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CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA

ACTING COMMISSIONER DUNFORD QC

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON TUESDAY, 21 AUGUST 2007, AT 2.23 PM

Counsel assisting:

MR J.P. GORMLY SC, with him MR J.P. QUINLAN

1 **M1:**
2
3 **THE ACTING COMMISSIONER:** Yes, sir, did you - - -
4
5 **PIDCO, MR:** May it please you, Commissioner, my name is
6 Pidco, P-i-d-c-o.
7
8 **THE ACTING COMMISSIONER:** Yes, Mr Pidco?
9
10 **PIDCO, MR:** I applied for leave to appear in respect of
11 the witness that will be called - - -
12
13 **THE ACTING COMMISSIONER:** Called later this afternoon?
14
15 **PIDCO, MR:** Yes.
16
17 **THE ACTING COMMISSIONER:** To be referred to as Gary and
18 only to be referred to as Gary.
19
20 **PIDCO, MR:** May it please you, sir.
21
22 **THE ACTING COMMISSIONER:** Yes, is there any objection to
23 Mr Pidco having leave to appear for Gary?
24
25 **QUINLAN, MR:** There is none, sir, and as I understand it
26 once this witness has finished Mr Pidco has asked if the
27 Commission could briefly adjourn into private hearing so
28 that he can make an application.
29
30 **THE ACTING COMMISSIONER:** Is that so - - -
31
32 **PIDCO, MR:** That is correct, Commissioner, yes.
33
34 **THE ACTING COMMISSIONER:** Yes. All right, I grant you
35 leave to appear for Gary and I will deal with your
36 appropriate in a private hearing after the conclusion of
37 this witness's evidence.
38
39 **PIDCO, MR:** Thank you, Commissioner, and if I could just
40 say one thing. I apologise to the Commission for not
41 appearing properly dressed. I was called down here at very
42 short notice and forgot to bring a jacket so I apologise to
43 the Commission - - -
44
45 **THE ACTING COMMISSIONER:** It happened to me once during
46 vacation.
47
48 **PIDCO, MR:** No disrespect is intended, sir.
49
50 **THE ACTING COMMISSIONER:** I was in Sydney and I turned up
51 in the commercial list in light-coloured slacks.
52
53 **PIDCO, MR:** Thank you, sir.
54
55 **THE ACTING COMMISSIONER:** In front of a very formal judge.
56 Yes, all right, thank you, Mr Pidco. We will continue the
57
58 21/8/07 M1 XN 813

1 examination of M1.

2

3 **QUINLAN, MR:** Yes.

4

5 Mr M1, before we broke I began to play you the extract
6 E12372 and we paused it after the first telephone
7 conversation that was referred to. I'm just going to ask
8 that that be played again and we will start from the
9 beginning so that we can hear the full extract. It runs
10 for some 11 minutes but there's a couple of points at which
11 I will pause and ask you to comment.

12

13 **THE ACTING COMMISSIONER:** Thank you.

14

15 (Audiotape played)

16

17 **QUINLAN, MR:** I will just pause it there for a moment,
18 Mr M1, to just say as we continue you will see that another
19 person comes in, named Marcus. You will remember from the
20 surveillance logs that when the UCO went back up to
21 Captain Munchie's Mr Mallard was talking with some American
22 sailors and I think you will find that that's perhaps who
23 Marcus may well be, just to put it in context.

24

25 (Audiotape played)

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58 21/8/07

M1 XN

814

1 **QUINLAN, MR:** That's obviously another telephone call to
2 the undercover officer. If we just quickly look at the
3 running sheet, the UPU running sheet, for that day.
4
5 **THE ACTING COMMISSIONER:** It's the same telephone call for
6 the undercover officer, isn't it?
7
8 **QUINLAN, MR:** That's a second call. He has hung up and
9 then there has been - - -
10
11 **THE ACTING COMMISSIONER:** I see.
12
13 **QUINLAN, MR:** - - - a call which is just - - -
14
15 **THE ACTING COMMISSIONER:** Is that right? Is that your
16 understanding?---I'm not sure. I'm just relying on what I
17 see on the screen, sir.
18
19 **QUINLAN, MR:** You would agree from that that there has
20 been some interaction and then Gary says to Mr Mallard,
21 "Sorry about that, man," and then a mobile phone rings and
22 you can hear - - -?---I heard a phone ring.
23
24 Yes. If we look at - this is the running sheet for that
25 day and if we go on to the second page it says - this is
26 the third-last paragraph:
27

Once at Captain Munchie's T1 started to talk to
American sailors and ordered food and drinks. I
contacted the controller who advised me to return to
the hotel. Once at the hotel and we've been evicted
from the hotel, we then headed back to Captain
Munchie's where I dropped T1 off and reported to the
controller.

28 Would you agree that those phone calls - the first one
29 where - there's a discussion obviously taking place and the
30 second short one is effectively arranging that departure
31 and their eviction from the hotel?---That's a fair
32 assumption, yeah.
33
34 Is that your recollection of how the operation was ended,
35 that they went back to the hotel where there was an
36 eviction and then they were separated?---Yeah, that's my
37 recollection; yes.
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1 So at that point the arrangement for them to go back to the
2 hotel for that evening and pending anything that might
3 happen the next day, there's really nothing else that is to
4 be achieved as part of the operation in terms of any
5 further contact between the undercover officer and
6 Mr Mallard?---As I said earlier, we'd given the tree a fair
7 shake and nothing further had come out of it, so that was
8 about it.

9
10 We can continue then.

11
12 (Audio played)

13
14 **THE ACTING COMMISSIONER:** I think we're over the page,
15 aren't we? Over the page. Scroll it down.

16
17 **QUINLAN, MR:** While there was a good deal of - - -

18
19 **THE ACTING COMMISSIONER:** Can you scroll it down, please?

20
21 **QUINLAN, MR:** Yes, I will, sir. Can I just ask this
22 question first?

23
24 While there was a good deal of interference there, would
25 you agree that effectively what you can hear there is
26 them - Mr Mallard and Gary getting back into the car to go
27 back to the room and then them stopping outside the room
28 where Gary says, "Let's go in there, sit down and have a
29 think"?---Yeah, that would appear to be the discussion;
30 yeah.

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1 So according to the logs that I took you to before, and I
2 don't need to necessarily bring it up again but they would
3 time this at around 1858 or 6.58 when both Mr Mallard and
4 Gary have alighted to enter the hotel. If we can continue
5 on there.

6
7 (Audio played)

8
9 **QUINLAN, MR:** It's fairly clear from that recording that
10 the undercover officer did pass Mr Mallard a piece of
11 jewellery at that point during the operation. Would you
12 agree with that?---It's certainly what's in the transcript
13 and on the tape but - yeah.

14
15 And certainly the context of it is such that it's at a time
16 during the operation that there is - it being the exit
17 point of the operation, there's no reason to be seeking to
18 garner Mr Mallard's trust or any other reason that you
19 could offer consistent with the operation that would
20 require jewellery be given to Mr Mallard?---Yeah. I can't
21 think of any particular reason for it and, as I indicated
22 before, this is the first time I've heard these tapes. So
23 whether it's something they found or picked up, I have no
24 idea.

25
26 Certainly it's something new that has been introduced
27 between the two because of the reference to Gary having
28 just found that?---Yeah. Well, there's no reference to it
29 earlier on in the transcript, so.

30
31 And it's unusual enough for somebody to legitimately ask
32 what it is?

33
34 **THE ACTING COMMISSIONER:** Sorry, what's the question?

35
36 **QUINLAN, MR:** I withdraw that. That's a matter for
37 submission.

38
39 Are you able to offer us any assistance as to what it is
40 that Mr Mallard was passed by the undercover officer as
41 they walked back into the Fremantle Hotel just prior to the
42 end of the operation?---No, I have no idea. The only
43 recollection I have of any jewellery passing hands is one
44 of the Celtic rings.

45
46 That was the entry that I took you to earlier in the day
47 where he passes him a ring at approximately 12.30 pm in the
48 afternoon?---That's correct.

49
50 **THE ACTING COMMISSIONER:** After the end of the operation -
51 this is virtually the end of the operation, isn't it?---To
52 all intents and purposes, sir, yes.

47/7/glj

1 Yes. Did you meet with or speak to the undercover officer
2 after the end of the operation, say the following morning
3 or - did you meet with him or talk to him?---In my journal
4 for that date there's an indication that - that says,
5 "Return to Fremantle area and arrange extraction from
6 accommodation as require, then debrief UCO." So that would
7 indicate that I met him that night.

8
9 That night?---Yeah.

10
11 After he left Mr Mallard?---That would be correct, sir,
12 yes.

13
14 Did you ask him anything about this cheap costume jewellery
15 that he was referring to?---No, because as I indicated
16 earlier I wouldn't have been listening to the conversation
17 live. This may well have been something that happened that
18 wasn't relayed to me.

19
20 I see. Yes, thank you.

21
22 **QUINLAN, MR:** Could it be that the jewellery is "that
23 thing" that is referred to at the beginning of the extract
24 that might be found on him?

25
26 **POWER, MR:** Commissioner, that's going to invite
27 speculation from this witness, given the - - -

28
29 **QUINLAN, MR:** Well, it's - - -

30
31 **THE ACTING COMMISSIONER:** One moment. Just a moment.

32
33 **POWER, MR:** Given the evidence has already been led about
34 "that thing".

35
36 **THE ACTING COMMISSIONER:** Just a moment.

37
38 **TROWELL, MR:** It says what it says.

39
40 **THE ACTING COMMISSIONER:** No, the witness can be asked
41 that question. Yes, I'll allow that.

42
43 **QUINLAN, MR:** Can you say whether the jewellery is "that
44 thing" which is referred to at the beginning of that
45 extract?---Well, firstly I've indicated I knew nothing
46 about this passage; and secondly, when the issue of "that
47 thing" came up before my recollection is it related to the
48 knife. Clearly, the knife was of major concern and
49 particularly if we were looking at putting two uniform
50 officers in to effect the extraction, the possibility of
51 moving from overt - sorry, from covert to overt law
52 enforcement interaction with a large knife in a room was
53 our major concern and I remember that being a significant
54 concern, so I would say there would be no connection.

55
56
57 21/8/07
58 2.42

M1 XN

818

1 **THE ACTING COMMISSIONER:** Can we just go back to - can we
2 just scroll back to the reference to "that thing" in
3 the - - -

4
5 **QUINLAN, MR:** It's on the first page.
6

7 **THE ACTING COMMISSIONER:** Earlier in the conversation,
8 please? It's on the first page. About four lines from the
9 bottom. Do you see that?---Yeah, I can see that, sir, and
10 it's referring to a singular object rather than a group of
11 objects.

12
13 That's what I was going to ask you about. You see, what he
14 says, what Gary says to you is, "But, um, you might find
15 that thing on him and so on and so on." You say the
16 "thing" refers to the knife or you believe the "thing"
17 refers to the knife?---Yeah, I do and - - -

18
19 What do you believe the "and so on and so on" refers to?
20 ---The consequences of uniform police walking into a room
21 and finding him in possession of a knife. See, the whole
22 plan was not to arrest Mallard, it was to extract the
23 undercover officer. So not going looking for evidence, but
24 to extract the undercover officer and walk away. There was
25 no arrest plan. There was no search plan.

26
27 Then if there was no search plan, why might they find "that
28 thing" on him?---Because if they go into the room and
29 something occurs and he gets arrested, or there is a
30 confrontation. The main concern that night was extracting
31 them safely, and from my recollection now that we've been
32 going through this, that was the reason why we wanted to
33 shift it away from a public carpark back to a hotel room so
34 we could contain the situation, the timing and the space.

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1 **THE ACTING COMMISSIONER:** I understand that but I'm just
2 concerned about, "You might find that thing on him and so
3 on and so on." You can't offer any explanation for the "so
4 on and so on." Is that what you're saying?---No, what I'm
5 saying is, is the "and so on and so on" refers to the
6 consequences, complications, of the interacting uniformed
7 police officers, Mallard and a covert operative in a room
8 with a knife.

9
10 All right, Thank you. Yes, Mr Quinlan?

11
12 **QUINLAN, MR:** When was the last time you spoke with the
13 person whose name is recorded as Gary on the sheet of paper
14 that you have in front of you?---The last time in this
15 operation or the last time ever?

16
17 The last time ever?---Would have been, I think 2002.

18
19 Would that have been at around the time that issues arose
20 concerning this matter?---Yes, when the - - -

21
22 In the public arena?---Yeah, when there was allegations
23 raised in the media.

24
25 And at that time did you take steps to review the records
26 of the Bureau of Criminal Intelligence in relation to this
27 operation?---Eventually I got to do that, yes.

28
29 That is, you made a request. You were still in the service
30 at the time, I take it?---That's correct, yes.

31
32 You made a request and the records were made available to
33 you?---Eventually they were made available.

34
35 May it please you, sir, I have nothing further for Mr M1.

36
37 **THE ACTING COMMISSIONER:** Yes. Does anyone wish to ask
38 the witness any questions?

39
40 **DAVIES, MR:** Yes, sir.

41
42 **THE ACTING COMMISSIONER:** What about, Mr Davies?

43
44 **DAVIES, MR:** About the provision of the initial
45 information to him through proper channels at the start of
46 the operation - - -

47
48 **THE ACTING COMMISSIONER:** There's no issue about that, is
49 there?

50
51 **DAVIES, MR:** But sir, with great respect, counsel led
52 curious questions about primary objectives and
53 sub-objectives. There is a detailed document prepared by
54 Mr Shervill which requests the operation, sets out in
55 writing by a BCI what they knew about Mallard, what his

48/10/sgp

1 habits were - - -

2

3 **THE ACTING COMMISSIONER:** I think we have already got - we
4 have already seen that document.

5

6 **DAVIES, MR:** Not today.

7

8 **THE ACTING COMMISSIONER:** Haven't we?

9

10 **DAVIES, MR:** Not to this witness.

11

12 **THE ACTING COMMISSIONER:** All right, then in that case
13 yes, certainly.

14

15 **DAVIES, MR:** And there are two other aspects, sir.

16

17 **THE ACTING COMMISSIONER:** What are the two other aspects?

18

19 **DAVIES, MR:** The two other aspects are, when the
20 transcripts of those tapes would have been prepared.

21

22 **THE ACTING COMMISSIONER:** Yes.

23

24 **DAVIES, MR:** Secondly, the precise meaning and coverage of
25 the term "IP" in the context of an operation such as this.

26

27 **THE ACTING COMMISSIONER:** Yes, all right, I will allow
28 cross-examination on those three topics.

29

30 **DAVIES, MR:** Thank you, sir.

31

32 I suppose it's easier if I can see you.

33

34 **QUINLAN, MR:** May I sit next to Mr Trowell, sir?

35

36 **DAVIES, MR:** No.

37

38 **THE ACTING COMMISSIONER:** Well, that depends on
39 Mr Trowell.

40

41 **TROWELL, MR:** I'm a person of generous spirit,
42 Commissioner, I'm happy - - -

43

44 **THE ACTING COMMISSIONER:** Thank you.

45

46 **DAVIES, MR:** I'm not sure whether that's a promotion or a
47 demotion, sir.

48

49 **THE ACTING COMMISSIONER:** Yes, Mr Davies?

50

51 **DAVIES, MR:** Thank you, sir.

52

53 M1, this covert operation was properly requested with
54 proper documentation through proper channels before it
55 started, wasn't it?---Absolutely.

56

57

58 21/8/07

M1 XN

821

48/11/sgp

1 And included amongst the materials requesting it and the
2 request goes not directly to you as a controller but to the
3 head of BCI?---That's correct.

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21/8/07

M1 XN

822

1 Then you were the one chosen to be the controller for the
2 operation once it was approved?---That's correct, yes.
3
4 The request was supported by substantial documentation
5 setting out the objects of it, what was known about the
6 target and so on?---Yes, that's my recollection.
7
8 That would of course have been made available to you once
9 you were selected for the job, so to speak?---That's
10 correct.
11
12 Can you get that on the screen please? I know you have got
13 it. I have no way of having numbers for them, sir, as you
14 would appreciate.
15
16 **THE ACTING COMMISSIONER:** We were shown a document earlier
17 this morning, E14357, a request for surveillance.
18
19 **DAVIES, MR:** Yes. This is entirely different, sir. This
20 is headed Additional Information Operation Huntsman. It's
21 dated the day before the operation commenced, 13 June, and
22 it's signed by Detective Sergeant Shervill and it's - - -
23
24 **THE ACTING COMMISSIONER:** No, I haven't seen that.
25
26 **DAVIES, MR:** I think you may have seen it at a private
27 hearing but that's another matter.
28
29 **THE ACTING COMMISSIONER:** I can't remember all the
30 documents I have seen.
31
32 **DAVIES, MR:** Of course not, sir. May I make a start using
33 my copy?
34
35 **THE ACTING COMMISSIONER:** Yes, certainly. You only have
36 one copy of it, I take it.
37
38 **DAVIES, MR:** Yes, I have, sir.
39
40 **THE ACTING COMMISSIONER:** All right.
41
42 **DAVIES, MR:** See if this sounds right, M1. It's headed
43 Additional Information Operation Huntsman - here we are;
44 look at that - Re Undercover Police Unit Request.
45

During the afternoon of Monday, May 23, Pamela
Suzanne Lawrence aged 45 years was murdered in her
business premises known as Flora Metallica situated
at 4 Glyde Street, Mosman Park. Pamela Lawrence died
as a result of head injuries.

46 I take it, M1, that you would have known nothing about it
47 when you were selected for the job until people started to
48 give you information about it. Is that correct?---I was
49 vaguely aware of the homicide.
50

51 21/8/07
52 2.50

M1 XN

823

1 Sure?---The specifics - until I received the information.
2 That's correct.

3
4 Because you were in a specialist unit although a detective
5 sergeant?---That's correct.

6
7 During the commission of this crime it appears that her
8 Orotan-brand purse was stolen. That was something you
9 needed to know, wasn't it"?---Yes. That's certainly
10 important.

11
12 This purse contained an unknown amount of cash money and
13 various forms of identification in the deceased's name
14 including plastic banking cards, video membership cards
15 et cetera, again important information for you to be
16 briefed up?---That's correct.

17
18 "The suspect for this crime is Andrew Mark Mallard, date of
19 birth 16/8/62. Mallard was arrested for unrelated matters
20 on Tuesday, May 24, 1994 and was remanded to Graylands
21 Hospital for a 28-day assessment." Again the matter of
22 assessment - something that was important for you to be
23 briefed up?---That is correct.

24
25 This assessment determined that he had a mental disorder.
26 Again important for you to be told that?---That's correct.

27
28 But not of sufficient nature as to warrant him becoming an
29 involuntary patient of Graylands Hospital. Again you
30 needed to know the level of the disorder and you were, it
31 would seem, appropriately briefed?---Yes.

32
33 Knowing about his personality - it was essential that you
34 be told what they could tell you about that, was it not?
35 ---Absolutely.

36
37 (1) egotist, loves talking about himself and fancies that
38 he has the ability to talk to anybody and sell any story,
39 useful information?---Yes.

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50/14/glj

(2) Reacts well to praise but does not like sympathy unless associated with some form of compliment, ie, battling against the odds et cetera; (3) always trying to scam, to get by.

1 Again, very useful information for you putting an operative
2 into the field?---Particularly.

3

Has several stock stories such as, "I have a property in Cornwall with 60,000 -

4 we've got dollars and pounds -

5

in the bank over there. I've lost all my credit cards. My fiancée is pregnant and in England. She'll be flying over. I'm an undercover police officer, I work for Interpol. I am a police informant."

6 Useful information as to what stories he had been putting
7 about?---Absolutely.

8

9 Possible approaches to him?---Absolutely.

10

11 "(5) Is a frequent user of cannabis"?---Of particular
12 interest.

13

14 No doubt you were told categorically about that. There it
15 is, point 5?---Yes, absolutely.

16

(6) Has an interest in jewellery, claims to have made jewellery in the past; (7) has an interest in art, claims to be a self-taught artist.

17 These were all fruitful areas to pursue if they came up?
18 ---Absolutely. Very important.

19

20 "Has an interest in Roanes" - and he doesn't mean a
21 particular colour of horse, he explains that as meaning
22 Nordic language, Vikings et cetera - "and Celtic designs"?
23 ---Yes.

24

25 "(9) Appears extremely hyperactive." Would you regard that
26 as a detailed and adequate briefing as to the sorts of
27 things that were known about him which would assist you as
28 a controller putting an officer in to the field?---That's
29 one of the better briefings I've received - - -

30

31 I was going to ask you that?--- - - - ahead of those
32 operations.

33

34 Yes. In the drugs area they may not have been quite so
35 good?---I'd rank this as probably the best.

36

37

38

39 21/8/07

M1 XN

825

40 2.54

50/15/glj

1 Thank you.

Inquiries into Mallard's antecedents indicate that he -

2 that he "may", there's a word missing -

3

have a cache of personal belongings and/or property which has been unlawfully obtained. Included in this cache may be property belonging to the deceased Pamela Lawrence.

4 So you're being alerted to the possibility of a storehouse
5 and the possibility that there may be something from the
6 scene of the offence there?---Yes, that's correct.

7

8 Objectives:

9

The objectives of enlisting a member of the police undercover unit are: (1) -

10 and this really exactly what you told us earlier, although
11 it wasn't the way you were questioned -

12

elicit the names and addresses of any associate/s -

13 singular or plural -

14

living in the Mosman Park area or close surrounds;
(2) attempt to elicit any information as to the
existence and whereabouts of Mallard's cache; and (3)
elicit any information relating to his involvement in
this crime -

15 which is exactly what you told us was the primary object of
16 the exercise?---That's correct.

17

18 And indeed, clearly, amongst the - with the other two was
19 what you were told by the inquiry officers, this one being
20 signed by Mr Shervill, was why they wanted you?---That's
21 correct.

22

23 Method:

24

The methods employed to elicit any information from
Mallard can be a matter of decision made in the field
by the undercover officer and/or his supervisor -

25 and no doubt that's the way you would prefer it to be, is
26 it not?---That's the only way it will operate, sir.

27

28

29

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33

34 21/8/07

M1 XN

826

51/16/sgp

1 Because it changes not only by the hour but often by the
2 minutes?---That's correct.

3
4 And something that couldn't possibly have been foreseen at
5 an early stage comes up, the undercover officer may have
6 the chance to check with you or he may not and he has got
7 to change like the branches of a tree and go where it
8 goes?---That's the inherent nature of undercover work.

9
10 Yes, Thank you. Whilst we're on that, indeed you were
11 experienced undercover as well as control then, weren't
12 you?---Yes, sir.

13
14 Very experienced. Parameters. The parameters for this
15 operation can also be determined by the undercover officer
16 and/or his supervisor. The extent to which this operation
17 can be evolved depends on how Mallard responds to the
18 undercover officer. That may be trite but that cuts right
19 across any proposition that the IPs were telling you what
20 to do then or at any stage, doesn't it?---That's
21 100 per cent correct.

22
23 Thank you. Duration. It is requested that this aspect of
24 Operation Huntsman be maintained for one week with progress
25 being reviewed on a daily basis to determine its
26 continuance, in fact went for three days because of what
27 you have been telling me about?---That's correct.

28
29 Signed M.W. Shervill, detective sergeant, CIB major crime
30 squad, June 13 1994. The tapes that you have been
31 listening to, M1. We now of course have transcripts of
32 them put up at the same time as they're being played. Can
33 you help us with this: when would they have been
34 transcribed?

35
36 Daily as it was happening or - - -?---No.

37
38 - - - well after?---No, it'd be well after. The general
39 rule of thumb is for every 10 minutes tape is an hour of
40 transcribing work and then rechecking. Sometime later had
41 we uncovered some additional crucial evidence there might
42 have been some pressing urgencies, but as my journal
43 indicates, we rolled out of this one straight into another
44 one, so, I have no idea but it would have been sometime
45 later, maybe weeks, perhaps longer.

46
47 Would it be correct that the transcripts when prepared
48 would not have gone on the major crime squad file but on
49 BCI's file in relation to the operation?---That would be
50 correct.

51
52 And unless someone directed attention to it, not something
53 that would come to the attention of the inquiry officers?
54 ---Yes, that would be correct.

55
56

57 21/8/07

M1 XN

827

58 2.58

51/17/sgp

1 You would have - - -?---Particularly given the outcome of
2 the undercover investigation.

3
4 All you could do at the end of the day was report to them
5 in effect, "We got nowhere"?---That's correct.

6
7 "We got some interesting possibilities, they came to
8 nothing, and can't help you"?---They were aware of that
9 result - - -

10
11 Progressively?---Progressively throughout the operation.

12
13 This expression "IP" that comes up in one of the
14 transcripts, that would extend, would it not, to all of the
15 major crime squad officers involved in the investigation?
16 Anyone of them could have been at any given time your IP
17 for contact purposes?---Absolutely.

18
19 **THE ACTING COMMISSIONER:** IP I take it stands for
20 investigating police, does it?

21
22 **DAVIES, MR:** Interested, sir.

23
24 **THE ACTING COMMISSIONER:** Yes.

25
26 **DAVIES, MR:** Interested person. Interested person.
27 Interested in the progress of the - - -

28
29 **THE ACTING COMMISSIONER:** Interested person?---Or
30 interested party. There's a number of different
31 interpretations placed on it but it's a collective
32 description as opposed to - - -

33
34 It refers to the police, not the person. There's a
35 difference between interested persons and persons of
36 interest?---Yeah, absolutely, it's the investigating squad.

37
38 **DAVIES, MR:** It's the "o" in - - -

39
40 **THE ACTING COMMISSIONER:** Investigate - - -

41
42 **DAVIES, MR:** It's the "o" in between - - -

43
44 **THE ACTING COMMISSIONER:** Yes.

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58 21/8/07

M1 XN

828

1 **DAVIES, MR:** The procedure when you had an important
2 operation like this going on was that someone from the
3 investigating team or someone further down, depending
4 whether it was the middle of the night, was available to
5 you for contact. Is that the way it worked?---Yes, and
6 also for extrication of safety purposes; yes.

7
8 Sometimes that would be an officer, not even a member of
9 the main investigation team, who sat in the CIB office at
10 Fremantle in case you needed him?---That'd be correct.

11
12 And it needn't necessarily be, for example, Mr Shervill or
13 Mr Caporn or Mr Brandham or Mr Carter or Mr Emmett that was
14 on duty as an IP at any given time?---That's correct. It
15 could've been anybody from major crime or a support unit.

16
17 **THE ACTING COMMISSIONER:** I appreciate it could have been
18 anyone but in actual fact in relation to this particular
19 operation who did you have the most contact with amongst
20 the IPs?---Well, the primary IP was Detective
21 Sergeant Shervill.

22
23 **DAVIES, MR:** In fact when you gave evidence this morning
24 that you take the reference to an IP, in the transcript or
25 on the tape, as being a reference to the question of how to
26 get out of it, are you telling us there that you would have
27 consulted them on whether they wanted left open the
28 possibility of Gary going back?---That's a natural normal
29 question and the answer to it is yes.

30
31 And would have consulted them on the question of whether
32 they wanted Mallard upset when they left him or whether
33 they had to have further dealings with him and so on and so
34 on?---No. My understanding that night - we were just
35 leaving him be. We'd uncovered nothing. The next move was
36 up to them whenever they were ready.

37
38 That was the only reference in the whole of the tapes to IP
39 that you were shown, wasn't it?---From recollection, yes,
40 you are correct.

41
42 Which you put as being in the context of how to get out -
43 when and how to get out?---That's correct.

44
45 To the best of your knowledge, M1, you were the only person
46 once the operation was up and running who deal directly
47 with Gary, the only police officer?---I don't have any
48 recollection of him having dealt with anybody else on this
49 operation. It is 12 years ago.

50
51 Sure, but it would be unusual, wouldn't it, when you are
52 there full-time as his controller?---As I indicated at the
53 beginning, the general principle is that doesn't happen.
54 It has happened on occasions. I don't think it happened in
55 this operation.

56
57 21/8/07

M1 XN

829

58 3.02

1 I'm obliged to you, Commissioner. Thank you very much.

2

3 **THE ACTING COMMISSIONER:** Thank you. Does anyone else
4 want to ask any questions? Mr Power?

5

6 **POWER, MR:** Not any more. Thank you.

7

8 **THE ACTING COMMISSIONER:** Thank you, all right. What I
9 will - - -

10

11 **QUINLAN, MR:** I have some questions I want to ask the
12 witness in reply, sir.

13

14 **THE ACTING COMMISSIONER:** Sorry. Yes, Mr Quinlan?

15

16 **QUINLAN, MR:** Mr M1, you were asked some questions about
17 the specific interaction between IPs, members of the major
18 crime squad for this particular operation. In that regard
19 you said in evidence that you met with Dr Aaron Groves on
20 13 June 1994, the day before the operation. Do you
21 remember that?---I think I met with him twice.

22

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58 21/8/07

M1 XN

830

1 Yes, and the second time that you met with him do you
2 remember who was there for that?---As far as I can recall
3 it was myself and Gary dealing specifically with tactical
4 and risk issues for the operation.

5
6 So that you and Gary went to Aaron Groves' - or where did
7 you see Aaron Groves?---I think at that stage he had a
8 practice in West Perth somewhere and I think both meetings
9 were at that location.

10
11 If I can find it there's a - firstly, if I can ask you to
12 go to the major crime running sheet which is 13152 at
13 page 70. You can see in the middle of that page there's a
14 reference to:

Detective Sergeants Shervill and Caporn to offices of
Aaron Groves, consultant psychiatrist, 35 Richardson
Street, West Perth where discuss fresh information
regarding Mallard. Discuss operation with UPU
members. Direction of operations set.

16 Do you see that?---Yes, I do.

17
18 Does that assist your recollection as to whether anybody
19 else met with Aaron Groves?

20
21 **DAVIES, MR:** Sir, that, with respect, is simply wrong. My
22 question was quite specific - "Met with the undercover
23 officer independently of you during the course of the
24 operation" - and it's pointless to point out - - -

25
26 **THE ACTING COMMISSIONER:** Sorry?

27
28 **DAVIES, MR:** It's pointless to point out that Mr Shervill
29 may have been there when the operator, the controller and
30 the undercover officer met Mr Groves. My question was
31 quite specific: "Did anyone independently of you during
32 the course of it meet with the undercover operative?"

33
34 **THE ACTING COMMISSIONER:** I think that's right, but - - -

35
36 **QUINLAN, MR:** It wasn't till - - -

37
38 **THE ACTING COMMISSIONER:** What's the question, Mr Quinlan?

39
40 **QUINLAN, MR:** My question was whether when the witness
41 went to see Aaron Groves with the undercover officer,
42 whether officers from major crime met with them at the same
43 time.

44
45 **THE ACTING COMMISSIONER:** This entry throws no light on
46 that subject.

47
48 **QUINLAN, MR:** Save that that is the time at which the
49 undercover officer and the witness, who are members of UPU,

50
51 21/8/07 M1 XN 831
52 3.06

53/21/glj

1 attended at Aaron Groves's office.

2

3 **DAVIES, MR:** So?

4

5 **THE ACTING COMMISSIONER:** So what does it matter? I can't
6 see how it matters really.

7

8 **QUINLAN, MR:** The question was directed to the direction
9 of operations for an undercover operation being discussed
10 with IPs during the course of the operation and not merely
11 in the requesting document at the very outset.

12

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58 21/8/07

M1 XN

832

1 **DAVIES, MR:** And he said he reported daily.

2

3 **THE ACTING COMMISSIONER:** I didn't understand him to say
4 that there was no contact with the IP as to the
5 direction - - -

6

7 **DAVIES, MR:** He said he reported - - -

8

9 **THE ACTING COMMISSIONER:** - - - of the operation once it
10 started - - -

11

12 **DAVIES, MR:** Quite the opposite, sir. He said he would
13 have spoken to them at each stage of the operation.

14

15 **THE ACTING COMMISSIONER:** I assumed that was what had
16 happened - - -

17

18 **DAVIES, MR:** And he used the word "progressively".

19

20 **THE ACTING COMMISSIONER:** Yes.

21

22 **QUINLAN, MR:** I have nothing further then, sir.

23

24 **THE ACTING COMMISSIONER:** Yes, Thank you.

25

26 All right, that concludes your examination, M1. M1 won't
27 be required any further, will he? I think I will discharge
28 him.

29

30 **QUINLAN, MR:** Yes, please, your Honour.

31

32 **THE ACTING COMMISSIONER:** I will discharge you from
33 attendance on the summons which brought you - just remain
34 there for a minute. I will discharge you on the summons
35 which brought you here. If you are required further you
36 will get a fresh summons. It's most unlikely?---Thank you,
37 sir.

38

39 (THE WITNESS WITHDREW)

40

41 **THE ACTING COMMISSIONER:** Now, what I intend to do is to
42 adjourn and I will then deal with Mr Pidco's appropriate in
43 the presence of - in a private hearing but the counsel
44 already at the bar table and their respective clients may
45 remain in court but no-one else. Is that suitable to you,
46 Mr Pidco?

47

48 **PIDCO, MR:** No objection to that, sir.

49

50 **THE ACTING COMMISSIONER:** Yes, all right. While that's
51 going on the witness can be taken out. I will adjourn now.

52

53 (Continued in Private Hearing)

54

55

56

57 21/8/07

M1 XN

833

58 3.10

1 **GARY** called:

2

3 **THE ACTING COMMISSIONER:** While that is being done I will
4 tell the witness what it's all about. This is an
5 investigation under the Corruption and Crime Commission Act
6 2003, the scope and purpose of which is whether any public
7 officer engaged in misconduct in connection with the
8 investigation of the murder of Pamela Lawrence, the
9 prosecution and appeals of Andrew Mark Mallard and other
10 matters related to and touching upon these events.
11 Mr Jeremy Gormly, senior counsel, and Mr Peter Quinlan have
12 been appointed to assist the Commission in the
13 investigation. This examination will be conducted in
14 public but appropriate steps have been taken to protect the
15 identity of the witness because the evidence relates to the
16 activities of police officers involved in undercover
17 operations. I therefore have directed that the witness
18 give his evidence from behind a screen which is in place.
19 His correct name, his address and present occupation are
20 not to be referred to in any way or published outside and
21 if inadvertently disclosed, they are not to be further
22 disclosed outside this hearing room. Gary, do you wish to
23 take the oath or make an affirmation?---Affirmation please,
24 sir.

25

26 Would you stand please?

27

28 **GARY** affirmed:

29

30 **THE ACTING COMMISSIONER:** Thank you. You may sit down?
31 ---Sir, may I take notes just as I - - -

32

33 Any objection?

34

35 **QUINLAN, MR:** No, sir.

36

37 **THE ACTING COMMISSIONER:** All right, yes, you may?---Thank
38 you, sir.

39

40 Before we go any further I will now tell you of your rights
41 and obligations under the Corruption and Crime Commission
42 Act 2003. That act provides that if you fail to produce
43 any document or other thing as required by the summons or
44 if you fail to answer any question relevant to the
45 investigation that I require you to answer, you will be in
46 contempt of the Commission. You are not excused from the
47 requirement to answer the question on the ground that the
48 answer might incriminate or tend to incriminate you or
49 render you liable to a penalty. You may accept that when
50 Mr Quinlan asks you a question, he is doing so on my behalf
51 and you must answer. If I take the view that the question
52 is not appropriate either as to form or content, I will
53 intervene. In the absence of that intervention, however,
54 you must proceed to answer the question. I may ask you
55 some questions myself in the course of the examination but

56

57 21/8/07

GARY XN

834

58 3.34

1 for the most part the examination will be carried out by
2 Mr Quinlan. However, the legislation provides protection
3 for you in the following way: a statement made by you in
4 answer to a question that I require you to answer is not
5 admissible in evidence against you in any criminal
6 proceedings or proceedings for the imposition of a penalty
7 except contempt proceedings, proceedings for an offence
8 against the Corruption and Crime Commission Act 2003 or
9 disciplinary proceedings. You must give truthful evidence
10 in this examination. You have promised to do so in
11 submitting to the affirmation. If you fail in that regard;
12 that is to say, if you give evidence which is false or
13 misleading in a material particular, you commit an offence
14 under the Corruption and Crime Commission Act 2003
15 attracting penalties which may extend to a significant fine
16 and lengthy imprisonment. In proceedings brought against
17 you for that offence, your evidence here that is relevant
18 to that prosecution will be admissible against you. Do you
19 understand that?---I do.

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59/25/sgp

1 Anything you wish me to add, Mr Pidco?

2

3 **PIDCO, MR:** No, sir.

4

5 **THE ACTING COMMISSIONER:** Thank you. Yes, Mr Quinlan?

6

7 **QUINLAN, MR:** May it please you, sir.

8

9 For obvious reasons I will call you Gary. You can see
10 there's a document, there should be a document in front of
11 you with two names that are on it. Can you see that
12 document?---Yes, I can.

13

14 Does that have your correct name on it next to the name
15 Gary?---It does.

16

17 There's another name on the document that refers to a
18 person by the name of M1. Do you see that name?---I do.

19

20 Do you recognise that name?---I do.

21

22 Can you confirm that that is the name of a person who
23 previously worked with you and was your superior while you
24 were with the undercover police unit within the Bureau of
25 Criminal Intelligence in the WA Police Service?---That's
26 correct.

27

28 **THE ACTING COMMISSIONER:** I think that piece of
29 paper - - -

30

31 **QUINLAN, MR:** Yes, sir?

32

33 **THE ACTING COMMISSIONER:** - - - should be collected by the
34 usher, along with any other copies, and returned to you,
35 Mr Quinlan.

36

37 **QUINLAN, MR:** Yes. They can be now, sir, because both
38 witnesses have seen it.

39

40 **THE ACTING COMMISSIONER:** Thank you.

41

42 **QUINLAN, MR:** And as I think I indicated yesterday but for
43 the identification purposes it's bar coded CCC evidence
44 E15120.

45

46 You were a member of the undercover police unit, I think,
47 joining that unit in 1993. Is that correct?---That is
48 correct.

49

50 The undercover operation in relation to Mr Mallard took
51 place in your second year with the undercover police unit
52 in 1994?---Correct.

53

54 What rank were you at the time?---I believe I was
55 first-class constable.

56

57 21/8/07

GARY XN

836

58 3.38

1 In relation to the undercover operation specifically with
2 Mr Mallard and your controller whose name you have
3 identified, he was a detective sergeant at the time. Is
4 that correct?---Correct.

5
6 Was that always the case, that the controller was a more
7 experienced senior officer in an undercover operation?
8 ---Yes.

9
10 When did you complete your service as an undercover
11 operative or - I withdraw that - as a member of the
12 undercover police unit? Approximately how many years were
13 you in the unit?---I believe I was in the unit for two and
14 a half years.

15
16 I take it that you completed a number of different
17 undercover police operations during that period?---Correct.

18
19 Some of which would have been in duration much longer than
20 others?---Correct.

21
22 The particular operation involving Mr Mallard, I take it,
23 was on the shorter side of the spectrum of the period of
24 time over which an operation would be conducted?---Correct.

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1 Could I ask you to tell the Commission your understanding
2 or your appreciation of the processes at the time within
3 the undercover police unit as to what the relationship was
4 between you as an undercover operative, the controller and
5 the group of persons that we have referred to as the IP for
6 the purposes of an operation?---When a job per se was
7 generated, it would come from an area within the police
8 department, obviously requiring a job to be done: specific
9 tasks required and the utilisation of a UCO to gain
10 evidence. Then they would approach the Bureau of Criminal
11 Intelligence and ask for the assistance of a undercover
12 operative, and then I believe a process would then take
13 place as to the availability of UCOs, the risk and just a
14 bit of general background as to the type of job and then it
15 would be allocated to the unit as a - as a job. It would
16 be given a file number or a code name and - and if not
17 both, and then it would really depend on who was available
18 to conduct the job at the time who would be given the job.

19
20 In relation to your role as the undercover operative, did
21 you - were there preliminary stages for the organisation of
22 an undercover operation such as background information and
23 soon which would take place before you got involved or
24 before you were allocated?---I believe so, yes.

25
26 So there was - at a different level within the organisation
27 there would be information exchanged between the unit and
28 the people requesting it from the - - -?---I believe so,
29 yes.

30
31 On a day-to-day basis during an operation, can you just
32 tell us something about the manner of the contact between
33 you as an undercover operative and the controller that
34 would be allocated for a particular operation?---Once -
35 once an - an objective was decided upon, what information
36 was going to be required for the day and I would go off and
37 try to achieve that objective. If - if there was any
38 uncertainty or any areas which were unclear that needed
39 clarification then the process would be that I would then
40 go directly to my controller and ask him for clarification
41 and then I believe the SOPs were that then the information
42 would then go back to the IP for further clarification. It
43 was - it was usual that the UCO would never be in contact
44 with the IP.

45
46 Yes?---But in some cases where information, specific
47 information may be lost in translation then there were the
48 odd occasion where the UCO along with the controller would
49 meet with the IP.

50
51 In terms of the tasks, the day-to-day tasks for the
52 operation, would they be set and reviewed on a daily basis
53 as the operation proceeded; that is, would there be a
54 direction for the operation formulated on each day of the
55 operation?---It would depend on each case, but in this case

56
57 21/8/07

GARY XN

838

58 3.42

60/28/glj

1 in particular from what I can recall, my main objective was
2 evidence-gathering. A few key points would be brought up
3 to see if I could extract that information from that person
4 and sometimes it might take four to five hours to approach
5 the subject and then develop on that.

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21/8/07

GARY XN

839

61/29/rds

1 For this particular operation involving Mr Mallard then on
2 each day of the operation - and there I think were
3 three days in total, 14, 15 and 16 June 1994 - were there
4 particular directives set for each day in terms of the way
5 you would go about the task?---Loosely there'd be specific
6 questions that would be put to me or information put to me
7 to see if Mallard knew anything in relation to that
8 subject.

9
10 So you would be provided with some information which you
11 would then introduce that subject matter into conversation
12 with Mr Mallard?---Correct, yes.

13
14 Where did that information come from that you received?
15 ---IP - sorry, it would've come directly from the IP but
16 from my controller.

17
18 So ultimately from the IP through your controller?---Yes.

19
20 As an undercover operative - and if you can comment on this
21 operation specifically - would you always be aware of all
22 information in relation to a particular operation - - -?

23 ---No, not - - -

24
25 - - - or the significance of a particular course you were
26 to take on a particular day?---No, not at all.

27
28 Could you just explain that by way of an example; for
29 example, where you would - there would be something that
30 you would need to do but you wouldn't know the significance
31 of it?---At the time I would be asked - my memory is a bit
32 sketchy but questions would be: what - see if he has any
33 tools, and then I would somehow formulate a conversation
34 directed around tools or ask him if he knew of any
35 locations to hide stolen gear.

36
37 So you would not, to take your first example, necessarily
38 know the significance of tools when you were directed
39 towards that subject matter?---Well, I would if that - if
40 that question was put to me I'd say - then I would
41 necessarily - I would have to ask, and I'm sure I did, why
42 so it gives me more ground to develop my background in
43 asking the question.

44
45 What do you specifically remember in relation to what
46 information you were given concerning tools?---I don't
47 remember anything specifically but tools - Sidchrome tools
48 may have been mentioned, to find out if he had any tools.
49 I'm sure I would've asked why and I think it was implied
50 that that may have been a possible weapon that would've
51 been used to murder.

52
53 I take it from what you have said in terms of you asking
54 why, the more information you have the better it's going to
55 be for you - - -?---The better for me to develop a story

56
57 21/8/07

GARY XN

840

58 3.46

61/30/rds

1 and make it sound like it belongs in a certain text as
2 opposed to being a wild question just asked out of the
3 blue.

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21/8/07

GARY XN

841

1 Now, I think in relation to Mr Mallard, one of the things
2 that you did in the course of the operation was to engage
3 him in discussion concerning this particular murder. Is
4 that right?---Correct.

5
6 Can you tell us - you have already mentioned the issue of
7 tools - what other information you specifically were given
8 as opposed to what the unit more generally might have, if
9 there is a difference, but what specifically you were given
10 in relation to the circumstances of the murder itself?---I
11 believe I was asked to find out about clothing, if he wore
12 multiple layers of clothing, if he did have a location for
13 storing stolen gear, stolen property - - -

14
15 Those conversations that you had with him about the
16 circumstances of the murder, is it fair to say that they
17 mainly consisted about conversations about what the killer,
18 being a third person, would have done or what method that
19 person, that being a third person, would have done as part
20 of the murder?---Correct. I believe I was informed by the
21 controller that from previous dealing - Mallard had
22 previous dealings with police - that he often referred to
23 the murderer in the third person, and I was made aware of
24 that, and just to be aware of it.

25
26 And the conversations you had, and I think in answer to my
27 question, were generally in the third person about the
28 circumstances of this murder?---Generally. There were
29 occasions there where there was no need to put ownership on
30 it.

31
32 Can I just ask, from the conversations you had or from your
33 initial contact with him, what impression you formed of
34 him, his character, in terms of your ability to interrelate
35 with him?---From the moment that I come across Mallard my
36 first impression was that this man is not the full quid.
37 There was definitely something different about him, but my
38 social circles, my personal social circles, I would never
39 have mixed with a person of that demeanour, so whether he
40 was or wasn't different, he was different to my social
41 circle.

42
43 So he wasn't within the norm of what you were used to?
44 ---No.

45
46 And during the course of the days that you spent with him,
47 how would you describe his behaviour?---Erratic; his
48 actions didn't make sense that I would interpret with a
49 person, you know, a normal person, what I'd classify as a
50 normal person.

51
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55

1 When you spoke about the murder and there were - when you
2 discussed various aspects of the murder, were you able to
3 determine from the information you were given whether or
4 not anything he was saying about the circumstances were
5 accurate or not?---At the time that - the three days that I
6 was dealing with Mallard and basically from the onset, I
7 was certain in myself that he had actually committed the
8 offence.

9
10 So from what you thought, you thought he had committed the
11 offence?---Absolutely.

12
13 From the conversations that you had about the details?
14 ---Yes.

15
16 Perhaps if we listen to one of those conversations, which
17 is E12360.

18
19 **THE ACTING COMMISSIONER:** Did that opinion continue up
20 until the time he was charged or his trial, or did you
21 change your mind before then?---No, my opinion was - was
22 set. Up until I heard about the other incident in Albany.

23
24 Thank you.

25
26 (Audio played)

27
28 **QUINLAN, MR:** Can you confirm that that is indeed a
29 conversation between you and Mr Mallard?---That's correct,
30 yes.

31
32 Is that the kind of conversation that you were referring to
33 when you said that you formed the view that he was
34 responsible for the murder?---It was one of the - one of
35 the many conversations, yeah, but that was one that I
36 would've based my opinion on.

37
38 That was one of the longer of the conversations between the
39 two of you. Would you agree with that?---One of the longer
40 ones that had been recorded or documented, yes.

41
42 Yes. Did you ever discuss with any other police officer -
43 you said you formed the view that he was responsible for
44 the crime. Did you ever discuss with any other police
45 officer that view or share views with any other police
46 officer about that issue?

47
48 **DAVIES, MR:** When, sir?

49
50 **QUINLAN, MR:** During the operation?---I definitely would
51 have viewed my opinion to my controller and it may have
52 been another UCO at the unit that I would run ideas by and
53 I would have formed that - would have informed them of my
54 opinion, yes.

1 Do you remember any other officer informing you that they
2 held a similar opinion?---I can't recall.

3

4 In the extract that you have just seen there are a number
5 of matters where, as part of the discussion while the
6 conversation is going, you have said things, in effect, in
7 agreement with the way in which he is putting it; for
8 example, when he refers to throwing things off the Stirling
9 Bridge, you said, "Well, that would be the best place to
10 throw it," and matters of that kind. Can you just tell us
11 why it was that you said things like that as part of the
12 conversation?---It was still - the four days would - apart
13 from other things, gathering evidence, it was maintaining
14 and developing a rapport with him. I didn't want to upset
15 him, cause him to take another line with me and sort of
16 discard me as a friend. I was there to be seen as a friend
17 and somebody who he could rely on and trust. So with me
18 responding to his statements that way, that's just another
19 tool to develop his trust.

20

21 Was that a particular direction of the operation that was
22 set as part of the planning with your controller?---To keep
23 his trust?

24

25 Yes, and in particular in conversation with him to make
26 affirmative noises, if you like, during the course of the
27 conversation about what he was saying?---I don't think it
28 was - I don't think it was discussed or decided. That was
29 just my technique.

30

31 What would happen if you disagreed or did you ever question
32 his views about particular things in the course of the
33 operation and, if so, what was the result?---I can't recall
34 any specific conversation I had where I disagreed with him
35 but if I had hypothetically, I would've selected the
36 questions and made sure that they weren't going to generate
37 any hostile emotion from him and that I wouldn't sort of -
38 I wouldn't contradict anything major that he said but small
39 - I don't know; to coin a phrase, the weather - you know,
40 sort of, "It's been a cold day." "Well, it's not that
41 cold." Nothing to invoke any hostility or a negative
42 response from him.

43

44 Nothing about the specifics, for example, of the theory
45 that he was giving you in that exchange that appears
46 there?---No.

47

48 If we just go back - I think it's on page 2, at the top of
49 the page where you have asked him a question, for example,
50 about the ring spanner he refers to, where he says,
51 "Tightening the big fucking valve connections on the top of
52 fucking big gas cylinders," and then he refers to her being
53 a jeweller and having welding equipment and then you have
54 said, "All right. So she's using acetylene bottles you
55 say. They're not - they're not acetylene bottles but just

56

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58 4.02

1 think of acetylene bottles." Do you remember being given
2 any information about gas cylinders, welding equipment or
3 acetylene bottles to be used in conversation?---I honestly
4 can't recall anybody saying, you know, there was gas
5 bottles or gas cylinders. It may have - it would've been
6 my - me drawing on my experience, you know, that they
7 would've had some sort of tool for heating or bending
8 material and just going on there where he's talked about
9 tightening big fucking valves, connections on top of gas
10 cylinders, well, then I would've probably drawn the
11 conclusion that the gas cylinders were acetylene bottles.

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1 Right, so that was something you had experience with, which
2 you then - - -?---I'm aware of oxyacetylene, so gas
3 bottles, I've drawn the parallel and titled it acetylene
4 bottles.

5
6 Was that one of the things that sounded to you like genuine
7 information concerning the circumstances of the murder?
8 ---Well, I think at that point of time, yes, it would have
9 because he was, he was, obviously here he's fairly
10 descriptive as to the type of tool used so then I've
11 developed and allowed him to continue on with that to get a
12 better description.

13
14 **THE ACTING COMMISSIONER:** Sorry, are we on page - can we
15 go to page 1 please?

16
17 **QUINLAN, MR:** Yes.

18
19 , **MR:** Page 1?

20
21 **THE ACTING COMMISSIONER:** Page 1 please. Yes, that's it.
22 See four lines from the bottom, "Gary":

23
 And they maybe reckon it was a monkey wrench, do
 they?

24 See that?---Yes, sir.

25
26 You mention the monkey wrench. What caused you to mention
27 a monkey wrench? Can you recall?---No, sir, I can't
28 remember the exact text it was mentioned in but - - -

29
30 Well, there's the - - -?---No, no, that was mentioned to me
31 prior as to monkey wrench. I'm thinking that the
32 information may have been relayed by my controller that,
33 "Ask about a monkey wrench or a similar type of tool."

34
35 I see, but you, do you agree, and you can have a look at
36 the whole conversation if you like, do you agree that you
37 were the one to mention monkey wrench?---Yes.

38
39 It didn't come from him?---Monkey wrench, no, sir.

40
41 I see. And then I think over the page there's talk of the
42 big valve connections to the big gas cylinders and so on
43 and then he refers to, "Like a train spanner"?---Yes, sir.

44
45 Expletives deleted. All right. Then you asked him where
46 they might have - where he might have got it - where he
47 might have got it from. He said the shop and you agreed
48 with that?---Yes, sir.

49
50 All right. But your recollection is that he had not
51 mentioned a monkey wrench or a train spanner or anything
52 similar until you mentioned the monkey wrench on page 1 of

66/36/sgp

1 that conversation. Is that right?---That's correct, sir.

2

3 All right. Now, the other - just go back to the top of
4 that page. You see the second statement by him:

5

Yeah, they showed me photographs.

6 Correct?---Yes, sir.

7

8 That was a statement volunteered by him, was it?---Yes.

9

10 You hadn't said anything about photographs prior to that?
11 ---I can't recall, sir, if it was prior to that but I think
12 there was mention, I had mentioned somewhere along the
13 lines with photographs, and I don't recall mentioning it to
14 him before then.

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1 So do you say this is the first mention of photographs?
2 ---As far as I can recall, sir, yes.

3
4 And he has volunteered, without any prompting from you,
5 that they showed him photographs?---That's correct, sir.

6
7 Thank you. Yes, Mr Quinlan?

8
9 **QUINLAN, MR:** Can I ask you to listen to another recording
10 of conversation which occurred? This is again on 15 June
11 1994, shortly after that as you're driving past the
12 Stirling Bridge. It's E12362.

13
14 (Audio played)

15
16 **QUINLAN, MR:** I take it that's another example of your
17 wanting to keep the trust going by keeping the conversation
18 going and effectively saying that the account he's giving
19 has the ring of accuracy about it?---Mm.

20
21 Do you agree with that?---I do agree with that, yes.

22
23 **DAVIES, MR:** May we see the top of that page again,
24 please?

25
26 **THE ACTING COMMISSIONER:** Yes, certainly.

27
28 **QUINLAN, MR:** Of that page or - - -

29
30 **THE ACTING COMMISSIONER:** What, in the middle where
31 there's "no rocks" - that part, Mr Davies?

32
33 **DAVIES, MR:** The starting page which has it headed up as a
34 Commission document, sir.

35
36 **THE ACTING COMMISSIONER:** Yes, all right, back to the
37 beginning. That's it.

38
39 **URQUHART, MR:** Can we ask, sir, who has prepared this
40 transcript? Are we able to do that?

41
42 **THE ACTING COMMISSIONER:** You can ask. I certainly don't
43 know the answer but - - -

44
45 **URQUHART, MR:** It's just that we have got copies of
46 transcripts that are a little different.

47
48 **QUINLAN, MR:** Yes, there are transcripts which appear on
49 the BCI files which are somewhat incomplete and these
50 transcripts have been prepared by - as I understand it -
51 transcription staff within the Commission.

52
53 **POWER, MR:** Commissioner, it's more than a case of
54 incompleteness. When one looks at the transcripts that we
55 have from the BCI file, there are passages which are blank.

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848

58 4.10

1 When you look at the corresponding transcript that we are
2 being shown today those passages are not blank, they are
3 words filled in. I don't know how that has happened, it
4 may have happened in a number of ways. The other
5 difference between the transcripts that we have and the
6 transcripts that are being brought up on the screen is that
7 in some cases in the transcript on the screen there are
8 indications of what was happening which are inserted in
9 brackets, for example, "So-and-so waiting for a reply" or
10 something of that nature which don't appear in the
11 transcripts that we have from the BCI file, so there are
12 very significant differences.

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1 **TROWELL, MR:** So this too, Commissioner, is in relation to
2 the witness M1, it was put to him that he had read this
3 transcript when in fact that was not the case at all. The
4 transcripts that - - -
5
6 **QUINLAN, MR:** I never suggested to the - - -
7
8 **THE ACTING COMMISSIONER:** I don't know that - - -
9
10 **TROWELL, MR:** The transcripts - he was quizzed on this.
11 He was not shown, as I understand it, the transcripts that
12 were prepared by BCI.
13
14 **THE ACTING COMMISSIONER:** What, in the witness box?
15
16 **TROWELL, MR:** Yes.
17
18 **THE ACTING COMMISSIONER:** No, he was only shown these
19 transcripts in the witness box as - - -
20
21 **TROWELL, MR:** That's right, but he wasn't shown the BCI
22 transcripts.
23
24 **THE ACTING COMMISSIONER:** No.
25
26 **TROWELL, MR:** That's right.
27
28 **THE ACTING COMMISSIONER:** No, I'm not - - -
29
30 **TROWELL, MR:** So these are - - -
31
32 **THE ACTING COMMISSIONER:** I don't think anyone believes he
33 was.
34
35 **TROWELL, MR:** But it was portrayed on the basis that these
36 were the transcripts that he had reviewed from day to day.
37
38 **QUINLAN, MR:** I never - - -
39
40 **THE ACTING COMMISSIONER:** Just a moment. Just a moment.
41
42 **TROWELL, MR:** Just settle down, just take it easy.
43
44 **THE ACTING COMMISSIONER:** Just a moment.
45
46 **TROWELL, MR:** It's the youthful enthusiasm, Commissioner.
47
48 **THE ACTING COMMISSIONER:** When was it suggested that he
49 had reviewed the transcripts from day to day? I see.
50
51 **TROWELL, MR:** Yes.
52
53 **THE ACTING COMMISSIONER:** But that was - - -
54
55 **TROWELL, MR:** He needed to - - -
56
57 21/8/07 GARY XN 850
58 4.14

1 **THE ACTING COMMISSIONER:** He said in answer to Mr Davies
2 that they weren't transcribed until some weeks or months
3 later.
4
5 **TROWELL, MR:** That's right.
6
7 **THE ACTING COMMISSIONER:** So he didn't review - - -
8
9 **TROWELL, MR:** That's right, and so he reviewed them - - -
10
11 **THE ACTING COMMISSIONER:** He didn't see them until then.
12
13 **TROWELL, MR:** Yes.
14
15 **THE ACTING COMMISSIONER:** I'm not sure that he actually
16 said he saw them at any time - - -
17
18 **TROWELL, MR:** My recollection is that he - there would be
19 a delay by the time the transcription would actually take
20 place.
21
22 **THE ACTING COMMISSIONER:** He certainly said that. I don't
23 know that he actually said that he then reviewed them.
24
25 **TROWELL, MR:** Well, when I say reviewed, he referred to
26 them, he clearly needed to refer to them to have an
27 understanding what had taken place. He would get the - - -
28
29 **THE ACTING COMMISSIONER:** Well, no, not necessarily. He
30 was being shown these transcripts today and asked to
31 comment on them or explain - - -
32
33 **TROWELL, MR:** As if, as if they were the transcripts
34 prepared by BCI.
35
36 **THE ACTING COMMISSIONER:** As if they were the transcripts
37 but not as if - - -
38
39 **TROWELL, MR:** Prepared by BCI.
40
41 **THE ACTING COMMISSIONER:** But not as if he had - no, no,
42 not as though they were the transcripts prepared by BCI, as
43 if they were the transcripts of the conversations,
44 simplicita - - -
45
46 **TROWELL, MR:** Yes, more accurately put, yes.
47
48 **THE ACTING COMMISSIONER:** - - - and he was not asked, and
49 I don't recall him saying, that he had reviewed these or
50 any other transcript in the meantime.
51
52 **TROWELL, MR:** Take out the word "reviewed". Let's say he
53 referred to the transcripts as they were - if and when they
54 were prepared by BCI. All I'm complaining about is that
55 he's given transcripts prepared by the Commission rather
56 than the transcripts that he would have seen at the time
57
58 21/8/07 GARY XN 851

1 the operation was taking place.

2

3 **THE ACTING COMMISSIONER:** No, he didn't see any while the
4 operation was taking place, and whether he saw them
5 afterwards, he didn't say that he did. All he said was
6 they would not have been - as I recollect it anyhow - they
7 would not have been prepared for some weeks or months
8 later, weeks or possibly months later - - -

9

10 **TROWELL, MR:** Possibly weeks subsequently to the - - -

11

12 **THE ACTING COMMISSIONER:** - - - and then they would have
13 gone onto the BCI files.

14

15 **TROWELL, MR:** Yes.

16

17 **THE ACTING COMMISSIONER:** I don't recall him saying that
18 he had looked at them then or since or ever until he looked
19 at these ones on the screen today. Now, that can be
20 corrected if it's wrong but that's my recollection of it.

21

22 **TROWELL, MR:** You may correct on that, sir.

23

24 **THE ACTING COMMISSIONER:** It is undesirable that you do
25 not have complete transcripts. Now, I know from past
26 experience of other cases that often transcripts are
27 prepared and then someone with supersonic equipment listens
28 to them again and can fill in some of the gaps; that has
29 happened. It often happens in Commonwealth - - -

30

31 **TROWELL, MR:** Telephone interceptions - - -

32

33 **THE ACTING COMMISSIONER:** - - - telephone interceptions.

34

35 **TROWELL, MR:** - - - telephone interceptions and the like,
36 yes, for drug matters.

37

38 **THE ACTING COMMISSIONER:** And that may well be what has
39 happened now. I don't know.

40

41 **TROWELL, MR:** Yes.

42

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1 **THE ACTING COMMISSIONER:** But what is the problem? Are
2 there significant - do you say there are significant
3 differences? Do you say there are gaps on yours that are
4 not on these or do you say that the extra words that have
5 been filled in on the Commission's transcripts are not to
6 be found on the tapes if you listen to them?

7
8 **TROWELL, MR:** Yes, my understanding is it's a combination
9 of all of those and Mr Davies has a particular - no, I
10 won't speak on behalf of Mr Davies but I think Mr Davies'
11 complaint is that he cross-examined on the basis of these
12 transcripts rather than the BCI transcripts which were
13 prepared as a consequence of this undercover operation. I
14 think if I - I'm not sure of how accurate - - -

15
16 **THE ACTING COMMISSIONER:** If he's cross-examining on the
17 more complete version he shouldn't be prejudiced. If he's
18 cross-examining on the incomplete version, I can see how he
19 might be prejudiced.

20
21 **TROWELL, MR:** But, again, I don't want - - -

22
23 **THE ACTING COMMISSIONER:** Leave that to Mr Davies.

24
25 **TROWELL, MR:** Having stated his case I'm not sure I want
26 to defend it so - he'll do that far more ably than I.

27
28 **THE ACTING COMMISSIONER:** All right, what are we going to
29 do? Just a minute. Yes, Mr Power?

30
31 **POWER, MR:** Commissioner, I don't want to take up any more
32 time than is necessary on this point, but the problem that
33 we're having at the moment in answering your question as to
34 whether there are any significant differences or not of
35 course is that we have only had these - this other version
36 of the transcript flashed up in front of us today
37 momentarily. We have not had the opportunity to sit down
38 and compare one with the other to see if there are any
39 significant additions or omissions and so we can't answer
40 your question fairly, but if we were given that opportunity
41 we might be able to address you more specifically on that.

42
43 **THE ACTING COMMISSIONER:** Can copies of these - this
44 version of the tapes be supplied so they can compare their
45 version with the other versions?

46
47 **QUINLAN, MR:** That's the usual course at the day of the
48 day is requests are made for exhibits or bar-coded
49 documents, which are provided.

50
51 **THE ACTING COMMISSIONER:** They have all been provided
52 today so they can - they have all been examined today. Can
53 they be provided this evening?

1 **QUINLAN, MR:** Yes, as I understand it. Anything that has
2 been used today can be - - -

3

4 **THE ACTING COMMISSIONER:** Anything that has been used
5 today can be - - -

6

7 **POWER, MR:** Commissioner, can I make the obvious point?
8 Without knowing what the differences are and without
9 knowing whether they are significant, it becomes a bit
10 difficult to deal with the evidence as it's being given
11 unless we get the transcripts in sufficient time to
12 consider those matters and then raise them - - -

13

14 **THE ACTING COMMISSIONER:** Why don't you - can't you deal
15 with it this way? It may not be the ideal way from your
16 point of view - - -

17

18 **POWER, MR:** Yes, Commissioner.

19

20 **THE ACTING COMMISSIONER:** - - - but I think it probably
21 satisfies your - solves your problem. When these
22 transcripts are flashed up on the screen, you compare them
23 with the ones you have and if there are any discrepancies
24 or differences draw my attention to them before the witness
25 is examined on them.

26

27 **POWER, MR:** That would be a partial solution,
28 Commissioner. Again, I don't want to take up more time
29 than is necessary but sometimes it's a matter of context.

30

31 **THE ACTING COMMISSIONER:** We are listening to the
32 conversations at the same time.

33

34 **POWER, MR:** I appreciate that, but we are listening to
35 selected portions.

36

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1 **THE ACTING COMMISSIONER:** I think the conversations that
2 have been played have all been played in their entirety,
3 haven't they, Mr Quinlan?
4
5 **URQUHART, MR:** That can't be the case, sir. If you look
6 at the title for this one that we are looking at now,
7 E12362, extract 7, tape 1, starting at 39 minutes,
8 46 seconds through to 41 minutes and 30 seconds - - -
9
10 **THE ACTING COMMISSIONER:** That doesn't mean it's not the
11 whole of that conversation.
12
13 **QUINLAN, MR:** That's effectively an entire trip on the way
14 to Kalamunda, as I understand it.
15
16 **THE ACTING COMMISSIONER:** Two minutes to get - I don't
17 know where Kalamunda is.
18
19 **QUINLAN, MR:** No, no. The tape - that is, there is a tape
20 which is on the BCI files which is marked "tape 1" and the
21 extract is an extract of tape 1 from 39 minutes, 46 seconds
22 into the tape until 41 minutes, 30 seconds into the
23 tape - - -
24
25 **THE ACTING COMMISSIONER:** I see.
26
27 **QUINLAN, MR:** - - - and is therefore an extract which is a
28 little under two minutes.
29
30 **THE ACTING COMMISSIONER:** So it's not the whole
31 conversation?
32
33 **URQUHART, MR:** And we need it, sir, because going back to
34 the last tape, E12360, you, Commissioner, asked the witness
35 questions about when photographs were mentioned and the
36 witness said, "As far as I can recall this was the first
37 mention of photographs," but it may be that there is other
38 taped conversation - - -
39
40 **THE ACTING COMMISSIONER:** If you have the more complete
41 tapes - - -
42
43 **URQUHART, MR:** We wouldn't.
44
45 , **MR:** No, we don't. That's the point.
46
47 **URQUHART, MR:** **MR:** We don't.
48
49 **THE ACTING COMMISSIONER:** But I thought you did - you had
50 the whole BCI tapes.
51
52 **URQUHART, MR:** We have got some transcripts of
53 excerpts - - -
54
55 **DAVIES, MR:** And no tapes.
56
57 21/8/07 GARY XN 855
58 4.22

1 **URQUHART, MR:** - - - but no tapes. Presumably the
2 Commission has got the tapes and I think in the interests
3 of fairness, if the Commission hasn't done it, then it
4 ought to have transcripts of the entire tapes.
5
6 **THE ACTING COMMISSIONER:** What have you got?
7
8 **DAVIES, MR:** Not much.
9
10 **URQUHART, MR:** Not much.
11
12 **THE ACTING COMMISSIONER:** No; just a moment. No, no. If
13 you have got the BCI tapes - the BCI transcripts - - -
14
15 **URQUHART, MR:** We have got some transcripts.
16
17 **THE ACTING COMMISSIONER:** Why don't you go to the BCI and
18 get the rest of them?
19
20 **URQUHART, MR:** Because presumably they would be with the
21 Commission by now.
22
23 **DAVIES, MR:** And they are not allowed to talk to us, sir.
24
25 **THE ACTING COMMISSIONER:** All right. What do you say,
26 Mr Quinlan?
27
28 **QUINLAN, MR:** What I say about, firstly, the extracts that
29 are played is this - we are not simply putting transcripts
30 up and comparing transcripts. We are playing the audio
31 content and - - -
32
33 **THE ACTING COMMISSIONER:** But I think what Mr Urquhart in
34 particular is saying - I think this is what he is
35 saying - - -
36
37 **QUINLAN, MR:** Yes.
38
39 **THE ACTING COMMISSIONER:** - - - that you have come in in
40 the middle of a conversation and played the transcript from
41 the middle - starting at 31 minutes into the tape.
42
43 **QUINLAN, MR:** Yes.
44
45 **THE ACTING COMMISSIONER:** There may be something at
46 36 minutes into that tape which puts all this in a
47 different context, and how can he know what it is because
48 BCI won't give him a balance or if they have got them -
49 they haven't got them or he doesn't know whether they are
50 there. I suspect it's a fishing expedition but
51 nevertheless - - -
52
53 **QUINLAN, MR:** To be perfectly honest, sir, I'm surprised
54 that there is a concern that there aren't transcripts
55 because I had understood from the list of documents that
56 was compiled by detectives - or by Messrs Shervill and
57
58 21/8/07 GARY XN 856

1 Caporn that included amongst those lists were all of the
2 transcripts from the BCI file but I may be wrong about
3 that.

4
5 **DAVIES, MR:** That is categorically wrong, sir.

6
7 **QUINLAN, MR:** I will check the list.

8
9 **THE ACTING COMMISSIONER:** I will tell you what we could
10 do. How long are the tapes altogether?

11
12 **QUINLAN, MR:** Several hours.

13
14 **TROWELL, MR: MR:** Have you listened to them all? I
15 wonder whether counselling assisting have listened to the
16 entirety of those?

17
18 **THE ACTING COMMISSIONER:** I beg your pardon?

19
20 **TROWELL, MR:** I wonder whether counselling assisting have
21 listened to all those tapes.

22
23 **THE ACTING COMMISSIONER:** I don't know.

24
25 **TROWELL, MR:** Otherwise it may be - not deliberately so
26 but inadvertently selective - - -

27
28 **THE ACTING COMMISSIONER:** I don't know.

29
30 **TROWELL, MR:** - - - and perhaps may not accurately
31 represent what has actually been spoken between - - -

32
33 **THE ACTING COMMISSIONER:** I gave an example a minute ago.

34
35 **TROWELL, MR:** Yes, exactly; exactly.

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1 **THE ACTING COMMISSIONER:** I am tempted to invite all
2 counsel to come and listen to all the tapes on Friday when
3 I won't be here. But the trouble is the witness will be
4 gone by then.

5
6 **QUINLAN, MR:** Yes, that's true.

7
8 **POWER, MR:** Sir, can I come back to my original suggestion
9 that if we get a copy of the transcripts that are being
10 shown on the screen tonight we could be ready tomorrow?

11
12 **THE ACTING COMMISSIONER:** That has a great attraction,
13 Mr Quinlan.

14
15 **QUINLAN, MR:** Yes, that's no - any of the transcripts
16 which have been shown today I will have them prepared
17 imminently.

18
19 **TROWELL, MR:** Can I just ask this: we know that extracts
20 have been shown. We're not sure how they have been
21 selected. No doubt they may be part of a bigger document.
22 They may be part of a complete transcript of the tapes. We
23 don't know whether the seven hours has been reduced to
24 writing or not but we would find it difficult to accept
25 that they had not been because how would it then be
26 possible, I suppose other than by listening to the
27 tapes - - -

28
29 **THE ACTING COMMISSIONER:** Someone listens to them and
30 says, "Oh yeah, we'll take it" - - -

31
32 **TROWELL, MR:** - - - how to select the particular excerpts?

33
34 **THE ACTING COMMISSIONER:** - - - "We'll transcribe that bit
35 and we'll transcript" - - -

36
37 **TROWELL, MR:** Yes, it doesn't seem to logically follow,
38 does it, so. It may be the case that there are transcripts
39 in relation to at least the key parts, the key meetings at
40 least, rather than just the extracts that we see, and that
41 would be of assistance to it and we can perhaps read those
42 overnight or - to prepare ourselves for tomorrow morning.

43
44 **THE ACTING COMMISSIONER:** Mr Quinlan, are you able to tell
45 me whether there is, as it were, a master summary of what's
46 on the rest of the tapes that have not been transcribed?

47
48 **QUINLAN, MR:** I am able to say that there is not a
49 complete master document that has been - gone through the
50 process of transcription and checking in the manner that
51 the extracts have. So there may well be other parts which
52 have been transcribed but there is not a complete
53 transcript of all the tapes, if you like, over the many
54 hours that has been fully completed.

1 **THE ACTING COMMISSIONER:** No, but is there a summary, such
2 as a half-page summary, "15 June, Gary talks to Mallard
3 about what they're going to have for breakfast; Gary talks
4 to Mallard about what they're going to have for lunch and
5 whether they will have morning tea. Then follows
6 extract 7" - - -
7
8 **QUINLAN, MR:** Those kinds of summaries appear in the BCI
9 files.
10
11 **THE ACTING COMMISSIONER:** Do they?
12
13 **QUINLAN, MR:** Well, in fact one of the documents which has
14 been put up, for example - - -
15
16 **THE ACTING COMMISSIONER:** I'm just thinking that would put
17 it in context.
18
19 **TROWELL, MR:** I'm just wondering whether counsel assisting
20 is - has he himself familiarised himself with the - either
21 the BCI transcripts or the audiotapes. He's in a position
22 to say whether there's any material appearing in any of the
23 seven hours that may directly bear upon the extracts that
24 we have seen. It may be the case that counsel assisting is
25 simply relying upon very limited excerpts on which to base
26 their propositions that they put to the witness.
27
28 **THE ACTING COMMISSIONER:** I think they're entitled to know
29 what's on the rest of the tapes, just the mechanics
30 of - - -
31
32 **TROWELL, MR:** I'm just wondering, maybe the BCI
33 transcripts provide some guidance for us.
34
35 **THE ACTING COMMISSIONER:** The BCI transcripts, yes.
36
37 **TROWELL, MR:** Yes.
38
39 **QUINLAN, MR:** Yes, I will - and I know there are BCI
40 transcripts - - -
41
42 **THE ACTING COMMISSIONER:** Why don't - - -
43
44 **TROWELL, MR:** Which counsel obviously hasn't read - - -
45
46 **THE ACTING COMMISSIONER:** Can you make available - - -
47
48 **TROWELL, MR:** - - - which causes us some concern.
49
50 **THE ACTING COMMISSIONER:** Can you make available
51 overnight - - -
52
53 **QUINLAN, MR:** And can I just correct that? Counsel has
54 read the BCI transcripts. What I said was that there was
55 not a master - - -
56
57
58 21/8/07 GARY XN 859

71/49/sgp

1 **THE ACTING COMMISSIONER:** Master plan.

2

3 **QUINLAN, MR:** Master transcript of all of the tapes.

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58 21/8/07

GARY XN

860

1 **THE ACTING COMMISSIONER:** Yes, and I asked about a master
2 summary and yet I gather there's not one of those either.
3
4 **QUINLAN, MR:** No.
5
6 **THE ACTING COMMISSIONER:** Let's see. Can you provide
7 overnight a copy of all of the transcripts you are showing
8 on the screen to the last witness and to this witness,
9 together with a copy of the BCI tapes - transcripts that
10 you have?
11
12 **QUINLAN, MR:** Yes, I can.
13
14 **THE ACTING COMMISSIONER:** Is there any problem about that
15 or any objection to that?
16
17 **QUINLAN, MR:** I don't think there is any difficulty and as
18 I said, I had understood that the BCI transcripts were
19 already available.
20
21 **THE ACTING COMMISSIONER:** All right. Then I direct that
22 they may be made available as soon as possible this evening
23 and I think you will probably find - my experience when we
24 have gone through this exercise in other cases is that it
25 all turns out to be a storm in a tea cup and there's no
26 significant difference; but you're entitled to check it.
27
28 **URQUHART, MR:** Sir, can we also find out how many hours of
29 tape have not been transcribed as well?
30
31 , **MR:** By anyone.
32
33 **URQUHART, MR:** Anyone.
34
35 **GORMLY, MR:** Commissioner, I hesitate to intervene - - -
36
37 **THE ACTING COMMISSIONER:** No.
38
39 **GORMLY, MR:** - - - but it goes to Mr Quinlan's matter.
40
41 **THE ACTING COMMISSIONER:** Yes.
42
43 **GORMLY, MR:** Commissioner, I understand the kinds of
44 issues that have been raised, but we are in the middle at
45 the moment of a particularly potentially significant area
46 of the evidence.
47
48 **THE ACTING COMMISSIONER:** Yes.
49
50 **GORMLY, MR:** We're halfway through the evidence of a
51 witness with a particular security issue but where the
52 evidence also may matter.
53
54 **THE ACTING COMMISSIONER:** Yes?
55
56
57 21/8/07 GARY XN 861
58 4.30

1 **GORMLY, MR:** I fully accept that my friends have a copy of
2 the BCI tapes and the view that I - - -

3

4 **THE ACTING COMMISSIONER:** BCI tapes or the - - -

5

6 , **MR:** No, we don't have them

7

8 **THE ACTING COMMISSIONER:** No, they say they don't.

9

10 **GORMLY, MR:** Transcripts. Transcripts. I have listened
11 to segments of the tape. I agree with them, but the BCI
12 tapes are in some respects incomplete. They look as though
13 they have been typed out fairly quickly in a routine way;
14 but we have better equipment, we have listened better and
15 we have produced better transcripts. It has been
16 important, because those transcripts are different, to play
17 the tapes at the same time, that is, everybody has an
18 opportunity to both hear them and read them.

19

20 In my respectful submission, Commissioner, the better
21 way to handle this is that the parties or the witnesses
22 represented today be provided with copies of our
23 transcripts that have been used today, but if there are any
24 that - - -

25

26 **THE ACTING COMMISSIONER:** Or will be used tomorrow?

27

28 **GORMLY, MR:** Commissioner, may we wait? May we wait on
29 that until the completion of this witness's evidence?

30

31 , **MR:** But that doesn't - - -

32

33 **THE ACTING COMMISSIONER:** That - - -

34

35 **GORMLY, MR:** It is a purely operational matter. Those
36 transcripts can be provided, but may we wait until the
37 completion of this witness's - - -

38

39 **THE ACTING COMMISSIONER:** But it's a bit late then. They
40 can't - - -

41

42 **GORMLY, MR:** They're very short - - -

43

44 **THE ACTING COMMISSIONER:** They can't object to the tapes
45 being inaccurate; they can't cross-examine.

46

47 **GORMLY, MR:** They'll be able to cross-examine,
48 Commissioner, because what's going to be dealt with
49 tomorrow I think will be relatively short. Will be quite
50 short.

51

52 **THE ACTING COMMISSIONER:** They may need an adjournment
53 before they cross-examine.

54

55 **GORMLY, MR:** Then I won't - subject obviously to your
56 views, Commissioner, I won't object to them having the

57

72/52/glj

1 adjournment. My assessment of the amount of time it will
2 take them to read the additional transcripts is probably 15
3 or 20 minutes, something of that order, and they will not
4 differ significantly from the transcripts they already
5 have.

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21/8/07

GARY XN

863

1 **THE ACTING COMMISSIONER:** What about the BCI transcripts?
2
3 **GORMLY, MR:** They have already got them.
4
5 **THE ACTING COMMISSIONER:** They say they haven't. Is that
6 right?
7
8 **GORMLY, MR:** If they haven't, then the lists of documents
9 that have been provided by their clients must be
10 inaccurate.
11
12 **THE ACTING COMMISSIONER:** Can they have the - what is the
13 position?
14
15 **PIDCO, MR:** Commissioner, may I address you from the point
16 of view of Gary?
17
18 **THE ACTING COMMISSIONER:** Yes.
19
20 **PIDCO, MR:** I have nothing whatsoever - - -
21
22 **THE ACTING COMMISSIONER:** No.
23
24 **PIDCO, MR:** I have nothing at all.
25
26 **THE ACTING COMMISSIONER:** No.
27
28 **PIDCO, MR:** In respect of the transcripts that have been
29 read today and the comment that you have made,
30 Commissioner, in respect of the transcripts being made for
31 tomorrow, in respect of Gary I would make application that
32 I be provided with all of the above for the purposes
33 of - - -
34
35 **THE ACTING COMMISSIONER:** No. There's a problem about
36 that, Mr Pidco, and that is that none of the witnesses and
37 none of the counsel have had access to any of these
38 transcripts prior to giving their evidence. They have all
39 had them flashed up on the screens, listened to them and
40 what I have been looking for is their spontaneous reaction.
41
42 **PIDCO, MR:** With respect, sir - - -
43
44 **THE ACTING COMMISSIONER:** They are not to go away and
45 think about it overnight and work out, "How I'm going to
46 answer that question and how I'm going to answer this one."
47
48 **PIDCO, MR:** With respect, sir, not having been here and
49 not knowing what has been going on, in my submission,
50 doesn't that raise an issue - if it's being done that way,
51 and I have seen it this afternoon, the witness has not been
52 asked to read the document and to say whether he agrees
53 that it's an accurate record of what has been transcribed.
54
55
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57 21/8/07 GARY XN 864
58 4.34

1 **THE ACTING COMMISSIONER:** He has been able to listen to
2 it. Everyone has been able to listen to it at the same
3 time.
4
5 **GORMLY, MR:** There's another component too, Commissioner,
6 we must bear in mind that this witness has already given
7 evidence in private hearing.
8
9 **THE ACTING COMMISSIONER:** Yes.
10
11 **GORMLY, MR:** Mr Pidco hasn't seen that transcript but we
12 will seek directions from you to make it available to him
13 so that he can see it.
14
15 **THE ACTING COMMISSIONER:** I think he should see that
16 tonight.
17
18 **GORMLY, MR:** Yes, but that is a matter to be taken into
19 account, I would submit, Commissioner, before we start
20 providing this witness or anyone else with transcripts
21 about evidence yet to be asked tomorrow.
22
23 **TROWELL, MR:** Commissioner, may I just ask this question -
24 this might resolve it hopefully. Do I understand that - we
25 know that there are in existence transcripts, completed or
26 otherwise, prepared by the Bureau of Criminal Intelligence.
27 We know also that there are what are described as excerpts
28 from those tapes prepared by the Corruption and Crime
29 Commission. The excerpts that have been shown on the
30 screen to M1 and to be shown to Gary today and tomorrow,
31 are they the full extent of the transcripts prepared by the
32 Commission? If they are not, we should see the other
33 transcripts because that solves the problem we are talking
34 about, about whether these accurately reflect the
35 conversation - - -
36
37 **THE ACTING COMMISSIONER:** I don't know whether it does
38 solve the problem or whether it's even relevant but are
39 these the extent of the - - -
40
41 **GORMLY, MR:** Commissioner, may I decline to answer that
42 question for operational reasons?
43
44 **THE ACTING COMMISSIONER:** All right, yes. Yes, all right.
45
46 **TROWELL, MR:** The answer is no then, is it?
47
48 **GORMLY, MR:** That will become - - -
49
50 **TROWELL, MR:** Obviously, no?
51
52 **GORMLY, MR:** That will become clear.
53
54 **TROWELL, MR:** Obviously, no?
55
56 **GORMLY, MR:** (indistinct) to this witness - - -
57
58 21/8/07 GARY XN 865

1 **THE ACTING COMMISSIONER:** One thing that - - -

2

3 **TROWELL, MR:** It's obviously no through embarrassment,
4 Commissioner.

5

6 **THE ACTING COMMISSIONER:** One things that occurs to me is
7 that if counsel have had the BCI transcripts or some of
8 them relating to the conversations that have been
9 transcribed and shown to the witnesses today and have not
10 objected until quarter past 4, I believe that there are
11 almost certainly no significant differences or you would
12 have been up on your feet long before this.

13

14 **DAVIES, MR:** Sir, with great respect - - -

15

16 **THE ACTING COMMISSIONER:** Anyhow we are not going to waste
17 any more time about it now. What about the BCI transcript?

18

19 **GORMLY, MR:** We can provide, Commissioner, all of the - if
20 it's said that they don't have them, I will accept that.
21 We will provide copies of the BCI transcripts and we can
22 also provide copies of transcripts of anything that has
23 been shown today.

24

25 **THE ACTING COMMISSIONER:** All right.

26

27 **DAVIES, MR:** In amongst all this that's all we have ever
28 been asking for, sir.

29

30 **GORMLY, MR:** No, no. You have been asking for tomorrow's
31 as well.

32

33 **TROWELL, MR:** Could I just say that I apologise when I
34 said that it's obviously through embarrassment that
35 Mr Gormly has claimed - - -

36

37 **GORMLY, MR:** I'm not embarrassed.

38

39 **TROWELL, MR:** - - - that for operational reasons he won't
40 say whether they have transcribed the balance of the BCI
41 tapes? The fact is for the life of me I can't imagine what
42 operational reasons you would have for not disclosing to
43 you, Commissioner, or at least to the Commission in a
44 public hearing - - -

45

46 **THE ACTING COMMISSIONER:** He may want to disclose them
47 later. That's one possibility.

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1 **TROWELL, MR:** The BCI tapes would have that information.

2

3 **THE ACTING COMMISSIONER:** What I do - - -

4

5 **TROWELL, MR:** It just seems a disingenuous reply to the
6 question.

7

8 **THE ACTING COMMISSIONER:** I'm not going to waste any more
9 time on this. I direct that copies of the Commission's
10 transcript of the tapes referred to and shown to witnesses
11 today and copies of the equivalent BCI tapes relating to
12 those conversations be provided to all counsel as soon as
13 possible this evening, as soon as practical this evening,
14 and that in addition to that Mr Pidco be provided with a
15 copy of the evidence given by his client at the private
16 hearing.

17

18 **GORMLY, MR:** May we make that available to Mr Pidco this
19 afternoon?

20

21 **THE ACTING COMMISSIONER:** Yes.

22

23 **GORMLY, MR:** Here.

24

25 **THE ACTING COMMISSIONER:** Yes.

26

27 **GORMLY, MR:** Rather than that he take it away.

28

29 **THE ACTING COMMISSIONER:** Mr Pidco, you understand that as
30 it's evidence of a private hearing it can't be disclosed to
31 anyone unless it's referred to in a public hearing?

32

33 **PIDCO, MR:** Yes, sir, I do understand that. Just for
34 logistical purposes, my understanding from Mr Gormly is
35 that I'm going to be permitted to read it here but not to
36 take it away. Is that - - -

37

38 **THE ACTING COMMISSIONER:** I think that's the basis on
39 which everyone else has received - has had access to a
40 transcript of the private hearings.

41

42 **DAVIES, MR:** Only Mr Trowell - - -

43

44 **THE ACTING COMMISSIONER:** No, no. Mr Trowell can only
45 read Mr Brandham's one here too.

46

47 **DAVIES, MR:** He's the only one - - -

48

49 **TROWELL, MR:** And I have been doing it while the
50 proceedings have taken place. It's amazing how I have kept
51 up with everything.

52

53 **THE ACTING COMMISSIONER:** You might have missed something.

54

55

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57 21/8/07

GARY XN

867

58 4.38

1 **TROWELL, MR:** I don't think so, sir. If I did, you said
2 you wouldn't.
3
4 , **MR:** Sir, if I could just - - -
5
6 **POWER, MR:** Sorry. Commissioner, can I just clarify one
7 issue? In the second limb of that first part of the order
8 you just made you referred to tapes. Did you mean to refer
9 to tapes or transcripts in the order?
10
11 **THE ACTING COMMISSIONER:** I'm sorry, I meant to refer to
12 transcripts of tapes.
13
14 **POWER, MR:** Thank you, sir.
15
16 **THE ACTING COMMISSIONER:** Thank you.
17
18 **DAVIES, MR:** But, sir, with great respect, we have now
19 gone backwards. It's the rest of the BCI transcripts that
20 we need to check the context.
21
22 **GORMLY, MR:** I have no problem there. The BCI transcripts
23 are item D103 on Mr Davies' client's list of documents, but
24 if they don't have them for some reason, despite their
25 presence on that list, I'm quite happy for them to have a
26 full copy of all of the BCI tapes so far.
27
28 **DAVIES, MR:** Thank you very much.
29
30 **GORMLY, MR:** As I offered before.
31
32 **THE ACTING COMMISSIONER:** Yes, I think that's right.
33
34 **DAVIES, MR:** Thank you.
35
36 **THE ACTING COMMISSIONER:** All right. 10 o'clock tomorrow
37 morning. I will adjourn, the court can be closed and then
38 the witness can be taken out.
39

40 AT 4.41 PM THE MATTER WAS ADJOURNED UNTIL
41 WEDNESDAY, 22 AUGUST 2007
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