred in the meantime. But I am sure that something was done within a week of the complaint being made. Something was done that week.

Q. Inspector Lendrum, you would expect that within a day or so of Vojinovic making that statement that all the persons implicated should have been interviewed, wouldn't you? (Objected to by Mr. Bainton; rejected.) 40

Q. Inspector, I appreciate you have told us that you did not look at Exhibit "D" - the document now being shown to you - during January 1967, but in preparation for giving evidence in this case have you looked at the statement yourself? A. I saw it some months ago, yes.

Q. Would you regard yourself as familiar with it? A. No.

Q. Or reasonably familiar with it? A. No, I would not. 50

Q. Would you care to go through it? (Exhibit "D" handed to witness.) A. Yes, I have read that, Mr. Gruzman.

Q. Inspector Lendrum, I am also going to show

you Exhibit 51, which is a document, - a transcript of notes - made by you on 8th January 1967, at 11.30 a.m. You may take that document also and, if you care to refresh your memory from it, you may? A. I am familiar with the notes.

Q. You are familiar with the notes? A. Yes.

Q. Now, the position was this, wasn't it, that Mr. Barton, accompanied by persons whom you regarded as responsible, made a complaint alleging in effect that somebody was trying to harm him? A. Yes. 10

Q. And as a result of that the police took action, and a criminal - a man was captured, and I want you to assume that he made the statement you have just read. A. Yes, a man was interviewed.

Q. The man Vojinovic? A. A man was interviewed and made this statement.

Q. By responsible officers at the C.I.B. He was interviewed and he made the statement which you have just read? A. Yes. 20

Q. And you observe from the statement that the man Vojinovic told Sgt. Wild that he had been approached by a man named Momo who told him that someone had offered him if he knew someone who would kill someone he would pay £2,000 for it? A. Yes.

Q. And he told you that the person that was to be killed - in answer to the question "Did the man Momo discuss with you who the person was that was to be killed?", he said the man in effect wanting the job done was Mr. Armstrong, and the fellow to be killed was Mr. Barton. Is that correct? A. Yes, the name Armstrong was mentioned. Armstrong was mentioned, and the fellow to be killed was Mr. Barton. 30

Q. Armstrong was the person who wanted the killing done? A. That is what he was saying, yes.

Q. And there was reference there that Momo was driving a car - a Falcon blue-grey, like a police car. That is at the top of p.2 of the statement. Do you see that reference? Your pages might be different from mine, I am sorry. After the Armstrong matter there is reference to the motor car? A. Yes. 40

Q. And then there is reference to the fact that there was a piece of paper with the name Armstrong and the name Barton and the number 956294? A. Yes.

Q. And then there is reference - there is reference that Fred Hume was the fellow in between? A. Yes.

Q. And that he is the man who was paying £2,000 to get Barton killed? A. Yes.

Q. And subsequently there is reference that Hume works for Mr. Armstrong, private investigating and doing all the things he needed? A. That was what Vojinovic was saying. 50

- Q. That was what Vojinovic said? A. Yes.
- Q. And then there is a reference to seeing Hume?
A. Yes.
- Q. And then he says that he communicated with Mr. Barton? (Objected to by Mr. Bainton; rejected.)
- Q. Now, Inspector, that statement by Vojinovic, assuming - on the assumption I have put to you, would that confirm - that statement would have confirmed to some extent in an investigating officer's mind the allegations of Mr. Barton, wouldn't it? 10
A. It would tend to confirm the allegations, but it would raise other considerations in the mind of the detective.
- Q. There were a number of matters in the statement that could have been checked out with the facilities at the disposal of the police immediately, couldn't they? A. Some of the matters mentioned there could be checked out immediately.
- Q. First of all, you could check the criminal records of the persons involved, couldn't you? A. Of some of the persons involved, you could. 20
- Q. You could check them all out, and you know now you would have found positive criminal records in the case of Vojinovic and the man called Momo? A. That is not as easy to do sometimes as you might appear to make it sound, Mr. Gruzman. A name does not necessarily mean a great deal to us, and to check a person who was referred to as "Momo" would be impossible virtually on our records. But depending on the amount of detail that was available, one would naturally make inquiries to see if the individuals referred to were known to the Police. 30
- Q. And you would expect that that would be done immediately, wouldn't you? A. It would be done as soon as this could be done consistent with whatever else was on hand.
- Q. Look, are you seriously telling me that in your view it would be a proper form of investigation not to even check the criminal records of persons against whom allegations were made immediately? A. No, I am not telling you that. I don't know what you mean by "immediately". 40
- Q. Is not the whole object of keeping the police records so that you can forthwith, within minutes, check out a suspect? A. Wherever possible, yes. Depending on the amount of information available. It may be necessary to make other inquiries to establish information on which you can check.
- Q. But, Inspector, you would expect that the inquiry through the Police records would be made immediately, wouldn't you? A. In those instances where you had sufficient information, yes. It may be necessary to make other sometimes very lengthy and painstaking inquiries to establish who you were checking about. 50

Q. If there is reference, for example, to a motor car, police have facilities for immediately checking on the ownership or registered ownership of motor cars, haven't they? A. Depending on the amount of information about the vehicle available, yes. (Objected to by Mr. Bainton; allowed.)

Q. You can check on the registered ownership of a car through police facilities, can't you? A. Certainly.

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Q. There was a positive statement that Momo was driving a blue Falcon? A. Yes. Of course, that would not be easy to check on. It would be most difficult - a blue-grey Falcon, that would not be easy to check on.

Q. But the immediate steps to be taken, I suppose, would be to interview Momo? A. The immediate - no, I would want to know just who Momo was. "Momo" does not mean anything to me. It might be a surname or a Christian name or a nickname.

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Q. The important thing would be to establish who Momo was, so far as Momo is concerned? A. Yes the important thing would be to establish who Momo was, and then whether he did own a car of that description, and if it had a registered number on it, and then check.

Q. You would have wished as soon as possible to interview Momo, wouldn't you? A. Not necessarily, Mr. Gruzman. I refer to what I said earlier. This would depend on other information that you were checking. It would depend on other information you were checking, as to whether it was a suitable time to interview him. Timing is very important in these matters, sometimes.

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Q. And, generally speaking, as soon as possible is the right timing, isn't it? A. No, quite often it is not.

Q. Inspector, we are not dealing here with some company fraud, are we? A. No.

Q. We are dealing here with a complaint of a threat to someone's life by violence, aren't we? A. Yes, an allegation of one.

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Q. And we are dealing with you would expect, probably, fairly low class criminals, aren't we?

A. Well, I don't know whether that statement includes Mr. Hume or not, but I don't go along with it if it does.

Q. You seem very anxious to protect Mr. Hume, Inspector? A. I am not anxious to protect anyone, and I am not anxious to give him a name that he does not deserve.

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Q. Is this his reward for his activities on behalf of the police? A. He will get no reward from me.

Q. You are protecting him as far as you can, aren't you? A. Certainly not. But I do know something about the man, and I know that he has on occasions assisted the Police Department.

Q. And that is why you are trying to protect him?
A. I am not trying to protect him, but you made a statement which could include him with which I do not agree.

Q. I put it to you again that you would expect the sort of persons who would be involved in a threat of physical violence to a citizen would probably be low class criminals, wouldn't you? Wouldn't you agree with that, as an Inspector of Police? A. Possibly. I think that would be a better statement - that they are possibly low-class criminals. 10

Q. And with those sorts of people your usual method is to get to them as soon as possible and get an admission from them if you can? A. After you have collected all other information to support the allegation. 20

Q. Inspector, don't let us hedge. If you had been the Investigating officer do I understand you would not have interviewed Hume? A. I certainly would have interviewed him.

Q. I am speaking now within 24 hours or 48 hours of the allegation being made. Do I understand you to be saying, as an inspector of police, that first of all you would not have interviewed Hume within that time? A. I am not saying that. I am not putting a time limit on when I would have approached Hume. 30

Q. Would you say it would be consistent with your concept of the duties of an investigating officer that when a citizen makes this allegation - this statement made by Vojinovic - that you would not have caused Hume to be interviewed within at least (sic) 48 hours? A. I would not agree with that statement, and I would not say how long it would take me to make up my mind as to when I would approach Hume. It is difficult to put yourself in the position that Sgt. Wild was in 12 months ago, or 18 months ago, and say what you would have done in the same set of circumstances, Mr. Gruzman. 40

Q. What would have been done next day? A. After Vojinovic had told me this story?

Q. Yes. A. I would have been looking around for something to support Mr. Barton's allegations and anything that Vojinovic told me the previous night.

Q. Just tell us what you would have done? A. How can I tell you now what I would have done next day? 50

Q. Look, you are an experienced police officer?
A. Yes.

Q. And a very senior one? A. Yes.

Q. At the time you were acting as Superintendent in Charge of the C.I.B.? A. Yes.

Q. Will you tell his Honour, if you would, what you would have done on the Monday if you had (a) the complaint from Mr. Barton, and (b) Vojinovic had made that statement to you? (Objected to by Mr. Bainton; allowed.)

Q. What would you have done on the Monday, Inspector? A. Having obtained this complaint from Mr. Barton? 10

Q. Having obtained the complaint from Mr. Barton and Vojinovic's statement? A. And Vojinovic's statement? I would have set about getting some support for Mr. Barton's statement from any person mentioned in his complaint, and as far as Vojinovic was concerned I would have endeavoured to prove matters referred to by him in his statement. I would have endeavoured to establish from him the identity of Momo and the identification of the vehicle referred to. I would know, of course, who Fred Hume was, and, having interviewed any person who could support the complaints made by Mr. Barton, I would have lost no time in seeking out Momo and Fred Hume. 20

Q. Inspector, you see, you have not really been really very helpful in that answer, have you? You have not been very helpful in that answer, have you, Inspector? You see what you said was that you would interview people who would support Mr. Barton's complaint? A. Yes. 30

Q. And you would prove or establish who Momo was and what the car was? A. Yes.

Q. But how would you do these things? What is the physical - what are the physical and practical steps that you would take on the Monday? (Objected to by Mr. Bainton; allowed.)

HIS HONOUR: I will allow the question, Mr. Gruzman, but before that is answered I would like to ask the Inspector a few questions.

Q. Inspector, you spoke of seeking for some support of the complaint that Mr. Barton had made on the Sunday morning? A. Yes. 40

Q. Would not the events of the Sunday night, including what Vojinovic said in his interview as recorded, have provided the most convincing support of what Mr. Barton had complained of that morning? A. That is one view that one could take of it, but what I meant to convey was that when Mr. Barton complained about this matter, he referred to a Mr. Bovill. I would have interviewed Mr. Bovill and got a statement from him concerning any important information that he might be able to assist with, and I would have endeavoured - I would say I would probably have had a further conversation with Mr. Barton about the matter, and learned more about the association between him and Mr. Armstrong and, 50

judging by what he told me, follow up any information he gave which would support the fact that there was friction between the two of them.

Q. I am still not quite clear on this. The complaint that Mr. Barton made on the Sunday morning was of certain threats that he said had been made to him over the telephone or in an interview with Vojinovic? A. Yes.

Q. When Vojinovic was brought in and questioned on the Sunday night ---? A. Yes. 10

Q. That would seem superficially, at least, wouldn't it, to confirm, in perhaps a way that one might not even have hoped, the validity of the complaint that Mr. Barton made? A. That is a view that one could take of the circumstances, but I, of course, now know that Sgt. Wild took another view - that Vojinovic was trying to obtain money from Barton. And I think that is a view one could take of the circumstances. 20

Q. But that is a possible view which might have been taken? A. Yes.

Q. But would not you expect the investigating officer to have probed alternative views before selecting and adopting one view as a preferable view? A. Yes. Everybody who could throw any light on the matter should have been interviewed.

Q. Promptly? A. Yes, promptly. But the order in which they should have been interviewed, and the time that it would have taken to do this, I would be unable to estimate now. Mr. Gruzman is talking about 24 hours and 48 hours. I would not like to say or place a time limit on how long it would have taken me to get around to doing this. But I would have wanted to be satisfied that I had seen everybody who could throw some light on the matter and preferably any associates of Mr. Barton who could support any statement that he made that there was serious friction between he and Mr. Armstrong which could possibly lead to Mr. Armstrong wanting his life taken. 30 40

HIS HONOUR: Mr. Gruzman, I have allowed your question. Do you want it answered before the adjournment? I wanted to probe these matters for my own guidance before I adjourned.

MR. GRUZMAN: The question I would like to ask you, if you don't mind, Inspector, is what steps would you have taken on the Monday physically? A. I find that a most difficult question to answer because I was not in the position in which Sgt. Wild found himself. 50

Q. The position in which Sgt. Wild found himself? A. I have not interviewed Vojinovic, and I am therefore not in a position now to form an opinion of Vojinovic. I have never spoken to the man.

Q. Inspector, you may very well one day be in the

position of having to judge whether a police officer has acted properly or not, aren't you? A. Yes.

Q. And in that case you would have to put yourself in the position in which he found himself and say "Well, did he act as I would have expected him to, or not?" A. Yes.

Q. With those two documents before you, and knowing also that Vojinovic had been released - if I might add that - what steps would you have taken on the Monday morning physically? A. Well, I don't think that any answer I could give you on that could be of assistance to you, because I don't know what arrangement Sgt. Wild had with Vojinovic when he left him that night. I think, in fairness to the Sergeant, I should know or be told what he did do before you ask my opinion as to what I would have done in the circumstances. 10

Q. You told us that you would have interviewed Mr. Barton and Mr. Bovill promptly? A. Yes, and any other persons who may throw some light on the association between these men. 20

Q. You would have done that I suppose on the Monday morning? A. I do not know when I would have done it. I would have done it to my own satisfaction.

Q. Would you have done it promptly? A. Yes.

Q. That would have meant on the Monday morning? A. I do not know what I would have been doing on the Monday morning. I would have wanted to do it before I interviewed these other characters, if possible. 30

Q. Assuming you were not too busy and that the volume of your work did not prevent you, you would have done it on the Monday morning, would not you? A. Yes, if I was investigating the matter.

Q. I am going to read to you some evidence now. Tell me whether you would have acted in this way. I want you to assume that Vojinovic's statement was made on the 8th January. P.708. 40

"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. I was relying on him to locate Mr. Ziric.

Q. Did you speak to Hume? A. Eventually, yes.

Q. When? A. Shortly prior to the 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. 50

Q. The 10th? That is Wednesday? A. This is only from memory.

HIS HONOUR; Tuesday."

Inquiries were made to locate Hume on the Tuesday. Would that be proper police investigation of this matter? (Objected to by Mr. Bainton; allowed.)

Q. You have probably forgotten what I read to you, so I will read it to you again. (Above indented matter re-read.) This evidence was that he commenced to locate Hume on Tuesday, the 10th, but he was not located until the 18th. Ziric was not located till after that, because Hume was going to lead them to Ziric. In your view is that a proper police investigation of this matter? A. In order to answer that question I must say this at the outset. It is now within my knowledge that Det. Sgt. Wild, an experienced detective, early in this Inquiry took a certain view. With that view developing in his mind I do not think it is improper that he took as long as he did to interview these people. It is quite obvious from what I have since learned that he did not believe that there was any danger to Mr. Barton's life. Rather did he believe that this was an attempt on the part of Vojinovic to obtain money from a wealthy man. Having that idea in his mind, plus the knowledge that Hume was a person who had rendered valuable assistance to the Police Department in clearing up crime, Hume being the alleged go-between in this plot, I have no reason to feel that Sgt. Wild was acting in any improper way. 10 20 30

Q. That is not the question that you were asked. That is the question which eventually this Court will decide. The question you were asked is if you had Mr. Barton's complaint made in the circumstances in which it was to you, and then you had read Vojinovic's statement made to the C.I.B., firstly would you have regarded as proper to wait until the Tuesday following the Sunday to endeavour to locate Mr. Hume? A. That would depend on the view I took of the matter after interviewing Vojinovic. 40

Q. You would? A. Would you let me finish?

Q. No.

HIS HONOUR: I think Inspector Lendrum should be let finish.

WITNESS: I think it is most important in this matter to realise that Det. Sgt. Wild on the face of it took a view that there was nothing in the allegation of a threat against Mr. Barton's life, thus the fact that he had the knowledge of the identity of Hume who was associated with the clearing-up of crime. He had already allowed Vojinovic to leave the C.I.B. and he would know that Vojinovic would go about his business and would no doubt talk to his associates, and he apparently felt that it was safe to take as much time as he did in locating Hume. The matter was not one of immediate urgency, having interviewed Vojinovic, in Sgt. Wild's mind. I cannot say now whether he took the proper view or not, but that is the view he says he took. 50

HIS HONOUR: Q. The point that casts some doubt on this topic is that Sgt. Wild apparently formed that view on his assessment of Vojinovic but without investigating anything at all to do with the matter?

A. On his assessment of Vojinovic and the knowledge that came to him or which he already had of Fred Hume, who was alleged to be the all important go-between in this plot, the man who would pay the money.

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Q. Does that come down to this, that this complaint of what would seem to be a fairly serious nature, once Vojinovic had been interviewed and that opinion had been formed of him it was not necessary to pursue with any degree of promptness other investigations which would enable a more informed opinion to be reached? A. I do not think it comes down to that at all. I think it would have been most necessary to see everybody.

Q. If he was wrong in his assessment of Vojinovic it could have been an error with serious consequences?

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A. Possible consequences, yes. I think this would have probably operated on his mind to some extent in deciding the urgency of certain interviews. I think it is a matter perhaps for this Court or the Police Department later to decide whether he was wise in what he did or not. It is quite obvious to me that this did occur.

Q. Hume apparently has an office at Riley Street. He was spoken to on the telephone just before the 8th January and not seen until the 18th, which does seem to my mind at all events to be an inordinate delay?

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A. I would not criticise that position until I knew what Wild was doing between the 8th and the 18th. I do not know what he was doing. I feel he would have been making some inquiries in the matter. Whether the further inquiries he made after the 8th January confirmed the view that he had formed in his mind or not, I am unable to say. If the inquiries he made after the 8th January tended to confirm in his mind his view of the situation, then it is conceivable that it would have taken him until the 18th January to see Hume. Without a knowledge of all the facts and his movements and the interviews he had over that period I do not think I would be in a position to say yet whether he was right or wrong.

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MR. GRUZMAN: I read to you some evidence in which it was stated that on the Tuesday following the Sunday efforts were commenced to locate Hume and Ziric. The question I asked you was: Was it in your view, even assuming Sgt. Wild's state of mind which you assumed, proper to wait until the Tuesday before commencing to locate Hume? A. How can I answer that without knowing what Wild did on the Monday?

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Q. Assuming he did nothing on the Monday by way of investigating this case, what would you say then?

A. I do not think that would be a correct statement to make. I would be surprised if it was.

Q. You have investigated it? A. No.

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Q. I want you to assume that Sgt. Wild did not deliberately set out to make any investigations at all into this matter on the Monday. Will you make that assumption? A. Yes, with reluctance.

Q. Assuming that, would you agree that it would be right for him to wait until the Tuesday before taking any steps to locate Hume or Ziric? A. I find that difficult to answer without knowing what was in his mind.

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Q. You have made the assumption that Sgt. Wild formed a poor assessment of Vojinovic, and a poor assessment of the danger to Mr. Barton's life. I am accepting that for the purpose of this question. Even on that assumption would you say it was right to wait until the Tuesday before initiating enquiries to locate Hume or Ziric? (Objected to by Mr. Bainton as against the evidence. Allowed.)

Q. On the assumption that you have made as to Sgt. Wild's state of mind and on the assumption that he did not deliberately do anything to investigate this matter on the Monday, would you say it would be right to wait until the Tuesday before initiating enquiries to locate Hume or Ziric? A. It may be provided he had commenced other enquiries which were occupying his mind. He might have been making enquiries to confirm the view of the case that was developing in his mind.

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Q. I want you to assume that Sgt. Wild on the Monday made no deliberate enquiries at all to investigate this matter. On the assumption that you have made as to Sgt. Wild's state of mind, do you say that it was proper for him to wait until the Tuesday before initiating enquiries to locate Hume or Ziric? Yes or no? A. I do not think I can answer that question Yes or No. He might have had other ideas in his mind what he would do on the Tuesday assuming he did nothing on the Monday. If he did nothing on the Monday, I would be surprised. I would expect him to do something on the Monday.

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Q. I want you to assume that on the Tuesday he gave instructions to Const. Follington to locate Hume and Ziric. Will you assume that? A. Yes.

Q. In your view would that have been a proper course for him to take? A. I do not know what would have been operating in his mind to give those instructions.

Q. Assuming he gave those instructions, you would have expected, would you not, that at least by the Tuesday he would have ordered Hume and Ziric to be located, would not you? A. No.

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Q. You would not? A. Not necessarily. I have told you what I would have done in the circumstances.

Q. I will read you the evidence of Const. Follington in relation to locating Hume and Ziric on the Tuesday:

"Q. On whose instructions did you make these enquiries? A. Det. Sergeant Wild's."

That is the sworn evidence. Would not you agree that certainly by the Tuesday Sgt. Wild should have given that instruction - that he was right in giving that instruction on the Tuesday? A. That testimony there does not suggest that he gave it on the Tuesday. That is one view you could take of that evidence.

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Q. He may have given the instruction on Sunday?
A. He may have. I do not know.

Q. You would have assumed that it would be proper for Sgt. Wild to cause Const. Follington to initiate enquiries to locate Hume and Ziric not later than the Tuesday, would not you? A. Yes, unless he had made them himself.

Q. Assuming he had not made enquiries himself, you would say it was proper for Sgt. Wild to cause enquiries to locate Hume and Ziric to be initiated not later than the Tuesday? A. This of course depends on what was in his mind. I would have been wanting to know where they were and whether they were available.

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Q. I will have to have a Yes or No answer. On the assumptions that you have made, which have been put to you, do you say it was proper for Sgt. Wild to give instructions to locate Hume and Ziric as at the Tuesday? A. I would have wanted to know on the Monday if possible whether they were available or not. It would not necessarily follow that I would have been out to interview them or bring them in for interview at that time. You would naturally want to know whether Fred Hume was in Sydney and whether Momo was available, and who he was. I would have been making enquiries from various sources to establish these things so that they would be available when I did want them.

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Q. The only source you really had was Hume on the information before you as at the Sunday night or Monday morning? A. I would not say that.

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Q. What other source was there? A. I would have been tapping various sources around Darlinghurst to establish who Momo was. I do not think it would have taken me very long to find out where Hume was.

Q. If you wanted a stool pigeon you had one, did you not? A. What do you mean by that statement?

Q. Don't you understand that? ---

HIS HONOUR: I do not know what you mean by that.

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MR. GRUZMAN: Q. When you spoke of tapping sources did not you mean speaking to people who would give information to the police? A. Amongst other things, and detectives who may know who this man was.

Q. What was the necessity to go to these extraordinary lengths if you could ring up Fred Hume, who was known to you and who could tell you all about it? A. It might not have suited him to do that at that stage.

Q. It might not have suited Hume? A. Wild. Timing can be important in these things.

Q. You have told us that Wild had formed a view, which you are prepared to accept he formed, that Vojinovic was in effect not telling the truth about Hume? A. That is apparently the view he took. 10

Q. Would not he just ring up Hume and say, "What is all this, Fred?" A. When he was ready to, yes.

Q. He would be ready to on the Monday morning? A. I do not know.

Q. We are getting off the question I want to ask you. I will ask you not to evade it again. A. I am not trying to evade your question.

HIS HONOUR: Ask the question. 20

MR. GRUZMAN: Q. This is the question: Would you agree that it was proper procedure for Sgt. Wild to have instructed Const. Follington to commence enquiries to locate Hume and Ziric not later than the Tuesday? A. It might have been proper for him to locate him after the Tuesday in view of what was operating in his mind if he genuinely believed the opinion he had formed in his mind about the matter. He might have felt it quite safe to leave until after the Tuesday. 30

Q. If you were the investigating officer and Const. Follington told you that Sgt. Wild had given these instructions as a result of which he had made these investigations on the Tuesday, would you have regarded that as proper? A. Would you repeat that question?

Q. Const. Follington has sworn in this Court that he received instructions from Sgt. Wild as a result of which on the Tuesday he made enquiries to locate Hume and Ziric. Would not you have regarded that as proper police investigation? (Objected to by Mr. Bainton. Rejected.) 40

HIS HONOUR: You can put the proposition that Follington on the Tuesday commenced enquiries to locate Hume and Ziric.

MR. GRUZMAN: Q. Would you not agree that if the officer in charge of the case, Sgt. Wild, caused his partner, Const. Follington, to commence enquiries to locate Hume and Ziric not later than the Tuesday following the Sunday, that that would have been proper police procedure? (Objected to-- 50
allowed.) A. It may have been in the circumstances.

Q. In fact you would agree not only that it may have been proper procedure but it was proper procedure, was not it? A. I think that depends on

whether the view that Sgt. Wild appears to have taken of the circumstances was in fact the one he was entitled to have taken. If it was not the one he was entitled to have taken, he perhaps should have made enquiries earlier than that.

Q. Certainly he should not have allowed any further time to go by, should he? A. No, I do not think so.

Q. I want you to assume something different, I want you to assume (p.629) that a positive decision was made by Sgt. Wild that no attempt should be made to locate Hume during the first week, that he never gave Const. Follington any instructions to locate Hume, and never discussed it with Follington, and Follington never told him anything about any such attempt. I want you to assume that. A. I am assuming it. 10

Q. That would have been a complete breach of Sgt. Wild's duty, would not it? (Objected to by Mr. Bainton.) 20

HIS HONOUR: I will allow you to probe the irregularity of a course of conduct such as you asked Inspector Lendrum to assume.

MR. GRUZMAN: Q. I want you now to assume that a positive decision was made by Sgt. Wild that no attempt should be made to locate Hume during the first week following the Sunday, that he never gave any instructions to Follington to locate Hume, that there was no discussion by him with Follington or by Follington with Wild about contacting Hume during that period. I put to you that that would be an improper method of investigating this complaint. (Objected to by Mr. Bainton.) 30

HIS HONOUR: I think you will have to expand the assumptions. It is more a question of irregularity than of propriety.

MR. GRUZMAN: Q. I am going to ask you to make the same assumptions as you have made when you answered the question about the Tuesday. These were to assume the state of mind of Sgt. Wild which you have told us about, to assume that he had these statements which have been referred to in the evidence before him. I want you to assume that he made a decision that there should be no attempt to locate Hume during the first week, that he never gave Const. Follington any instructions to locate Hume, nor did Follington discuss it with him, nor he with Follington during that week. That would have been an irregular method of investigating this complaint, would not it? A. I do not think so if Sgt. Wild could be justified in the view that he apparently took of the complaint after interviewing Vojinovic and with the knowledge that he had of Frederick Hume. 40 50

Q. How can you reconcile on the same set of assumptions telling his Honour a moment ago that the

location of Hume and Ziric should have been commenced not later than Tuesday and your evidence now that it was not irregular if the investigation were not commenced during the whole of the first week? (Objected to by Mr. Bainton. Rejected.)

HIS HONOUR: I think one would need to look at that question in writing before answering it.

MR. GRUZMAN: Q. As an experienced police-officer is there any other factor, apart from the view which you accept that Sgt. Wild rightly or wrongly formed after interviewing Vojinovic, which would have in your view justified him delaying attempts to locate Hume and Ziric for a week? A. If he had formed this view that he apparently had in his mind of the complaint, and he was engaged in other investigations of a serious and urgent nature, it might well have taken him a week to get round to interviewing Hume or locating Hume for interview. If he formed an opinion about the complaint and took it so far, he might have felt that the urgency of locating Hume and continuing his enquiries had lapsed. 10 20

Q. I suppose you would agree that nothing else apart from that view, and the circumstance that he was otherwise busily engaged on urgent enquiries, could have justified that delay? A. I cannot think of any proper reason which could have justified any such delay, if it is to be called a delay.

Q. Having in mind your personal knowledge of Hume (p.586) and the fact that you discussed your knowledge with Sgt. Wild, I suppose the last thing you would have expected to cause delay would be that Sgt. Wild wanted to find out something of Hume's background? A. My recollection is that I did discuss with Sgt. Wild the fact that the Fred Hume referred to would be this particular man who had assisted the police in the past. To what extent he might have wished to ascertain more about Hume I am not aware. 30

Q. You had told Sgt. Wild in substance that Hume was favourably known to the police in view of the assistance he had given? A. That is my recollection. 40

Q. In your view that is what coloured Sgt. Wild's attitude in part? A. In part, yes, plus the opinion he formed of Vojinovic.

Q. It would be ridiculous, would it not, to suggest in the light of that that Sgt. Wild would have tried to find a police-officer who knew Hume, and endeavour to locate him and take other steps to find out about Hume's background, would not it? A. If my recollection that I spoke to him about Hume is correct, yes. Unless he wanted to contact an officer at the C.I.B. who knew Hume better than both of us. That might have been operating in his mind. 50

Q. That would not take him any further than to know that he was well and favourably known to the

C.I.B.? A. He might have wanted to find out to what extent he was well and favourably known.

Q. Supposing it was put to you (p.629) in these terms - that you had asked Sgt. Wild why he had decided it was unnecessary or undesirable to contact Hume that week, and he said, "I wanted to find something out about Hume before I interviewed him", you would regard that as quite ridiculous, would not you? A. No.

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Q. In the light of your conversation with him?
A. I met Hume some years ago. The knowledge that I would have conveyed to Sgt. Wild would have related to my knowledge of Hume about the year 1964 or 1965. Sergeant Wild might have wanted to find out something about Hume's more recent activity.

Q. Because he was suspicious of him or doubted you? A. No. He might have wished to establish what his immediate activities were. I did not know them.

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Q. Let us take another point. The Police Force have as one of their principal activities I suppose finding people whom they wish to interview? A. Yes.

Q. Can you imagine that if a detective attached to the Sydney C.I.B. wanted to locate Frederick Hume, who was at that time in his office at 77 Riley Street, Surry Hills, it would take him a week to find him? A. Not necessarily.

HIS HONOUR: Q. As a matter of convenience I will show you p.708. I would like you to look at the part from about one-third of the way down the page to near the bottom of the page. Then I will ask you to assume that the information stated in that portion of the page is correct? A. I have read that.

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Q. You may assume that Ziric is the name of the man Momo. Bearing in mind that the suggestion was that Ziric and Hume were parties to this matter which was under investigation, and assuming that what you have read on that page is correct, does not that seem a somewhat off-hand way to go about locating Hume and Ziric, both in terms of time and method, assuming that is correct? A. If this was all that was done, I would say yes.

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Q. It was rather the time delay and the fact that Hume was rung up and a message was left and Hume was to be located to provide the contact with Ziric. Assume that nothing of any significance was taking place between 10th January and 18th January, and that Hume was not in fact interviewed until 18th January. That appears to present what I would describe as a somewhat offhand approach. It is on that I would be glad of the benefit of your comment as a senior police-officer. A. The only comment I could make on it would be an idea which had developed in Sgt. Wild's mind about this rather than being a threat against Mr. Barton's life being an attempt on the part of Vojinovic to obtain money from a

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wealthy businessman and at the same time to embarrass a man he did not like, Fred Hume. This idea would have developed to such a stage in Sgt. Wild's mind that he considered this inquiry no longer at all urgent, and was involved in other more pressing police work.

Q. Does it not seem imprudent for him to have formed that conclusion prior to actually interviewing Hume and Ziric? Whether it was borne out by subsequent events or not is another matter. A. This is the area in which I find difficulty. I think it could be argued that he prematurely allowed that opinion to dominate his actions in the matter. I feel before one can come to that conclusion I would personally have, if I was asked to assess his actions, to have in front of me all the available information. I would only say that Det. Sgt. Wild is a man who is highly regarded in the C.I.B. and has indicated on previous occasions that he has developed into a mature investigator at a very early age. His officers have the greatest confidence in him so far as integrity is concerned. If this opinion which developed in his mind dictated his actions in this matter I would say that the question of whether he acted improperly was something that I could not answer at this stage. I would have to personally know more about the incidents and the matter generally.

MR. GRUZMAN: Q. I want you to assume in any of these questions I ask you first of all (halfway down p.582) that Sgt. Wild had some reason to suspect Hume as a result of Vojinovic's statement. A. You want me to assume that?

Q. Yes. Sergeant Wild had some reason to suspect Hume as a result of Vojinovic's statement. I want you to assume also (halfway down p.598) that the state of Sgt. Wild's work, whether he was busy or not, was not such that it affected his decision whether to seek out Hume, Momo or Armstrong for the purpose of interviews. I want you to assume also that Sgt. Wild saw Vojinovic on the Monday, and that Vojinovic told him where Momo lived. Do you understand that? A. Yes.

Q. Would not you have expected that Sgt. Wild, whatever the state of his mind, would have immediately interviewed Momo or tried to interview him? A. I do not know what else I am to assume Vojinovic told Wild on the Monday. He might have told him certain things which confirmed the views which were being formed in Sgt. Wild's mind about Vojinovic's motives in the matter.

Q. If Sgt. Wild met Vojinovic at Springfield Avenue, Kings Cross, and it was good enough for Sgt. Wild to go up to Springfield Avenue, Kings Cross, to see Vojinovic, and Vojinovic told him that Momo was round the corner in Bayswater Road, would not you expect Sgt. Wild to interview or seek to interview Momo? A. He might have different ideas about interviewing other people before seeing Momo. I do not know.

Q. Who? A. I can only suggest what I would have done.

Q. You would have interviewed Mr. Bovill and had another conversation with Mr. Barton? A. Yes, and any other associates of Mr. Barton who could have indicated to me, independent of him, that there was sufficient friction between Mr. Barton and Mr. Armstrong to lead to the possibility of Mr. Armstrong wanting to take Mr. Barton's life.

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Q. The last thing you would have done is to interview the persons who were supposed to have committed the offence? A. Probably, yes.

Q. Even if you knew there was a chance that these people would find out that they were going to be interviewed? Would that have made any difference to you? A. It might have.

Q. I want you to assume that the investigating officer believed that Hume would be told of these investigations during that week. Would that have altered your view of the investigating officer's duty to get on with the job of interviewing Hume?

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A. I think it would have been prudent to interview him as soon as possible.

Q. Throughout your evidence you have been generous in your approach to Sgt. Wild's state of mind, have not you? A. I suppose I have.

Q. You have assumed for these many questions that Sgt. Wild formed a view that Armstrong, Hume, and I suppose Novak, had nothing to do with this matter, and it was purely a product of Vojinovic's mind. That is the view you have assumed in Sgt. Wild's mind? A. He might have considered the possibility of Novak being involved with Vojinovic. I think it is a reasonable statement to make that the opinion that formed in his mind was that Mr. Armstrong and Hume were not involved, or the likelihood of it being so was very remote.

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Q. You have made the assumption that Sgt. Wild actually formed that view, have not you? A. Yes.

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Q. That assumption is completely unreasonable, is not it? A. No. The assumption I have made here?

Q. Yes. A. No. I have made it on good ground.

Q. The assumption has been made firstly because of something Sgt. Wild has told you? A. Yes.

Q. I suppose principally on what Sgt. Wild has told you? A. Yes.

Q. In fact solely on what Sgt. Wild has told you? A. Well, yes, I did not investigate the matter.

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Q. I want you to assume this for the moment, that in fact on the Sunday night Wild gave instructions to have Hume and Ziric located, that on the

Tuesday Hume was located, that Hume was brought to the C.I.B., that he made a statement typed by Const. Follington in which he made a number of admissions, then of course you would say that your assumption was invalid? A. If I made that assumption?

Q. Yes. A. Yes.

Q. You would then be asking yourself what could have happened to have changed Sgt. Wild's attitude from inactivity of the first few days to a state where he claimed he had a state of mind that he saw nothing in it? A. I do not follow that question. 10

HIS HONOUR: I do not follow it either, Mr. Gruzman. I am not sure it is within the legitimate field of questions you can put to Inspector Lendrum. You are entitled to ask Insp. Lendrum questions directed to what a competent police-officer would have done.

MR. GRUZMAN: Q. If the facts were that Sgt. Wild had caused Hume to be interrogated within a few days of Vojinovic's statement and if in the interrogation Hume had made admissions, for example that he had employed Momo and Novak to frighten Mr. Barton, and similar matters, you would have expected Mr. Armstrong to be interviewed, would not you? A. Of course. 20

Q. That would have been the regular and proper course of investigation would not it? A. Yes.

(Luncheon adjournment.)

HIS HONOUR: You are still on oath. 30

MR. GRUZMAN: Q. I want to see if I can correctly summarise your views on the investigation of this matter. First of all I think you are Sgt. Wild's superior officer? A. Yes.

Q. It could happen that one day you would have to take part in some inquiry into Sgt. Wild's conduct? A. Yes.

Q. So far as possible you prefer to keep an open mind at this stage? A. Yes.

Q. What your evidence here amounts to is this, that you can see a possible basis on which it is possible that Sgt. Wild's actions would be explicable? A. Certainly. 40

Q. The question whether he held these beliefs is a matter that you would leave either to this Court or to the inquiry which could be held in the Department? (Objected to by Mr. Bainton.)

Q. You yourself had not formed a view as to whether or not he held these beliefs at this stage? A. I do not think I am qualified to at this stage. 50

Q. There are two possibilities, first of all Sgt.

Wild may or may not have held certain views as to which you express no decided opinion? A. That is so.

Q. I would like to ask you about one or two other things now. There would be no doubt in the mind of any officer investigating this matter that Vojinovic was a person who should be available if the police required him? A. That is a hypothetical sort of question to ask me. I would not know whether there would be a doubt in somebody's mind or not. 10

Q. Would not you expect a competent police-officer having charge of these investigations to know where he could find Vojinovic in the few weeks following his making of that statement? A. He would have before him some material and information which would lead him to the belief that he would be likely to be able to put his hands on Vojinovic in the immediate future, yes.

Q. Would you expect as a matter of normal police routine that the officer-in-charge would make it his business to know where he could locate Vojinovic if he was required? A. Yes. 20

Q. Would you expect him to have ascertained that Vojinovic was on bail on a charge? A. Yes.

Q. Would you have expected him to have ascertained who his associates were at that time? A. Yes.

Q. Would you have expected him to have ascertained if a short time after the 8th January he and the man Novak had gone to Melbourne together? A. That would depend on whether information of this came to his knowledge. 30

Q. Would not you have expected a competent police-officer to make it his business to find out such a matter? A. It might be most difficult for him to find out unless somebody told him or unless the man was found in Melbourne with this other fellow. People are not in the habit of telling the police when they are going to leave the City, of course.

Q. That is why the police have methods of dealing with such things? A. I submit that we have not got methods for dealing with such things. This man was not in custody. He was a free member of the community to go where he felt he ought to go in the meantime, unless of course his bail required him to appear somewhere and he did not appear. 40

Q. If a competent police-officer believed that Vojinovic was guilty of extorting or attempting to extort money from a wealthy businessman, what should he have done? A. What would depend on whether he had enough information to go ahead with the matter and whether he had enough evidence to charge him. Suspecting something and having enough information for evidence to do something about it are two different things. 50

Q. Suppose you had the evidence of Mr. Barton

along the lines of his complaint to you, and the admission of Vojinovic in his statement, what would you expect a competent police-officer to do if his belief was that Vojinovic was guilty of attempting to extort money from Mr. Barton? (Objected to by Mr. Bainton. Question withdrawn.)

Q. If a competent police-officer had the complaint that Mr. Barton made to you, and Vojinovic's record of interview, would you expect him to take some action against Vojinovic? (Objected to by Mr. Bainton. Allowed.) A. On the face of the evidence that we had on the 8th January, no. Mr. Barton was not making a complaint against Vojinovic. 10

Q. You have told us you assume that the Sergeant in charge of the case believed that Vojinovic was attempting to extort money from a wealthy businessman. That is your description? A. I do not think I used the word "extort". I think I used the word "obtain". 20

Q. To put it in expanded form, the belief that you assumed was that Vojinovic was guilty of attempting to obtain money from Mr. Barton by informing Mr. Barton that he had been hired by certain people to kill him. That is the belief you assumed? A. I do not think I used the word "guilty" for a start. I think I said "Was endeavouring to obtain". The question of whether Vojinovic should have police action taken against him for endeavouring to obtain money from Mr. Barton I am sure would have been considered by Sgt. Wild at the time, and probably discussed with Mr. Barton. I do not know. It certainly has not been considered by me as an individual police-officer. 30

Q. Is this what you are saying, that Sgt. Wild should have considered that matter? A. Of course.

Q. And should have discussed with Mr. Barton?
A. I would have expected him to. If his beliefs were along those lines I would have felt he would have examined the available evidence on the question of whether he could put Vojinovic before the Court on some criminal charge relating to attempting to obtain money. Of course he had not obtained money from Mr. Barton. 40

Q. Do I take it from the mention of discussions with Mr. Barton that you mean that if Mr. Barton had been agreeable then police proceedings should have been instituted against Vojinovic? A. If the evidence was there to warrant the police action.

Q. That is on the state of the evidence that we have assumed in these questions? A. Would you repeat that? 50

Q. That is on the basis of Mr. Barton's complaint and Vojinovic's statement? A. No. On a careful assessment of all the available evidence after the police inquiries were complete. Then and then only should the question of prosecuting Vojinovic have been considered.

Q. When were the police inquiries in this matter completed? A. I could not tell you.

Q. Have they ever been completed? A. I do not know.

Q. As Sgt. Wild's senior officer, cannot you tell his Honour now in September, 1968 whether police inquiries into the complaint made on the 7th January 1967 have ever been completed? A. 8th January. I presume they have been completed. It was not my function to enquire into whether they had been completed or not. Sgt. Wild was responsible to his own officers. When you say I was his superior officer, I am one of several police-officers who are superior to him. He was not working under my control.

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Q. Can you tell us by what regular method of police inquiry according to Sgt. Wild no record of interview was obtained from Hume during the year 1967? (Objected to by Mr. Bainton.)

HIS HONOUR: You can probe that subject matter, but I do not think that question is admissible in form.

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MR. GRUZMAN: Q. Can you tell us whether by any regular method of police inquiry a record of interview of Frederick Hume would not have been obtained until more than a year after the original complaint? (Objected to.)

HIS HONOUR: It is rather a cumbersome way of putting the subject matter to Inspector Lendrum.

MR. GRUZMAN: Q. You would agree that it would be highly irregular if a record of interview of Frederick Hume in respect of this complaint was first obtained more than 12 months after the complaint? (Objected to.)

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HIS HONOUR: First of all put the negative, that no interview was obtained for 12 months.

MR. GRUZMAN: Q. From what you have been informed by Sgt. Wild is it your belief that no record of interview was obtained from Frederick Hume during the year 1967? A. That is my belief.

Q. It is also your belief that a record of interview was obtained from Frederick Hume for the first time on the 5th February 1968 by Sgt. Butler? A. In early February. I do not think that is the date. That is in substance correct.

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Q. Would you regard both of those two last matters which I have put to you as a regular method of conducting a police inquiry? (Objected to by Mr. Bainton.)

HIS HONOUR: You are relating the two together. There could be all sorts of reasons for the February 1968 interview.

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MR. GRUZMAN: Q. Would you regard as a regular method of conducting a police inquiry into a

complaint of this nature that no record of interview was obtained from Frederick Hume during 1967?

A. There could be several reasons why it was not obtained. It would have been desirable had it been obtained, I would say, in 1967.

Q. Was it a regular method of police inquiry into a complaint of this nature to obtain a record of interview with Frederick Hume in February 1968? (Objected to by Mr. Bainton.)

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HIS HONOUR: The February 1968 interview was after the commencement of litigation. I should have thought the inference at the moment is that the February 1968 interview arose out of this litigation. I reject it.

MR. GRUZMAN: Q. Would you agree that it would have been highly desirable if within two or three days of the complaint a record of interview had in fact been obtained from Frederick Hume? (Objected to by Mr. Bainton - allowed.) A. I would say it would have been most desirable had a record of interview been obtained from Hume at the time he was approached during the original investigation, whether it be a day or two or a week afterwards.

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Q. That is what you would have expected a competent police officer to do? A. With respect, I regard Sgt. Wild as a competent police-officer. I do not know what his reasons were for not taking it. No doubt he has some. He has probably ventilated them in this Court. Nevertheless it would have been desirable had it been obtained. It would have been there and it would have been a true indication of what his statements were on the matter at that time.

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Q. I am not asking you to be critical of Sgt. Wild. I am asking you questions so that his Honour may be informed as to what the regular practice of the Police Department is in these matters. Do you understand that? A. Yes I do.

Q. On that basis I ask you would you have not expected a competent police officer to have obtained that record of interview from Hume? (Objected to by Mr. Bainton.)

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HIS HONOUR: Q. Having the information that came to you from Mr. Barton on the morning of Sunday the 8th January, having read the record of interview with Vojinovic on the occasion of his interview on the night of Sunday the 8th January, and leaving aside questions of time for the moment, in the ordinary course of investigating Mr. Barton's complaint Frederick Hume would have been interviewed as I understand? A. Yes.

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Q. In the ordinary course of investigating that complaint would not a record of interview have been made when Hume was interviewed? A. Not necessarily. This is not laid down as a police instruction. But I think it would have been most desirable had that course been adopted.

Q. It is not the desirability that the question is directed to. It is whether in the ordinary course of investigation a record of interview with Hume would in fact have been made. If the investigation had followed an ordinary course would not a record have been made? A. There is nothing laid down about this in the Police Department as to when a record shall be made of an interview with a person in an inquiry of this nature. For the purpose of clarity and a proper assessment of the complaint I consider that it is always desirable to have a record of such an interview.

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Q. That is still not quite on it. Drawing on your experience of investigations that you have conducted, and others in the Force have conducted and that have come to your knowledge, in the ordinary course would not a record of interview have been obtained from Hume in circumstances such as I have referred you to, namely, the complaint on the Sunday morning and Vojinovic's statement on Sunday night? A. This would depend on the approach to the interview by the police concerned. It is not laid down that police shall take a verbatim record of interview with people in these circumstances.

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Q. Does that mean that there is no course of practice one way or the other? I am not suggesting that there is anything laid down or obligatory. My question is directed to what you would expect to find if the investigation had followed an ordinary course of progress. A. I would have expected Sgt. Wild to have made a record of his interview with Hume, unless there were good reasons why he did not or could not at that time. There was nothing binding on him to do so within the Police Department's instructions to its men.

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MR. GRUZMAN: Q. The same would apply to his interview with Novak? A. Yes.

Q. You know that Mr. Barton says there was a discussion with Hume in which some questions arose of a promise to pay money to Vojinovic. Do you remember that? A. Yes, he said that. I say it did not occur.

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Q. You say it did not occur? A. Yes, not with me anyway.

Q. I would just like to ask you to consider this. Was it not the duty of the Police Department to endeavour to catch Vojinovic if possible? A. They had Vojinovic at the C.I.B.

Q. Before he was caught, when the complaint was made, did not the making of the complaint create a duty in the Police Department to endeavour to catch Vojinovic if possible? A. There was no problem presented with Vojinovic. He had indicated apparently to Mr. Barton that he would contact him. I sent Det. Follington to Mr. Barton's home to ensure that if contact was made we would be in the picture.

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Q. If contact was made you would be in the picture? A. The Police Department.

Q. You mean by that, do you, that you sent Follington to Mr. Barton's home so that if Vojinovic rang arrangements could be made for the police to catch him? A. Yes.

Q. You knew at the time that Vojinovic was asking for money? A. No, I did not know this. There was something said during the complaint to the effect about money in general terms, but there was nothing specific discussed. 10

Q. As an experienced police-officer you would have appreciated the possibility that when Vojinovic telephoned he would have asked Mr. Barton to bring some money, would not you? A. Not in particular, no. We hoped he would ring and make an appointment to see him.

Q. Did not it occur to you, having in mind the nature of what you had been told by Mr. Barton and by Mr. Millar that Vojinovic might on the telephone say to Mr. Barton "Bring some money with you"? A. No, that possibility was not developed at all in our discussions. 20

Q. It never occurred to you? A. It might have crossed my mind at the time, but not to any great extent, not to the extent that we made any plans about it. I will put it that way.

Q. If it crossed your mind --- A. I said it might have. 30

Q. If there is even a possibility that it crossed your mind did not you appreciate that the whole of the police plans would come to nothing unless Mr. Barton promised to provide the money? A. No, I did not go into the matter to that extent at that stage.

Q. It never occurred to you? A. Not at that stage.

Q. At any stage? A. No.

Q. You sent a police-constable to spend an afternoon in Mr. Barton's home at Castlecrag? A. Yes. 40

Q. In order to catch a man who was going to contact him with a demand for money, and you never gave any thought to whether any promise of money should be made? A. There was no indication there would be a demand for money when he did contact him.

Q. (Obtains Exhibit 51.) Did not you yourself believe that if the man whom we will call Vojinovic was telephoning Mr. Barton he would probably want money? A. Not at that stage, no.

Q. That just never occurred to you? A. It did not occur to me he would want money that night. 50

Q. You thought he would come and expose himself and give information for nothing? A. I hoped he would make an arrangement to meet Mr. Barton and that we would be able to pick him up and talk to him.

Q. He had already met Mr. Barton once? A. That is right. We were not there that time.

Q. I put to you fairly and squarely that it did enter your mind that this man would want money, and that you advised Mr. Barton to promise him money? 10
A. No.

Q. And that you did it for the proper and legitimate police purpose of ensuring that the man came to the meeting place and was duly arrested? A. No. There was no discussion about promising him money or paying him money between Mr. Barton and me. There was some reference to money in the early stages of the interview on the Sunday morning. There is some note there on the question of money. 20

Q. What is your recollection of it? A. Something to the effect that this man would be prepared to divulge the plot on the payment of money.

Q. With that in your mind you still say that there was no discussion whether or not Mr. Barton should offer money to the man if he telephoned and asked? A. No, not that I can recall. I think if there had been I would have had a note about that in my book.

Q. One of the reasons you put forward in your evidence in chief was that it would have been wrong for you to have taken the responsibility of telling Mr. Barton to provide money, was not it? A. Yes, I mentioned something to that effect earlier. 30

Q. It would have been your duty to have communicated with Mr. Blissett? A. Yes, which I did do.

Q. On the question of money. You did not communicate with Mr. Blissett in connection with money, did you? A. No.

Q. It would be Mr. Blissett's duty to communicate with the Commissioner. You mentioned that in your evidence in chief? A. Yes. 40

Q. Short of that the police would not be involved in an offer of money to the criminal? A. By Mr. Barton, no. That is right. Not in these circumstances anyway.

Q. I put to you (I suggest no impropriety of any kind against you) it was simply not a practical matter in your mind to have gone through that procedure on the Sunday? A. I, with respect, say that you are wrong. The time of the day or the week does not make any difference. 50

Q. That is according to police regulations? A. What is?

Q. The time of the day or the week does not make any difference to your duty? A. It does not make any difference to whether I want money either from the Commissioner of Police for a legitimate purpose. I could get it in the middle of the night on Sunday if I wanted it.

Q. I put to you that you put it fairly to Mr. Barton if he wanted to provide the money it was a matter for his discretion, and that the police would have no objection? A. No, I did not say that to him. 10

Q. If you had said it, it would have been contrary to police regulations? A. If I had said it?

Q. Yes. A. It would have been contrary to police practice and procedure.

Q. And contrary to your duty? A. Yes.

Q. It would have exposed you to some sort of Departmental charge? A. I would not say that unless they could show that there was some impropriety on my part. It is just not done. I would not ask Mr. Barton to provide money for the purpose of gaining evidence against a man he was complaining about. 20

Q. If you agreed to that course it would have exposed you at least to censure by the Commissioner? A. It might have, but it did not occur anyway.

Q. I regret to do so, but I must put it to you: that is the reason why you are now denying you said it? A. You are entirely wrong. It did not occur. If it had occurred in those circumstances I would have no hesitation in telling this Court. 30

Q. When the original complaint was made you knew that the complaint was against Frederick Hume, did not you? A. The complaint was directed against Mr. Armstrong and persons in his employ.

Q. Including Frederick Hume? A. Yes.

Q. Did you immediately tell the various people present of your knowledge of Mr. Hume? A. No.

Q. Why not? A. It was none of their business.

Q. Is not this a matter which in your mind might have affected the course of conduct of the investigation? A. Was not what a matter? 40

Q. The fact that you had a special view of Mr. Hume? A. No. This would not be relevant to the complaint at all at that stage, if Mr. Barton was making a complaint involving Hume.

Q. I thought you told his Honour earlier today that your knowledge of Hume, and passed on to Wild, coloured the whole investigation? A. I did not say that at all. Not in those terms. I am suggesting that --- 50

Q. It should not have, should it? A. Certainly not. I am suggesting if I said something to Sgt. Wild about the knowledge I had of Hume, this might be one of the things that operated in his mind in taking so long to get round to interview Hume.

Q. You never said a word to Mr. Muir, Q.C., Mr. Millar or Mr. Barton of the fact that you knew Frederick Hume? A. As far as I can recall I never discussed Hume with them at all to the best of my recollection at this stage.

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Q. Do you remember Vojinovic in his statement made reference to a Detective-Sergeant Col. Mackie?
A. Yes.

Q. It would have been a simple procedure to check Vojinovic's veracity in that respect to see whether he communicated with or endeavoured to communicate with Det. Sgt. Mackie on the Sunday afternoon? A. Vojinovic was interviewed on the Sunday night, late.

Q. As part of his statement he said that he had made some contact with Mackie? A. He referred to Det. Sgt. Mackie; "the little man" I think he said.

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Q. Would you have expected a competent police-officer to have checked with Mackie ---

HIS HONOUR: Checked what?

MR. GRUZMAN: Q. I will read you this passage from Vojinovic's statement:-

"Q. Did you ask Mr. Barton for £500 to be paid to you to start helping him? A. Yes. I said to him after I see the detective and after we talk to him he could give me £500 because I have an idea how to bring these fellows to justice.

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Q. What is the name of the detective you refer to? A. It is Det. Mackie. There is two Mackies at Darlington, but he is the little one.

Q. Did you contact Det. Mackie? A. No. I ring there today and they tell me Mr. Mackie is not there. So then I ring Mr. Barton to tell him that I could not see the detective and it was no use coming down because I could not introduce them and discuss the matter. Mr. Barton has alleady left and I spoke to a woman."

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Would you have expected a competent police-officer to have checked on Vojinovic's statement? A. To the extent that he could, yes. He could ring Darlington Police Station and find out if Mackie was there or was not there. Whether he would be able to locate a police-officer who had spoken to a caller who had telephoned Mackie I would not be able to say.

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Q. If the fact were that Darlington Police

rang Det. Sgt. Mackie at the golf club, told him who was calling, and Mackie declined to speak to him, you would have expected a competent police-officer to find that out? A. Yes.

Q. That would have been some confirmation at least of Vojinovic's statement? A. Of some portion of it, yes.

Q. There is one other subject matter. Vojinovic was the man who had made this statement. He was a person against whom there was at least a possibility that the police might bring some charge arising from this matter - was not there? A. It would be a matter no doubt that would run through Vojinovic's mind. 10

Q. And it would run through the mind of any competent police-officer in the case? A. Yes.

Q. There was also the other possibility that Vojinovic would be an essential witness in proceedings against Mr. Armstrong, Hume and Novak? A. Yes, that would be considered. 20

Q. That would also be a possibility? A. That would have to be considered.

Q. If the police concerned were aware that Vojinovic was on bail in respect of a charge only a few days later, you would have expected them to keep an eye on him, would not you? A. This is a course that could well have been adopted, to keep an eye on Vojinovic.

Q. A proper course? A. A proper course in the circumstances, yes. Not one that everybody would adopt all the same. 30

Q. If it transpired that on the 16th January Vojinovic failed to answer his bail on this charge, you would have expected the police officers in charge of this case to be concerned, would not you? A. I do not know whether they would be concerned. It is something that they ought to take note of and consider in the overall picture. Vojinovic was on bail on a criminal charge. As I understand it Mackie had him at Darlington on a break and enter charge. 40

Q. Yes. I want you to assume, if you do not know, that the charge was one where Vojinovic was arrested by police after six shots were fired in a public street, and he jumped through a plateglass window. He had stolen or attempted to steal a number of items ---

HIS HONOUR: Jumped through a hole in a plateglass window. 50

MR. GRUZMAN: Q. I want you to assume that Vojinovic had been arrested after jumping through a hole in a plateglass window, broken as a result of this crime, and six shots had been fired by

police in a public street, and Vojinovic had been arrested by police and charged with break enter and steal. He had been remanded to the 16th January 1967? A. Yes.

Q. And that he failed to answer his bail? A. Yes.

Q. Would not you have expected that every effort would be made to apprehend Vojinovic ---

HIS HONOUR: Why am I concerned with what might or might not have been done? 10

MR. GRUZMAN: Vojinovic skipped bail and went to Melbourne, and no police enquiries were made. It so happens that Inspector Lendrum was one of the people responsible for no action being taken to apprehend Vojinovic.

HIS HONOUR: Vojinovic was in gaol in Victoria.

MR. GRUZMAN: May I adduce the facts. The facts we propose to adduce are Vojinovic was on bail on the 16th January on a fairly serious charge. He skipped bail and went to Melbourne. No effort was made to extradite him. The arresting police-officer, Det. Sgt. Mackie, recommended that he not be extradited. This was probably before it was known he had been gaoled there. According to this file Det. Sgt. Mackie sent the warrant to the C.I.B. for filing. I am not sure what that means. Det. Lendrum sent the warrant back. 20

HIS HONOUR: I do not think any significance could attach to that. There are all sorts of considerations that enter into whether or not extradition proceedings should be taken. 30

MR. GRUZMAN: I am reminded of the letter received from Victoria and the destruction of that letter. It is an amazing thing that this man makes this complaint and is spirited away to Victoria and put in gaol there. The police here do not want him back. Positive steps appear to be taken to see that he does not come back. He passes through New South Wales to Victoria where he is duly arrested on some other charge. The suggestion is that the Victorian charge was a frame-up. 40

HIS HONOUR: What significance attaches to whether or not he was brought back to face his trial here for break and enter?

MR. GRUZMAN: The suggestion is that in order to protect Hume the police here did not want Vojinovic back to put further charges against him.

HIS HONOUR: Assume everything in favour of your case, what conceivable embarrassment would it be to anybody if Vojinovic was brought back and charged with this break and enter offence? 50

MR. GRUZMAN: The question is whether he should be brought back at all. If Vojinovic were here he

would be able to give evidence against Hume. If he has gone and is unable to be contacted by anybody, it creates the greatest difficulty. Not only this witness but another witness has just disappeared. There is a file here which we subpoenaed yesterday which relates these facts. Extradition was not required. The warrant was sent to the C.I.B. and Mr. Lendrum returned the warrant.

HIS HONOUR: Mr. Gruzman, I think you are seeking to pursue an extraordinarily long lead on this. I think in fairness, as this has now been partially ventilated, either you should ask Inspector Lendrum, or if you do not I will, to take this file and state what part he played in the warrant. 10

MR. GRUZMAN: Q. Have a look at the file ---

HIS HONOUR: Q. The question you will be asked is briefly to state what part you played in the extradition proceedings concerning Vojinovic? A. This is the Police Department file relating to a warrant in first instance issued for the arrest of Alexander Vojinovic, the original charge being for break enter and steal at Randwick in 1966. 20

Q. We can leave the details out. A. The warrant was issued on the 19th January 1967, which was the day subsequent to the day on which he failed to appear at the Central Court of Petty Sessions. A warrant was issued as a matter of routine in order that his arrest could be effected on the original charge. The correspondence attached to the warrant is purely of a routine nature. Such correspondence can be found attached to any warrant of this type issued out of the Court where the arrest of the offender cannot be immediately effected. Detective-Sergeant Mackie of Darlinghurst Police Station, who was the officer in charge of the case, has reported on this file that the brief of evidence against the offender is filed at the modus operandi section in Sydney, and that the offender is serving a sentence in Queensland. This report by Mackie is dated December 1967. The warrant had then been in existence for several months. In the normal course of events it came to my office which was then at Darlinghurst Police Station. I was then the Detective-Inspector in charge of an area which included Darlinghurst. Mackie was working under me. He was one of my men. On the 3rd January 1968 I pointed out on the file that consideration was not given to the normal filing of warrants until they had been in existence for at least twelve months. After 12 months warrants of this type are filed at the C.I.B. Headquarters in the City. Prior to that they usually are to be found at police stations in the metropolitan areas where inquiries have to be instituted to trace the offender. 30 40 50

Q. Is the filing of a warrant a purely mechanical act? A. It is purely a mechanical act after a period of 12 months. If the offender is not located the warrant is filed in a central index at the C.I.B. headquarters. 60

Q. What is the effect of that? A. That warrant remains there and a notation is made on the criminal history of the offender to the effect that the warrant is in existence and is on file and available for reference purpose if he is located.

Q. Is that passed to Police in other States?
A. No. This is purely a domestic matter within our Department. The actual issue of the warrant would have been circularised in the Police Gazette which goes to other States.

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Q. From that file would you say that no action at all was taken to apprehend Vojinovic either before or after his release from gaol in Melbourne? --

HIS HONOUR: Q. The only part that you played in the history of this warrant according to that file was that in January 1968 you endorsed a memorandum that the warrant was not then 12 months old, so that it was not yet old enough to be sent back to be filed at the head office - at the Criminal Investigation Branch. Is that correct? A. Yes, and at that time the name Alexander Vojinovic would not have meant anything to me in relation to this particular matter that the Court is concerned with.

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RE-EXAMINATION:

MR. BAINTON: Q. Very early in the course of your cross-examination you were asked if you personally on either the Sunday night or the Monday morning after Vojinovic was interviewed - you were asked if you personally had assessed the record of interview and you said you had not? A. No.

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Q. Were you over that weekend on temporary duty at the C.I.B.? You were only on temporary duty at the C.I.B.? A. Yes.

Q. In the course of routine police matters on the Monday morning, would that record of interview have gone to some person or officer at the C.I.B.? A. Not necessarily. It may have been produced and shown to the Superintendent. I don't know.

Q. Well, who was the Superintendent in Charge?
A. Superintendent Blissett, and I am not sure if Mr. Barnes was there or not at that time. Det. Supt. Blissett was on duty and would have seen Det. Sgt. Wild about the matter.

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HIS HONOUR: Q. You said that you were not sure if Supt. Barnes was there? A. That is so. Det. Supt. Barnes was attached to the C.I.B. I believe at that time, but I am not sure if he was there at that particular time. He could have been away overseas.

MR. BAINTON: Q. You were asked a number of questions as to what in your view should have been done or should not have been done as a result of what police officers learned as a result of that Sunday morning interview, and subsequently as a result of the record of interview with Vojinovic. I want to deal with the first of these two matters. That is the Sunday morning interview. A. Yes.

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Q. I think you were told, weren't you, amongst other things that there had been some sort of relationship between Mr. Barton and Mr. Armstrong? A. Yes.

Q. I think if you look at the sixth page of your notes, there had been some breach between them, and prior to this interview there had been a settlement agreement reached between those two people. That is pp.6 and 7, I think. You have your notes there? A. Yes. I was told that there had been some conference with representatives of Mr. Armstrong in connection with a compromise.

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Q. And you were told also by Mr. Barton or someone on his behalf that he had these telephone calls from a person you now know to be Vojinovic; that he had met him at a King's Cross Hotel. I think you were also told that it was being asserted that Mr. Vojinovic had some principals behind him in the transaction, or some other people between him and Mr. Armstrong? A. The name "Hume" was mentioned - Fred Hume.

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Q. His Honour asked you, Superintendent Lendrum, if the fact that Vojinovic was apprehended on the Sunday evening should not be regarded as some corroboration of what was said on the Sunday morning. Do you remember being asked that? A. Yes.

Q. Would that in your view necessarily corroborate all the matters that were said on the Sunday morning? A. No.

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Q. Would it in your view necessarily corroborate the statements that were being attributed to Vojinovic, that what he was doing was being done through Momo and Hume and up to someone else? A. No, this would not necessarily follow.

Q. You were then asked some questions as to what in your view should or should not have been done after Police officers have had the benefit of the record of interview with Vojinovic. Do you remember being asked those questions? A. Yes.

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Q. I think you told us that Sgt. Wild had informed you that he formed a view about Vojinovic and what he was doing? A. Yes.

Q. I want to refer you to some other matters that were not put to you and ask you if you regarded them as material in determining what should or would not be done after Sunday, 8th January - that is, after the morning interview with Mr. Barton and his representatives and the evening interview with Mr. Vojinovic? A. Yes.

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Q. Would you add to the assumptions you were asked to make to start with this one, that on the following Monday -

HIS HONOUR: I am sorry to interrupt you, Mr. Bainton. Inspector Lendrum has been asked to make so

many assumptions, not all of them consistent, that I think it would be fairer to the Sergeant for you to re-state them, so that he knows what assumptions to proceed on.

MR. BAINTON: Q. Will you assume, for the purposes of the question I am now going to ask you, that the Police Officer, or the hypothetical reasonable police officer - if I may use such an expression - was present at the interview with Mr. Barton on Sunday morning? A. Yes.

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Q. And at the interview with Vojinovic in the evening? A. Yes.

Q. And had available to him the record of that interview? A. Yes.

Q. And the advantage of having seen and spoken to Vojinovic and formed his own assessment of him? A. Yes.

Q. Would you assume that on top of that he saw the man again on the Monday and was told by him this, inter alia, or rather I should say, was asked by Vojinovic - just above the middle of the page, on p.563 - "How much money do you think I will get out of this?" and that over the page - the second page on p. 564 - that he had been told on this occasion the discussion had been about money, and about how much money Vojinovic was likely to obtain from Mr. Barton for his information. Would you first of all assume that the investigating officer had had that discussion? Will you assume that? A. Yes.

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Q. May I add to that that discussion occurred because Vojinovic had rung up and asked to see the officer concerned. Would you then assume that later on in the same day, Monday, Vojinovic rang up again and asked to see the officer again, and had with him this conversation. Vojinovic said to the officer "You know about the shooting in Kellett Street a few days ago?" The Officer said, "Yes". Vojinovic said, "There was one man caught, and I know who the other man is". The officer said, "What is his name?" and Vojinovic said "His name is Muki". The police officer said "Where is he now?" Vojinovic then went on to recount that the man Muki had been helped by some people in King's 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. The police officer asked Vojinovic "How do you live?" and Vojinovic in effect that he "got a quid here and there", and the police officer had said to him "I suspect that you are committing crimes", and Vojinovic had said "Yes", and the Police Officer had said "What sort of crimes do you commit?" and Vojinovic said "I can't tell you that", and the Police Officer 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 was asked by the Police Officer, "What did you do before you came to Australia?" and he said "I escaped from Yugoslavia and I went to Europe". The Police

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Officer asked him "How did you live there?" and Vojinovic said, "I went to Holland and Germany and I did a bit of smuggling in those countries". The police officer asked him "And where did you come from to Australia?" and Vojinovic said, "I came from Austria". The police officer asked him "How did you live in Austria?" and Vojinovic 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." The Police Officer asked "Was it enough to live on?" and Vojinovic 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". The Police Officer asked him "Do you mean you were blackmailing them?" and Vojinovic said "Well, I got money from them". The officer said "It sounds to me as if you were actually blackmailing them."

Would you assume the officer had had that discussion? A. Yes.

Q. And then two days later, on the Wednesday, the same person, Vojinovic, rings the officer again and asked to see him. On that occasion Vojinovic asks him about his impending appearance at the Central Court, and what the officer thought he might get on that charge, and in the course of that conversation Vojinovic says to the police officer words to this effect "How much do you think Mr. Barton will pay me?" The officer said "I have advised him to give you nothing". Vojinovic said, "I tried to 'phone him". The officer said, "Did you get in touch with Mr. Barton?", and Vojinovic said, "No, I could not get him".

Q. Would you assume those things had occurred, in addition to the events on the Sunday? A. Yes.

Q. Would you think it reasonable that an experienced police officer in those circumstances - would you think it reasonable for him to form the view that there may not be much reliance to be placed on Vojinovic's words? (Objected to; rejected.)

Q. Would you assist us, if you can, by expressing a view whether or not it would be regular or irregular for a police officer who had been present at the Sunday discussions and those others I have read to you not to have taken steps to interview Hume until 18th January, and then not to have taken a written record of what happened? A. I would say that notwithstanding what he had learned from his interviews with Vojinovic the Detective Sergeant should have interviewed Hume within a reasonable period of the complaint having been lodged and in my view he would have been well advised to have recorded the interview in some way at that time.

Q. Dealing first of all with the time element, bearing in mind the matters I have just put to you, can you assist us as to whether it would have been regular or irregular to have waited for some seven

days to interview one of the persons named by Vojinovic? A. I would prefer to use the word "inadvisable" than "irregular". I think the word "irregular" lends itself to the suggestion of something ulterior. But I think it would have been advisable for Hume to have been interviewed earlier if he could have been located, having regard to the serious nature of the complaint and the person against whom the complaint was levelled.

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Q. I think you were shortly after that asked some questions about what should have been done - I think it was put this way - had Hume made a statement in writing implicating Mr. Armstrong. You were asked should someone have interviewed Mr. Armstrong. I think you said in your view it should have been done?
A. Certainly.

Q. I want to add something to that, if I may. I ask you in addition to assume that a written statement had been obtained from Mr. Hume. This was put to you, that the statement contained this material, and I will try and summarise it. I want you to assume the alleged record of interview contained a statement to the effect that Mr. Armstrong was buying stolen jewellery, that he kept it in his house, that the person having made the statement knew where it was and, in effect, provided a sketch showing where it was. Would you add that assumption to what you were asked about earlier? A. Yes. This is assuming such an interview occurred with Hume?

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Q. Assuming an interview occurred with Hume? A. Yes.

Q. And assuming there appeared in that record of interview a statement to that effect by Hume? A. Yes.

Q. And that it was a statement made about a person you knew to be a member of the Legislative Assembly?
A. Legislative Council.

Q. Legislative Council, I am sorry. A. Yes.

Q. Would your answer to the question that my friend Mr. Gruzman put to you be the same with that additional assumption? A. Yes, I think he should. This would make me dig my teeth in a bit harder, and I would get as much evidence as I could with a view to seeing the man at the earliest opportunity.

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Q. You would consider he should be interviewed?
A. Yes, sure, at the earlier opportunity after I had gathered my evidence.

Q. As a matter of police practice and procedure, if a person in that position were to be interviewed on a matter of that nature, can you tell us how many police officers, and what rank, would ordinarily be sent to see him? A. I would say two police officers.

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Q. Of what rank? A. I don't know. Probably of my rank and a sergeant.

Q. You mean of the rank you now bear - Inspector?
A. Yes.

Q. Now I want to come back for a moment to the matter I was asking you about before I got on to that, namely the views you expressed as to the advisability or otherwise of seeing Hume and making a record of interview? A. Yes.

Q. Why would you consider it advisable that there should be a written record? A. Well, I think this is an excellent means - it is an excellent tool in the hands of an investigator. If you are interviewing a person, I think if you have got a record made at the time, particularly something that the person can read and agree to there and then, and perhaps append his signature to there and then - there can be little doubt later on that it is not in fact that which it purports to be, and I personally go along with this method of interviewing people. But circumstances sometimes alter cases, and other considerations come into it, and the question of whether you can adopt this method. 10 20

Q. Would these considerations apply irrespective of whether or not you expected ever to need to make any use of the record of interview? A. You might not know at that stage. The point is that you have this document, along with other documents. They can all be considered on their merits at a later stage. And unless you have something along these lines you are relying on someone's recollection of an interview, and recollections are subject to human frailties. For that reason I think that it is far better to have the record of interview - I think it is by far the safest method of procedure. 30

Q. The view you expressed as to the advisability of interviewing Mr. Hume at all - will you tell us why you consider it was advisable to do that? A. Would you repeat that?

Q. Yes. You expressed the view that you thought it was advisable, in the proper course of Police practice, and after the events of the Sunday - two discussions - that Mr. Hume should be interviewed. Would you tell us why you consider that was advisable? A. Why Fred Hume should be interviewed? 40

Q. Yes? A. Because of the serious nature of the allegation.

Q. Yes? A. For that reason alone I think that in matters of this kind everybody who can throw some light on them should be seen and given no opportunity of denying the allegation or giving their answer to it. I think this is the only really safe method on which you can approach these inquiries - see everybody and get their story; go on a fact-finding mission. 50

Q. Would you assume this, that an allegation of this nature happened to be in a particular case true? Would you expect, if you went to see one of

the participants, that day or the next day - would you expect to get an admission from him if it was true? A. Well, you are always hopeful, and you sort of arm yourself with whatever information and evidence is available to you, and only hope for the best. But in this day and age these hopes are receding, of course.

Q. Would it be true that the more information you have when you go and see someone, the more chance you have of succeeding? A. Yes, of course.

10

(Witness retired.)

MR. GRUZMAN: I seek an admission that in the books of Pacific Panorama Pty. Ltd., in relation to the payment by that company of \$500 to Frederick Hume (a) the sum of \$500 was banked to the credit of the company - we don't know by whom; (b) a cheque for \$500 was drawn by the company in favour of Frederick Hume, and (c) there is a notation in the company's books in respect of that payment that it is for private investigations, and that the deposit and the withdrawal are within a day or so of each other. I would seek those admissions.

20

MR. STAFF: We would like to consider those matters put forward by my friend.

HIS HONOUR: It is agreed that the Minute Book of Southern Tablelands Pty. Limited contains no entry referable to the payment of \$1094.30 to Frederick Hume in or about the month of January 1967. The Southern Tableland Finance Pty. Ltd., books can be released to the custody of Mr. Grant.

30

MR. GRUZMAN: I tender m.f.i. 78 and m.f.i. 79.

HIS HONOUR: I shall admit as Exhibit "NN" a report from Hume's Investigations, 13th October 1967, being a report of a divorce raid, and comprising in all four pages, but only the text of the top half of the first page is in fact admitted in evidence. That is to say the details of the occurrences described in the document are not admitted in evidence.

(Above report admitted as Exhibit "NN".)

40

There will be admitted, and marked as Exhibit "OO", a report of a second divorce raid from Hume's investigations, 8th June 1967, comprising three pages, but omitting the context of all except the top half of the first page.

(Above report admitted as Exhibit "OO".)

Report of a divorce raid from Hume's Investigations 8th June 1967, comprising two pages, but omitting the text of all except the first page down to and including the word "Erskineville" eleven lines up from the bottom, will be admitted as Exhibit "PP".

50

(Above report admitted as Exhibit "PP".)

(Further hearing adjourned to 10 a.m., Tuesday,
1st October, 1968.)

IN EQUITY

No. 23 of 1968

CORAM: STREET J.

BARTON -v- ARMSTRONG

FORTIETH DAY: TUESDAY, 1ST OCTOBER, 1968

(Michael Novak called on subpoena duces tecum by Mr. Gruzman. The call on subpoena was answered by a person identifying himself as Michael Ziric.)

MR. GRUZMAN: Q. (To person answering subpoena.) 10
What is your name? A. Michael Ziric.

Q. Are you also known as Michael Novak? A. Yes.

Q. Where do you live? A. 77 Riley Street, East Sydney.

Q. Do you produce to the Court the subpoena duces tecum that was served on you? A. Yes.

Q. And the documents called for by it? A. I was served with the subpoena yesterday afternoon, and I did not have time to produce the documents required by the subpoena. 20

Q. How long would it take you to get those documents? A. The period of time that is under the subpoena, I would have to write letters to my employers in Surfer's Paradise. I would have to get documents from some places in Sydney that are closed - the Westside Theatre Restaurant and the Napoleon Restaurant. The subpoena asks for the record of money received from Fred Hume. I have no -

Q. The subpoena calls for certain documents. Have you any of those documents in your possession? 30
A. None whatsoever.

MICHAEL ZIRIC
On voir dire:

MR. GRUZMAN: Q. What is your full name? A. Michael Ziric.

Q. I think you are also known under the name of Michael Novak? A. Yes.

Q. You reside at 77 Riley Street, Surrey Hills?
A. Yes, it is Darlinghurst.

Q. 77 Riley Street, Darlinghurst? A. Yes. 40

Q. I think you were served with the subpoena duces tecum which is now shown to you? A. That is right.

Q. And at the time of service did you sign this receipt for conduct money? A. That is right, yes.

M. Ziric, on voir
1959. dire.

M. Ziric, on voir
dire.

Q. You wrote that cut and signed it? A. Yes.

(Receipt for conduct money m.f.i. 82.)

Q. Now, Mr. Novak, you realise that by the subpoena you are asked to produce copies of your group certificates, wages sheets, tax stamps or other records of payment received by you in respect of any payment made by Frederick Hume? A. I understand that.

Q. Do you tell the Court that you have no document in your possession relating to any payment made to you by Frederick Hume? A. None whatsoever. 10

Q. Do you know where any such documents are? A. There were no documents.

Q. There were no documents? A. No.

Q. You were also asked to produce copies of taxation returns? A. Yes, I was.

Q. Do you have in your possession any copies of income tax returns? A. I have not got any.

(Witness retired.)

20

(Subpoena directed to Michael Novak m.f.i. 83.)

FREDERICK HUME

On former oath:

HIS HONOUR: Q. You are still on your former oath, Mr. Hume. A. Yes, your Honour.

MR. GRUZMAN: Q. Mr. Hume, did I understand you to tell his Honour that Novak did not write English? A. Yes, not to my knowledge. I don't believe he does write English.

Q. Will you have a look at this document? Looking at the document would you agree that is in Mr. Novak's or Mr. Ziric's handwriting? A. It could be. I don't know. I don't know his handwriting that well, but he told me he does not write English. 30

Q. In all the time you employed him before you have never known him to write English? In all the time you employed him do you say you have never known him to write English? A. No. There was no need for him to write English, because there were no reports for him to do. He was only employed on very minor things, such as tracing someone's address - if the person was there. 40

Q. Looking at that document, will you agree that is Novak's handwriting or not? A. Well, I could not really say.

Q. Have a good look at the document. Does that help you? A. Well, if you would show me the book where he signs that he receives the money, then I could tell.

M. Ziric, on voir
dire, ret'd.

Q. Have you brought any such book to the Court? You have got the book there from my ... (not completed.)

Q. Might I suggest to you there is no signature?

A. Well, I think there should be one somewhere around there, because when they get paid I think usually they have to sign.

Q. I hand you now the only wage records that you have produced. Tell me, by reference to those, whether you can confirm if that is Ziric's signature? 10

A. Well no, not according to that. No, I am sorry, I can't help you there at all. This is not signed by anyone. It just says "Employee's name in full". I can't help you there.

Q. I would like you to have another look at this voucher which is taken from Exhibit "KK". Can you help us further as to who wrote that document? A. Definitely not Michael Ziric, if that is his handwriting - and I don't have to be a handwriting expert 20 to see that.

Q. Well, who did write it? A. I would not know. Do you know, Mr. Gruzman?

Q. Don't be cheeky. A. I am not being cheeky. These documents have been in envelopes with you here for six months, Mr. Gruzman.

Q. Just answer the question. A. I don't know. I don't know who wrote them. It certainly does not look like the same handwriting. This one is written in oval, and this one is written in sharp handwriting. 30

Q. The question was can you now tell his Honour who wrote the car numbers and other information on the back of the voucher? A. No, I would not know who wrote it, but according to this it is certainly not Mr. Ziric, if that is Mr. Ziric's handwriting.

Q. Do you know Terry Catt's handwriting? A. Well, if you show me the book? Has it got his handwriting there? I don't know his handwriting.

Q. You say you don't know his handwriting? A. 40 No. Miss Catt would know her brother's handwriting? I would not know it.

Q. Is this the position, that you are ---? A. He also never wrote any reports to me, because if he had to give a report he would give it to Miss Catt, and not to me.

Q. Is this the position, that you are still unable to offer his Honour the slightest assistance as to who wrote these car numbers and other information on the back of that document? A. No idea. I would be having a guess, but I am quite sure that it is not Mr. Catt's handwriting either. 50

Q. Mr. Hume, I would like to ask you this. Do you remember when Mr. Armstrong came back from overseas in 1966? A. No.

Q. Well, if I might help you you told his Honour that whilst Mr. Armstrong was overseas you went out with his daughter? A. Two or three occasions. I think it was two occasions. It was always in the company of some other people.

Q. With that to help you to fix the time, can you tell us when it was that Mr. Armstrong came back?

A. No, your Honour. I still would not know, because it was not such a great occasion to go out with someone for two or three times. 10

Q. If I suggest to you that Mr. Armstrong returned from overseas on about 15th or 16th October 1966 does that ring a bell in your mind? A. Not a thing.

Q. Does it help you to know that it was on 21st October that you sent the money to Novak? A. No. But it certainly has nothing to do, the one with the other.

Q. Why are you so sure about that? A. Because why would Mr. Armstrong's return have anything to do with my sending money to Mr. Novak? 20

Q. You say it is just a coincidence? A. No coincidence at all. It has just nothing to do, one with the other.

Q. Did you meet Mr. Armstrong when he arrived back? A. No.

Q. At the airport? A. I don't think so.

Q. You don't think so? A. No.

Q. You would not be prepared to say one way or the other? A. I am prepared to say I did not meet him. 30

Q. You are prepared to say you did not meet him?
A. Yes.

Q. You would not be prepared to deny that you met him a day or two after he came back, would you?

A. Well, I don't know when he came back so I could not very well say it was a day or two after. I would have met him at the tennis courts, when they rang me to play tennis. That is when I arrived - when they rang me to play tennis. I don't know whether he came back that week, or a month before that. I don't keep a check on Mr. Armstrong's movements, to know when he came back. 40

Q. Did Mr. Armstrong write to you while he was away? A. No. Yes, he did. He did. I remember one letter. I think it was from Yugoslavia. I think it was a postcard. It was a postcard, where he described to me the changes in Yugoslavia to what I described to him that it was before when I lived there. It was a postcard. I don't know whether it was in his handwriting, but I received a postcard from Zagreb, which just briefly described to me the city that I was born in. 50

Q. When he came back you were aware that he had been put out of his position as Chairman of Landmark? A. No, I was not aware of that.

Q. He never told you? A. No.

Q. Never discussed it with you? A. I was not a shareholder. Why should he discuss it with me? I could not help him, whether he was put out, or not.

Q. You see, you could have helped him if you were required to follow Mr. Barton, couldn't you? A. I can't see what that has got to do with it. How could that help him? If he needed some shares to be voted in by the shareholders - I was not a shareholder, so I could not help him. 10

Q. You knew he needed shares to be voted in? A. I suppose that is how they do it. The one that wins most of the shares is usually the one that takes over the company. Isn't that the way it works? Even with my limited knowledge, I know that much, Mr. Gruzman. I am not that much of a fool. 20

Q. Mr. Hume, I put it to you that after Mr. Armstrong arrived back in Australia ---? A. From Australia?

Q. I put it to you that after Mr. Armstrong arrived back in Australia he consulted you? A. Consulted me?

Q. And gave you instructions to follow Mr. Barton? A. He did not, your Honour, at any time.

Q. And that you in turn engaged the services of Novak? A. I did not. 30

Q. I want to come forward now. By the way, did you have some work to do for Mr. Armstrong in connection with a shop at Double Bay? A. Nothing to do with Mr. Armstrong. Mrs. Armstrong was a part-owner in a shop at Double Bay. Mr. Armstrong had nothing to do with the shop. I believe someone in the shop once took some money out of his pocket. That was the only connection he had with the shop.

Q. Yes? A. Then I was asked by Mr. Armstrong to go out and see the part-owner of the shop, who was a Mr. Hoffman, and then I went to see Mr. Hoffman, and he told me about his suspicions about one of the employees, and that is what I did. 40

Q. When did this happen, Mr. Hume? A. I would not know. There was nothing behind it to my knowledge at all. I never managed to uncover anything.

Q. When did this occur? Either you being asked to carry out the investigation or the actual carrying out of the investigation. When did that occur? A. I actually did carry out investigations, not just being asked to. 50

Q. Well, when was that? A. I don't know when it

was. It was so unimportant. It was, I believe, a pretty girl that was the suspect, and, of course, I immediately did not believe she was doing these things, because pretty girls have things given to them and I doubt whether they would go to the trouble to take them. That is my opinion, so I did not persevere with it much.

Q. The date and place? A. I beg your pardon?

Q. The date? A. What? 10

Q. The date? The time when you were either asked to do the work or did the work? The date, or time associated with it. Could you give us the date or time associated with this matter? A. No, I could not help you. Not to save my life I could not help you on this date because it was something so unimportant to me.

Q. Purely social assistance to Mr. Armstrong?

A. Not purely social assistance. They had suspicions. It was not Mr. Armstrong that had the suspicions. It was the owner of the shop. I just carried on with the inquiries, and got no result. 20

Q. Mr. Hume, if I tell you that you sent out an account in respect of that ---? A. I always send an account for everything I do, Mr. Gruzman. Whether it gets paid is another story.

Q. If I tell you you sent out an account on 21st December 1966 for that work ---? A. Yes.

Q. - does that help you to fix when the work was done? A. No. It would tell me that it was some time before that. 30

Q. Well, you have told us that you regarded it as polite to wait for a month? A. Yes.

Q. Do we assume from that that the work would have been done about the middle of November? A. We could, unless, of course, Miss Catt was in a hurry and she sent it out quicker. But I could not help you there, because I could not pinpoint the date.

Q. It might have been October, might it? A. No, that would be too long. No, we do not leave it so late as that. 40

Q. So that it would be some time during the month of November 1966 that you were watching the employee of the Double Bay shop? A. This is only guessing. It could be November; it could be December. I am not going to say that, because I do not know.

Q. How many days did you spend on that work?

A. A few. 50

Q. A few days? A. Yes, quite a few. It might be even a week.

Q. A week? A. It could be. I don't know. It was not very important, and I was not particularly taking notice of how long it was going on. From the time I started on the job I had doubts. It just did not ring true. I still had to persevere with it because I was asked to do it, but it just did not sound right.

Q. It was Mr. Armstrong who asked you to do it, wasn't it? A. No. Mr. Armstrong just told me - he asked me to go and see Mr. Hoffman. 10

Q. Mr. Armstrong told you to see Mr. Hoffman about a job? A. No. We didn't know at that time whether I was going to take on the job, or anything. Mr. Armstrong told me someone took some money out of his coat pocket while he was at the shop, and then he said "Go and see Mr. Hoffman. He will brief you - give you some idea of what is going on." Mr. Armstrong - I don't think Mr. Armstrong has been in the shop very often at all. 20

Q. I beg your pardon? A. Mr. Armstrong probably has not been in the shop very often. He didn't know anyone there.

Q. How much money of Mr. Armstrong's had been stolen? A. I don't know. It could be \$100. Something like that. I don't know.

Q. How long after Mr. Armstrong spoke to you did you start doing the work? A. It would have taken me some time to see Mr. Hoffman. I am only guessing. I suppose three or four days after that. 30

Q. Probably I suppose about the beginning of November or thereabouts? A. I did not say. It could be the beginning of December. You are answering for me, Mr. Gruzman, now.

Q. Where did the discussion with Mr. Armstrong take place? On the tennis court? A. Yes, it would have been on a tennis court.

Q. Purely chance? A. Well, it was not something of great importance.

Q. Well, let me take you forward a little bit now. We know that on the weekend of 6th-7th January? A. It was not 6th January. It was the 7th January. 40

Q. The 7th? A. Yes.

Q. Thank you. On 7th January Vojinovic made certain allegations to the police? A. I don't know what allegations he made on the 6th or 7th, or what date he made them. But I know where I was on the 7th January.

Q. And at that time, Mr. Hume, you were unaware of Vojinovic's name? A. Yes, unaware. I was unaware even on the date when I was being interviewed by Sgt. Wild. I was unaware on that date, but when 50

he showed me the photograph then I knew the man he was referring to.

Q. Have you thought of what you have just said, Mr. Hume? A. Yes. No one at the Cross would know Vojinovic by that name. I believe the name they give him is "Little Alec".

Q. You have just stated to his Honour that when you were interviewed by Sgt. Wild you were unaware of Vojinovic's name? A. Until he showed me the photograph, and then he told me the name. 10

Q. When he showed you the photograph and suggested to you the name Vojinovic it meant nothing to you? A. When he showed me the photograph I certainly recognised the man as one I had seen at the Cross.

Q. When he told you the name "Vojinovic" it meant nothing to you as a name, did it? A. No. As I mentioned to you before, he was known as Little Alec.

HIS HONOUR: Mr. Hume, just confine yourself to answering the questions which are asked of you. Just answer the question, if you are able to do so, directly, without adding comments to your answers. 20

MR. GRUZMAN: Q. On 17th January, Det. Sgt. Hammond told you - A. Senior Constable Hammond.

Q. Thank you. I will start again. On 17th January Senior Constable Hammond told you that Vojinovic had stolen your car, didn't he? A. That is right. He mentioned the name "Vojinovic", yes.

Q. So that if you were unaware of the name "Vojinovic" when you were interviewed by Sgt. Wild -? 30
A. Yes.

Q. - you must have been interviewed before the 17th? A. No. You are wrong. I was interviewed on the 18th. The name meant nothing to me, because I didn't know Vojinovic, so when Senr. Const. Hammond said that Vojinovic stole the car what is the difference to me whether it was "Vojinovic" or what his name was. I didn't know the man.

Q. In your diary, Mr. Hume, in large letters on 17th January you wrote the name "Vojinovic", didn't you? A. That is right, yes. 40

Q. Do you tell his Honour then that the next day Sgt. Wild said to you "Do you know a man named Vojinovic", and you said "No"? A. That is right, and I still say that. No, I didn't know him.

Q. Look, sir, you told us only a moment ago that when you were interviewed by Wild the name "Vojinovic" meant nothing to you? A. Nothing to me at all. But I told him I had received the 'phone call only the day before, from Hammond, and he told me that a man by the name of Vojinovic stole my car. That is all I know. 50

Q. You say you told that to Sgt. Wild? A. Yes, I did.

Q. So that what you say is that when you were interviewed by Sgt. Wild the name Vojinovic meant a lot to you, didn't it? A. No, it did not mean much to me at all. It still does not mean anything to me.

Q. Wasn't he the man who had stolen your car?

A. What has that got to do with it?

Q. The name Vojinovic on 18th January ---? A. Yes.

Q. - was a name which meant something to you, wasn't it? A. No. I had previously been informed that he had stolen my car the day before that by Hammond. What is that? I still can't see what you are getting at. 10

Q. Mr. Hume, why did you need a photograph to form any concept of the man? A. Because how would I know by the name who he was? I needed the photograph so that I would know what sort of man he is. By the name I would not be able to tell him.

Q. You have told a deliberate lie by arrangement with Sgt. Wild as to the date you were interviewed, haven't you? A. No, I have not. I have not. 20

Q. You were interviewed by Sgt. Wild before Constable Hammond telephoned you? A. I have not (sic). I have not. Miss Catt was there when the 'phone call came.

Q. You were interviewed at a time when you were able to say that you did not know Vojinovic by name?

A. No, I was interviewed on 18th by Sgt. Wild, and previous to that I had received a 'phone call from Const. Follington, who told me that Sgt. Wild wants to interview me at the C.I.B. in the Safe Squad, I believe. 30

Q. Let me just ask you something else. Do I understand you to be saying to his Honour that there is no truth in Vojinovic's allegations? A. No truth.

Q. That you were not associated with Vojinovic? This is prior to 8th January? A. Not at any time. Even now I am not associated with him. 40

Q. And that Novak to your knowledge had no association with Vojinovic? A. I can't answer for Novak's movements.

Q. You think Novak may have had? A. I don't know. You ask him that.

Q. Ask him? A. Yes, you ask him that. You can't ask me about someone else's movements.

Q. You don't know one way or the other what arrangements there were between Novak and Vojinovic? A. According to Novak, none. 50

Q. But you don't really know? A. I don't know.

Q. Can you explain to his Honour how it came about that after Vojinovic made these allegations on 8th January that he came to go in your car with Novak to Melbourne on 12th January? A. No explanation. All I can say is that it was possibly pre-arranged by him and Mr. Barton when he met him at the Rex Hotel. That is the only thing - at the meeting between Mr. Barton and Vojinovic at the Rex Hotel. That was previous to the time I believe when - I think first he saw Mr. Vojinovic, and then Mr. Barton started making his complaints. Isn't that correct, Mr. Gruzman? 10

Q. You might just explain to us exactly what you meant to say, that the going to Melbourne in your car on 12th January was something pre-arranged by Mr. Barton and Vojinovic. Would you mind expounding on that to his Honour? A. I can't really expound on it. But that is what I am thinking now, after knowing the story better than certainly at the time when I was interviewed by Sgt. Wild. I believe that was the whole plan - to prove - to bring in some sort of association. 20

Q. You think that Mr. Barton -? A. I do think so. I really think so, Mr. Gruzman. Without any doubt in my mind, I think so.

Q. That Mr. Barton made an arrangement with Vojinovic, that Vojinovic would go in your car with Novak to Melbourne? A. Yes, I think so, yes.

Q. To your knowledge did Mr. Barton know Novak? A. No, but it is quite possible because he was a waiter at the Chevron Hotel, and I believe Mr. Barton goes there quite frequently. That was up at Surfer's, your Honour. 30

Q. Do you think Mr. Barton suggested to Vojinovic to steal the car? A. I don't know. I would be thinking - I cannot answer. I believe Mr. Barton is behind it. After all, my M.G. was stolen on the 12th. It was stolen also on the 12th, and recovered a day after, in Redfern, damaged, by the police. This all fits in. My place was broken into also at that time. Someone stole some things. The M.G. was stolen. Everything fits in, Mr. Gruzman. 40

Q. Mr. Hume, after Novak went to Melbourne on the 12th, when did you next see him? A. Well, I don't really know what date he went to Melbourne. That is for one. When I saw him - I did not see him until he came back from Melbourne. That is also only guessing. That would be after Senr. Const. Hammond rang. Yes, that would be after that. I suppose a day or two after that he arrived in Sydney without any money; without any clothes; and he came to me for help again. All of this was taken by Vojinovic from him. He did not even have his underwater gear - his spear fishing gear. Even that was taken from him, because he had that in the boot. 50

Q. So that the position was that he went to Melbourne, came back and immediately came to you? A. Yes. Because he needed money, I suppose.

Q. And certainly by 21st January you were working with him in certain divorce matters, weren't you?

A. No.

Q. Weren't you? A. No.

Q. Mr. Hume, look, I don't want to play on words. On 21st January Ziric --? A. He may have been employed by me on some job, naturally, because he had no money. I certainly would have found something for him to do, yes.

10

Q. So that by 21st January he was involved with you in some matter which led to a report being produced? A. Report? He has never given a report to me in his life.

Q. Mr. Hume, I am not suggesting that he made a report on that matter. On 21st January he was involved with you in a matter which led to the production of a report which you have seen? A. You mean this Eckstein report?

Q. Yes. A. Well, he was employed by Eckstein on that. He was employed by Eckstein on this one, your Honour, as I have mentioned before.

20

Q. Won't you admit that on 21st January 1967 you were on a divorce raid, and Novak was also there? A. That is possible, yes.

Q. That is a fact, isn't it? A. Well yes, you have got the documents. I have not.

Q. You agree that on Saturday, 21st January, at 1 a.m., you were in a divorce matter, and Michael Novak was there also? A. Yes, but it did not finish up as a divorce matter. It was just an attempted divorce matter, but there was no co-respondent there. I have already mentioned that previously.

30

Q. So that the position is that Novak was only away from you for seven days or less? A. I don't know.

Q. Well, you see, you had been seeing him almost every day, hadn't you? A. Not necessarily. When he was working for me, yes, I would be seeing him, because naturally he would come and want to get paid and he was always short of money, so I would practically have to pay him every day - write him a cheque, and he goes to the bank and gets money from there.

40

Q. During December and the early part of January you were seeing Novak practically every day, weren't you? A. If he was working for me, yes. If he was not, no. You would find this easy by just checking through the cheque butts there.

Q. I put it to you that after Vojinovic told the Police about these matters that you arranged with Novak to take him to Melbourne in your car and to have him put in gaol down there? A. Your Honour,

50

I had never heard of Vojinovic until the 13th - until the 17th from Hammond, and the 13th, when Sgt. Wild told me that.

Q. And Novak immediately came back to Sydney, reported back to you, and you continued to employ him as before? A. Yes, I continued to employ Novak, but he was not - there is no truth behind what you have just said there.

Q. Subsequently, of course, you received the witness' expenses that Novak was paid or which were payable to Novak for giving evidence against Vojinovic? 10

A. I did not receive them. They were sent to my address because Novak did not give them any other address. He gave them my address.

Q. And it was paid into your bank? A. Yes, but I paid him the money, because he has not got a bank account. That is the only way I could do it. There was no other way.

Q. By the way, Mr. Hume, were you aware that Mr. Barton had left his home and gone to live at the Wentworth Hotel? A. Yes, I think at that interview at the Police Station, I think when Constable Follington arrived at the end of the interview, he asked me that question, and in fact he told me, "Did you know that Mr. Barton went to the Wentworth Hotel and is staying there?" 20

Q. Is this what you are suggesting, that the police, who were supposed to be protecting Mr. Barton disclosed to you his hiding place at the Wentworth Hotel? (Objected to; rejected.) 30

Q. Are you suggesting, Mr. Hume, that the police disclosed to you of all people where Mr. Barton was living at that time? (Objected to; rejected.)

Q. Mr. Hume, are you suggesting that Det. Follington told you that Mr. Barton was at the Wentworth Hotel? (Objected to; allowed.)

Q. Mr. Hume, is that your suggestion? A. Would you mind repeating that?

Q. Are you suggesting that Det. Follington told you that Mr. Barton was at the Wentworth Hotel? A. He was asking me a question, and he wanted to see what my answer was. He did not tell me for any other reason. He was asking me then did I know that. 40

HIS HONOUR: Q. As something may attach to the time, you say that was at the very first interview that you had with the police when they came that they talked to you about this matter? A. I think so, yes. I can't remember everything that was said at that interview, but that is what I think. 50

MR. GRUZMAN: Q. Of course, the asking of that question conveyed to you that Mr. Barton was in fact at the Wentworth Hotel, didn't it? A. I don't know. I didn't check up on that. Why should I take

Constable Follington's word as gospel. Maybe there was something behind it. Maybe that was a way of asking a question.

Q. Mr. Hume, I suggest to you that your knowledge of Mr. Barton being at the Wentworth Hotel came from following him - came from following Mr. Barton? A. I have never followed Mr. Barton, your Honour.

Q. Look, did you follow this girl at Double Bay?
A. Yes. 10

Q. How did you do that? A. Very simple. When she knocked off from the place where she was working I followed her from there, and she was usually picked up by a friend of hers.

Q. What did you do? Just stand outside the building? A. No, I did not stand outside the building. It would make me obvious. I was away down the street, parked in a car.

Q. Well, how could you tell when she came out?
A. I saw her coming out. 20

Q. You had her identified to you? A. Oh yes.

Q. And you watched in your car? A. Yes.

Q. She may have recognised you? A. No, because I was so far away she could not see me.

Q. And then what would you do when she came out?
A. I followed her.

Q. In the car? A. Yes, naturally.

Q. She was picked up by a friend in her car?
A. She was not picked up by a friend in her car. That does not make sense. She was picked up by a friend in his car. 30

Q. How did you know the number of the car? A. I didn't know the number of the car. I was watching her, not the car. I was not terribly interested in what car picked her up. I had to follow her movements.

Q. Well then, did you follow the car? A. Yes.

Q. Where did the car go? A. All over the town.

HIS HONOUR: I don't think I am very interested in this, Mr. Gruzman, am I? 40

MR. GRUZMAN: Q. You followed the car? A. Yes.

Q. It went to some flat? A. Yes. A house it was.

Q. A house? A. Yes.

Q. And then did you watch the house? A. Yes. I wanted to see all her associates, and so on.

Q. How did you watch the house? (Objected to; rejected.)

Q. Mr. Hume, I am going to suggest to you that at the interview with Sgt. Wild these questions and answers were made. First of all, you were asked, "Do you know a Yugoslav named Alec Vojinovic?" Were you asked that question? A. No. He said, "Do you know a man called Vojinovic?"

Q. I see. What did you answer? A. "No". Then 10
he showed me the photograph.

Q. He then showed you the photograph? A. Yes.

Q. Did he say, "I now show you a photograph of that man. Do you know this man?" A. Yes.

Q. And did you say "Yes, I have seen him around the Cross and at the Kellett Club"? A. I have never been in the Kellett Club. I would not be allowed to go into the Kellett Club. Mr. Dick Reilly was running the Kellett Club at that time, and I don't think he would permit me to go into the Kellett Club. 20

Q. Why? Did he have anything against you? A. Because he would think I give information to the police.

Q. Do you know Mr. Lennie McPherson? A. No.

Q. You don't know him? A. No.

Q. Seen him in the company of Mr. Armstrong?
A. No, I only saw tennis players in the company of Mr. Armstrong.

Q. Why did you laugh in that way when I suggested Mr. Lennie McPherson has been in the company of Mr. Armstrong? A. Why? 30

Q. Yes. A. Because he is not a tennis player to my knowledge.

Q. How do you know? A. Because I just know he is not a tennis player.

Q. You know him, do you? A. No, I don't know him.

Q. You know him very well, don't you? A. I don't know him very well at all. I don't know him. I don't know him. 40

Q. You are smiling while you are saying that?
A. Most certainly I am smiling, because I don't know him. I have heard that name before, but I don't know the man.

Q. You know of him? A. Heard of him, yes, quite a lot. The papers write about him quite a lot. I don't know him.

Q. He is the man known as "Mr. Big", isn't he?

A. I would not know. I don't know who Mr. Big is. This is what you are saying. Mr. Gruzman - not me.

Q. I put it to you that to your knowledge he has been in the company of Mr. Armstrong? A. That is incorrect.

Q. And on a friendly ---? A. I have never seen anyone but tennis players in the company of Mr. Armstrong.

Q. You say you would not be allowed in the Kellett Club by Reilly? A. Yes. 10

Q. Isn't Mr. Reilly now dead? A. I don't know. I suppose he is. I didn't identify him. I don't know.

Q. Were you asked this about Vojinovic by Sgt. Wild: "Q. How many times have you seen this man?" A. No, I don't think I was asked that.

Q. What were you asked along those lines? A. I don't know, really. "What do you know about this man?" and that sort of thing. That is what I would have been asked. 20

Q. "What do you know about him?" A. Yes, I think I was asked that.

Q. And what did you answer to that? A. "He is a small time criminal and he is associated with some small time criminals around the Cross". That is all.

Q. Did you answer "He is a bad criminal and he hangs around with criminals mostly at the Kellett Club? A. No, I didn't. The Kellett Club was never brought into it at all. I never mentioned the Kellett Club. 30

Q. Did Sgt. Wild ask you "Have you seen him with Momo?" A. I didn't (sic).

Q. Did Sgt. Wild ask you that question? A. I don't know. He could have. I suppose he could have.

Q. What was your answer, or what would have been your answer? A. Exactly the same as to you. I didn't tell them any different stories than to you. I can only tell the truth.

Q. What is your answer? A. No, I have not. 40

Q. I put it to you that you answered "Yes. I told Momo to keep away from him"? A. No, that is fabrication.

Q. Were you asked "What is Momo's real name?" A. Yes.

Q. Did you answer "Michael Ziric"? A. Yes. He is also known as Michael Novak, and also known as Momo.

Q. Were you asked "Does he have any other name

that he uses?" A. Yes.

Q. Did you answer, "I don't think so. I would know if he did have"? A. Well, I told him all of those names, and apart from those I don't think he has any other names. Not to my knowledge.

Q. Were you asked, "Have you ever employed or hired Momo"? A. Yes.

Q. What did you answer? A. "Yes". Of course, yes. 10

Q. Did you answer in these terms: "Yes, I wanted to help him as a friend. I used him many times in my work as a private investigator to help me"? A. No, that was never asked. That was never mentioned. I told him exactly how I met Mr. Novak, and I also told him how Mr. Gibbons came to me and asked me later on to look after Mr. Novak while he was still at Long Bay and I promised Mr. Gibbons I would do that.

Q. Is this statement true in answer to the question? A. That statement you have got there --- 20

Q. Just a second. In answer to the question "Have you ever employed or hired Momo?" Is this a truthful answer: "Yes, I wanted to help him as a friend and I used him many times in my work as a private investigator to help me"? A. I never said that.

Q. Is that a truthful statement? (Objected to; rejected.)

Q. Mr. Hume, did you want to help Novak as a friend? A. I wanted to help Mr. Novak because Mr. Gibbons asked me, and I believed in Mr. Novak. Yes, of course, I wanted to help him. I did in fact help him. 30

Q. And did you use him many times in your work as a private investigator? A. Well, I used him a number of times, yes. I would not say as a private investigator. I used him as someone who was picking up documents here and there, and checking up on addresses. Anyone could do that. That is not a private investigator. You use girls in solicitor's offices for that sort of thing. 40

Q. In your job you used him to help you in your work as a private investigator? A. No, that is not private investigating. Anyone goes around taking particulars like that. I use Miss Catt for that now, and she is not an investigator.

Q. Your work is that of private investigator?
A. Yes, but he could not do my work.

Q. You used Novak to help you in your work, didn't you? A. No, he was not doing my work. None of them can do my work. I have to do raids, and I have to go to Court and give evidence, and 50

that sort of thing. He could not do that? How could he do that?

Q. Were you asked by Sgt. Wild "What do you mean by helping you?" Were you asked by Sgt. Wild what you meant by saying Novak was helping you? A. No, he never asked that question at all.

Q. Did Novak help you with "little simple things, following people and reporting to me"? A. No, he does not ride well enough - does not drive well enough. He smashed up every car I lent him. How could you send him following something. He could not drive to save his life. He only once drove me - I think to Bexley - and I got out of the car and got a taxi. If I would send him to follow someone I would want to be in Callan Park. 10

Q. Were you asked by Sgt. Wild "Can you find Momo in a hurry for us?" A. Can I find ---

Q. Find Momo. "Can you find Momo in a hurry for us?" A. No. No policeman would ask a question like that. I would say "Go and find him yourself", if he asked me a question like that. If he asked me could I find him in a hurry I would say "Go and find him yourself". He probably asked me could I find him, or something like that. 20

Q. Did you answer "Yes, I can bring him here within 24 hours"? A. No, I did not. How would I know whether I could bring him or not. Your Honour, you just can't bring a man to the Police Station, if he doesn't want to come to the Police Station. How could I say that? That is stupid. 30

Q. Were you asked "Do you know Alexander Barton of Landmark Corporation"? A. Yes, of course I was asked that.

Q. And did you answer "Yes, I did a job for him at Surfer's Paradise"? A. I could have answered, yes, that I did that. I could have answered that I did a job for him - for the company. I would not have said for Mr. Barton, because I am not proud of working for Mr. Barton, so I would not have mentioned it. 40

Q. Were you asked "What kind of job?" A. Yes, I believe I was. Repossession of machinery, or something like that.

Q. Did you answer "Mr. Barton and Mr. Armstrong's company had a problem with a contractor and I was hired by Mr. Barton to take possession of some machinery"? A. No, I don't think - no, I would not have gone so far into the details of that. I just told them briefly what happened. 50

Q. What did you tell him? A. I said "I went over there to repossess machinery".

Q. That is all you said? A. That is right. "I was once employed by them - by the company, and

Mr. Barton and Mr. Armstrong were in this Company". That is all. "I went over there and repossessed machinery".

Q. Was there a discussion about Mr. Armstrong?

A. Yes, he asked me a number of things about Mr. Armstrong.

Q. First of all, did he ask you "Is the man Alexander Armstrong, M.L.C.?" A. I would not know whether he was. I only learned this once the newspapers started publishing the story. I don't know what M.L.C. ---

10

Q. You don't know what an M.L.C. is? A. I thought they were cricket players - M.C.C. or M.L.C. I didn't know much about that.

Q. You never knew Mr. Armstrong was a Member of Parliament? A. I thought he was in Parliament, but I didn't know what was M.L.C.

Q. You knew him as Senator Armstrong, didn't you? A. No. I believe there is a Senator Armstrong in Canberra, but I didn't know him as Senator Armstrong.

20

Q. Mr. Armstrong was known to you as Senator Armstrong, wasn't he? A. No, as a different Armstrong.

Q. You are well aware of this? A. Yes. I heard of Armstrong in Canberra. That is Senator Armstrong. That is in the Federal Government, I think.

Q. Well, in respect of Mr. Armstrong, did Sgt. Wild ask you how well you knew him? A. Yes, he did ask me that.

30

Q. And did you answer "He is my friend and my best client"? A. No, I didn't. That would be a lie.

Q. Well, first of all, is it true? A. I could not even say he is my friend, let alone my best friend.

Q. Is it true that Mr. Armstrong is your friend? A. I could not say that he is a friend of mine. I know him, yes. But "friend" - the definition of "friend" - you would have to explain to me that before I could answer that. I know the man, yes.

40

Q. But you have never said that he is your friend? A. Well, he is known to me socially, yes, quite well.

Q. I will accept your answer? A. I could not say he is a friend of mine. No, I could not.

Q. That is not the question. Have you ever said of Mr. Armstrong "He is my friend"? A. No.

Q. We are now speaking, of course, of a time only a few days after you had slept on his boat?

50

A. Yes, but that does not make him a friend. Jack Murray was also there, and I was eating his food, but I could not call Mr. Murray my friend either, could I?

Q. Have you ever said of Mr. Armstrong at about that time that he was your best client? A. No, that would be false. I told you who was my best clients. They are solicitors in Sydney. They are my best clients by far. Certainly not Mr. Armstrong. 10

Q. I don't want to get this confused. The question is that at round about that time - we are speaking now of January 1967 - did you ever say about Mr. Armstrong to anybody "He is my best client"? A. No, because he was not my client. It was always through some company. He used to ---

Q. Will you please --? A. Yes.

Q. It is better for you, I think, if you don't say too much. A. All right.

Q. You say you never told anyone at round about that time that Mr. Armstrong was your best client? 20
A. That is right. I didn't.

Q. And secondly, you say it is not true that Mr. Armstrong for six months prior to that time was your best client? A. It was for companies that I was doing these things. I have told you that at least a dozen times, Mr. Gruzman.

Q. Were you asked "What do you mean by 'He is my friend'?" A. No.

Q. Did Sgt. Wild ask you what you meant by saying that Mr. Armstrong was your friend? (Objected to; rejected.) 30

Q. Did Sgt. Wild say this to you? "What do you mean by 'He is my friend'?" A. I don't quite follow this.

Q. Did Sgt. Wild ask you that question, "What do you mean by 'He is my friend'?" A. I never said he was my friend, so how could he ask me "What do you mean by that?"

Q. You say you never told Sgt. Wild? A. I never did. I never said he was my best friend or best client or anything of the sort. 40

Q. And did you answer to Sgt. Wild "You know I am with him a lot socially and I play tennis with him"? A. I said "I play tennis with him". I did not say that I was with him a lot socially. That is wrong.

Q. That is wrong? A. That is definitely wrong. I was with him four or five times, and that was with your friend and associate, Mr. Cedric Symonds, in his company and his wife and some other people. Always the same people. 50

- Q. Someone else's home for dinner? A. It was Mr. Cedric Symonds' home for dinner. I remember that very well, because I had to eat this soup which I didn't like. Borsch soup, or something like that it was. I didn't like it, but I had to eat it. It was all red colouring and made out of some sort of vegetable or something like that. I didn't like it, and that is the sort of thing that I remember for a long time. 10
- Q. Did you go out to someone else's home with Mr. Armstrong for dinner? A. Cedric Symonds. No.
- Q. Are you sure of that? A. Positive.
- Q. Nobody? A. No, no one. No one apart from Mr. Cedric Symonds for dinner.
- Q. Did you go out for dinner to a restaurant with Mr. Armstrong? A. Yes, again in the company of Mr. Cedric Symonds.
- Q. Was that the Villa? A. Again in the company of Mr. Symonds, yes. That was for dinner to the Coachman Inn. I think we went to the Coachman Inn. 20
- Q. Apart from that you say you have had no social intercourse with Mr. Armstrong? A. The word "intercourse" - does that fit in, Mr. Gruzman? My English is not so good, but I still
- Q. You had no social contact with Mr. Armstrong?
A. No, it was always in the company of these people who are also your friends.
- Q. Were you asked "How often do you see Mr. Armstrong?" A. Yes. I think I was. 30
- Q. You were asked that? A. I think so.
- Q. And did you answer "Two or three times a week when he is in Sydney"? A. Two or three times a week when he is coming down to play tennis with us. That is at the public courts, because we only used to play once a week at his place. If he wanted to play tennis usually he used to come to where we were playing at Cooper Park or Jensen's Park. That is the only time.
- Q. Did Sgt Wild ask you "What do you mean by 'He is my best client'?" Did Sgt. Wild ask you that? 40
A. No.
- Q. Did you tell Sgt. Wild that Mr. Armstrong gives you a lot of investigating to do, "and I earn good money from him"? A. No.
- Q. Anything like that? A. Nothing like that.
- Q. Did Sgt. Wild want to know what money you had received from Mr. Armstrong? A. I never received any money from Mr. Armstrong.
- Q. Well, did Sgt. Wild ask you any questions 50

relating to moneys that you had received from Mr. Armstrong? A. I have never received money from Mr. Armstrong.

Q. Mr. Hume, it would be a lot quicker if you would answer the question? A. You are not going to try and make me say something that is not true. I received payments from companies. I have not denied that, Mr. Gruzman.

Q. Mr. Hume, listen to the question. A. Yes. 10

Q. Did Sgt. Wild ask you whether you had received any moneys from Mr. Armstrong? Yes or No? A. No, I don't think he even asked that.

Q. No question like that was asked? A. No. He asked me what work I did. I told him, and that I was paid - I told him I was paid by the company. I told him once that Mr. Barton signed a cheque for the company. I don't know who was paying for it. I doubt whether it was Mr. Barton.

Q. You did tell him you had received money from companies? A. Yes, I think I did, yes. 20

Q. Did you tell him they were large bills? A. I don't think he even asked me whether they were large or small. He asked me what sort of work I did and got paid for it. I told him that.

Q. I put it to you that you said to him "I always give him big bills, and he always pays"? A. Never. Never. I would never even say such a stupid thing as that. 30

Q. Were you asked "How much money have you got from him lately?" A. No.

Q. Did you answer "I don't remember, but not much"? A. I was never asked that question and never made any answer.

Q. You have always been paid for any work you have done connected with Mr. Armstrong, haven't you? A. This "connected with Mr. Armstrong" again - you keep on using those words that I cannot properly reply to them. "Connected". Now, this job in Double Bay was not connected with Mr. Armstrong in that connection. His only connection was that someone took money out of his pocket. 40

HIS HONOUR: Mr. Gruzman, there is no point in getting involved in this argument about "connected with".

MR. GRUZMAN: Q. Did Sgt. Wild say to you "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 them?" A. Yes, I believe he said something to that effect. 50

Q. Did you 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." Did you give that answer? A. No, your Honour, never.

Q. Did you tell him you had hired Momo? A. No.

Q. And his friend? A. What friend?

Q. Well, did Sgt. Wild say that to you? Did he say to you "What friend of Momo do you mean?" A. No, he didn't.

Q. And did you answer "Alec. You just showed me his photograph"? A. No, definitely not. 10

Q. Did you tell Sgt. Wild that Armstrong was a bad man? A. No. This is so silly. He is a bad man, and I am playing tennis with him! Just what exactly does that mean?

Q. Did you tell Sgt. Wild that he does a lot of criminal things - for example, he buys stolen jewellery? A. No, I certainly did not. I think that is the most ridiculous thing I have heard for a long time, for Mr. Armstrong to be buying stolen jewellery. He would certainly leave himself wide open for anyone trying blackmail or anything like that if he was to do such a stupid thing. It would be a stupid thing for a wealthy man to get involved in it. Who is saying this, Mr. Gruzman? 20

HIS HONOUR: Mr. Gruzman, I don't know what the significance of all these argumentative additions that Mr. Hume is making in his answers has. If you are going through this statement merely to go through the formalities of taking issue upon it, it may be quicker to show Mr. Hume the statement. I quite realise that certainly as to earlier parts of it there were other reasons for you to put them directly. Once you have reached the point where you have gone past those matters that you may want to put specifically, it may be a great deal shorter and quicker to put the whole statement to the witness. Take your own course. I am not requiring you to hurry or to cut corners. Take your own course. 30 40

MR. GRUZMAN: Q. I put it to you, Mr. Hume, that you told the police that Mr. Armstrong kept stolen jewellery in his house? A. No, your Honour.

Q. And that you drew a sketch to show where it was? A. No, your Honour.

Q. Did Sgt. Wild ask you why Mr. Armstrong wanted to harm Mr. Barton? A. No.

Q. Or anything like that? A. No.

Q. Nothing like that? A. Who said he wanted to harm him? That is what you are saying, Mr. Gruzman. Mr. Wild never said that. 50

Q. Didn't Sgt. Wild tell you that Vojinovic's allegation was that ---? A. This is what he was

saying, yes, that a man called Vojinovic was saying these things.

Q. - that Mr. Armstrong wanted to get Mr. Barton killed? A. This is what another man was saying. That is right, yes.

Q. And did Sgt. Wild ask you if you knew of any reason why Mr. Armstrong would want to harm Mr. Barton? A. I think, yes, that question was asked.

Q. And what was your answer? A. "No idea." 10

Q. "No idea"? A. "No reason. I don't believe it."

Q. Didn't you answer "Mr. Armstrong was the Chairman of a big company. Mr. Barton pushed him out. Mr. Armstrong wanted to get even with him and get his position back"? A. No.

Q. Were you asked "For how long did you and your man follow Mr. Barton?" Were you asked that? A. No, I was not, because we never followed him, so I was never asked that question. 20

Q. And did you answer "From about the end of October until now"? A. We never followed him. Nobody ever followed him. Oh yes, yes, Mr. Gruzman, there was a man - a private inquiry agent - that rang me up. He followed Mr. Barton for his wife, and his name is Owen Hetherington. That is right, your Honour. That is the man that followed Mr. Hetherington - the man that followed Mr. Barton. First of all I received this message from a solicitor to get in touch with him. I got in touch with him and he told me to ring up Mr. Owen Hetherington and he gave me a number, and then I did this, and then Mr. Hetherington - first of all, Miss Catt got in touch with him and then I got in touch with him and he told me that he was following Mr. Barton and followed Mr. Barton to Pott's Point, and there Mr. Barton had a girl friend, and we (sic) went up a tree and he was looking in through a window and he had enough evidence to do a divorce raid, but Mrs. Barton didn't want a raid, and Mr. Barton is also allergic to street lights - red lights. He would go well out of his way to pass a red street light. 30 40

Q. When did you make up that shocking pack of lies? A. Why not ask Mr. Hetherington? You can ask him and ask Miss Catt. I have not made one lie in this courtroom, your Honour.

Q. Mr. Hume, who was the solicitor? A. That rang me up?

Q. Yes. Name him, if you can. A. Yes, most certainly. 50

Q. What is his name? A. Mr. Francis Marks, from Walker, Gibbs & Donald. He asked me to ring up Mr. Owen Hetherington.

Q. When was that? A. Oh, some months ago.

After all these newspaper stories started coming out.

Q. What you are saying to his Honour is that Mr. Barton probably did see someone watching him, but it was this other man? A. I am not saying that. I don't know whether Mr. Barton did see someone or invent someone there. All I am saying is what the man told me. That is what I am saying.

Q. What you are saying, just to get it clear, is that you believe that Mr. Barton's evidence that he was watched was true? A. No, I don't believe it. 10

Q. Well, why did you mention with such detail the fact that you believe that Mr. Barton was in fact watched? A. I have just mentioned to you what I was told - that a man was following him.

Q. Mr. Hume, did you think that that had anything to do with the evidence given in this case? A. No, not much.

Q. Or was it intended as a dirty libel? A. No, it is not libel, it is the truth. 20

Q. Well, why did you mention it, if in your mind it had nothing to do with the case? A. You keep saying I was following Mr. Barton, and I was not, and I have told you the only instance I know of someone following him was Mr. Owen Hetherington.

Q. I want to get it clear. Is it your belief that this man was following Mr. Barton at about the time you were supposed to be following him? A. I never even bothered asking him. I said "Look, this case has nothing to do with me. I am only a witness. You had better get in touch with Mr. Armstrong's solicitors." That is all. 30

Q. Is this the position, that you have got no belief or knowledge at all? A. None whatsoever.

Q. Well, why did you tell that dirty pack of lies? A. Your Honour, every word that I have said in this courtroom is true and you can - if you ring up Miss Catt, she had the first conversation with this man, Owen Hetherington. 40

Q. By the way, did you have any conversation at all with Sgt. Wild about stolen jewellery? A. No.

Q. Not at any time? A. Not at any time.

Q. You were giving information to Momo as to places to be broken into, weren't you? A. Your Honour, I find this offensive.

Q. You supplied Momo and Vojinovic with a list of addresses of properties to be broken into, didn't you? A. No.

Q. And the document was in Vojinovic's possession, wasn't it? A. I don't know what was in 50

anyone's possession. I have never given anything of the sort to anyone.

Q. Mr. Hume, did you see Mr. Goldstein in January 1967? A. I could have. I have seen Mr. Goldstein on a number of occasions because I did a bit of interpreting, and Mr. Goldstein was handling a number of cases for some of the clients - Croations. Yes, I could have seen him in January.

Q. Was Mr. Goldstein known to you as one of Mr. Armstrong's counsel? A. No, no. In January? Only recently I read about it in the papers. 10

HIS HONOUR: January?

MR. GRUZMAN: January 1967.

Q. On instructions of what solicitor were you seeing Mr. Goldstein in January 1967? (Objected to.)

Q. Did Messrs. Dare Reed, Martin & Grant instruct you to see Mr. Goldstein in January 1967? A. No. No, I was seeing Mr. Goldstein on some other case altogether. I think it was a woman called Miss Raphaelovic, or something like that. There were also a number of other cases, but this particular case I remember that Mr. Goldstein was handling. 20

Q. You say that in none of these cases in regard to which you saw Mr. Goldstein around that time were Mr. Grant or anyone from his firm associated? A. No, not that I can remember. They could have been on the opposite side ... (answer not completed.)

Q. Did you arrange an interview between Mr. Grant and Mr. Novak? A. Yes. I think I just went in there with Mr. Novak. 30

Q. Were you asked by Mr. Grant to bring Novak? A. No, I did that on my own. I was never asked for anything by Mr. Grant. I did not even know Mr. Grant was going to subpoena me as a witness until very recently. That is the reason why I made that affidavit.

Q. And Mr. Grant, in your presence, took a statement from Novak? A. Yes, he did. 40

MR. GRUZMAN: Q. Did you have your gun with you when you went to the villa? A. What month would that be in the year?

Q. Mr. Hume, you have told us on many occasions about going out with Mr. Cedric Symonds and you will never forget the dinner you had and so on? A. That is right.

Q. When was that? A. About the same time as we went to the villa.

Q. When was that? A. I don't really know but if it was in the summer time I would not have had the gun because I was doing a lot of dancing in 50

the villa and the gun would be too clumsy and it would be too hot anyhow up there.

Q. The question is this: The night that you had dinner at Mr. Symonds' place and you went into the villa, did you have your gun with you or not? A. No, I don't think so.

Q. Are you prepared to say you did not? A. Yes. If it was summer time and I was dancing, no, I would not have had the gun. 10

Q. No ifs or buts. Did you have your gun with you on that night or not? A. That is a very hard question to answer. I could not say that but I don't think so.

Q. You do not know one way or the other? A. No. I remember I was doing a lot of dancing so I wouldn't have had my gun with me, according to that, because I think it was summer time and it would have been hot.

Q. So you did not have your gun with you? A. That is right. 20

Q. Did Novak tell you that he had a gun? A. No. I don't think he ever had a gun.

Q. Did Novak tell you that Vojinovic had a gun?
A. No.

Q. Did Novak tell you that on the trip down to Melbourne in the car, he and Vojinovic each had a gun? (Objected to; rejected.)

Q. You have made some allegations about some solicitor informing you that instructions had been given to follow Mr. Barton? A. No. I said that a solicitor rang me up and told me to get in touch with Mr. Allan Hetherington who is a private inquiry agent and he would be able to - 30

Q. Mr. Hume, the suggestion was that the solicitor you have mentioned was a solicitor acting for Mrs. Barton, was it not? A. No, no.

Q. The man of whom you spoke is your own solicitor, is he not? A. Yes, he is my own solicitor, that is right.

Q. And he had no concrete information of any kind, did he? A. He did. I believe he must have spoken to the inquiry agent himself. 40

Q. Your solicitor has certainly never acted for Mrs. Barton or had any association with her? A. But who said he was acting for Mrs. Barton? I didn't say that. He only told me to get in touch with a Mr. Hetherington and he gave me a number and then Miss Catt finally got in touch with Mr. Hetherington and she spoke to him and then I got in touch with Mr. Hetherington and I spoke to him and then I gave Mr. Hetherington the number of Mr. Armstrong's solicitors and I believe he got in touch with them. 50

RE-EXAMINATION:

MR. STAFF: Q. (Exhibit "LL" shown.) You have before you Exhibit "LL" which is the original of what has been called your affidavit of February 1967, is that right? A. That is correct.

Q. Now when this case first commenced you produced on subpoena duces tecum some documents to the Court. Do you remember that? A. I do.

Q. Amongst the documents which you then produced, did you produce a photo copy of the affidavit which is Exhibit "LL"? A. I could have because I produced all the documents which I had in reference to this case. 10

(Ledger sheet, Commonwealth Trading Bank, King's Cross Branch, account of Hume's Investigations, tendered and marked Exhibit 78.)

(Envelope labelled "Fifth week 1966-67, 25th to 31st July 1966" and vouchers contained in it, tendered and marked Exhibit 79.)

MR. STAFF: That is the whole of the re-examination. 20

HIS HONOUR: Q. Are you likely to be leaving Sydney in the course of the next few days? A. No, definitely not - not for quite a long time.

(Witness retired and excused.)

MICHAEL JOSEPH GIBBONS
Sworn, examined as under:

MR. BAINTON: Q. Is your full name Michael Joseph Gibbons? A. That is correct.

Q. Do you reside at xxxxxxxxxxxxxxxx? A. I would like that deleted, if you do not mind. I would like my address deleted. 30

Q. Well, is it in fact your address? A. It is my address, yes.

HIS HONOUR: Q. Do you wish your address not to be published? A. Not to be published.

Q. What is the reason for that? A. The reason for that is that probationers may get to know the address and we do not like probationers to know our private address.

HIS HONOUR: I think that is reasonable, Mr. Gibbons. What I shall do is that the address will be struck from the record so that it will not be available to the press for publication, and Mr. Gibbons can write down his address on a piece of paper and it can be placed in an envelope. 40

MR. BAINTON: Q. Have you a blank sheet of paper there? (Handed to witness.) Perhaps you could write your full name and your address.

HIS HONOUR: Needless to say, the address having F. Hume, re-x, ret'd.

1985. M. J. Gibbons, x

been struck out, it is not for publication. The document can be tendered and placed in an envelope.

(Piece of paper showing the name and address of Michael Joseph Gibbons placed in an envelope, sealed up and marked Exhibit 80.)

MR. BAINTON: Q. I think you are an officer of the Adult Probation Service, are you not? A. Yes.

Q. And you have been such an officer since your retirement from the Navy? A. I have, yes. 10

Q. How long ago was that? A. 1958.

Q. Then you have had some 10 years' experience, I take it, as a probation officer? A. Yes.

Q. Now do you know a person by the name of Michael Ziric? A. Yes.

Q. Would you please tell me when you first came to know a person of that name? A. On 23rd August 1962.

Q. And I think that was in your capacity as a probation officer, was it not? A. That is correct. 20

Q. You attended at a Court and Mr. Novak was before that Court? A. Yes, Sydney Quarter Sessions, before the late Judge Rooney.

Q. Would you please tell me what was the charge against Mr. Novak and what happened? A. It was in company - (Objected to; allowed.)

Q. What was the charge? A. Stealing.

Q. What was the result? A. He was placed on a five-year recognizance.

Q. And I take it from that that he was convicted in the first place? A. Yes. 30

Q. And the sentence was a five-year recognizance, was it? A. Yes.

Q. Were there any terms of that recognizance which brought you in touch with Mr. Novak? A. Yes. He was placed under our supervision and ordered to pay £210.10.0 compensation at the rate of £2.10.0 a week.

* Q. Do you recall what it was he was charged with as having stolen? A. A camera. 40

Q. You say he was placed "under our supervision". I take you mean the Adult Probation Service? A. The Adult Probation Service, yes.

Q. Did he come under your supervision and control? A. He did, yes.

Q. Now did you make any arrangements with anyone to see him or do anything for him as part of what

you considered proper? A. Yes, well, in the course of my inquiries for the pre-sentence investigation before his Honour, I interviewed a Mr. Hume, who was then residing at 352 Darling Street, Balmain ---

Q. Let me interrupt you and ask you whether you had met Mr. Hume prior to this occasion? A. Only in the course of my investigations as a referee. Yes.

Q. In the course of investigating this matter or others? A. This matter. 10

Q. Would you carry on and tell us what you did?
A. I interviewed Mr. Hume and his parents.

HIS HONOUR: Q. Mr. Hume's parents, or Ziric's parents? A. Mr. Hume and his parents. Mr. Hume told me he had instructed Ziric to report to the C.I.B., and he was subsequently arrested. Eventually of course he came up before the Court. In the course of my conversation with Mr. Hume and his parents I asked them of the possibility of caring for Ziric as he was destitute, if he was placed on recognizance, and he had no money and, being a Yugoslav family, they understood his background. They agreed. 20

* MR. BAINTON: Q. Was it required of Ziric that he should report to you from time to time? A. Yes, either by letter or in person.

Q. Now did he observe that requirement? A. He did, yes - he did until 1963 and then he breached for the reason of arrears in compensation. 30

Q. Would you tell us what happened on that occasion, who he came before and so on? A. May I refer to my notes?

HIS HONOUR: Yes. You have no objection, I take it, Mr. Gruzman?

MR. GRUZMAN: No.

HIS HONOUR: Mr. Gibbons, as far as possible would you confine your reference to what is necessary to answer the question. I suggest that because otherwise anything you refer to must be made available to counsel to see. A. Yes. 40

Q. So would you just confine your reference to so much as you need to answer the question, and that will control the scope of how much must be passed down to the Bar Table for counsel? A. I see, yes.

MR. BAINTON: Q. With his Honour's permission may I ask you to look at February 1963? A. 15th February 1963, he was called up on breach of his recognizance for failure to pay his compensation. 50

Q. Are you able to tell us how much he was in arrears? A. At that time it was £54.

HIS HONOUR: Q. £54? A. Roughly about £54.

MR. BAINTON: Q. What happened? A. He failed to appear and a warrant was issued.

Q. Was that warrant executed in due course? A. It was executed then on 17th May 1963.

Q. And what happened on 17th May? A. He appeared then on the breach. The sentence was deferred and he was placed on a further five-year recognizance.

Q. And was there any term of that recognizance? 10
A. No, there were no terms at all, only that he pay compensation.

Q. Was he still at this stage required to report to you from time to time? A. No. There was no order made at that stage.

Q. Was the first order still operative? A. No, this one rescinded that.

Q. Can you tell us when you next had dealings with or saw Ziric? A. On 9th February 1966.

Q. Perhaps I should suggest you have a look at a 20
date in September 1964? A. Well, 30th September 1964 he again breached the recognizance.

Q. What was that breach? A. Failure to pay compensation.

Q. And how much was involved this time? A. I think it was round about the same thing. He had not paid up.

Q. What happened to him then? A. He failed to appear and a Bench Warrant was issued.

Q. This was in September 1964? A. Yes. 30

Q. Then was that warrant executed? A. Yes.

Q. And when did he appear on that warrant? A. 9th February 1966.

Q. What happened then? A. He was placed on a further recognizance for five years and compensation £156, to pay £15 within 24 hours and the balance at £10 a week.

HIS HONOUR: Q. £10 a week? A. It would be \$10 a week, your Honour, the first payment on 1st March, 1966. His compensation payments were completed on 40
14th October, 1966.

MR. BAINTON: Q. On 14th October, 1966? A. Yes.

Q. Was there any term of the bond on that occasion that he should be under the control of the Adult Probation Service? A. Yes.

Q. What were the terms? A. The terms were that

he placed himself under the guidance of the Adult Probation Service and pay that compensation.

Q. Now has he been under your guidance and control since then? A. He has, yes.

Q. Has he been required to report to you at any particular intervals? A. Yes, either monthly by letter or in person.

Q. Has he complied with that requirement? A. He has complied with that, yes. 10

Q. You have told us of five occasions on which he has been before the Court after 31st August, 1962. Are you able to tell us whether he has been before any court on any other matter since that date? A. No, he has not.

HIS HONOUR: I have four occasions. Do you mean five including 1962?

MR. BAINTON: I have counted the date of completion of payments so four is correct, your Honour.

Q. Have you seen him very often during this period - that is, altogether since 31st August 1962? 20
A. Yes, I have.

Q. Would you tell his Honour what sort of a man you found him to be? A. I found him to be a very intelligent lad, very truthful and trustworthy.

CROSS-EXAMINATION:

MR. GRUZMAN: Q. It has been your job to know what is happening to Novak during this period in which you have had him under your observation, has it not?
A. Yes. We keep notes. 30

Q. And I suppose the simplest part of your knowledge would be the number of times he has been before a court during this period, would it not? A. Yes, and if we are notified by the Police Department which we are, every time he is arrested.

Q. You say you are notified every time this man Novak was brought before the Court? A. On criminal offences, yes.

Q. On criminal offences, but you have given the man a reference here, have you not? A. Yes. 40

Q. Is it possible that he was brought before a court on charges of a criminal kind that you do not know about? A. That would be impossible.

Q. Impossible? A. Yes, unless the C.I.B. was falling down on their job.

Q. Do you regard a charge of vagrancy as a charge of a criminal kind? A. Yes.

Q. Are you not aware that he was brought before the Central Court of Petty Sessions on 16th April

1963 on a charge of vagrancy? A. I think that was on the count where he was arrested and charged with vagrancy, on the breach. In 1963 -

Q. Mr. Gibbons, have you come here to tell his Honour the whole of the truth about Novak? A. Definitely, yes.

Q. Were you aware when you gave your evidence in chief that Novak had been charged before the Central Court of Petty Sessions with vagrancy? A. Will you repeat that question please? 10

Q. Yes. When you gave your evidence in chief in this matter were you aware that Novak was charged on 16th April 1963 at the Central Court of Petty Sessions with vagrancy? A. Yes, well, I would have to refer to -

Q. Mr. Gibbons, the question is very simple? A. Yes.

Q. When you gave your evidence in chief were you aware that Novak had been charged with vagrancy in April 1963? A. Yes. 20

Q. You were? A. I was aware.

Q. Why did you not tell his Honour about that? A. Because I did not refer to these notes here (indicating). These are only rough notes.

Q. Did it depend on which notes you looked at? A. Yes. These are rough notes here. These are my final ones here.

Q. But you remember you were asked specifically by Mr. Bainton whether he had appeared before any court apart from the instances that you enumerated, were you not? A. Yes. 30

Q. And you denied that he had? A. Well, I would say yes, I did deny that, but -

Q. Why did you make that positive assertion knowing that it was untrue? A. I didn't. The point was that he was arrested and charged on the vagrancy charge on the breach. That was how he was brought before the court.

Q. Look, sir, he did not have to be charged with vagrancy if he was not suspected of being a vagrant, did he? A. Well, around about that period he was not under my supervision. I think it was round about that period. 40

Q. He was charged on 16th April with vagrancy and on the following day he was charged or was called up in respect of the breach of his recognizance, was he not? A. Yes. Do you mind your Honour, if I refer to my file?

HIS HONOUR: Yes, you may. 50

WITNESS: (Consulting file.) This arrest notice is on the 14th of the 4th. That is the one you are referring to?

MR. GRUZMAN: Q. Well, you just tell me? A. In the name of Michael Ziric, and there was no mention at all of vagrancy. He appeared at Central and was remanded to 5/5/63.

Q. You told his Honour that you were aware he had been charged with vagrancy? A. Well, that is, 10
yes.

Q. I suggest to you that in fact he was charged on 16th April 1963 at the Central Court of Petty Sessions with vagrancy under the name of Michael Ziric? A. That could be correct, yes.

Q. You see, you have come here to help Ziric, have you? A. No, not a bit. The point is that I have come here to tell the truth, to give a picture of the whole situation of Ziric, yes.

Q. Well, you see, you did not give a very good 20
picture if you left out the only independent charge that has been brought against him over that period, did you? A. No, well, the point is that -

Q. That was not a very good picture, was it? A. Well, I am putting it this way, Mr. Gruzman; the fact that this arrest notice did not state vagrancy at all, and I assumed that this matter was brought up when he was arrested on a Bench warrant for failure to pay compensation.

Q. Your knowledge of Hume came from an interview 30
with him? A. Yes.

Q. Did you interview any police officers about Hume? A. Only by telephone.

Q. And to whom did you speak? A. I do not know who the officer was. It was somebody in charge at Balmain and that was in relation to his credentials.

Q. What, the fact that he was a private inquiry agent? A. Yes.

Q. Were you aware that Hume was a police informer? (Objected to by Mr. Bainton; question to be put 40
without colour.)

Q. Were you aware that Mr. Hume was a man who, as a matter of practice, gave information to the police? (Objected to.) A. No. (Objection argued. Questions and answers between the asterisks on p.1565 read by Court Reporter.)

HIS HONOUR: Mr. Gruzman, I shall restrict you to the inquiries and the result of them, but I will not allow what Mr. Gibbons' opinion was.

MR. GRUZMAN: Q. Were you informed by anybody that 50
Hume was a man who gave information to the police?
A. No. (Objected to.)

HIS HONOUR: It has been answered, Mr. Bainton. Do you want to press the objection?

MR. BAINTON: No.

MR. GRUZMAN: Q. You were not so informed by anybody? A. No.

Q. Do not answer this question as I foresee a possible objection. If you had become aware that Hume was a person who gave information to the police, would you have asked him to keep an eye on Novak? (Objected to; rejected.) 10

HIS HONOUR: Mr. Gruzman, I do not really think I am going to be assisted in any degree by what Mr. Gibbons thought about Mr. Hume. On what he thought about Ziric, as it has been opened up clearly and expressly - whether I am going to be assisted by it is another matter - I do not think I should dissuade you from pursuing it, but I do not think Mr. Gibbons' opinion of Mr. Hume will have any bearing on it at all unless there is something he is aware of that has come out in evidence. I reject the particular question you have asked. 20

MR. GRUZMAN: Q. You see, what you told Mr. Bainton was that Hume instructed you that he had ordered Ziric to report to the C.I.B. and Ziric had been arrested. A. Hume told me - (Objected to.)

HIS HONOUR: That was my impression of the effect of the evidence, but you may ask Mr. Gibbons again. You can ask Mr. Gibbons what Mr. Hume said.

MR. GRUZMAN: Q. What did Hume tell you on that subject? A. He told me that he instructed Ziric to report to the C.I.B. and confess that he committed this offence. 30

Q. Was that one of the matters which made you believe that Hume was a suitable man to keep an eye on Novak? (Objected to; rejected.)

Q. I will ask you this question but please again do not answer it as I think it will be objected to. If you had been aware that in fact Hume had without Novak's knowledge given information to the police which led to his arrest, would you have regarded him as a suitable person to keep an eye on Novak? (Objected to; rejected.) 40

Q. By the way, you were aware that in April 1961 Ziric was sentenced to 18 months' hard labour for stealing in a dwelling? That was 7th April 1961, and then there was an appeal with which I will deal in a moment? A. Yes.

Q. At the Sydney, New South Wales, Quarter Sessions on 7th April 1961 he was charged with stealing in a dwelling and was given 18 months' hard labour? A. Yes. 50

Q. He appealed against that conviction to the Court of Criminal Appeal on 1st September 1961 and

the appeal was allowed against the sentence and in substitution he was given a sentence of 18 months' hard labour to date from 23rd March 1961. Could you just tell us what was the result of that appeal?

A. The result of that appeal was that a pre-sentence report was ordered by the Court of Criminal Appeal and he appeared on 1/9/61. The sentence of imprisonment was six months to date from 23/3/61. In other words, it was immediate release.

10

Q. He had been in gaol from 23rd March 1961? (No answer.)

HIS HONOUR: Q. There would be 3 weeks of his sentence to go? A. Immediately released on the Court of Criminal Appeal.

Q. It was six months to date from 23rd March 1961? A. Yes, to date from 23/3/61. That was the day he was arrested.

Q. Would not that take him to 23rd September 1961? A. Yes it would, from that date.

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Q. So that he had in effect 3 weeks more to serve after the Court of Criminal Appeal? A. Yes. He appealed against the severity of the sentence and it was reduced to 6 months to date from that date and they ordered his immediate release.

Q. I am sorry but I am not with you on the dates. It was 6 months from 23rd March 1961? A. Yes.

Q. That goes to 23rd September 1961? A. That is right, your Honour. Well, when he appeared ---

Q. But this was dealt with on 1st September 1961? A. That is right, 1/9/61, to date from the 23/3/61.

30

Q. Did the Court of Criminal Appeal give him a remission for good conduct? A. Yes, with remissions, immediate release.

MR. GRUZMAN: Q. By the way, what was the nature of that offence? A. Steal in a dwelling.

Q. And I suppose that you would have expected that he would have been cured of stealing? A. Well, at that particular time of this report, it was his first offence.

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Q. His first offence? A. Yes.

Q. Do you know any of the facts? A. A patrolling police car observed two men carrying two suitcases down a narrow street in East Sydney at about 4.30 a.m., and they went and arrested them. The men dropped the suitcases and ran. Ziric was caught and brought back to the C.I.B. On questioning he promptly admitted the articles were stolen. He promptly admitted he stole the articles.

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HIS HONOUR: Mr. Gruzman, the question whether Mr. Gibbons knew the facts has direct relevance to the

angle you are pursuing, but is it relevant to read the facts? I observe it is a fairly lengthy account Mr. Gibbons has there.

MR. GRUZMAN: I am not proposing to pursue it any further, your Honour.

WITNESS: I have his Honour's summing up here if your Honour would like to see it.

MR. GRUZMAN: Q. There was a trial, was there? A. Yes.

10

Q. Did he plead guilty or not guilty? A. He pleaded guilty.

Q. And he was sentenced to 18 months' hard labour? A. 18 months' hard labour, yes.

Q. Subsequently there was the appeal. Then having got out of that, you would have expected him to be cured of stealing, would you? A. Well, the next occasion when this happened -

Q. That is what you would have expected, is it not? A. Depending on the circumstances. In this particular circumstance -

20

Q. You see, you said you came here to tell the Court something about this man? A. Yes, and I am prepared to.

Q. I suppose the judge must have taken a fairly serious view to have given him 18 months' hard labour for a first offence? I suppose you concede that? A. Oh yes.

Q. And the Court of Criminal Appeal, notwithstanding that it upheld the appeal, still thought that six months was not unreal as a penalty? A. Yes.

30

Q. Then would you not have expected that he then would have been cured of that sort of offence; yes or no? A. Well, I would say yes.

Q. But he promptly went to Melbourne, did he not? A. May I explain it a bit further on from here?

Q. Yes. A. His Honour summed up in this particular case and he said: "The facts of this case -"

Q. No, please, Mr. Gibbons - A. Well, I want to try to explain this.

40

Q. I am dealing now with the conviction in Melbourne. Has the conviction in Sydney got some relevance to that? Is that what you want to tell me, that perhaps the offence had been committed before, or something of that kind, in which case please tell us? A. There was the offence in Melbourne, after, yes.

Q. Can you tell us the date of the commission of the offence in Melbourne? A. 1/3/62.

Q. No, first March 1962 is the date of the conviction? A. Yes.

Q. Are you able to tell his Honour the date of the commission of the offence? A. No, I have not got the date here.

Q. Well, what you know is that in Melbourne general sessions on 1st March 1962 he was charged with housebreaking and stealing? A. Yes.

Q. And again on this occasion he got a bond? A. 10
Yes.

Q. That was for £20 to be of good behaviour for a period of 5 years and to come up for sentence when called upon? A. Yes.

Q. Well, at this stage he was building up to quite a record, was he not? A. Yes.

Q. This was his second conviction in the last 12 months? A. Yes.

Q. And do you know the date of the next offence he committed - that is as opposed to the date of his conviction? A. The next one was on 31/8/62. 20

Q. That is the date of the conviction but have you got the date of the offence there? A. On 1st August he appeared before Mr. Pocock.

Q. On 1st August, that was in 1962, he appeared before Mr. Pocock? A. Yes.

Q. Was that the date of the offence? He was arrested and taken straight to Central? A. Taken straight to Central.

Q. On that offence he was committed for sentence? 30
A. Yes.

Q. And subsequently on 31st August he got a 5-year bond and was ordered to pay compensation of £210, is that right? A. Yes.

Q. This is when he stole a camera from someone's house, is that right? A. From a fellow Yugoslav, yes, in company with another Yugoslav named Marcel Grabovac.

Q. Now during the next 3½ years, that is from 31st August 1962 to 9th February 1966, how much of that £210 did he pay off? (Witness consults file.) 40

Q. If I might assist you, by 9th February 1966 he still owed £156, did he not? A. Yes.

Q. So that in 3½ years he paid off a total of £54, is that right? A. I will just check these figures and see what we have here. What date was that again?

Q. 9th February 1966. A. Yes. I have a receipt there for that amount. Yes, he paid £15 on that date, 9/2/66. 50

Q. Have you got the other receipts there? A. Yes.

Q. How do they go from then on? How was the balance paid off? A. The next one was 10/3/66.

Q. How much was that? A. \$20. 18/3/66, \$20. 25/3/6/, \$20 -

(Luncheon adjournment.)

HIS HONOUR: Mr. Gibbons, you are still on your former oath? A. Yes.

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MR. GRUZMAN: Q. Perhaps you might just finish telling us when these payments were made. Did they continue regularly at \$10 a week throughout the period? A. Roughly, \$10, \$20, and it was completed on the 14/10.

Q. What was the final payment? A. I have not got the final payment.

Q. Well, how much was it? A. It is not down here. You see, it is not our job to keep the compensation list. It is the job of the Clerk of the Peace. We only make a check now and again to make certain that they are paying.

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Q. Can you tell us whether it was finished with a lump sum or whether they were regular payments which eventually made it up? A. 15/4/66, \$10. 3/5/66, \$20. 5/9/66, \$20, which made then a total of \$170, and the payments were completed on 14/10/66. I would not know what amount was paid then.

Q. It looks as though the payment then would have been of \$142 in one lump sum on 14th October. Would that be right? A. I would not know.

30

Q. Well, as far as any records that you have it would indicate that a lump sum of about \$140 was paid on 14th October, is that correct? (Objected to; rejected.)

Q. Consistent with your records it may be that a lump sum of \$140 was paid on 14th October, is that right? A. It could be (Objected to; rejected).

Q. As far as you know, have the amounts and the dates which you have mentioned been the payments, the only payments which Novak made? A. Yes. We regularly check every 3 months but I would not know exactly what was paid in the last amount unless I checked with the Clerk of the Peace.

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Q. Well, did you speak to Novak and ask him?
A. Yes. He said he completed his payments on 14/10 and I was satisfied.

Q. Did you ask him from where he got that money?
A. No.

Q. In a very brief kind of way, I would like to

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understand what is the function of the Probation Service. In other words, is it your duty to keep Novak out of trouble, to use a phrase? A. Yes.

Q. Is it your duty to exercise some supervision over his associates? A. Yes.

Q. Is it your duty to keep some check on his whereabouts? A. If it is possible, but in the case of this particular probationer he has more or less worked all over the place. He has worked on the Snowy River, he was fishing - it is very hard to keep a check on him. The only time we can check him is when he writes to us.

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Q. Are you aware of any fishing that he did?
A. Yes.

Q. Whereabouts? A. In Marlo, Victoria. He was diving then. I will check this up. He was diving for Abalone.

Q. Whereabouts was this - a place called Marlo?
A. That place I think is called Marlo. It is on the Victorian border between Disaster Bay and Two-fold Bay.

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Q. I think Marlo is south of that? A. Marlo, yes.

Q. When do you say that was, when he was at this place called Marlo? A. He was there on 9/12/67 and in June 1967. He had been there probably about 6 months.

Q. He had been there? A. Approximately round about 6 months.

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Q. He had been working at this place called Marlo, Abalone diving, for 6 months as at June 1967 is that right? A. That is when the letter was received from Ziric marked "post office Marlo, Victoria".

Q. And you say that he wrote to you? A. Yes.

Q. On what date - by letter dated when? A. Well, there is no date, but we received this in our office on 19th June 1967.

Q. On 19th June 1967, you received a letter from him saying that he had been working - correct me if I am wrong - for the preceding 6 months at Marlo?

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A. No, he just said he was working there, that is all.

Q. But I thought you said - A. Well, I would say because the last time, when it comes to the next letter, he came down a couple of times from there and reported and he went back again - two or three times he came down because his wet-diving suit had to be repaired, and he drifted back again.

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Q. You are refreshing your memory now from letters written by Ziric? A. Yes.

Q. And the next letter you received was when? A. It was dated 9th December 1967.

Q. You are refreshing your memory from that letter, are you? A. Yes. This is the letter, yes.

Q. And you say that he continued Abalone diving when - during the whole of the year 1967? A. No. In May he resided here in Sydney when he reported. Then he was employed as a casual waiter, then he went to Marlo, Victoria.

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Q. He went to Marlo, Victoria, in May 1967? A. It would be May 1967.

Q. And what occupation was he following prior to May 1967? A. Prior to May, casual waitering. He was employed with Mr. Hume as a driver at one stage. In March 1967 he had to appear at Melbourne Court to give evidence against somebody who had stolen his car and his money and so forth. Prior to that again, he was between periods working in various hotels and employed as a driver with Mr. Hume.

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Q. That is taking you back to what date? A. That takes me back to December 1966.

Q. Can you tell us what he was doing before that?
A. He was employed at the Chevron Hotel at Surfers Paradise, going back to September 1966.

Q. Do you know how he came to leave that job?
A. No. He was on the staff there as a waiter, a casual waiter.

Q. But you do not know how he came to leave that job at the Chevron Hotel? A. Well, apparently, from what he told me, nearly all the particular jobs he left, particularly this one, was because of the fact that the work eases down and they had to put them off. Waitering is a seasonal job. They don't seem to get a permanent one at all.

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Q. Well, he did not leave of his own accord?
A. No - there was only one place he was really discharged from, dismissed from, and that was for refusing to clean ashtrays.

Q. That was a different job? A. That was a different job again.

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Q. This job at the Chevron Hotel just came to an end? A. Yes.

MR. GRUZMAN: I would ask leave to see the letters from which the witness has refreshed his memory and the other matters from which he has refreshed his memory.

HIS HONOUR: Q. Mr. Gibbons, in this file that you have are there documents which are of a confidential nature which you would seek to have withheld from being seen by counsel? A. Yes sir. We have had this problem before where we have been asked to produce, and the last one - (Witness produced document which was handed to his Honour.)

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HIS HONOUR: Mr. Gruzman and Mr. Staff, you may see this document and after you have looked at it I will ask Mr. Gibbons one or two questions.

Q. You have made reference to some portions of your file to refresh your recollection of dates?

A. Yes.

Q. Now are those portions of the file entries which you would seek not to have disclosed? A. As far as the letters are concerned, I do not mind that at all. 10

Q. Can they be detached without destroying the file? A. Yes.

HIS HONOUR: I think the letters are the main documents you want to see, Mr. Gruzman?

MR. GRUZMAN: Yes.

HIS HONOUR: Q. Would you be good enough to take out those letters and Mr. Gruzman can see them? A. Yes.

MR. BAINTON: From listening to what went on, my impression was that all Mr. Gibbons looked at was the date on certain letters. 20

HIS HONOUR: You may be entitled to have Mr. Gruzman tender them but I will not rule on that now.

MR. GRUZMAN: Q. You looked at a number of letters. Would you mind putting together there all the letters at which you looked? You gave his Honour dates going back to December 1966 and September 1966, looking at letters. Would you please place together all the letters you looked at? A. All the letters? 30

Q. Yes. A. They are all the letters.

Q. Did you not refer to documents in your file and then give his Honour evidence relating to Mr. Novak's movements and jobs during the latter half of 1966? A. Yes.

Q. What documents did you refresh your memory from for that? A. These- (Objected to.)

HIS HONOUR: It may be that Mr. Gruzman will be under some procedural penalties from having looked at the documents, which is something I may have to rule on at a later stage, but he is entitled, subject to some matter of public policy which may be relevant to some parts of this file, to look at them. I have observed what has happened and at an appropriate time, if the question arises and I do not anticipate it will, I will then rule on it. Mr. Gibbons has taken out some of the letters but there was reference to some other documents. Unless it is material, Mr. Gruzman, I do not think you ought to seek to go too closely into this file. I can see the direct materiality in the letters but what is the significance of this matter? 40 50

MR. GRUZMAN: I will ask one question, your Honour -

Q. You told us that the only letters you received from Novak are the two letters which you have just extracted from the file? A. Yes.

Q. And the other documents to which you referred were not letters? A. They were not letters.

Q. Nothing in Novak's handwriting? A. No.

(Two letters, one undated, the other 9/12/67, tendered and marked Exhibit "QQ".)

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Q. Were those two letters in Mr. Ziric's handwriting? A. Yes.

Q. By the way, with this Probation Service, do they not have to report every month? A. Well, it is up to the Probation Officer himself, depending where he is. There is no specific time laid down. It is only that we ask him to report once a month but if he is away in the bush and can't get there, then we expect him every two months. In other words, we please ourselves as to when we think fit to get him to report.

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Q. And what were your instructions to Ziric? (Objected to; allowed.)

Q. What were your instructions to Ziric as to reporting? A. Well, originally to report monthly either in person or by letters, and then later I sent him a letter which covered his requirements and that would have been in August 1966, stating "You are required to carry out the following instructions and terms of your bond, to write to me once per month either from your address or place of employment, the amount of money you are forwarding to the Clerk of the Peace, 225 Macquarie Street. It is most essential that your compensation payments be paid regularly. If, you can't pay the full amount regularly then inform me of your financial position", and then on that I notified the Clerk of the Peace.

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Q. Then in August 1966 you instructed him to report monthly, personally or by letter? A. Yes.

Q. Well, he did not comply with that, did he?
A. Well, that is to say the period when he was able to report in person - that is when he was away.

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Q. He was away for many months? A. Yes, well, then -

Q. During that time he only ever sent you two letters? A. No, he has been up, backwards and forward from Marlo, and he went from there on to, say, the Chevron Hotel.

Q. He went to the Chevron Hotel after Marlo? A. Yes, that was in September 1966 -

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Q. What, he was at Marlo before September 1966, was he? Is that right? A. Yes.

Q. Is that right - the letters are 1967, are they not? A. Yes.

Q. He went to Marlo after the Chevron Hotel? A. Yes.

Q. You see, you could not say that he reported strictly in accordance with your instructions, could you? A. Well then, what we do, we relaxed the instructions to him - not personally, but if he is doing all right, we try to make him stand on his own feet, we don't rigidly adhere to a monthly reporting. 10

Q. You see, this letter was received on 19th June and it is an apology for not contacting you sooner? A. That is correct, yes.

Q. And he said that you probably found out from Fred Hume? A. Yes.

Q. That he was working as an Abalone diver; that is what he told you, was it not? A. That is what he mentioned in the letter, yes. 20

Q. Of course, you see that is not a compliance with your instructions, is it? A. Well, put it this way, that if he is away and there is no post office, and being Zircio as he was at that time, very hard to write - he found it hard to write - occasionally he would probably call Mr. Hume and he would ring me or I would ring him and find out where he was.

Q. But you know that Marlo is a perfectly ordinary little town; it even has its own aerodrome? A. Yes, but if you are out on the rocks fishing - it is not in the town itself. He was right away down the coastline between these fishing points. 30

Q. But Marlo is a fishing town? A. Yes, but he was not stationed in Marlo itself. He only used to come to Marlo, if you read that letter and found out.

Q. And you accept that as an explanation for not writing you a letter once in a month? A. Definitely, yes. 40

Q. And even though he says in the letter: "Every few days somebody drives down to get food"? A. Yes.

HIS HONOUR: Mr. Gruzman, I think to be fair to Mr. Gibbons you should read on the next part of that letter.

MR. GRUZMAN: Yes.

Q. By the way, how does he address you when he writes? I will come to that part, your Honour. How does he address you when he writes to you? A. "Dear Sir", generally. 50

Q. Does he put on the letter "Mr. Gibbons" and

something else? What is the form of it? A. I will give you this. (Documents handed to Mr. Gruzman.)

Q. I see. What, are these some cards? These are also documents in Mr. Ziric's handwriting, are they not? A. Yes, but they are Christmas cards, cards sent, that is all, routine.

Q. A Christmas card in July 1966? A. No. That particular one wasn't. This one was sent as a card from the Gold Coast. Do you see that card? (Shown to Mr. Gruzman.)

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HIS HONOUR: Mr. Gruzman, I think you might put the next sentence of that letter.

MR. GRUZMAN: Yes.

Q. The address on the letter from Surfers' Paradise, is, "Mr. Gibbons, Probation Officer, Sydney", is that right? That is what he says? A. Yes, that is right, and the box number.

Q. And it is for that reason that you accepted the explanation contained in the letter received on 19th June, "I could not give letter addressed to you to anybody to post" - is that right? A. Yes.

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Q. By the way, the card is a card from Surfers' Paradise posted on what date - 29th June, is it, or July? A. 28th July.

Q. 28th July 1966? A. Yes.

Q. That is an envelope and has that card got a postmark too? A. Surfers Paradise. The card is just enclosed in the letter.

Q. I think you have been associated with or you have had some control over Ziric for a period of over 6 years now? A. With a break in between, yes.

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Q. And the fact is that during that period, first of all in February 1963 a warrant was issued for his arrest? A. Yes.

Q. And that warrant was not executed until April of 1963 when he was arrested for vagrancy? A. Yes.

Q. Well, did you feel that that was a matter which commended Ziric to you as a citizen? (Objected to.) A. Well, this is sixty- (Rejected; question withdrawn.)

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Q. Did that make you regard Ziric as a trustworthy person? A. Well, he has not committed any offences.

Q. But is that your test of whether is trustworthy or not? A. Yes, if a man does not commit an offence.

Q. So you say - and I am not attacking you on this - that there are two types of people in the community; those who are trustworthy and those who are not? A. Yes.

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Q. And that that is the same classification as those people who have committed criminal offences and those who have not? You answer Yes to that?

A. Yes.

Q. And that is why you say that Ziric is now a trustworthy person? A. Yes.

Q. Then, having been given the benefit of a further 5-year bond in April of 1963, it became necessary to issue another warrant for his arrest in September of 1964? A. Yes, again for arrears of compensation, nothing of a criminal nature.

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Q. Yes, but you see, so far as Ziric was concerned, he was a man who was wanted by the police first of all for the period from 15th February 1963 to 16th April 1963? (Objected to; question pressed; question to be put again.)

Q. So far as Ziric was concerned, he was a man who was wanted by the police from 15th February 1963 until he was caught on 16th April 1963? (Rejected in that form.)

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Q. You would have expected that at any time between 15th February 1963 and 16th April 1963 Ziric would have been concerned that he might be arrested by the police? (Objected to; rejected.)

Q. At any time during February 1963 and April 1963 it was the duty of any police officer who saw Ziric to arrest him on this Bench Warrant? (Objected to.) A. Yes. (Question allowed.)

Q. Your answer is yes? A. Yes.

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Q. And you would have expected that fact to affect Ziric's movements, would you not? (Objected to as irrelevant; specific question rejected but allowed general matter to be probed but questions more directly framed.)

Q. Do you know how Ziric came to be arrested for vagrancy? A. By warrant, really.

Q. But do you know whether some policeman just happened to see him in the street and took him? A. I have no idea.

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Q. And you would have expected that during that period of some months, two months prior to that, Ziric would have been keeping out of the way of the police? (Objected to; allowed.)

Q. You would have expected that, would you not?
A. Well, in that period a breach report was put in to his Honour for his direction.

Q. A warrant had been issued? A. Yes.

Q. Would you not expect that during the period when the warrant was in existence but unexecuted, Ziric would have been keeping out of the way of the police? A. I should think so, yes.

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Q. And coming further, he was then, having been arrested, given the benefit of a further bond for 5 years, was he not? A. Yes.

Q. That was on 17th April 1963, and on 30th September 1964 he was again called upon in respect of a breach of that recognizance, was he not? A. Yes. There were two breaches.

Q. And again he failed to appear in answer to that call-up, is that right? A. Yes, he could not be located. 10

Q. And again a warrant was issued for his arrest? A. Yes.

Q. And he then managed to evade the police for approximately 18 months? (Objected to; rejected in that form.)

Q. He was not arrested until 9th February 1966 on the warrant which had been issued on 30th September 1964, was he? A. I would have to look that up. 30th September 1964? 20

Q. What was the warrant, and it was executed on 9th February 1966? A. Yes. A Bench Warrant was ordered, yes.

Q. So that for a further period of some 17 months ending on 9th February 1966, Ziric would have sought to keep out of the way of the police, wouldn't he? (Objected to; to be put in another form.)

Q. You would have regarded Ziric as a man who during that period of 17 months terminating on 9th February 1966, keeping out of the way of the police, would you not? A. I suppose I would, but in some cases this particular fellow ever since he has been in Australia has wandered. He could be anywhere. Half the time he would not know there was a warrant out for him. 30

Q. But he would know he was not complying with his bond, wouldn't he? A. Well, at that time was more or less kept out of the way of him because we put in a breach report and we left it lying with the Judge. 40

Q. But you see, you have told his Honour that this man has certain qualities? A. Yes, definitely.

Q. And I am trying to test your knowledge of this? A. Yes.

Q. Now it is within your knowledge that having been called up and given a second bond on 17th April 1963, in respect of that he committed a breach? A. 17th April?

HIS HONOUR: I think the evidence was May.

MR. GRUZMAN: Q. In respect of that bond he committed a breach, didn't he? A. Did you quote 1961? 50

Q. I am speaking of the bond in respect of which he was called up on 17th April 1963 at the Sydney Quarter Sessions.

HIS HONOUR: The evidence was May, Mr. Gruzman.

WITNESS: 17th May.

MR. GRUZMAN: Q. Have you got a date of 17th April 1963? A. 15th February 1963, breach of recognizance.

Q. And the next one? A. 17th May.

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Q. 17th May 1963? A. Yes.

Q. So that on 17th May 1963 he committed that breach. On 30th September 1964 a warrant was issued, is that correct? A. Yes.

Q. And it was executed on 9th February 1966? A. Yes.

Q. Well, do you not regard that as an irresponsible action on the part of a man who had been given the benefit of probation? A. Well, at that time he was an unstable person and we were trying to straighten him out.

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Q. When do you say he ceased being unstable?

A. I would say when he got this last recognizance on 9th February 1966.

Q. And the reason that gave you the cause for believing his stability was that he made payments in respect of his compensation? A. He honoured his obligations to the Court, yes.

Q. And it did not matter to you, did it, where he got the money from to make the payments? A. We don't probe into those affairs.

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Q. You do not probe into that? A. No.

Q. So that you would regard him as a stable man even if he was getting the money to honour his obligations to the Court dishonestly? A. No, because the money he was paying in would have been only small amounts from his casual work as a waiter.

Q. But the final amount he paid in was not a small amount, was it? A. I don't know. (Objected to.)

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HIS HONOUR: The question has been answered. (Objection not pressed.)

MR. GRUZMAN: Q. If you had been aware that Eric had associated with another criminal, would that affect your opinion of him? A. Well, I mean, put it this way: it would not affect my opinion of him because at the present moment I have got probationers who have other criminals living with them. I have offenders living with other offenders in a half-way house - Judge Rainbow's idea.

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Q. So the fact that a probationer associates with criminals does not affect your opinion? A. Provided the criminal does not commit any more offences - if the police do not pick him up for consorting.

Q. Well, if you knew that Novak had been associating with a man who had a number of criminal offences, including carrying an unlicensed pistol, would you regard that first of all as desirable?

A. No, oh no. He would have been warned about that.

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Q. He would have been warned? A. Warned and promptly reported to the Court.

Q. You would regard as a serious matter? A. As a breach, yes.

Q. And did you regard it as Hume's duty to report such a matter to you? A. No, he was not responsible to me, Mr. Hume.

Q. Well, was it Novak's responsibility to tell you? If Novak had been associating with a known criminal, was it his duty to tell you? A. Well, it is not his duty. I mean he could tell me if he wishes. He did mention the fact that he had associated with a criminal.

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Q. He didn't or he did? A. He did. He was quite open about that.

Q. Who was that? A. This was a particular person who was charged at Melbourne Court.

Q. He told you he had had some association with him? A. He told me he gave him a lift to Melbourne.

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Q. Is that what he told you? A. Yes.

Q. Could you tell us exactly what he told you?
A. Yes, I have that information here.

Q. What did he tell you? A. Well, it was on 31st January 1967. He told me that he went to Melbourne in a car and gave a fellow countryman a lift to Melbourne, who asked him to give him a lift, who later stole the car, his money and his personal belongings. Ziric reported the theft to the Melbourne police who arrested the offender en route to Adelaide, and Ziric said he gave evidence at the Melbourne Petty Sessions and the offender was sentenced to six months' imprisonment.

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Q. Did he tell you how he came to give this man a lift? A. No.

Q. Did you ask him? A. No, I did not follow it up.

Q. He gave you that information because you said that Ziric had told you quite frankly about associating with a criminal? A. He told me quite frankly that this particular person had been convicted of some crime. He did not mention the name of the fellow.

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Q. You can't have told us the whole of what Mr. Novak told you, can you? A. This is all I have got. This is all there is. This is all he told me.

Q. But you have added a bit now. You said he told you this man had some conviction? A. Well, he told me - that was afterwards when I questioned him again.

Q. You questioned him again, did you? A. Yes.

Q. When was that? A. That was on 7/3/67. 10

Q. 7th March 1967? A. Yes.

Q. Where did that interview take place? A. In the office of the Adult Probation Service.

Q. And what was the conversation? A. The conversation there was that he said he could not report on 28/2/67 for the reason that he had to go to Melbourne to give evidence against a fellow countryman. Then he mentioned the fact that he had a conviction.

Q. What did he say? A. He said "He is a convicted criminal with a bad record of stand-over and blackmail". 20

Q. Carry on and tell us all. I am sure his Honour would like to know all he said? A. Well, he gave this evidence against this particular person. He appealed against the sentence imposed of six months and he said the appeal was dismissed, and from there on nothing else was taken.

Q. But as a probation officer in whom the Court had confided the care of Novak, were you not interested to know how he found himself in that situation? A. Well, I was interested. 30

Q. What did you ask him about his association with this man whom you now knew was a criminal?

A. He said he met this particular cove who came to him and he asked him to give him a lift to Melbourne, and that is all about it and I did not follow it through from then.

Q. Did you have a conversation about it? You have told his Honour that you would regard it as a serious matter and a matter proper to be reported to the Court, if Novak was associating with a criminal? A. Yes, if he was associating. If I found out he was associating - not only hearsay, but if I found out and could confirm it. 40

Q. And the best way to find out is by asking him, is it not? A. Yes.

Q. And you now knew on his own admission that he had travelled to Melbourne in a motorcar with a man with a bad criminal record? A. Yes. 50

Q. Did you find out whose car it was? A. No.

Q. Did you ask "Where did you get this motorcar?"

A. No, I did not follow it up at all.

Q. But this was a serious matter which was worth reporting to the Court if certain facts were known, wasn't it? A. No, it wasn't.

Q. But that is what you have told us? A. Yes, but this was not a case for reporting. It was not a breach.

Q. Anyway, you never asked him where he got this car? A. No, I never asked him where he got this car. 10

Q. You never asked him how he came to go to Melbourne with this man? A. Well, I did ask him that question.

Q. And what was his answer? A. His answer was that he had to go to Melbourne on business for Mr. Hume.

Q. Who told you that? A. This was Ziric.

Q. Ziric told you he was going to Melbourne on business for Mr. Hume? A. Yes. 20

Q. Look, Mr. Gibbons, I do not like to suggest this but I must suggest to you that you are not fairly giving the whole of the evidence. Now I have asked you not once but I think three times to tell his Honour what Novak told you about this matter. You might just turn round and face towards his Honour and tell his Honour all that Novak told you about this matter? A. That is all he told me, your Honour, nothing else. 30

HIS HONOUR: Q. Could I just have it again? A. That he went to Melbourne with a fellow countryman, who did have a record, on business for Mr. Hume. He said when he arrived there they stayed at a hotel and all his gear was stolen during the night, including the car, money, personal belongings. He reported this matter to the Melbourne police and the offender was apprehended on the Adelaide road, was sentenced to six months' imprisonment. Then later on the second interview he told me that the sentence was not dismissed. He still had to do the six months' sentence. 40

Q. And what did he tell you about this man's record? A. He said he had a record. He said he had a record of blackmail and stand-over.

Q. A record of blackmail and stand-over? A. Yes.

Q. Do you have a recollection of this blackmail and stand-over? A. I am pretty well certain, your Honour. It is going back some time, it is hard to, and we don't enter everything up in files at all. We just briefly outline everything, that is all. 50

MR. GRUZMAN: Q. Did you simply accept that a man just asked him for a lift? A. Yes, I did accept it.

Q. Did you not ask him how it came about? A. No, I did not follow it up.

Q. But did you not ask whether it just happened whilst he was driving along the road or was it pre-arranged? A. No, I never asked him that.

Q. So you do not know whether he arranged to pick up this man while he was driving along the road to Melbourne? A. No, it could have been anywhere. 10

Q. Did you ask him what was his business in Melbourne for Mr. Hume? A. No, I never followed that up.

Q. Well, did you ask Mr. Hume was it true? A. No. All he said there was that he was driving to Melbourne on business for Mr. Hume, that is all.

Q. But you had confidence in Mr. Hume, did you not? A. Yes. I still have confidence in him. 20

Q. Well, did you ask Mr. Hume whether it was true that Momo was going to Melbourne for him? A. No.

Q. You never asked him? A. No, never asked him.

Q. Up till today? A. No.

Q. You were outside the Court with Mr. Hume for some days? A. No, I was in the conference room, but he was out there, yes.

Q. Up to this present moment have you never asked Mr. Hume whether it is true that Novak was going to Melbourne on business for him? A. No, I have not. 30

Q. Is that all that Novak told you? A. That is all, nothing else.

Q. From, say, 1st January 1967 up till this interview in March 1967, did Novak tell you anything else about anything that had happened to him? A. No, nothing at all. I didn't probe anything at all.

Q. But is it not your job to probe these things? A. No, it is not our job to probe it. We are not police officers. We run a centre course. If a fellow 40 is keeping out of trouble, we look after him.

Q. But don't you believe that the Court expects you to see and find out something about the man's associates? (Objected to.) A. Put it this way, Mr. Gruzman, when you are dealing with - (Allowed.)

WITNESS: When you are dealing with 60 or 70 probationers you have not got much time to interview everyone. You have only one night a week to look after - to attend to their wants, and to interview them. 50

MR. GRUZMAN: Q. You only had to see him once a month, didn't you? A. When you have got 60 or 70 and you are doing eight pre-sentence reports on top of that, my time is taken up.

Q. Did he say how long he had known his countryman? A. No, he never mentioned it.

Q. He never mentioned it? A. No.

Q. And you didn't ask him? A. No.

Q. Did Novak ever tell you he had been interviewed by the police? A. Novak? 10

Q. Yes. Did Novak ever tell you he had been interviewed by the police? A. No.

Q. Up to this moment are you aware that Novak was interviewed by the C.I.B. in connection with a serious charge involving Mr. Barton? A. I read it in the papers. I did question him on it, yes, and he said there was no truth in it.

Q. Mr. Gibbons, prior to your reading this in the newspapers, had you any knowledge of it? A. None at all. None whatsoever. News to me. 20

Q. So Novak never told you at all that he had been interviewed by the police at the time that it happened? A. At the time, yes. (sic.)

Q. That is, he didn't tell you at the time? A. No. And I questioned him on it when I read it.

Q. You questioned him when, some time this year? A. I could not say what date it was; some time.

Q. You may take it that nothing appeared in the newspapers prior to this year. A. Yes. I mean the date. I could not say the date. 30

Q. About how long ago? A month or two months? A. Yes, I suppose it would be.

Q. About a month or two ago? A. It may have been a bit longer.

Q. The first time what was discussed between you and Novak? This was the first time there was any discussion between you in regard to it? A. Yes.

Q. What was the discussion between you and Novak relating to the allegations made in this matter? A. Well, in discussion I just asked him if he was involved in this thing mentioned in the paper and he said "No". He said that so far as he was concerned there was nothing in it and I did not follow it up, because it was going to Court and I did not want to be involved in discussing evidence with him. 40

Q. That was the whole of the conversation? A. Yes, that was the whole of the conversation.

Q. That is the whole of the conversation you have

ever had with Novak about this matter or anything arising from it? A. Yes, definitely.

RE-EXAMINATION:

MR. BAINTON: Q. Mr. Gibbons, you told us that you spoke to Ziric on 31st January and on 7th March last year? A. Yes.

Q. About his trip to Melbourne? A. Yes.

Q. A little while ago to his Honour you gave an account of what you said was all that Ziric told you? A. All Ziric told me, yes.

10

Q. Was that all told to you on one occasion, or on the first occasion, the second occasion, or both? Was it all told to you on one occasion or on the two occasions? A. On two occasions. The conversation was split up between two interviews.

Q. You were asked a number of questions about Mr. Ziric's failure to appear when he was called up for breaches of his recognizance? A. Yes.

Q. Will you tell us, what is the procedure when someone fails to appear? A. When someone fails to appear? You mean leading up to the breach?

20

Q. No. The breach has occurred. A. Immediately the breach has occurred we render a report to his Honour in writing.

Q. Let us go back to an earlier stage. There is a breach? A. Yes.

Q. You make a report? A. Yes.

Q. What is the procedure for calling the person up? A. On the breach?

Q. Yes. The breach is proved? A. The Clerk of the Peace calls him up. The breach is proved, and then I render a report to the Court.

30

Q. How is the call-up done? A. It is done by registered letter to the offender, and then we are notified.

Q. Well now, if the person to whom that registered letter is sent does not turn up on the day notified, what action is ordinarily taken? A. Well, normally action is taken by the Judge to order a Bench Warrant.

40

Q. Does that invariably happen? A. No. Sometimes it does; sometimes it doesn't. The Judge may turn around and say "Well, the fellow is away. He may be in the bush somewhere", and he stands it over for re-listing in say two weeks, or two months, or something like that.

Q. Supposing the person concerned is interstate, what is done with the Bench Warrant as a rule? What is done on the Bench Warrant in those

circumstances as a rule? A. Well, nothing is done on the Bench Warrant. It just lies there until the person is arrested.

Q. Until he comes back into the State? A. Until he comes back into the State, yes.

Q. You were also asked some questions as to the opinion you would have had of Ziric had you known he was consorting with criminals? A. Yes.

Q. Is there a procedure or a practice whereby if a person on probation is arrested and charged with consorting that you are notified? A. We are notified? 10

Q. Yes. A. Yes.

Q. Was any such charge made against Ziric at any time? A. No.

Q. You were also asked about a charge of vagrancy which was put as having been made in April 1963. Are you able to tell his Honour whether there was any conviction on that charge? A. No, I think what happened there was that he was picked up on the charge of vagrancy more or less on the warrant and then brought before the Court. 20

(Witness retired.)

(M.f.i. 3, cheque for \$500, Pacific Panorama, tendered by Mr. Staff and admitted as Exhibit 81.)

(Application by Mr. Gruzman to recall Det. Const. Follington for further cross-examination within limited bounds was acceded to by his Honour.) 30

ALBERT GEORGE FOLLINGTON
Further cross-examined, deposed:

MR. GRUZMAN: Q. Your full name is Albert George Follington? A. Yes.

Q. You reside at 10 Stewart Street, Randwick?
A. Yes.

Q. And you are a Detective Constable of Police attached to the C.I.B., Sydney? A. Yes.

Q. Const. Follington, you are being further cross-examined with respect to a particular matter, do you understand? A. Yes. 40

Q. Const. Follington, on 15th February this year do you remember attending at this Court for the second time in answer to a subpoena duces tecum that had been served on you? A. I don't recall the exact date, but I know round about that time I did appear.

Q. And that was an occasion when you and Sgt. Wild and Mr. Forbes of the State Crown Solicitor's Office appeared at the Court? A. Yes, I recall being here when Mr. Forbes was here, but I was out of the Court when he tendered the documents.

Q. On that occasion do you remember being asked whether you produced to the Court certain documents and a copy of the subpoena that was served on you?

A. I cannot recall exactly, but I take it that was said, Mr. Gruzman. 10

Q. I will try to refresh your memory if I can. Do you remember his Honour then saying "I pass down to you, Constable Follington, the envelopes produced by Mr. Forbes this morning"? A. I recall going through the envelopes, yes.

Q. And then I said to you, "We asked you to produce the whole of the documents which were in your possession and called for by the subpoena", and you said "There is an envelope folder", and then did you say, "I produce an envelope", and then you produced certain documents which you identified. Do you remember that? A. Yes. 20

Q. And then I asked you - his Honour asked you "Do those comprise the whole of the documents in your possession within the subpoena, Constable Follington?", and you answered, "Yes"? A. Within the subpoena, yes.

Q. Constable Follington, did you then have in your possession this document now shown to you? Not the subpoena which is attached to the document, but the document which has been called an affidavit? A. Yes, I had it on each and every day I appeared at this Court. 30

Q. You have had it in your possession on each day you have come to the Court? A. Yes.

Q. How did you obtain that document in the first place? A. That document was given to me at the Criminal Investigation Branch by Det. Sgt. England.

Q. I see. Did he tell you where he obtained it from? A. I can't recall, but I would assume from Mr. Hume. 40

Q. When did Det. Sgt. England hand that document to you? A. It was either the day before or on the morning of the 15th. I am not sure, Mr. Gruzman. It is some time back.

Q. What did you do with the document then? A. I locked it in my locker at that particular stage, and I later notified Sgt. Anderson of its existence. I notified a number of people if I can recall correctly, and also it was shown to Mr. Forbes. 50

Q. We will take them one at a time. Who did you notify of the existence of the document? A. Sgt. Anderson. I showed it to him at Police Headquarters.

Q. Yes? A. In conversations with others about it.

Q. At that time? A. I can't recall who exactly, Mr. Gruzman.

Q. You appreciated that the document was an important one, didn't you? A. Not to the police case.

Q. Not to the police case? A. Not in connection with the police papers.

Q. Do you say you did not regard that as an important document in your investigations? A. Not in my investigations - investigations being carried out by Det. Sgt. Wild. 10

Q. Didn't you regard the document as an important document in the police investigation of Mr. Barton's complaint? A. Sufficient to show it to Sgt. Anderson, yes.

Q. You did regard it as an important document from that point of view, didn't you? A. Not important, but a document coming into my possession relating to this matter. 20

Q. It related to a conversation alleged to have taken place in the Rex Hotel, didn't it? A. I can't recall exactly. If you let me read it?

Q. Just read the last paragraph or two. I am asking you to read the second last paragraph on p.3? A. Yes, it does relate to a conversation.

Q. And the suggestion was that Mr. Barton was trying to get Mr. Armstrong killed, instead of vice versa? A. Yes. 30

Q. That was an important matter, in your mind, in the police investigations wasn't it? A. At that stage I showed it to Sgt. Anderson for him to adjudicate on it. It is not a matter for myself to adjudicate on.

Q. What was the necessity to get an adjudication on it? A. At that stage to the best of my recollection there was a subpoena in existence for documents and I thought that this document should have been produced there and then. 40

Q. You told that to Sgt. Anderson, did you? A. I produced it. I gave the document to Sgt. Anderson.

Q. You gave the document to Sgt. Anderson? A. Yes.

Q. And told him it should be produced? A. No, Mr. Gruzman. You are putting words in my mouth.

Q. I am sorry. A. I gave it to Sgt. Anderson for him to decide. He is a senior member of the service with considerable experience, and it is not for me to tell him how to perform his duty. 50

Q. Do you say that - you gave evidence a few minutes ago that the document was shown to Mr. Forbes? A. Yes.

Q. That is Mr. Forbes of the State Crown Solicitor's office? A. Yes.

Q. Were you present? A. Yes, on the morning of the production of the document. On the day preceding that, I did in fact ring Mr. Forbes personally telling him of the document and the contents of it. 10

Q. You might just tell his Honour what that conversation was? A. It was late on the day preceding the day that the documents were produced. I rang Mr. Forbes and told him of this document -

Q. What did you say? A. I can't recall the exact conversation.

Q. Give us the best you can your recollection of the conversation. Did you say "We have received an affidavit from Frederick Hume", or what did you say? A. I said that I had papers in my possession which came from Mr. Hume and I was wondering whether or not they should be produced. Mr. Forbes said that he would view the documents on the following morning, which he did do. 20

Q. When you say "which he did do", did you personally go to Mr. Forbes' office? A. I was there, yes.

Q. With Sgt. Anderson? A. I recall being in the office when the document was shown to Mr. Forbes.

Q. With Sgt. Anderson? A. I cannot recall who was there. 30

Q. Or Sgt. Wild? A. Sgt. Wild - you are casting my memory back some time. I know Sgt. Anderson and Sgt. Wild were in the vicinity. Whether or not they were in the room I cannot recall.

Q. It is your recollection that you were the person who showed this particular document to Mr. Forbes, is that so? A. I was there when it was showed to him. I can't recall whether I had it in my actual possession. I had given it to Sgt. Anderson. 40

Q. You tell his Honour what you recollect of what happened in Mr. Forbes' room in relation to this document? A. I was there when the document was showed to Mr. Forbes.

Q. Did you see someone hand the document to him? A. If I can just tell his Honour, Mr. Gruzman -

HIS HONOUR: Yes.

WITNESS: I just can't recall who was in the room at the time. I know Sgt. Anderson did have possession of the document at some time, sir. Mr. Forbes did view the document, and his opinion was that it did not come--- 50

HIS HONOUR: Just a moment.

MR. GRUZMAN: Q. What did Mr. Forbes say? A. The exact words I cannot recall, but he did say words to the effect that the document did not come within the ambit of the subpoena.

Q. Was that all that was said on the subject matter of that document? A. All that I can recollect.

Q. And then what was done with the document? A. I cannot recall. I eventually got the document back, and I kept it in my locker. 10

Q. Just jumping ahead a little bit, this conversation took place with Mr. Forbes on the morning of 15th February 1968? A. To the best of my recollection, yes.

Q. In his office in the Crown Solicitor's, a few doors up the street? A. Yes.

Q. Did you and Sgt. Wild and Mr. Forbes come to this Court? A. We came to Court, yes. 20

HIS HONOUR: Q. When in Mr. Forbes' office, Const. Follington, were the documents sorted into bundles as those that were regarded as falling within the subpoena and those which were not regarded as falling within the subpoena? A. The documents had been labelled.

Q. Yes? A. I can't recall any label being on this particular document, but it was in fact shown to Mr. Forbes.

Q. It was rather what happened to it physically after it had been looked at. Was it put aside with some other documents separate from those that were to be produced? A. I can't recall whether it was given back to Sgt. Anderson, or what the position was there. I know that I did get the document back, and I kept it in my possession, and each day that I appeared at this Court I brought it, hoping that I would be asked to produce it, because I thought it was a document which should be put before the Court. 30 40

MR. GRUZMAN: Q. Are you able to tell his Honour whether there was any other document - whether there were other documents which fell within the same category as this affidavit? A. None to my knowledge.

Q. When you walked up to the Court, who carried that document? A. I can't recall.

Q. Well, when you were present in this Courtroom here - you, Sgt. Anderson and Mr. Forbes - between you one of you had that document, hadn't you? A. I can't recall who had the document on that day. 50

Q. And then when you left the Court you say the

document was subsequently handed to you? A. Yes, I can't recall when, but I did in fact get the document back.

Q. How did that come about? A. To the best of my recollection it was given to me by Sgt. Anderson.

Q. How long after you left the Court? A. I can't recall.

Q. Days, weeks, hours, months? A. I can't recollect. 10

Q. No idea? A. No, no idea. I can't recall.

Q. Not within a matter of months you can't tell us? A. It would be a guess, and I think it would be rather misleading to be guessing in a matter like this. It was only a matter of days, if you want to put it down to something, but then again, it is one of these guesses.

Q. Your impression of it is that you were handed back the document within a few days after 15th February? A. Yes. 20

Q. And it was then put where? In your locker?
A. Yes.

Q. Why not someone else's locker? A. Because it had come into my possession, and I took it it was to remain in my possession and I put it in my locker for safe-keeping, hoping it would be asked for when I arrived at the Court.

Q. You were hoping that, were you? A. Well, it is a thing I thought should have been produced in the first place. 30

Q. You felt in your mind that it was a document which should have been produced to the Court? A. I felt that, yes.

Q. And did you have some conferences with Mr. Staff about this case? A. No.

Q. Didn't you? Or Mr. Bainton? A. I spoke to Mr. Bainton.

Q. In his chambers? A. Yes.

Q. After 15th February? A. Yes. Only for a short period with Mr. Bainton. There was another gentleman I spoke to at length. I was only with Mr. Bainton for a very short time. 40

Q. Mr. Goldstein, was it? A. Goldstein, yes.

Q. You had a lengthy conference with him? A. I was there for a couple of hours. I am not sure of the exact time.

Q. Can you tell us approximately when that was?
A. Shortly prior to my attending this Court and giving evidence.

Q. At the time of that conference did you have the affidavit with you? A. I can't recall.

Q. You might or might not have? A. That is right. I can't recall.

Q. At the time of your conference with Mr. Bainton, did you have that affidavit with you? A. I can't recall.

Q. Did you tell either Mr. Goldstein or Mr. Bainton about the existence of this affidavit? A. I told one of the representatives. I think it was - I am not sure whether it was Mr. Goldstein or Mr. Grant. I told one of the representatives about the existence of the affidavit. I am not sure who it was. 10

Q. Did you go to Mr. Grant's office? A. I have been to Mr. Grant's office, yes.

Q. On how many occasions? A. I was there today. It would be two or three times I have been there.

Q. You made a statement to Mr. Grant, did you? A. I made a statement to nobody. 20

Q. I beg your pardon? A. I have made a statement to nobody.

Q. How long were you in Mr. Grant's office on each occasion? A. Very short periods.

Q. Were you taken up to counsel's chambers? A. No, in Mr. Grant's office.

Q. Well then, apart from today you have had at least two discussions with Mr. Grant, one with Mr. Goldstein and one with Mr. Bainton, is that right? A. The conversation with Mr. Bainton, if I can remember correctly, was merely an introduction, and he then introduced me to Mr. Goldstein, or I had to wait for Mr. Goldstein. 30

Q. Did you tell any of those persons about this affidavit? A. I can't recall. A lot of things were discussed.

Q. Look, sir, here was a document in your possession which you believed should have been produced to the Court, and which for certain reasons had not been produced to the Court. That is the position, isn't it? A. It was not produced because of Mr. Forbes' decision to my knowledge. 40

Q. And you did not entirely agree with that, did you? A. Not 100%, but I am governed by my superiors.

Q. I asked you did you tell Mr. Grant, Mr. Goldstein, or Mr. Bainton about the existence of this document? A. I would have told one of them, but I am not sure which one.

Q. You are not prepared to tie yourself to anyone? A. Well, I could not definitely, because I can't recall which one. 50

Q. But you said you hoped that somebody would ask you for that document when you came to Court, didn't you? A. That is right.

Q. Because you felt it was right and proper that that document should be produced to the Court? A. Yes.

Q. Well, how could you expect anyone to ask you for it if you didn't tell them about it? A. It is not my position to volunteer these things. 10

Q. The position is that you did not tell them?
A. I did.

Q. You are not prepared to swear who? A. I can't recall who.

Q. You have got a distinct recollection of producing the document and showing it? A. I have a distinct recollection of taking it one day when I saw one of the counsel for Mr. Armstrong, but which one it was I can't recall.

Q. Well, if you are using "counsel" as a term for "barrister", you only saw two barristers? 20
A. Either Mr. Goldstein or Mr. Grant, I am not sure.

Q. You took it with you and showed the document to them? A. Showed the document to one of them.

Q. And said that in your opinion it ought to be produced? A. No, I did not say that. I showed it to them.

Q. Did you say why it had not been produced in the Court? A. I can't recall. 30

Q. You might have or you might not have? A. I just can't recall.

Q. Throughout your evidence in these proceedings you made no mention of the existence of this document? A. There was no necessity. I was never asked.

Q. I put it to you, Constable Follington, that you and the other police concerned were anxious to prevent the production to this Court of documentary evidence? A. Well, that is completely wrong, Mr. Gruzman. 40

Q. I put it to you that Mr. Forbes did not give you advice to fail to produce that document to the Court? A. He did.

Q. I put it to you that you realised that this document, being an affidavit of Frederick Hume, was incriminatory of Hume? A. No, not incriminatory of Hume. I cannot see anything in it which would incriminate Mr. Hume.

Q. Of course, you know - you are acquainted with Det. Sgt. England? A. Yes, I know Sgt. England well. 50

Q. You know that Det. Sgt. England was the officer who Mr. Hume principally assisted in the Police Force? (Objected to; rejected.)

Q. Did Sgt. England tell you how he came to be the recipient of this affidavit? (Objected to; allowed.)

Q. Did Sgt. England tell you how he came to be the recipient of this affidavit? A. I can't recall.

Q. Const. Follington, did you tell Sgt. Wild about the existence of this document? A. I can't recall. It is possible, but I can't recall. 10

Q. Did you discuss the document with Sgt. Wild?
A. As I said I can't recall.

Q. But, Constable Follington, you have told us already that this was a document which you regarded as of some significance? A. It should have been produced, yes. It is possible, Mr. Gruzman, that I did discuss it with him, but I can't say definitely whether I did or did not. I don't work in the same section as Sgt. Wild, and there are sometimes weeks go past and I don't even see the man. 20

Q. Constable, on 15th February you and Constable (sic) Wild together came first to Mr. Forbes' office, and then to this Court, didn't you? A. Sergeant Wild, yes.

Q. And this affidavit was a document which was under discussion with Mr. Forbes, wasn't it? A. Definitely, yes.

Q. And it was an original affidavit by Frederick Hume? A. Yes. 30

Q. Can't you tell his Honour whether or not you discussed this document with Sgt. Wild? A. Sir, I can't recall every person that I discuss something with or this nature. As in all Court cases, it is quite obvious that you do discuss it with the person involved. I can't say definitely that I did. I have a lot of Court cases, and quite regularly do discuss these things with them, but I cannot say positively that I did discuss it with him. It is possible, but I can't say positively. 40

Q. I put it to you that you, for example, discussed with Wild the fact that Hume was concerned that he gave Det. Sgt. Wild a statement and he took some notes. Do you remember a discussion of that matter with Sgt. Wild? A. No, I can't recall that particular discussion, Mr. Gruzman.

Q. Do you remember whether there was a discussion with Sgt. Wild as to the date of the interview with Hume? A. I know the interview - Sgt. Wild told me of the interview on 18th January 1967 with Hume. 50

Q. That was the first you knew of it? A. No. I had made arrangements for Mr. Hume to be at the C.I.B. on 18th January for Sgt. Wild to interview him.

Q. Were you present at that interview? A. No.

Q. Not at all? A. No.

Q. Never asked any questions? A. No.

Q. Never took any part of any kind or description in the interview? A. No.

Q. Did you see Hume at the C.I.B. at the time of that interview? A. I can't even recall whether I was at the C.I.B. on that date.

Q. You certainly never saw Hume there? A. No, I can't recall seeing him. 10

Q. I put it to you that in brief you were aware that this affidavit showed that the investigation with Hume must have taken place on a different date to what Sgt. Wild and Hume were maintaining? A. Would you repeat that?

Q. Yes. I put it to you, Constable, that you knew that the affidavit established that you and Sgt. Wild were not telling the truth as to the date of the interview with Hume? A. That is wrong. The only interview in connection with this matter that I have been present at with Mr. Hume - at which Mr. Hume has been present - was on 5th February 1968, when Det. Sgt. Butler interviewed Mr. Hume and I typed the questions and answers. 20

Q. You say it is completely untrue to suggest that at any time in January 1967 you were asked whether you wanted to ask any further questions of Hume? A. I beg your pardon, can you repeat that?

Q. You say it is completely untrue to say that in January 1967 you, in the presence of Wild and Hume, were asked whether you wanted to ask Hume any further questions? (Objected to; allowed.) A. I was not even there. 30

Q. I put it to you, Constable Follington, that you were present at the interview - the original interview with Hume? A. That is a lie.

Q. That is a lie? A. Yes.

Q. I put it to you that you were present at the tail end of the interview, and that you were asked whether you wanted to ask questions of Hume? A. No, that is a lie. 40

Q. That is a lie? A. Yes.

Q. One other matter. Don't answer this until his Honour has ruled on it - did you tell Hume that Mr. Barton was staying at the Wentworth Hotel?

HIS HONOUR: I will allow that.

WITNESS: No.

(Witness retired.)

(Further hearing adjourned to 10.00 a.m. on
Wednesday, 2nd October, 1968.)

HIS HONOUR: This morning's Sittings have been delayed by reason of a matter having been raised with me by counsel in private Chambers. Last night one of the counsel engaged in this suit was telephoned at his home and the caller, after making reference to evidence given in this suit, threatened the life of that counsel and of the members of his family. 10

This is a grave and serious matter. Litigants, their solicitors, counsel and witnesses are not to be exposed to intimidation. I shall forthwith take steps to ensure that the matter is thoroughly and completely investigated, and that firm action is taken to deal with the situation. I shall say no more about it at this stage beyond recording that there is no suggestion whatever that Mr. Barton, Mr. Armstrong or any party to this suit or witness in this suit was in any way responsible for the telephone call. 20

ROBERT IAN GRANT

On former oath:

HIS HONOUR: Q. You are still on your former oath, Mr. Grant. A. Yes.

MR. BAINTON: Q. Your full name is Robert Ian Grant? A. Yes.

Q. You have previously given evidence in this matter? A. Yes. 30

Q. Will you look at the first document in this bundle, which I think is Exhibit 61? A. Yes.

Q. Is that a document that came into your possession? A. Yes, it is.

Q. Would you tell me when and from whom you received it? A. When Mr. Armstrong gave me instructions to act for him in the divorce petition this document was given to me at or about that time.

Q. Had you acted for Mr. Armstrong or for any company in which he had any interest prior to that time? A. No. 40

Q. You took over from another solicitor in effect? A. That is right.

Q. You were acting for Mr. Armstrong when his Honour Mr. Justice Dovey announced his decision in the proceedings, were you? A. Yes.

Q. I think what his Honour Mr. Justice Dovey said gained some publicity in the press, didn't it? A. Yes.

Q. Did Mr. Armstrong come to see you about it on the same day? A. Yes either that day or the following day. I think it was the same day.

Q. Did you take Mr. Armstrong anywhere to get advice in the matter? A. Yes. I retained Mr. Mahoney, and arranged for a conference with him.

Q. Was there any other counsel at the conference?
A. Mr. Goldstein.

Q. And after that conference had taken place was the matter again listed before his Honour Mr. Justice Dovey? A. It was, yes. 10

Q. I now show you Exhibit 62. Mr. Grant, would you look at this document, which is Exhibit 62 in this case. Was that brought into you some time in April 1967? A. It was.

Q. May I take it when it was brought into you, you read it? A. I did.

Q. Were any of the documents mentioned in it brought in to you with the subpoena? A. Yes. I am not too sure that they were brought in with the subpoena, but shortly after the subpoena the documents that answered the description were brought in. 20

Q. Did that include a diary for the current year, 1966, and a diary for so much of the current year 1967 as had then gone by? A. Yes.

Q. Did you take any photo copies of any of these books? A. The relevant period was round about December-early January, and I took photo copies of all the entries in the diaries during those dates. 30

Q. That is December 1966 and January 1967? A. Yes. I did take some other copies of any entry that could possibly be conceived to be relevant, generally if someone's name was mentioned that may have been involved in the proceedings.

Q. At any rate, you did take a Xerox copy of the entries for December 1966 and January 1967?
A. Yes.

Q. What did you do with those Xerox copies?
A. They were ultimately destroyed. I destroyed them personally round about the end of October, I suppose, 1967. 40

Q. What led you to take that course? A. There had been some conferences between the time the diaries were subpoenaed and the time Mr. Armstrong went away late in April 1967, and when he came back some time later he had a further conference with Mr. Staff, at which I was present, and he later made a decision, or communicated a decision to me, concerning the diaries, and as a result of that I destroyed the Xerox copies that I had. 50

Q. As a result of what Mr. Armstrong told you?
A. Yes.

Q. And what was that? A. That he was going to destroy his diaries and keep the current diary and one year back in the future.

Q. Did you read the entries for these months, Mr. Grant, before you copied them, or the copies subsequently? A. Yes, I did.

Q. Have you looked at the entries in the diary produced for January 1967? A. I have.

Q. Are you able from recollection to say whether the two correspond? A. No. 10

Q. Was there anything in what you read, either in the photo copies or in the books from which you took them, which appeared to have any relevance to the proceedings last year? (Objected to; rejected.)

Q. Mr. Grant, I think in March 1967, Southern Tablelands Finance Co. Pty. Limited, called up \$300,000 due to it on mortgage? A. Yes.

Q. From, I think, the Paradise Waters companies? A. Yes. 20

Q. And from Landmark? A. Yes.

Q. It alleged there had been default in the payment of interest? A. Yes.

Q. The mortgagor companies denied that there had been a default? A. Yes.

Q. And asserted that even if there had been a default the original agreements did not record the intentions of the parties, and ought to be rectified in that respect? A. Yes.

Q. The respect in question being to give 14 days' grace on payments of instalments of interest? A. Yes. 30

Q. And proceedings were commenced in this Court in both its equitable jurisdiction and its common law jurisdiction to secure that rectification and to prevent the calling-up of the mortgage money? A. Yes.

Q. The common law proceedings were purported to be based on s.30 of the Money-Lenders Act? A. Yes. 40

Q. The subpoena in question was served on Mr. Armstrong in those proceedings? A. That is so.

Q. And it asked for his diaries covering the period of the negotiation of the agreement? A. Yes.

Q. And it was those diaries that you looked at and read? A. Yes.

Q. And it was present to your mind, wasn't it,

that Mr. Armstrong may give evidence in those proceedings? A. Yes.

Q. And that his diary was subpoenaed by those appearing for the Paradise Waters companies in connection with any evidence Mr. Armstrong might give?
A. Yes.

Q. Were there any matters that you noticed in those diaries when you read them relevant to that proceeding which are not in the diary for 1967 which has been produced in this Court? (Objected to; rejected.) 10

Q. When you read the diary entries that you had copied or the copies you had made did you see anything in them relating to the making of threats upon Mr. Barton or the employment of Mr. Hume to make any threats or any matters of that nature? (Objected to; rejected.)

Q. Was there anything in what you read before you copied the diaries, or in the copies, if it was the copies you read, relating to the making of any threats upon Mr. Barton? (Objected to; rejected.) 20

Q. Mr. Grant, was there any statement in those diaries that Mr. Armstrong employed Hume to threaten Mr. Barton or to watch Mr. Barton? (Objected to; rejected.)

Q. Do you have any recollection of any of the actual entries for either of these months? A. Yes. I could not relate detailed entries. I could possibly mention topics, but that is all. 30

HIS HONOUR: Q. This is December 1966-January 1967?
A. No, in that particular period I could not recall the entries at all.

MR. BAINTON: Q. You have got no specific recollection of actual entries in either of those months?
A. No.

Q. Throughout the period covered by these diaries which I suppose would have been the whole of 1966 up to some date in 1967 - or, I will put it this way: Do you have a recollection of any of the actual entries in the 1966 diary or the 1967 diary produced? A. Not detailed. Of topics, yes. 40

Q. You can't tell us of the actual entries?
A. No.

Q. What is your recollection of the topics?
(Objected to; allowed.)

HIS HONOUR: Q. This is the best recollection that you are now able to present of what you read in the 1966 diary? A. Yes. There were comments concerning the plaintiff and Mr. Armstrong's opinions of him at a particular time. There were noted such events as when he was removed as Chairman, and there were comments on the events that were happening 50

during this November-December period. There was an odd comment on Mr. Staff. There was comment on myself.

MR. BAINTON: Q. Yes. Anything else? A. Yes. There were odd personal comments on family or social events. I could not remember any detail. In detail I could not remember anything more than that.

Q. Well now, after these proceedings commenced did you look through the 1967 diary, in particular for the month of January? A. I did, yes. 10

Q. When you did that, did you observe anything in it that was different from what recollection you had of the documents you had seen in the prior year, and photographed? (Objected to; discussion ensued.)

Q. You heard the way his Honour put it a moment ago? A. Yes.

Q. Relating to the 1967 diary? A. Yes.

Q. Would you just assume I had asked the question, and answer it, please? A. Could I have the question again, please? 20

HIS HONOUR: I will ask the question.

Q. You have seen the 1967 diary? A. Yes.

Q. And that contains within it entries of a personal nature, entries of a business nature both in the city and in the country, and comments and observations on persons and events? A. Yes.

Q. Broadly speaking was the 1966 diary of a similar character in the entries that it contained? A. Yes. 30

MR. BAINTON: Q. I want to come now to the 1967 diary which his Honour had in his hands - the one produced in Court. I think I did ask you did you read it after these proceedings commenced - that is, the entries for January 1967. You told me you had? A. Yes.

Q. When you read it did you observe anything which struck you as being in any way different from your recollection of what you had read when you photographed the 1967 diary in April 1967? (Objected to; allowed.) A. I noticed nothing different, but I don't recall the details. It was the same type. 40

Q. When the diary now in Court was produced to you after these proceedings commenced you read the entries for the month of January 1967? A. Yes.

Q. In April 1967 you read and photographed entries in a diary for the month of January 1967? A. Yes.

Q. Among other entries? A. Yes. 50

Q. In other books? A. Yes.

Q. When you read the entries in the book now in Court after these proceedings commenced for the month of January 1967 did you observe anything that did not accord, or was different from whatever recollection you had of the entries for January 1967 that you had read in April 1967? (Objected to.)

HIS HONOUR: Q. Mr. Grant, are you able to say one way or the other whether your copy of the January 1967 entry did or did not correspond with the January 1967 entry in that book, Exhibit "AA"? A. I could not say they corresponded. 10

MR. BAINTON: Q. At p.515 you gave some evidence of having a conference with Mr. Staff on 9th January 1966 - I am sorry, 9th January 1967 - and it was subsequently put to you - it was subsequently put to Mr. Armstrong that he could not have been where his diary said he was if he was having a conference on that day. The discussion you had with Mr. Staff on 9th January - was that a discussion face to face or by telephone? A. No, by 'phone. He was at Muswellbrook, and I 'phoned him. 20

Q. The next matter is not one arising out of cross-examination at all. Would you look at this document, Mr. Grant? A. Yes.

Q. I think that is something found in your office since you gave evidence? A. Yes.

Q. What is it? A. It is a copy of Exhibit 50, or part of Exhibit 50, which is the original draft deed of settlement. 30

Q. I think it is the one you worked on at the time of your conferences with Mr. Coleman and Mr. Bowen? A. Yes, this is so, yes. My notes were taken down on the sheets of paper that have already been tendered as exhibits, and later on, in order to keep up to date with the possible amendments to the deed, I wrote them on this particular copy.

Q. When you say "later on", after what interval of time? A. Probably within 24 hours I should think. 40

Q. The matters that are not in typescript are in your handwriting, aren't they? A. Yes.

Q. Are these notes of the matters that were put to you either by Mr. Coleman or by Mr. Bowen in relation to the contents and drafting of the deed?
A. That is right.

(Draft deed tendered and admitted as Exhibit 82.)

Q. In the middle of the year 1966 were you admitted to practice as a solicitor in Queensland?
A. I was. 50

Q. Did you set about opening an office in Queensland? A. I did. At Surfer's Paradise.

Q. I think some little interval of time elapsed between your admission and the actual issue of the practising certificate? A. Yes.

Q. During that interval did you take steps to set your office up in Surfer's Paradise? A. I did.

Q. I think you sent someone ahead to do some administrative work? A. Yes. 10

Q. And did you go up there yourself? A. I did.

Q. Can you tell me when it was that you went to Surfer's? A. On Sunday, 24th July 1966.

Q. Before going up there yourself had you been instructed to prepare any document for use in Surfer's Paradise? A. Yes. On Friday - the day I went up was Sunday, and on the Friday before, the 22nd, I had a telephone conversation with Mr. Barton and as a result of that I prepared a notice to determine the contract with H. & V. Developments. 20

Q. Yes? A. On that day I wrote a letter to Mr. Barton. I drafted the notice, and received the common seal of Goondoo Pty. Limited from the Landmark Office, and I was told that Mr. Hume would be calling at the office to pick up these documents and the seal, and that he would take them up; he was flying up that day. They were prepared and sent up via Mr. Hume.

MR. BAINTON: I call for letter dated 22nd July 1966 from Dare, Reed, Martin & Grant addressed to A. Barton, Esq., Landmark Corporation, 109 Pitt Street, Sydney. (Not produced.) 30

Q. Do you have your carbon copy of the document? A. I do. (Objected to; allowed.)

Q. You have? A. Yes.

Q. What was given to Mr. Hume to take up to Surfer's Paradise? A. There was simply an envelope. The envelope contained that letter, the common seal of Goondoo Pty. Ltd., and I think the notice in triplicate. 40

Q. You went up on Sunday, 24th? A. Yes.

Q. Where did you stay? A. The Chevron.

Q. Did you see anybody when you got there that you knew? A. As soon as I arrived there I was called, and I went down to a room where Mr. Barton was, and there were quite a few people. There was Mr. Armstrong, Mrs. Armstrong, Mr. Hume. There may have been others.

Q. What time of the day was this? Do you recollect what part of the day it was? A. Early evening. 6.30-7.30 time. 50

Q. Well then, I suppose there was some discussion took place among the people there? A. The general topic that sticks in my mind was the H. & V. contract and its determination.

Q. Where did you have dinner that evening? A. At the Captain's table.

Q. Who was present at that dinner? A. Mrs. Armstrong, Mr. Armstrong, Mr. Barton, Miss Peacock, my secretary. I think Margaret Armstrong may have been there - Mr. Armstrong's daughter. There could have been others, too. It was quite a large party. 10

Q. So far as you personally are concerned, was that dinner interrupted by anything? A. Yes. I received several 'phone calls from a Mr. Lippiatt.

Q. Who is he? A. A Brisbane solicitor, acting for H. & V. Developments. He was informing me that he was proposing to take injunction proceedings against Goondoo and the Landmark group of companies to restrain them from taking possession of this machinery. He indicated it was going to be an ex parte injunction, and I asked him if he would make arrangements to let us know when it was coming before the Court so that we might be represented. 20

Q. Yes? A. During the course of the evening I was conferring with Mr. Barton and Mr. Armstrong about it.

Q. Were you telling both of these people what Mr. Lippiatt had said to you on the telephone? A. Yes.

Q. And discussing, may I take it, what action would be taken about these matters? A. That is correct. 30

Q. Was there more than one such 'phone call between you and Mr. Lippiatt? A. Yes, there was. I don't recall how many there were, but there was certainly more than one, and I made 'phone calls to Mr. Bayley, who was our Brisbane agent at the time, and arranged for him to brief counsel and to have appointments made for a conference the next day and for counsel to be available to appear if injunction proceedings were instituted. 40

Q. After the dinner did you go back to the hotel? A. Mr. Barton took us up on to the Paradise Towers building which had just been finished and we had a look at the penthouse and the magnificent view, and after that we went back to the hotel.

Q. Have you any idea of what time you got back to the hotel? A. It was fairly late. It would be after 11 o'clock.

Q. Who went back to the hotel? A. There was Mr. Barton, Miss Peacock and myself. 50

Q. Where did Mr. Barton go when you got to the Chevron? A. I think Mr. Barton invited me along

to his room to have a drink. We had a drink and a short talk, and then I went to bed.

Q. Did you see Mr. Barton again next morning?

A. Yes. On the following day Mr. Barton and I went down to Brisbane.

Q. Before you come to that, where was Mr. Barton when you first saw him on the Monday morning? A. It was fairly early in the Chevron Hotel, probably in the foyer. 10

Q. Who went to Brisbane on the Monday? A. Someone drove us down. I don't recall whether it was Mr. Bryant or Mr. Kilmartin, but it was one of the agents drove us down to Brisbane.

Q. Who was "us"? A. Mr. Barton and I.

Q. Where did you go in Brisbane? A. We went - we may have gone to the solicitor's office first, but we certainly were together at Mr. Connelly's Chambers.

Q. Who is that? A. Queen's Counsel, in Brisbane. 20

Q. At what part of the day? A. Mid to late morning.

Q. And the rest of the day - how was that spent?

A. Well, there was a conference with Mr. Connelly and Mr. Philp, the junior.

Q. Who was present? A. Mr. Bayley, Mr. Barton, myself, Mr. Philp and Mr. Connelly.

Q. Yes? A. There were telephone conferences with Mr. Lippiatt, and I think his counsel was Mr. Bennett, Q.C., and there were telephone conferences between Connelly and Bennett. Round about - certainly by early afternoon - it became apparent there was not going to be any injunction proceedings instituted certainly that day, and my recollection of this is that Mr. Barton then took the opportunity of coming back to Sydney, and I did some liaison with some Brisbane solicitors. I called on Mr. Steindl - 30

Q. To cut it short, you had some other work to do in Brisbane, and did it? A. Yes, this is right. 40

Q. When did you leave Brisbane, and where did you go yourself? A. I came back that evening in a hire car.

Q. When you say you came back, you came back to where? A. I came back to Surfer's and I got back there - I would have left just before the traffic started, and would have got there a little after six, or six-thirty.

Q. I think you did remain there yourself for some time afterwards? A. That is right. 50

Q. About how long? A. I was there for at least a fortnight.

Q. During the period that you were there of this fortnight, did you see Mr. Armstrong from time to time? A. During the first week. I think he went back - the Monday was the 25th. He went back the following Saturday.

Q. While he was there where was he staying? A. He was in a unit around on the Esplanade near the Sands. It was not in The Sands building, which was not completed. Driftwood, or some such. 10

Q. Was he staying at all, while he was there, at the Chevron? A. Not on that occasion.

Q. I am talking about this occasion in July through August 1966. A. No, not to my recollection.

(Document produced by Mr. Purvis.)

(Mr. Bainton granted access to box of cards in Court produced from Chevron Hotel.)

MR. BAINTON: Q. Mr. Grant, did you subsequently on 29th November 1966 render a memorandum to Landmark Corporation Limited of your fees in that and some other matters? A. Yes. 20

Q. Do you have a carbon copy of that bill? A. I do.

Q. Does the name Owen Hetherington mean anything to you? A. Yes, it does.

Q. Did a person saying that that was his name telephone you not so very long ago? A. Earlier in the year I think his name was given to me, and I telephoned him. 30

Q. Did you have a conversation with him? A. Yes, I did.

Q. Did you at any time tell Mr. Hume anything at all about that conversation? A. No.

(M.f.i. 70 tendered, together with a Chevron Hotel record card, and marked Exhibit 83.)

Q. Were you in Court when it was put to Mr. Hume in the course of cross-examination that Mr. Barton was not at the Chevron Hotel on that Sunday evening? A. Yes, I was. 40

Q. Was Mr. Barton in Court when that was put? A. Yes, he was.

Q. Where was he sitting? A. Where he is now.

Q. Behind his counsel? A. Yes.

(Another card from Chevron Hotel documents tendered; objected to. His Honour permitted it to be shown to the witness to identify signature.)

Q. (Document shown to witness.) Whose signature appears on that? A. Mr. Barton's.

(Document tendered; again objected to as irrelevant.)

HIS HONOUR: I will retain it for the time being and will defer ruling on it for the moment. At the moment I am not satisfied it is relevant.

MR. BAINTON: Q. Would you have a look at these, two, and tell me if you can identify the signatures on them? (Mr. Gruzman objected to this course being taken; question allowed and document shown to witness.)

10

MR. GRUZMAN: It might be noted the witness is reading the document in detail rather than looking at the signatures.

HIS HONOUR: Yes.

MR. BAINTON: Q. Would you please look at the signature? A. Yes.

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

20

(Document tendered.)

HIS HONOUR: Q. Is that on each? You spent some time perusing the document in your right hand. Has that Mr. Armstrong's signature on it? A. Yes.

MR. BAINTON: Q. That is m.f.i. 69, is it not? A. In fact, each of the documents has his signature on it.

(Chevron Hotel record card and document m.f.i. 69 tendered together and marked Exhibit 84.)

(Mr. Bainton renewed the tender of the card on which his Honour had deferred ruling.)

30

HIS HONOUR: I do not feel justified in drawing an inference from that; I think it is speculative. One might well speculate that that is what the system is, but the reference from which you seek to have this inference drawn has no reference at all on that date, and I do not think I would be prepared to draw an inference as to the course of practice regarding the significance of this date. For that reason I think I should reject it as it stands at the moment.

40

MR. BAINTON: Q. Would you then please look at these and tell me whether you can identify signatures on them? (Shown to witness.) A. The first one is Mr. Armstrong's, the second one is mine, the third one is mine, the fourth one is ---

Q. The fourth one is unsigned but from your own knowledge are you able to tell us to whom it relates? A. Yes, it relates to me.

Q. You personally? A. To me personally, yes.

50

(Above documents tendered; objected to as irrelevant.)

HIS HONOUR: I do not think I am prepared to draw an inference of system from those documents, Mr. Bainton. They can be marked for identification but I do not consider I am justified in drawing the inference.

(Four documents just tendered, together with the one previously tendered and rejected, m.f.i. 84.) 10

MR. BAINTON: Q. I think you have stayed on quite a few occasions at the Chevron Hotel, Surfer's Paradise? A. Yes, I have.

Q. What is the system when you book in? A. I don't know. It has always been done for me.

Q. I think you sent to Mr. Bayley a document handed to us, of which I think this (shown to witness) is a photo copy, and asked him to answer the questions on it, did you? A. Yes, I did. 20

Q. And I think you telephoned him this morning, was it? A. I spoke to him late last night, yes.

Q. And he dictated the letter which is being sent in reply, did he not, and this document sets out the answers he is making to the questions? A. This document is the letter that I understand is on its way down here from Mr. Bayley.

(Questions and answers, F. C. Bayley, relating to his affidavit, tendered and marked Exhibit 85.) 30

MR. GRUZMAN: Would your Honour note that it is to be read as part of Mr. Bayley's affidavit, and would your Honour also say that by consent the questions and answers be taken as evidence in the suit?

HIS HONOUR: I shall have it noted that these questions have been asked and the answers furnished so as to avoid Mr. Bayley having to come to Sydney to be cross-examined. The answers are agreed to be treated as if they had been given in evidence in the suit. I think this is all I need say. 40

CROSS-EXAMINATION:

MR. GRUZMAN: Q. In respect of this Queensland visit, you can see that there is a difference of opinion as to whether Mr. Barton was at the Chevron Hotel on the night of Sunday, 24th July 1966, or not? A. Yes.

Q. You have given a version in which you say that he was not there and he has equally given a version in which he says he was? A. No -

HIS HONOUR: It was the other way round, Mr. Gruzman. 50

MR. GRUZMAN: Q. You say he was there and he says he was not? A. Well, no, I haven't heard- (Objected to.)

Q. You might just check your recollection. You say you remember seeing Mr. Connelly of counsel in Brisbane? A. Yes.

Q. Can you remember how Mr. Connelly was dressed when you saw him? A. No, I can't.

Q. If I suggest to you that he was in military uniform, does that help you? A. Yes, it does. I think that he was involved in some military activity during that particular weekend, but he was not in military uniform when I saw him and I think that this military uniform, or the military activity, was some reason why he could not be got earlier in the evening. 10

Q. But you see, the military activity was an activity during the weekend, was it not? A. This is right, yes, or it could be. I would expect it to be.

Q. And the fact is that the conference with Mr. Connelly took place on the Sunday, did it not? A. No, that is not correct 20

Q. I put it to you that the conference with Mr. Connelly took place on the Sunday in Brisbane? A. No, that is not correct at all.

Q. Well, was this how it came to your mind, that Mr. Connelly was engaged in a military activity that weekend? A. It came to my mind because this was the reason put forward by Mr. Bayley that he could not get him on the Sunday night when he was speaking to him on the 'phone. 30

Q. I put it to you he was in uniform when you saw him? A. No, he was not.

Q. You are a solicitor and you were engaged on a fairly important exercise at the time, were you not? A. That is this -

Q. This repossession and so on? A. Yes.

Q. Well, did you keep some entries, diary entries, some written notes? A. I have the Avis car account which shows that I picked up the Avis car - at least that Miss Peacock picked up the Avis car on the Sunday - and I know that I went up there on the Sunday by air. 40

Q. Have you got the Avis account there? A. Yes, I have.

Q. Would you let us have a look at it? A. Yes. (Account produced.)

Q. I suppose we can all have some lapse of recollection, but you might just take this Avis car account in your hand and tell me where the car was actually hired? A. It was in Brisbane. 50

Q. And when was it hired? A. Well, I did not take delivery of it on the hiring. I got up there on the -

Q. Please, Mr. Grant. You told us that this Avis account document was in your possession and I am only trying to find out the exact truth of it for the Court. Now, according to you, you were in Brisbane for the first time on the Monday. That is correct, is it not? A. No, that is not right.

Q. You flew up on the Sunday, in Brisbane on the Monday? A. No, I flew to Brisbane on the Sunday and I was picked up on the Sunday by Miss Peacock in this Avis car and taken down to Surfers' Paradise and that was the evening we dined at the Captain's table. 10

Q. I thought, and I was under the impression, that you told us you came to Surfers' Paradise on the Sunday? A. I arrived at Surfers on Sunday, that is correct.

Q. Well, you were certainly in Brisbane on the Sunday? A. That is correct.

Q. And I put it to you that it was on the Sunday in Brisbane that you saw Mr. Connelly? A. No, that is not correct. 20

Q. And I put it to you that Mr. Barton met you in Brisbane on the Sunday and you went to see Mr. Connelly? A. No, that is not correct not this weekend.

Q. I want to be perfectly fair to you. Have you got any other document which you feel supports your recollection? Do you understand I am not suggesting you are misleading the Court, but have you got some document which you think would help his Honour? Then would you tell us what it is and let us have a look at it? A. I have a receipt from Steindl Wardrobe & Co., dated 25th July 1966, for \$1,000, which I paid to Mr. Steindl on that day. It was an account of costs for releases of mortgages on the Paradise Towers project and I called and saw him on that day and discussed general procedures with him, and this is the receipt. (Indicating.) 30

Q. Mr. Barton was not with you then? A. No, he was not. 40

Q. I include amongst the documents any notes that you made, diary entries, plane tickets, anything that you say supports your recollection. These are documents, not recollections at this stage? A. Well, this is a diary note and it was very recently made, but -

Q. I exclude documents that were very recently made. I mean notes made at or around the time of any kind or description which you think assist your recollection? A. No. I do not have any other documents in my possession that relate to it. 50

Q. You see, your recollection was that Mr. Armstrong had not stayed at the Chevron Hotel at all in July, was it not? A. No. My recollection is that on that occasion he was staying round at, I

think it was Driftwood units on The Esplanade.

Q. Did you not give evidence that during this July visit, Mr. Armstrong did not stay at The Chevron at all? Was not that your evidence in chief? A. What were the dates - he left the following Saturday?

Q. Did you not give evidence to my friend Mr. Bainton that Mr. Armstrong did not stay in the Chevron at all during that July visit? A. Yes, that is so. 10

Q. And in fact, you were wrong, were you not?
A. There was -

Q. Mr. Grant, you have seen the document, the tender of which I did not object to. It shows that Mr. Armstrong stayed in the Chevron, I think if I am not mistaken, on 27th, 28th and 29th July. That is correct, is it not? A. Yes - I did not see the dates of that but that could be.

Q. You see, you made a mistake, didn't you? A. Yes. 20

Q. And if you can make a mistake like that, you will agree in fairness that you can make a mistake about other aspects of that weekend? A. No, I will agree that mistakes could be made, but there was no mistake made with this conference with Mr. Connelly on the Monday.

Q. I will put it to you again: Mr. Barton met you in Brisbane? A. No that is not correct.

Q. Well, have you got a memorandum of fees from Mr. Connelly? A. No, I have not. These papers were taken over by other solicitors and all my files went. I did take the opportunity to have these dates checked and Mr. Bayley --- 30

HIS HONOUR: Q. No, do not go into that. A. I am sorry.

MR. GRUZMAN: Q. The position is that although there must have been a memorandum of fees by Mr. Connelly, doubtless a solicitor's account for his work instructing, possibly diary entries by the solicitor, and notwithstanding the importance placed on it, you cannot produce any document of any description which supports your recollection; that is correct, isn't it? A. That is correct, yes. 40

Q. If I might help you just a little further, did Mr. Connelly in uniform, in the course of the discussion, take off his uniform coat? A. No.

Q. You mentioned a man called Owen Hetherington?
A. Yes.

Q. As meaning something to you, and I think you were present in court when Mr. Hume, on I think the fortieth day of the case, made some suggestion affecting Mr. Barton and in relation to this man Hetherington? A. Yes. 50

Q. And you remember I suggested to Hume that it was, I think, in the terms "a dirty libel"? A. Yes.

Q. The question involved was whether Mr. Barton had been followed by the man Hetherington? A. That is so.

Q. And that, I suppose, might have explained Mr. Barton's view that he was followed? (Objected to; question withdrawn.)

Q. As Mr. Armstrong's solicitor, have you taken any steps to bring Hetherington to the Court? A. None whatsoever. 10

Q. And you are prepared to let this suggestion just remain in the air? A. No, I am not.

Q. You have not brought Hetherington to the Court? A. No.

Q. And you have not taken any other steps to prove in this Court the truth or falsity of the allegation? A. If you ask me the question, Mr. Gruzman, I will answer it. 20

Q. Mr. Grant, I do not want to know your views. I am asking you whether as a solicitor for Mr. Armstrong, having the conduct of these proceedings, have you taken steps and do you propose to establish in this Court the truth or falsity of the allegation? (Objected to; rejected.)

Q. I would like to deal with another matter. You told his Honour that the document which is now Exhibit 61 came into your possession and was regarded by you as your instructions from Mr. Armstrong? A. It formed part of my instructions. 30

Q. Did you accept and act on those instructions? A. In summary, the instructions were to ---

Q. No. You have produced a document. You have told his Honour it comprised part of your instructions from Mr. Armstrong. The question is, did you accept and act upon those parts of Mr. Armstrong's instructions which are contained in that document, Exhibit 61? (Objected to; rejected in first instance as a double question.) 40

Q. Did you accept those parts of Mr. Armstrong's instructions which are contained in Exhibit 61? (Objected to; rejected.)

Q. Part of your instructions was that Mr. Armstrong was concerned that the Registrar of the Divorce Court would find out his true assets position, was it not? (Objected to; question to be re-framed.)

Q. In that document, Exhibit 61, Mr. Armstrong expressed his concern that the Registrar in the Divorce Court would find out his true asset position, did he not? (Objected to; allowed.) 50

Q. That was a concern, wasn't it? I will put it to you again; in that document, Exhibit 61, Mr. Armstrong expressed his concern that the Registrar in the Divorce Court would find out his true asset position, didn't he? A. If that is in the document, yes.

Q. Well, you have no doubt, have you? A. May I look at the document?

Q. Yes. Will you have a look under the heading, "Notes", No. 7 on the last page of the document. (Shown to witness.) Will you agree it says "Notes. 7. Registrar will find out true asset position". A. That is what the document says. 10

Q. And by reference to the fifth paragraph, you will agree it says "It would be unwise to bank on the fact that the Registrar of Means will not very easily find out that the true asset position of A.E. Armstrong is not disclosed by income"? A. That is what the document says. 20

Q. And you regarded those two statements as expressing Mr. Armstrong's concern that the Registrar in Divorce would find out the truth about his asset position? (Objected to.)

HIS HONOUR: It is quite clear; is it, Mr. Gruzman, that you are making a specific challenge of Mr. Grant's credit referable to what you say he did pursuant to these instructions?

MR. GRUZMAN: Yes. (Question allowed.)

Q. You regarded those two statements in Exhibit 61 as expressing Mr. Armstrong's concern that the Registrar in Divorce would ascertain the truth about his asset position, did you not? A. I would have expected the Registrar in Divorce to have ascertained the truth of his asset position, if there were a Certificate of Means application, yes. 30

Q. And you realised that Mr. Armstrong was concerned to prevent that, did you not? A. There was not a lot of point - if the thing was going to be settled, there was not a lot of point in having a Certificate of Means application. 40

Q. Would you please answer the question? You understood that Mr. Armstrong was concerned to prevent the Registrar in Divorce finding out the truth about his assets, did you not? A. No, I didn't.

Q. You did not understand that? A. No.

Q. Are you serious, Mr. Grant? A. Yes, I am.

Q. What do you think Mr. Armstrong meant when he said, "It would be unwise to bank on the fact that the Registrar of Means will not very easily find out that the true Asset position of A.E. Armstrong is not disclosed by income"? What do you think he meant by that? A. This document --- 50

Q. What do you think he meant by that? A. That the income position was not a true reflection of the asset position.

Q. And what do you think he meant by the words "It would be unwise to bank on the fact", etc. A. I think it was probably an acknowledgement that in the event of a certificate of means application the asset position and income position would probably be disclosed and ascertained. 10

Q. Look, what it meant was that Mr. Armstrong was concerned that the Registrar might find out the truth; that is what it means to you wasn't it?

A. No. I would have expected that the Registrar would have found out the truth.

Q. What, without it being disclosed to him? A. On a Certificate of Means Application it would have been disclosed.

Q. Sir, I am not suggesting that you would have done if it had come to the point. What I am putting to you is what your understanding was of the concern that Mr. Armstrong was putting to you. Will you not agree that the concern Mr. Armstrong expressed was that the Registrar might find out the true position? (Objected to; allowed.) A. Now may I have it again? 20

Q. Yes. Your understanding was that Mr. Armstrong's concern was that the Registrar might find out the true position, wasn't it? A. I think he rather regarded that the Registrar would find out his asset and income position. 30

Q. Well, he did not say that, did he? A. Bearing in mind that ---

Q. What he says is "You can't bank on the fact that the Registrar will not find it out". A. This is what it said.

Q. And your understanding was that he was concerned that the Registrar might find out the truth; that was your understanding, was it not? A. Yes, but I do not know that I approached it that way, quite frankly, but --- 40

Q. Look, sir, will you answer my question: Your understanding was that Mr. Armstrong was concerned that the Registrar might find out the truth; that was your understanding, wasn't it? A. No, I expected and I am sure he would ---

Q. Mr. Grant, I will have an answer to that: Yes, No, or I don't know? (Objected to.)

HIS HONOUR: It is a question that can be answered yes, or no, but it may be he cannot answer it, and no doubt if that is the position he will say so. Put the question again, Mr. Gruzman. 50

MR. GRUZMAN: Q. Your understanding was that Mr. Armstrong was concerned that the Registrar might

find out the true position about his assets. That was your understanding, wasn't it? A. No, it wasn't. It was not.

Q. You deny that, do you? You deny that that was your understanding? A. Yes.

Q. But you agree with me that that is what Mr. Armstrong said. A. Those are the words. They are written there.

(Luncheon adjournment.)

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HIS HONOUR: Mr. Grant, you are still on your former oath? A. Yes.

MR. GRUZMAN: Q. I would just like to get one date clear. When do you say you first commenced to act for Mr. Armstrong? A. I am not certain of the exact date. It was during the early part of January 1963 or 1964, whichever year the divorce proceedings were in.

Q. And the position was that you understood that Mr. Armstrong believed that if the matter went to Court the Registrar would find out his true assets? A. Oh yes.

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Q. And it therefore became necessary to settle this case with Mrs. Armstrong before the truth was revealed, didn't it? A. No, that was not necessary.

Q. Well, look, sir, if the truth of Mr. Armstrong's assets became known, you would have expected the court to make a large order in favour of Mrs. Armstrong, would you not? (Objected to; rejected.)

Q. In your mind it became necessary to settle the proceedings before the truth was known to Mrs. Armstrong, didn't it? (Objected to; allowed.)

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WITNESS: What was the question again? (Question read by Court Reporter.) A. No.

MR. GRUZMAN: Q. Is not that what you sought to do? A. If I can give an explanation of this, your Honour, it may help, and ---

Q. No, Mr. Grant --

HIS HONOUR: Mr. Gruzman, the central portion of the question is "To settle the proceedings before the truth became known". That is merely putting a time sequence to Mr. Grant. The innuendo you are seeking to convey is that it should be settled so that the truth should not become known. It is a difficult question to answer in one sense if you leave it in innocent phraseology of time sequence. I think if you are going to challenge Mr. Grant, he is entitled to have it put to him and then to answer it.

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MR. GRUZMAN: Q. As a matter of time sequence you succeeded in settling the matter before any Certificate of Means Inquiry was held, did you not? A. This is correct, yes.

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Q. And you realised - in fact, you say it was a certainty - that if a Certificate of Means Inquiry had been held, the truth about Mr. Armstrong's assets position would have been revealed? A. It would.

Q. And you were aware that because the matter was settled without a Certificate of Means Inquiry Mrs. Armstrong was not at the time of settlement aware of the full extent of her husband's assets? (Objected to; rejected.) 10

Q. It was your belief, was it not, that because the matter was settled without a Certificate of Means Inquiry Mrs. Armstrong was unaware of the extent of her husband's assets? A. I simply did not know.

Q. You knew that the full extent of his assets had not been revealed in the documents filed in court, did you not? A. I did not.

Q. You believed that it had not been revealed, didn't you? A. I did not. 20

Q. Well, what did you understand by the phrase in Note No. 7, in the document, Exhibit 61 "The Registrar will find out the true asset position". A. The simple certainty that the asset position would be fully revealed in court.

Q. And the equal certainty, I put to you, that it had not yet been fully revealed in Court; that is right, is it not? A. No. I simply do not know there.

Q. Are you serious on this? A. At that point of time I was not aware of Mr. Armstrong's asset position in any detail at all. 30

Q. But you regard Mr. Armstrong as an intelligent man? A. Yes.

Q. And a man of business affairs? A. Yes.

Q. Well, when he stated to you in this document that you could not bank on the Registrar not finding out the truth, did you not understand from that that the truth had not yet been fully revealed? A. That was only part of the things that he had given me and there were other conferences, Mr. Gruzman, that ---- 40

Q. But we are dealing with this document. Did you not understand from this document that Mr. Armstrong was telling you that the truth had not been fully revealed? A. In the light of the other conversations with him, no, I did not, understand that.

Q. You understood the question, did you not? A. Yes.

Q. Then understanding it, will you please answer it, and I will repeat it for you: From this document you understood that Mr. Armstrong was telling you that the truth had not yet been fully revealed, did you not? A. No. 50

Q. And that is your full answer is it? A. No, it is not my full answer, I would like to enlarge on it.

Q. But as a lawyer receiving this document from your client which contained these two statements which I will put to you, "It would be unwise to bank on the fact that the Registrar of Means will not very easily find out that the true asset position of A.E. Armstrong is not disclosed by income" - that is the first statement, and the second statement, "Registrar will find out the true asset position", do you say that from those two statements it was not your understanding that the truth of his asset position had not yet been fully revealed to the Court? A. Yes, I say that.

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Q. Well, you say that this was the same: you regarded this as the same, as if Mr. Armstrong had said, "Well, I have disclosed everything to the Court"? You say it means the same thing? A. No, I don't.

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Q. You do not? Well, it means something different from that? A. There were other things that he had told me.

Q. Will you please not force on me matters which you are not entitled to force on me. Will you please answer the question? Do you say that it means something different from a statement that there had been a full disclosure to the court? (Objected to; rejected.)

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Q. You want to tell his Honour that there were certain reasons why you did not come to the conclusion that Mr. Armstrong was concealing his true position from the Court; is that right? A. Yes.

Q. Now what are the nature of the things? Are there other documents? A. Yes.

Q. What are they? A. One document is a letter dated 6th November, 1962 from Lonton Duke & Company to Adrian Twigg.

Q. Do you say that is a document which you had in your possession at this time? A. Yes.

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Q. And which you say alters the construction to be put on this Exhibit 61? A. Yes.

Q. May I see the document, please? (No answer.)

MR. BAINTON: Is my friend calling for it?

MR. GRUZMAN: Yes.

WITNESS: Mr. Bainton has the original. I have a copy.

MR. BAINTON: It is produced.

MR. GRUZMAN: Q. Well, this is what happened, is it, that on 6th November 1962, Mrs. Armstrong's

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solicitors, wrote to Mr. Armstrong's former solicitors, saying that they were going to apply for a Certificate of Means; however they would be prepared to settle on certain grounds - is that right?
A. That is what the letter says.

Q. You might just tell the Court how could this offer of settlement made on 6th November 1962 alter the view that you had formed as to those paragraphs of Exhibit 61? A. Well, firstly, the letter was the first thing that Mr. Armstrong produced to me, and in effect he said that he was quite happy to settle on a basis that was reasonably close to this particular letter and I understood from the conversation that he believed Mrs. Armstrong had a fair knowledge of what his assets were and what his overall position was. The primary instructions that I received in the sense of what I was to do were my handwritten notes in blue opposite those various questions. This other document, Exhibit 61, was quite a subsidiary document, it had been given to me for purely background and in the light of what the clear instructions were arising out of that letter, it was a matter of negotiating round those terms, to settle it, broadly on the basis that was put there. 10 20

Q. Look, do you say that that alters the meaning of the clear statement - what I put to you is the clear statement by Mr. Armstrong - that he was concerned that the Registrar would find out the truth? (Objected to; rejected.) 30

Q. How does that letter alter your view of the document? (Objected to; allowed.) A. It was simply part of the instructions I received. The Certificate of Means Application was going to be completely unnecessary if the matter was settled and it was quite obvious at that point of time that Mr. Armstrong's affairs were extremely complicated and it would be, as I now know, a most difficult matter for anyone actually to decide what he owned and what he did not, and where he --- 40

Q. I suppose you would assume if it was difficult for you and Mr. Armstrong to work it out, it would be far more difficult for his wife, would it not? A. She knew the ---

Q. Look, do you not agree with that? A. As a simple proposition, yes.

Q. And I put it to you that you became aware from Exhibit 61, that Mr. Armstrong had knowledge of his position far greater than that which his wife had? (Objected to; question not pursued.) 50

Q. I want to ask you something about these diaries. Do I understand your evidence correctly, that in April 1967 a subpoena was received from this court directed to Mr. Armstrong, requiring him to produce his diaries from, I think it is July 1966 to the date of the subpoena, which is April 1967; is that right? A. That is correct.

Q. And either at the time when you first saw the

subpoena, or shortly after that Mr. Armstrong attended at your office, is that right? A. Yes, that is right.

Q. Now, what documents did he bring to you which fell within the description of diaries? A. A diary for 1966, and the diary for 1967.

Q. And no other documents? A. Not within the description of diaries, no.

Q. Did you ever see the diaries for the years 1961, 1962, 1963, 1964 and 1965? A. Yes, I believe I did. 10

Q. Were they brought to your office? A. At one point of time, yes.

Q. What point of time? A. It was in connection with one of the lots of litigation. Could have been at the end of 1966. I think that is probably when it was. It was an earlier subpoena, issued in relation to earlier proceedings.

Q. Were those documents taken away from your office? A. Yes, they were. 20

Q. Were they produced to any court? A. No.

Q. And what became of those diaries, to your knowledge? A. They were given back to Mr. Armstrong.

Q. Was any advice given by anybody to your knowledge to Mr. Armstrong in connection with those diaries? A. I believe they were discussed with Mr. Staff. I believe he saw them at some point of time and this was when the initial surprise was evidenced by Mr. Armstrong, that diaries were able to be produced before the court - diaries that he had regarded as completely personal and beyond production. 30

Q. Is it your understanding that those diaries from 1961 to 1965 inclusive were taken to Mr. Staff? A. Yes.

Q. And it is your understanding that Mr. Staff saw those diaries? A. Yes.

Q. Were you present? A. I believe I was. 40

Q. You saw Mr. Staff examine those diaries? A. Yes, in part, anyway.

Q. And would you tell his Honour how it came about that those diaries were taken to Mr. Staff's chambers? A. That would be in relation to the proceedings in which they were subpoenaed. Mr. Staff was briefed as counsel in them.

Q. When was this? A. I would not be certain but I think it was one of the proceedings that was instituted late in 1966. 50

Q. Your recollection is that this took place in 1966? A. Yes, this is my recollection.

Q. And this was the time that Mr. Staff informed Mr. Armstrong that his diaries were not privileged from production? A. That was the original occasion, yes.

Q. So that at that time there were taken to Mr. Staff's chambers the diaries for the years 1961 to 1965 inclusive, and any other diaries? A. I don't know whether it was 1961 to 1965. It started in the early 1960's anyway. There was quite a large number of diaries.

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Q. And did it end with a diary for the year 1965? A. No, well, look, I do not know. I think it went up to whatever date the subpoena was - whatever the date of the subpoena, the diaries were included up to that date.

Q. Well, on your recollection of it, that would have been, or the last diary would have included the unfinished diary for the year 1966? A. If I am correct in the 1966 proceedings, this would be right.

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Q. And Mr. Armstrong was then told by his senior counsel that his diaries were not privileged from production? A. That is correct.

Q. And was anything said then about destroying the diaries? A. Yes, I think it was said then that the only way that he could - that if he kept those diaries they were liable to be produced to a court, and he would have to produce them, and the only way - it would depend on the view the Judge took, as to whether they would be inspected; that may be one Judge would take one view, and another Judge would take another view, as to their availability for inspection, but there was no certainty that they would not be, either in part or in whole, made available.

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Q. And something was said about destroying the diaries? A. I think that that was mentioned at that point of time.

Q. By Mr. Staff? A. It was either a matter of keeping diaries - if you kept diaries they were liable to be subpoenaed. You either did not keep them or you destroyed them.

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Q. And at that time there was in existence, a subpoena from this court, requiring the production of the diaries to the Court? A. That is my recollection, yes.

Q. And did you then leave Mr. Staff's chambers with Mr. Armstrong. A. Yes, I believe so.

Q. And with the diaries? A. I believe so, yes.

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Q. Did you ever again see the diaries for the years 1961 to 1965 inclusive? A. I do not recollect having seen them again. I think that the same sequence of events as occurred in that subpoena

occurred in the latter subpoena that has been produced as an exhibit here, and in both cases the diaries were not asked to be produced. They were not called upon from the subpoena.

Q. Perhaps you are trying to be helpful, but I just want to get your assent to this, that after leaving Mr. Staff's chambers at this period towards the end of 1966, you never did see again any of the diaries for the years 1961 to 1965 inclusive; is that correct? A. I do not recollect having seen them again, no. 10

Q. And is it your belief that Mr. Armstrong accepted Mr. Staff's advice? (Objected to; rejected.)

Q. Did Mr. Armstrong say anything to indicate that he did not accept Mr. Staff's advice? A. Well, the proceedings in 1966 ---

Q. No. At the time when Mr. Staff gave the advice about which you have told us, in 1966, did Mr. Armstrong say anything to indicate that he did not accept that advice? A. Yes, I do not recollect anything being said. 20

Q. Well, the next thing that happened - or you may tell us what was the next thing that happened in connection with Mr. Armstrong's diaries? (Objected to; rejected.)

Q. So far as you are aware what was the next thing that happened in respect of Mr. Armstrong's diaries? (Objected to.)

HIS HONOUR: You can ask him what he saw, or what he did. 30

MR. GRUZMAN: Perhaps I might make some submissions to your Honour later on that subject.

Q. What was the next matter which came to your knowledge, whether from Mr. Armstrong, or service of documents or otherwise, in connection with Mr. Armstrong's diaries? A. I believe that - or my recollection is that he took them away in April of 1967, prior to his going overseas, because the proceedings had been settled; that after he came back there was ---- 40

Q. In April 1967 did you receive this subpoena, Exhibit 62, (shown to witness)? A. Yes, this is the subpoena that was issued in the 1967 proceedings.

Q. And in response to that subpoena, you have told us there were brought to your office diaries for 1966 and 1967? A. That is correct, yes.

Q. Then you again went to Mr. Staff's chambers? A. Yes.

Q. With Mr. Armstrong and those two diaries? A. Yes. 50

Q. What was Mr. Staff's comment then? A. It

was similar to the previous occasion. It was a re-iteration of the fact of "I have told you before, Alec, that these diaries, if they are subpoenaed, they have got to be produced".

Q. What, he gave the same advice again? A. Exactly the same advice.

Q. Well, was it necessary in your view to go to Mr. Staff to get the same advice again? (Objected to; rejected.)

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Q. You say you did go back again to Mr. Staff to ask the same question as you had asked towards the end of the preceding year? A. Yes.

Q. And that by that time there was in existence yet another diary? A. That is correct.

Q. That was a 1967 one, is that right? A. That is correct.

Q. Was it much the same procedure as the preceding time? Did Mr. Staff look at the diaries on that occasion in April 1967? A. Yes, I think so.

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Q. And then did you both leave together, with the diaries? A. I think that is correct.

Q. And on that occasion had Mr. Staff, in the same way as before, suggested that the diaries should be destroyed? A. Well, while they were under subpoena of course, there was no question of destroying them immediately. At that point of time they were still under subpoena to be produced at Court, and this was not advice to specifically destroy those diaries now, it was simply advice that "If you keep diaries they are likely to be inspected and if you don't ---"

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Q. I see, this was said in April 1967? A. That is right.

Q. And you then left Mr. Staff's chambers and took the diaries back to your office again? A. I think Mr. Armstrong may have put them in his brief case or they may have come back to our office.

Q. Well, what happened to the diaries then? A. If they came back to my office, they were held for a few days. My recollection is that those proceedings were settled at a point of time prior to Mr. Armstrong going overseas and when the proceedings were settled, the diaries were returned to him.

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Q. Now, at some stage you told us you made photostat copies of the diaries? A. That is correct.

Q. This was some aspects of the 1966 and 1967 diaries? A. Yes.

Q. Then did you learn something about the destruction of these diaries? A. Yes. Round about October, the September/October period, Mr. Armstrong

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was giving thought to this question of diaries, and again had a discussion with Mr. Staff about it, as to this position of diaries generally, and Mr. Staff again told him that the question of diaries was a matter for him but if he kept them they were always likely to be the subject of subpoenas in litigation, and that it was up to him, what he did with them.

Q. Were any diaries present in Mr. Staff's chambers when this was said? A. My recollection is not. 10

Q. What happened then? A. At some point of time not long after that, Mr. Armstrong told me that he had destroyed the diaries and I said I had these Xerox copies that I had made and he said, "Well, they had better be destroyed too", and I destroyed them.

Q. How many Xerox copies? How many sheets of paper were there? A. I don't know. There would probably be thirty to forty. 20

** Q. It was quite a major job to destroy them?
A. Not really.

** Q. Do I understand you that at that time, in September/October 1966, was there litigation pending? A. No, not at that point of time.

** Q. It is your understanding that you were destroying the sole remaining evidence of what was in the diaries which were destroyed, is that right?
A. Yes, that would be so. The sole remaining - the originals had been destroyed and I was destroying the copies. 30

** Q. And the copies that you destroyed were copies of both the 1966 and 1967 diaries? A. Portions of them, yes.

Q. It was your understanding that Mr. Armstrong destroyed his 1967 diary, wasn't it? A. No, no.

Q. Look, sir, you have told his Honour in the clearest possible terms that you destroyed the sole remaining evidence of the diaries that Mr. Armstrong destroyed, have you not? A. No, I destroyed the copies of the 1966 and 1967. 40

Q. And you destroyed those, you told his Honour on your oath, because Mr. Armstrong had destroyed the originals? (Objected to; questions and answers marked ** on page 1615 read by Court Reporter.)

HIS HONOUR: Q. Was it your understanding it was October 1967? A. It was October 1967, when the copies were destroyed, yes.

MR. GRUZMAN: Q. What you destroyed in October 1967 were photostat copies of the diaries which Mr. Armstrong told you he had destroyed, correct? A. He didn't tell me he had destroyed the 1967 diary. 50

Q. Look, sir, didn't you in answer to a clear question say that you destroyed the sole remaining evidence of the diaries which Mr. Armstrong told you he had destroyed? Correct? A. The question and answer as read are what I said. That is so.

Q. And that evidence which you had was of the contents of both the 1966 and the 1967 diaries, wasn't it? A. I don't believe the 1967 diaries had been destroyed ---

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Q. Mr. Grant, you know better than that. Please answer the question. The documents which you destroyed was the sole evidence of the 1966 and 1967 diaries? (Objected to; question withdrawn.)

Q. The documents which you destroyed were photostats of the 1966 and 1967 diaries, weren't they? A. This is so, yes.

Q. And you destroyed those documents on the instructions of Mr. Armstrong because he told you he had destroyed the originals. That is right, isn't it? A. I don't think that is right. He ---

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Q. That is what you have said up to the present, isn't it? (Objected to.)

Q. Mr. Grant, you will agree that the effect of what you have said up to the present is that you destroyed the photostats because you were told that the originals had been destroyed? A. Well ---

Q. Is that true or false? A. I did not intend to convey that.

Q. Let us take it a step at a time. Will you agree that up to the present the effect of what you told the Court is that you destroyed the photostats because you were told the originals had been destroyed? (Objected to; rejected.)

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Q. Will you agree that the effect of what you told the Court is that you destroyed the photostats on the instructions of Mr. Armstrong because he told you that the originals had been destroyed? (Objected to; rejected.)

Q. Mr. Grant, will you agree that the effect of what you told the court is that on the instructions of Mr. Armstrong you destroyed the photostats, Mr. Armstrong telling you that the originals had already been destroyed? (Objected to; allowed.) A. If it is the effect I did not intend to give that impression. Mr. Armstrong told me that he had destroyed diaries - and, we had a discussion about this - that his policy was going to be to keep the current diary and the previous year, and when he destroyed these diaries, it was then that the instructions were given to me to destroy these other ones that I had kept. They were of no significance so far as the previous litigation was concerned. They were private documents and they simply should not be in existence if the past were destroyed and the future going to be destroyed. That was going to be the policy.

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Q. Did Mr. Armstrong say to you "I will not destroy my 1967 diary"? A. No, he didn't.

Q. His instructions to you were "I have destroyed my originals; you destroy the duplicates"? A. No, that is not so.

Q. Did he say anything other than that with regard to instructions to you to destroy them? A. No, they were simply instructions to destroy them - they are of no use now.

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RE-EXAMINATION:

MR. BAINTON: Q. Mr. Grant, you were asked a number of questions about the sequence - perhaps not the sequence of events, but when you went to see Mr. Connelly and Mr. Barton in Queensland. How many times were you together with Mr. Barton in Queensland consulting with Mr. Connelly? A. Two. Possibly three.

Q. I want you to come back to this one of which you gave evidence. When and how did you first gain knowledge that there was likely to be litigation over this repossession? A. When I drew the notices I anticipated that there could be litigation.

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Q. Apart from your own anticipations, when did you learn from anybody on the other side of the prospective litigation? A. This was on Sunday night. The day I arrived at Surfers' Paradise. On the Sunday night.

Q. While you were having dinner? A. Yes.

Q. Can you give us some idea of when that dinner finished? A. It was fairly late. It would be after ten o'clock.

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Q. Have you ever seen Mr. Connelly after 10 p.m. on a Sunday? A. No.

Q. You were asked whether or not you had made any endeavours, as Mr. Armstrong's solicitor, to get Mr. Owen Hetherington to this Court. You said you had not? A. No. I 'phoned Mr. Hetherington but I have made no effort to get him to the Court at all.

Q. Will you tell me what the conversation was you had with him on the telephone? (Objected to; rejected.)

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Q. Why didn't you take any steps to have Mr. Hetherington called? (Objected to; allowed.)

Q. Why did you not take any steps to have Mr. Hetherington called as a witness? A. It was clear, after I had spoken to Mr. Hetherington that the Barton he had been following was quite a different person to the plaintiff.

Q. It was a person of the same name? A. Yes, it was the same name.

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Q. Living where? A. Castlecrag.

Q. But not the plaintiff in this case? A. No, clearly not.

(Witness retired.)

(Affidavit of F.C. Bayley read by Mr. Bainton.)

(Instructions to H. R. Marks, 15th November 1966, formerly m.f.i. 17, tendered and marked Exhibit 86.)

(Letter from Lorton, Duke & Co., to Adrian Twigg, 6th November 1962, tendered and marked Exhibit 87.)

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CASE FOR THE DEFENDANT CLOSED.

CASE IN REPLY

(Letter dated 9th December 1966, plaintiff to P.M.G., and reply, tendered; objected to; ruling on admissibility deferred until conclusion of case in reply.)

(M.f.i. 80 tendered; objected to; Cheque requisition, part of m.f.i. 80, admitted and marked Exhibit "RR".)

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(Two documents, M. Kilmartin, m.f.i. 55, tendered and admitted as Exhibit "SS".)

(Two documents m.f.i. 64, tendered; objected to; rejected.)

(M.f.i. 41, copy newspaper article, tendered; objected to; admitted and marked Exhibit "TT".)

(m.f.i.'s 46 and 57 tendered; objected to; rejected.)

(Notes of A.E. Armstrong, m.f.i. 37, tendered; objected to; admitted and marked Exhibit "UU". Para. 9 of exhibit to be masked.)

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(Further hearing adjourned to 10.30 a.m. on Thursday, 3rd October, 1968.)

BARTON v. ARMSTRONG & ORS.

FORTY-SECOND DAY: THURSDAY, 3RD OCTOBER, 1968

MR. GRUZMAN: May I indicate we will be seeking your Honour's permission within the next few days to copy specific exhibits, which will be referred to your Honour's associate.

HIS HONOUR: Any request may be made to my associate. That applies to both sides.

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(Letter from Postmaster General, 20th December 1966, tendered and admitted as Exhibit "VV".)

(Title on p.1 and pp. 8 and 9 on transcript of proceedings before Mr. Justice Dovey, portion of m.f.i. 42, tendered and admitted as Exhibit "WW".)

(M.f.i. 56 tendered; objected to; rejected.)

(M.f.i. 54 tendered; objected to; rejected.)

(M.f.i. 16 tendered; objected to; rejected.)

(Balance of Hume's account, other than portion admitted as Exhibit 78, tendered; objected to.)

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HIS HONOUR: The defendant tendered the ledger sheet of the account, Hume's Investigations, covering the period December 5th 1966 to February 1st 1967. This document was not objected to, and it was accordingly admitted and marked Exhibit 78. The plaintiff now seeks in reply to tender the three earlier ledger sheets covering the period from 21st April 1966 up to 5th December 1966 referable to this account.

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The tender when made on behalf of the defendant was suggested to be of probative relevance as establishing that Mr. Hume did in those months have a credit balance at his bank. Mr. Gruzman seeks to tender the earlier ledger sheets as completing the picture of the extent of the credit balance in this account during the earlier months of 1966. Mr. Staff objects to the tender by Mr. Gruzman.

In my view the tender of the earlier sheets should be rejected. None of the ledger sheets was put to Mr. Hume in the witness box by either counsel. It would in my view provide no evidence upon which a concluded view could be formed to have a record merely of the ledger sheets in this account, and if it is to be suggested that the state of Mr. Hume's bank account should support a particular inference as to his solvency at a given time this ought to have been put to Mr. Hume when in the witness box. One does not know how many, if any, other accounts he had, what their state of balance, debit or credit, was, nor what other liabilities he had.

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One does not even know whose money is represented by the credit balance in this account, Hume's investigations, in December 1966 and January 1967. Standing alone, the evidence is in my view of no probative weight at all, and notwithstanding that the defendant has tendered one ledger sheet it does not seem to me that it is open to the plaintiff to tender the three earlier ledger sheets as filling out any relevant pattern. I accordingly reject the tender.

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(Section 12 certificate on Falcon EBD 703 tendered; objected to; admitted and marked Exhibit "XX".)

(M.f.i. 57 tendered; objected to; not pressed.)

HIS HONOUR: It can be noted that the document as to which I deferred ruling on 2nd October at p.1617 was partially retendered, and admitted without objection this morning as Exhibit "VV".

CASE IN REPLY CLOSED.

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(Further hearing adjourned to Tuesday, 15th October, 1968.)