

**REPORT TO THE CHIEF JUSTICE  
OF NEW SOUTH WALES  
(The Hon J J Spigelman AC)  
  
OF THE INQUIRY**

**Held under Section 79 of the Crimes (Appeal and Review) Act 2001**

**INTO THE CONVICTION OF**

**PHUONG CANH NGO**

**FOR THE MURDER OF JOHN NEWMAN**

**DATED: 14 April 2009**

**DAVID PATTEN: JUDICIAL OFFICER**

Note

This copy of the report has been edited to the extent that, in order to comply with publication restrictions imposed by law, some names have been replaced with initials or a pseudonym and some addresses have been omitted.

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## INTRODUCTION

- 1 In an instrument signed on 6 June 2008, the Chief Justice of NSW (The Hon JJ Spigelman AC) recited “It appears there is a question as to part of the evidence in the proceedings leading to the conviction of Phuong Canh Ngo (Mr Ngo) on 29 June 2001 for the murder of John Newman (Mr Newman)”. His Honour directed that an inquiry be held in accordance with Part 7 of the Crimes (Appeal and Review) Act 2001 and appointed me, a former judicial officer, to conduct it.
- 2 Mr Newman was mortally wounded by gunshots at about 9.30pm on 5 September 1994, shortly after alighting from his car at his home at 15 Woods Avenue, Cabramatta. Mr Ngo was charged with Mr Newman’s murder on 13 March 1998.
- 3 There were three trials. At the first, conducted before Justice Wood, Chief Judge at Common Law, and a jury from June to August 1999, Mr Ngo was indicted jointly with Mr T. This trial was aborted for legal reasons. The second trial, again before Justice Wood and a jury, was held from February to May 2000. This time Mr Ngo was indicted jointly with Mr Tu Quang Dao (Mr Dao). At its conclusion the jury was unable to agree upon a verdict and was discharged.
- 4 The third trial before Justice Dunford and a jury was held from 7 March 2001 to 29 June 2001. The joint accused, all charged with the murder of Mr Newman, were Mr Ngo, Mr Dao, and Mr David Dinh (Mr Dinh). Mr Dao and Mr Dinh were acquitted but Mr Ngo was found guilty and was subsequently sentenced to imprisonment for life. His appeal to the Court of Criminal Appeal (Stein JA, Sully J and Levine J) was dismissed on 3 April 2003 and an application for special leave to appeal to the High Court was refused on 28 May 2004. Gleeson CJ expressed the reasons for such refusal:

“We are of the view that in this matter there are insufficient prospects of success of an appeal to warrant a grant of special leave and the application is dismissed.”

- 5 At the time of his murder Mr Newman held the seat of Cabramatta in the Legislative Assembly of NSW (Legislative Assembly) as a member of the Australian Labor Party (ALP). Mr Ngo had unsuccessfully, as an independent, opposed him at the previous state election in 1991. He was heavily involved in local politics and for a period Deputy Mayor of Fairfield City Council (the Council). Since the election he had joined the ALP and made known his ambition to secure a seat in the NSW Parliament.
  
- 6 Mr Ngo and his various co-accused were associated with the Mekong Club (the Club) at 117 John Street, Cabramatta. It had been formed in 1993 primarily through the efforts of Mr Ngo and he was regarded as Honorary President, although this does not seem to have been a position recognised by the Club’s constitution. He, nonetheless, it is clear, exerted very considerable influence, particularly in the hiring and internal promotion of employees. He had, apparently, unlimited access to the Club’s funds through a very loosely administered voucher system and he also received other benefits. His own office, from which he conducted a Vietnamese language newspaper, was situated a very short distance from the Club’s premises at 88 John Street Cabramatta and rooms adjacent to his office were used by the Club for administrative purposes. Employees of the Club during 1994 included Mr Dao, Mr Dinh, Mr T, and Mr N.
  
- 7 It was the Crown case that early in 1994, in effect, Mr Ngo conspired with Mr T and Mr N to murder Mr Newman. Thereafter, guns were acquired and various plots hatched, which included abortive attempts to kill Mr Newman. By 5 September 1994 however, as the Crown seems to have accepted, Mr N had withdrawn from the conspiracy and Mr T was no longer regarded as an effective participant.

8 As to the actual murder of Mr Newman, the Crown claimed that, at the instigation of Mr Ngo, a car driven by Mr Dao and containing Mr Dinh and Mr T (lured into the car by subterfuge) went to the vicinity of Mr Newman's house at about 9.30pm on 5 September 1994. Upon Mr Newman's return from an ALP meeting Mr Dinh, armed with a pistol and wearing a green army style jacket and gloves, left the car and shot him. He then returned to the car, which was driven away. Within a minute or two it stopped at a nearby service station and while the others waited, Mr Dinh went to where Mr Ngo had parked his car close by and gave him a bag in which he had placed the gun used in the shooting, the jacket and the gloves. Mr Ngo, either directly or after stopping briefly at his home at 1 Wellard Place, Bonnyrigg, then drove to a footbridge over the Georges River at Voyager Point and dropped or threw the gun into the river where it was found by police divers nearly 4 years later. The jacket and gloves were never recovered.

#### **APPEAL TO THE COURT OF CRIMINAL APPEAL:**

9 In the result, 12 grounds were relied upon by Mr Ngo in the Court of Criminal Appeal (2003 NSWCA 82). They did not include a general contention that the verdict involved a miscarriage of justice.

10 Of the matters argued and pronounced upon by the Court, only two seem relevant to the issues before me, namely:

- Inadequate directions by trial judge on evidence of Mr T and Mr N
- Failure by trial judge to direct the jury on significance of acquittal of other accused

11 In relation to the first of those grounds, the Court referred to ***Pollitt v The Queen (1991 – 1992) 174 CLR 558***:

“The rule that one accomplice cannot corroborate another is based in large part on the common interest of accomplices in minimising their involvement in the offence charged. That

common interest raises the possibility that they may have conspired to give an identical but false account .

It is for this reason that a direction is given that accomplices cannot corroborate each other.

Thus, if there is no possibility of joint fabrication, as, for example, where the witness was an accomplice in other offences and is called to give similar fact evidence, a direction to this effect is not required.

Equally, there may be cases not involving accomplices where, because of the possibility of joint fabrication, it is necessary to direct a jury to look elsewhere for corroboration. But there was no basis for any suggestion of joint fabrication in this case and, thus, there was no need for a direction that Denning and Jones could not corroborate each other.”

- 12 The quoted passage follows immediately the statement “There is no rule of law or practice that evidence which attracts a corroboration warning cannot corroborate or be corroborated by other evidence attracting the same warning”.
- 13 The Court did not address the possibility of Mr T and Mr N being accomplices of the type described in **Pollitt** but did consider whether that categorisation applied to the relationship between Mr N and another Crown witness, Mr TN. It held, at paragraph 200, “We can find in the competing submissions no reference to any evidence which would justify the contrary conclusion”, namely, that Mr N and Mr Ngo were accomplices of the type referred to in **Pollitt**.
- 14 Upon the second ground stated above, the Court said:

“[298] As the Crown contends, the appellant's submissions appear erroneously to assume that an acquittal of Dinh meant that the jury "rejected" Mr T's evidence. The Crown points to the dubious validity of the proposition advanced on behalf of the co-accused Dao (relied upon by the appellant) that if the jury had a doubt about Mr T's evidence that Dinh was the shooter, that would have a bearing on the credibility of Mr T's evidence in relation to Dao. It is clear the cases against the two co-accused heavily depended upon the evidence of Mr T. An acquittal of Dinh, however, may merely have meant, and we agree, that whilst the jury accepted the

evidence of Mr T, they were not prepared to return a verdict of guilty because they were not satisfied by the degree of or the existence of corroboration of his evidence in relation to Dinh. This has more force given the "dangerous to convict" direction given where corroboration was absent.

[299] The situation was different in respect of the case against the appellant. Mr T's evidence of course was an important component; he was a principal witness, but there was an abundance of other evidence as well. This would have been evident to senior counsel for the appellant at trial: the prosecution case against Ngo was more complex than the case against Dao and Dinh; no further submission was made or request for a specific direction. This can now be viewed as perfectly comprehensible when senior counsel had secured the trial Judge's agreement to give the "dangerous to convict" warning. As was submitted by the Crown, nothing more advantageous to the appellant could be achieved.

[300] We are of the view, noting the acknowledgment of the "literal correctness" of the directions to which reference has been made, that the discrete Ground 15 has not been made out. This is so when one views first, the introduction of the notion by Dinh's counsel that Mr T may have been the shooter, when one acknowledges that that scenario formed no part of the Crown case at all, and by viewing over all the Summing-up especially the portions extracted above. We are not persuaded in relation to Ground 15 discretely, that, in the context to which reference has just been made, any unfairness arose from an otherwise correct statement by his Honour as to it not mattering who the shooter was, in the context of the "dangerous to convict" direction, and taking into account the considered forensic stance adopted by senior counsel for the appellant.

[301] When one considers the submissions for the appellant and the starting point of acknowledgment of correctness, it can be seen, with respect, that they involve an attempt to transpose what, in argument, might be a legitimate course of speculation as to a possible process of reasoning, to an assertion that that speculative course became an inevitable reality for the jury in the discharge of its function. A close and sensible examination of his Honour's directions overall might give rise to the submission in the form in which it was presented, but cannot give rise to the conclusion that in any real sense the task of the jury was affected at trial by the same considerations to the prejudice of the appellant."

## THE CONDUCT OF THE INQUIRY:

15 The submission to the Chief Justice, which led to his Direction, was presented by Mr Hugh Selby of the Australian National University on behalf of Mr Ngo. The submission was based on the following “propositions”:

“1. The prosecution led evidence, properly characterised as ‘scientific/technical’ evidence, that plotted the position of various mobile phone calls on 3 and 5 September, 1994. These positions were critical to placing the accused Ngo in locations consistent with his participation in preparations for the murder and the immediate disposal of the murder weapon. That evidence was the linchpin of the prosecution’s case theory and it had an importance analogous to the presence of an offender’s DNA at a crime scene. An expert review in March 2008 by Professor Ron (sic) Coutts indicates that the proffered evidence as heard by the jury was incomplete, failed to consider and test alternative hypotheses, and was given a weight which it did not deserve. In light of the now available technology we submit that the current, more reliable opinion as to the locations of ‘mobile’ phones at critical times is consistent with Ngo’s innocence.

2. The prosecution relied upon the oft-claimed ‘independence’ of two indemnified witnesses, [Mr T] and [Mr N], and a third witness, [Mr TN]. Evidence given by them in 2003 (that is, two years after Ngo’s conviction) in another trial (the Dung trial) showed that their evidence was interdependent. The ‘consistency’ of their accounts at the Ngo trial is derived from one being told what the other was saying (either by staff of the Crime Commission, or by being brought together).

3. The prosecution relied upon assurances that the police had made full and proper disclosure to them (and thus to the Defence and the jury) of relevant materials. In light of the new technical evidence as to alternative credible locations for Ngo at and after the time of the murder on 5 September, 1994, and other matters set out in this submission, there must be doubts about the frankness and completeness of that disclosure with respect to the fortuitous discovery of the alleged murder weapon.

4. Moreover, following Ngo’s conviction it came to light during the later unsuccessful prosecution of Ms Marion Le (a friend and supporter of the accused Ngo) for breaching the

Listening Devices Act, that an important interview between one of the Newman case investigators (Inspector Kaldas as he then was) and Mr Albert Ranse was not disclosed to the prosecution or the Ngo Defence. That interview contains information which is inconsistent with the evidence given by both Inspector Kaldas and Mr Ranse at the second Ngo trial. Had that information been disclosed before, or at, the third trial at which Ngo was convicted then the Defence could have used it for impeachment purposes, and to demonstrate that there was at least one other person with a plausible motive and opportunity to kill Mr Newman.”

16 Representation at the Inquiry comprised Mr A M Colefax SC, Counsel Assisting, Ms D Woodburne SC for the Director of Public Prosecutions; Mr P Hastings QC with Ms R Pepper for Mr Ngo; Mr P Hamill SC with Mr D Jordan for NSW Police Force; and Mr P Bodor QC with Mr M Spartalis for the Deputy Commissioner of Police, Mr N Kaldas.

17 It seemed to me that I should primarily confine the scope of the Inquiry to the matters raised in Mr Selby’s submission and, accordingly, I propounded the undermentioned issues, which received acceptance by all counsel:

1. The extent to which mobile telephone records tendered in the trial of Mr Ngo:
  - evidenced the whereabouts of the caller;
  - were consistent or inconsistent with the Crown case.
2. Whether the testimony of Mr T and Mr N was interdependent in a manner not disclosed by the Crown to Mr Ngo and, if so, whether such interdependence potentially undermined their reliability.
3. Whether evidence given by Mr T and Mr N at the trial before Judge Norrish in September 2003 of Mr Ngo and Mr Dao undermined the evidence they gave at the trial of Mr Ngo, subject of this Inquiry.

4. Whether the Crown frankly and fully disclosed to Mr Ngo the circumstances which led to the finding of a firearm in the Georges River at Voyager Point and, if not, whether such omission potentially impacted upon the trial.
5. Whether the Crown failed to disclose to Mr Ngo the existence of a record of interview between the then Inspector Kaldas and Mr Albert Ranse on 28 May 1999 and, if so and to what extent, such failure impacted upon the trial.
6. Whether findings on the above matters give rise to a doubt as to the guilt of Mr Ngo.

18 At an early stage, upon the application of Mr Hastings, I authorised the further examination by experts of the gun found in the Georges River at Voyager Point, and I permitted evidence as to the reasons why Mr Ngo did not give evidence at the third trial, and as to the construction and location as at September 1994 of the change box and manager's office in the Club. I will make further reference to this evidence.

19 During the course of the Inquiry, other matters arose which required consideration.

20 The first concerned information given by a former police officer, Mr Krzeminski, to Mr Colefax, most of which appeared in an article published in the Sydney Morning Herald on 20 October 2008. I considered that further investigation was warranted and, accordingly, asked the Commissioner of Police to institute enquiries by officers who were not involved in the investigation of Mr Newman's murder.

21 On 8 January 2009, Mr Dave Owens, then Acting Commissioner, provided the Inquiry with a report in light of which I decided that the matter not be

further pursued. A copy of the report was provided to all counsel who acquiesced in my decision.

22 The second matter was raised, in confidence, by Mr Hastings with Mr Colefax early this year. Mr Hastings asked that the Inquiry investigate some information which had come to his notice via a NSW prison inmate regarding the weapon allegedly used to kill Mr Newman. Initially, I accepted Mr Colefax's advice that the nature and quality of the information did not warrant the expenditure of public funds in investigating it. Mr Colefax, with my approval, provided reasons to Mr Hastings for a decision not to take the matter further. However, that decision was reviewed in light of additional material provided by Mr Hastings and, as a consequence, the Commissioner of Police was asked to make a preliminary enquiry which he caused to be conducted by Detective Inspector Scott Whyte. Under cover of a letter dated 3 March 2009, the Commissioner provided me with a confidential copy of the Executive Summary of Detective Inspector Whyte's report. It revealed, in my opinion, that there was nothing to be gained by further investigation and Mr Hastings was notified accordingly. With the Commissioner's consent, copies of the Executive Summary were provided, in confidence, to both Mr Hastings and Ms Woodburne.

23 At a public hearing of the Inquiry on 27 March convened to take oral submissions from counsel, Mr Hastings, in effect, sought a direction that the Inquiry be adjourned until after there had been further investigation of the matter referred to in the preceding paragraph and the matter concerning "Operation Florida", raised by the Honourable Peter Breen, to which I will refer hereafter. After hearing Mr Hastings and Mr Colefax, I declined to delay the Inquiry as requested in light of the material on both subjects already before the Inquiry and what I regarded as the inherent unlikelihood of any further investigation producing relevant information.

24 Mr Hastings also asked the Inquiry to consider an allegation that a police officer connected with the investigation of Mr Newman's murder was involved in disciplinary proceedings concerning the "planting" of a firearm

in an unconnected case not long after Mr Newman's murder. The Inquiry pursued this matter to the extent that it made inquiries of the Police Integrity Commission and issued a summons for the production of documents to the Commissioner of Police.

- 25 In the result, it appeared that there was a complaint against the police officer concerned, which led to an internal investigation. This investigation was overseen by the Police Integrity Commission and the Ombudsman. The complaint was dismissed.
- 26 Finally, so far as Mr Hastings was concerned, he requested that there be a comparison of the ballistic evidence acquired immediately after the murder of Mr Newman with the ballistic evidence collected following the murder on 7 August 1995 of Tri Minh Tran and Thanh Hao Nguyen at Unit 3, 22-24 McBurney Road, Cabramatta. Ballistic evidence given to the Inquiry by Senior Constable Berry was to the effect that microscopic examination of cartridge cases found at the scene of the other murder established that neither of the guns which discharged those cartridge cases matched the gun which discharged the cartridge cases found at the scene of Mr Newman's murder.
- 27 On 16 March 2009, after the Inquiry had concluded taking evidence and counsel were in the course of preparing written submissions, Mr Breen, a solicitor and former member of the Legislative Council who, whilst not formally acting for Mr Ngo in this Inquiry, did from time to time communicate with the Inquiry, apparently at Mr Ngo's behest and with the acquiescence of the solicitors formally acting for Mr Ngo, wrote to Mr Colefax concerning the make of two mobile phones mentioned in evidence which had significance in light of some particular testimony by Mr T. Although the matter raised by Mr Breen did not appear to me to have importance and although there was nothing "new" about it, in that it presumably was available at the time Mr Ngo was tried, the Inquiry caused the matter raised by Mr Breen to be investigated. I will deal with the result

of this investigation in a separate section of the report under the heading the Compatibility of the Council Mobile and the Club Mobile

28 The Inquiry had available to it and considered the written and oral evidence given at the Coronial inquiry, the committal proceedings and each trial. It also took oral evidence from the following witnesses:

JOHN BADHAM:                      Manager/Chief Executive Officer Mekong Club  
1998-2006

TIMOTHY BERRY:                 Senior Constable NSW Police, Ballistics  
Section

PETER BREEN:                    Solicitor, former Member of Legislative Council

RAYMOND BUSBY:                Sergeant NSW Police - Diver

REGINALD COUTTS:              Principal – Coutts Communications Pty Ltd  
formerly Professor of Telecommunications  
University of Adelaide

JOHN GIORGIUTTI:               Director of Operations and Solicitor for NSW  
Crime Commission

PETER JACKSON:                 Solicitor for Mr Ngo and formerly solicitor for Mr  
Dao

MARK JENKINS:                  Chief Superintendent NSW Police

NAGUIB KALDAS:                 Deputy Commissioner NSW Police

MARION LE:                        Registered Migration Agent

MICHAEL LEE:                     Barrister

IAN MACLEOD:                    Executive Director – Collections Management  
Conservation, Western Australian Museum

IAN McNAB:                        Detective Inspector NSW Police

REBA MEAGHER: Former Member for Cabramatta in NSW Parliament

GREIG NEWBERY: Detective Superintendent NSW Police

PHUONG NGO

TIMOTHY O'CONNOR: Assistant Director, Investigations, NSW Crime Commission

PETER PEARSALL: Barrister

LEO SOMMERICH: Former Employee Leighton Contractors

SUSAN SPENCER: Executive Producer ABC

BRET WALKER: Senior Counsel

STUART WILSON: Telstra Employee

DAVID YOUNG: Emeritus Professor – School of Material Science and Engineering, University of NSW

29 The Inquiry sat in public and in the presence of Mr Ngo on 36 days, some of which were devoted to formal matters. It also held a view of places mentioned in the evidence and admitted some 194 exhibits.

30 It is appropriate that I record that the Inquiry, in addition to the submission from Mr Selby, received submissions from other supporters of Mr Ngo, including Mr Breen, Professor Don Greig, and Ms Marion Le. Where it appeared from those submissions that the author possessed knowledge of facts relevant to the Inquiry, the matter was pursued and the evidence sought. Otherwise, although the submissions were read and distributed to counsel, where they simply addressed arguments as to the law or facts, I have for the most part confined myself to the submissions of counsel.

- 31 I do pause, however, to deprecate the intemperate language and lack of objectivity characterising many of the submissions from those supporters of Mr Ngo. They included allegations of fraud, perversion of justice, and other improper conduct against the police and prosecuting authorities without, in my view, a shred of evidence to support them. There were even very offensively couched criticisms of the trial judge, Justice Dunford, criticisms which I add, seem to have escaped the half dozen or so lawyers who represented the defendants; senior counsel who represented Mr Ngo before the Court of Criminal Appeal; the judges who constituted that Court; and the Justices of the High Court who considered the application for special leave to appeal.
- 32 In general terms as submitted by Mr Hastings and Ms Pepper and following what was said by Justice Wood in his report into the convictions of persons over what became known as “the Hilton Bombing”, I believe my role is to consider the various “new and “fresh” pieces of evidence, and in light of that consideration, determine whether there now exists a doubt in the sense of a feeling of unease or disquiet in relation to Mr Ngo’s guilt.

## **THE EVIDENCE AGAINST MR NGO**

### PRELIMINARY

- 33 In this section, I propose to refer to the evidence against Mr Ngo (other than evidence based upon Telstra records and evidence relating to the finding of the alleged murder weapon, which I will deal with separately), so as to put into context the issues upon which the Inquiry will focus. Much of it requires no more than brief, if any, reference particularly where it was, or became, uncontentious. Parts, however, where they impinge upon the issues for the Inquiry will require closer attention. Unless otherwise indicated, references are to evidence given at the third trial where Mr M Tedeschi QC with Mr R A Hulme appeared for the Crown, Mr J Nicholson SC with Mr P Pearsall appeared for Mr Ngo, Mr R Hoenig appeared for Mr Dinh and Mr G Cusack QC with Ms B Rigg appeared for Mr Dao.

34 Although most of the evidence referred to in this section was available to the Crown and led at the third trial, I have not regarded myself as bound to have regard only to the evidence given at that trial. In my view, in considering whether there is now a doubt as to Mr Ngo's guilt, I am entitled to have regard to all credible material whether before the jury or not. I do not understand counsel to have expressed a contrary view.

#### PLACES, CARS and TELEPHONES

35 As I have indicated the Club was situated at 117 John Street Cabramatta and Mr Ngo's office a few minutes walk away. Mr Newman lived at 15 Woods Avenue Cabramatta, several minutes drive from the Club, and Mr Ngo at 1 Wellard Place Bonnyrigg, some minutes by car further west. The Club owned a 1993 white Toyota Camry STQ 956 (the white Camry), normally driven by Mr Ngo. Mr Dao commonly drove a 1985 green Ford Fairlane sedan NKR 104 (the Fairlane) owned by his father. There was evidence that a 1985 Ford Fairlane was generally similar in shape to a 1985 Ford Falcon, although the latter was slightly smaller in overall size.

36 The Club had a landline telephone (the Club landline) 724 6688. There was a fixed car phone in the white Camry (the car phone) 015 202 932. Mr Ngo had, on or about 2 September 1994, been issued by the Council with a mobile telephone (the Council mobile) 015 400 521 and the Club had a mobile telephone (the Club mobile) 018 246 488, available for use by management and, according to his evidence, available for use by Mr Ngo prior to the issue to him of the Council mobile. There was a landline to Mr Ngo's home 610 8182.

#### THE MEKONG CLUB 5 SEPTEMBER 1994 - EVENING

37 On the evening of 5 September 1994, there was a staff meeting at the Club, the minutes of which were taken by Mr Dao. He recorded that the meeting, which was held in the upstairs restaurant, commenced at 7.45pm

and concluded at 8.45pm although the Crown did not accept the accuracy of these times. At or towards the closure of the meeting, staff were invited to participate in a meal. The meeting, according to the minutes, was attended by 14 staff members, about half of whom gave evidence. All were agreed that Mr Ngo arrived late, addressed the meeting shortly, stayed to the end, and consumed some food.

- 38 Seven members of the Club who were present on the night of 5 September 1994 gave evidence at the second trial or had statements read. At the third trial 8 staff members gave evidence but the composition differed slightly in that Ms Tri Kim Pham, who did not give evidence at the second trial, gave evidence at the third trial. Much of the evidence given by these witnesses was imprecise as to times and vague or non-committal as to whether Mr Ngo was observed in the Club between about 8.45pm and 10.30pm. It was a matter for the jury to assess this evidence. It may have been persuaded that there was no cogent evidence of Mr Ngo's presence in the period I have mentioned. Certainly, in my opinion, the evidence did not warrant the comment in Professor Greig's submission:

"It is certainly difficult to understand how these inconsistent stories could outweigh the evidence of four or five people who had seen Ngo remaining in the Club restaurant well after the time invented by the Prosecution for his departure."

or his peremptory rejection of the evidence of the doorman, Mr Peter Bowen.

- 39 Mr Ngo, himself, as will appear, does not dispute that he left the Club for a time and returned later. The time of his departure was very important at the trials and is important to this Inquiry. Potentially, on this issue, the evidence of Mr Bowen was significant in that he was in a better position than most to observe comings and goings. Prior to 5 September 1994, he had come to know, through working at the Club, Mr Ngo, Mr T, Mr Dinh and Mr Dao.

- 40 On 5 September 1994, he was on duty between 4.30pm and when the Club closed about midnight. For the most part his duties required him to be stationed in the Club's front reception area but on occasions he moved into other areas. He did not attend the staff meeting but remained on duty while it took place. He said that he saw Mr Ngo, Mr Dinh, Mr Dao, and Mr T leave the Club together through the front entrance at approximately 8.30pm, "within 10 minutes either way". He did not see them return but remembered seeing Mr Ngo and Mr T in the Club sometime later, "about 9.30 ish". He could not remember seeing either Mr Dinh or Mr Dao again. During the night he became aware of reports as to the murder of Mr Newman.
- 41 Cross-examined by Mr Nicholson, he agreed that it was not until 3 December 1994 that he was asked by police to recall staff movements on 5 September; that he had not made any record in the meantime; and that he told police he could not remember such movements. He agreed with Mr Nicholson that he had maintained this position until called to the NSW Crime Commission (the Commission) on 19 October 1995.
- 42 He conceded that he told the Commission that Mr Ngo, Mr Dinh, and Mr Dao left the Club together at about 8.30pm and returned later in the evening. He said Mr Dinh was wearing a jacket with wool blends but that he would not describe it as an army jacket.
- 43 Mr Bowen told Mr Nicholson that on 9 July 1996 he made a statement to police in which he included Mr T in the group who left the Club together about 8.30pm. He was unable to remember when any of the group had arrived at the Club, but thought that the staff meeting was still in progress when they left as other staff members had not yet come down from the restaurant. Later in the cross-examination, he said that he was untruthful to police in December 1994 because he "didn't want to become involved".
- 44 Both Mr Hoenig and Mr Cusack, with some vigour, also challenged Mr Bowen's credibility.

45 Mr Bowen did not give evidence before me and I make no attempt to assess his credibility, which was entirely a matter for the jury and undoubtedly created problems. I note, however, that it was not suggested that he was engaged in any criminal activity; that he was not an indemnified witness; and that he had no apparent reason to implicate falsely his work colleagues in the murder of Mr Newman. If the jury accepted that Mr Ngo, Mr Dinh, Mr Dao and Mr T left the Club at about 8.30 pm on 5 September 1994, the Crown case would have benefited considerably. I do not regard it as of much significance, although it was again a matter for the jury, that in his later statement and his evidence he had Mr T leaving at the same time as the other three, given that on Mr T's version of events he left within one or two minutes of the others.

46 Other staff members gave evidence of events which occurred during the evening, to some of which I will make reference. It was for the jury to consider whether, and if so when and in what circumstances, those alleged to be involved in the murder of Mr Newman left the Club following the staff meeting.

#### THE MURDER SCENE

47 I now turn to the evidence of the murder itself and of neighbourhood witnesses.

48 It is convenient to commence with a reference to the testimony of Ms Lucy Wang who was standing close by when her partner and fiancé, Mr Newman, was shot.

49 She had met him about 18 months previously and for the last 10 months had been his Electoral Secretary located in his office at Canley Vale. She knew that Mr Newman regarded Mr Ngo as a political rival and said that she had never seen the two men converse or even shake hands.

- 50 Her evidence was that on Monday, 5 September 1994 Mr Newman attended a meeting of the Canley Heights Branch of the ALP, regularly held on the first Monday of the month. Usually, the meetings commenced at 8pm and lasted about one hour. She waited at their home for his return and heard his car enter the drive about 9.30pm through a front gate normally kept open when he was out. As a movement sensor light came on she went outside to greet him and help him put a tarpaulin over his car, part of their usual routine.
- 51 When she saw him he was at the rear of the car, having removed the tarpaulin from the boot. She then went to the front of the car and commenced to spread the tarpaulin whereupon she heard the sound of gunshots, and looking up saw a man with his arms outstretched facing Mr Newman – “I saw fire come out of his hands”. She described the man as wearing an “army” jacket of “greenish/yellowish” colour and a head covering, probably a hood. He turned away and ran but she gained the impression that he was a “skinny kind of person wearing baggy clothes”.
- 52 She went first to Mr Newman who was lying on the ground and then ran towards the fleeing man who entered, she said, the nearside front door of a car without headlights, parked outside the front gate. The door was slammed shut and the vehicle, which she said was dark green in colour and looked like a Ford Falcon about 10 years old, moved away. She saw only the driver in addition to the man who jumped in. Next day at Cabramatta Police Station, she noticed and pointed out a car which she said was very much like the one she had seen at Mr Newman’s house and which, according to the evidence, was a green Ford.
- 53 She ran after the car while it travelled 30 or 40 metres in a north west direction in Woods Avenue until it rounded a bend. She then returned to Mr Newman and tried to support him. She also made a triple 0 telephone call, which was timed at 9.31 and 10 seconds. Although she was in a highly emotional state, she later estimated that about a minute passed between the car moving off and the triple 0 call.

54 Although I did not see Ms Wang, there was, and is, in my view, no reason why the jury would have questioned either the honesty or reliability of her evidence.

55 Mr Michael Dimaio, in September 1994, lived at [Address suppressed] in a house, the rear verandah of which overlooked part of Woods Avenue. On 5 September at about 9.30pm, he heard some gunshots. He looked towards Woods Avenue from his back verandah and saw two cars in Woods Avenue driving in a north west direction towards Warwick Avenue. They were spaced about two car lengths apart and seemed to be driving quite fast. He saw the cars turn right into Towers Street, but lost sight of them as they approached the intersection with Cabramatta Road. He put the period between hearing shots and seeing the cars as about 23 seconds.

56 His daughter, Ms Lisa Dimaio, who lived with him and who had been for about 17 years a private aeroplane pilot, also gave evidence. On 5 September 1994, she heard gunshots at about 9.30pm. At the time, she was walking up stairs at the back of the house. From the top of the stairs, across a gully, she saw two cars driving north in Woods Avenue from near Lyons Avenue, at a fast speed. She lost sight of them but saw them again in Warwick Avenue. She again lost sight of them but saw them next in Towers Street, travelling about one car length apart. When she first saw them they appeared to have only parking lights but when she saw them in Warwick Avenue, the leading car had its headlights on. She was unable to describe their colour and said they appeared to be of average size or "smallish".

57 Mr Luis Arce lived at [Address suppressed]. On 5 September 1994 at about 9.30pm, he was watching television when he heard gunshots. He went to a window, which overlooked the intersection of Lyons Avenue and Woods Avenue, and saw two cars about one car space apart travelling northwest in Woods Avenue. The rear car was a small white 4-door car

which only had parking lights illuminated. He could not provide a description of the leading vehicle.

58 Another witness of events near the murder scene was Ms Margaret Ivachev who, in September 1994, lived at [Address suppressed]. She was preparing for bed when she heard “some loud bangs”. She thereupon looked out a window from which she could see Woods Avenue and into Warwick Avenue. She saw a car travelling at fast speed turning left from Woods Avenue into Warwick Avenue. Its headlights were on, and she described it as white in colour and of medium size. She also saw the back of another car some distance ahead in Warwick Avenue travelling at speed and turning right into Towers Street.

59 In lieu of calling Mr Heiko Lade of [Address suppressed] (who was said to be in New Zealand) to give evidence, at both the second trial and the third trial, part of a statement made by him on 5 September 1994 was read to the jury by the Crown with the consent of defence counsel. He said he was in his study at 9.30pm talking to his flatmate, Mr Taras Macsyinczuk, when he heard a series of what he thought were gunshots. He ran outside with Mr Macsyinczuk and looked across Bowden Street into Woods Avenue. He heard someone screaming and saw a medium size white sedan, without headlights, drive towards him and turn left into Bowden Avenue. He could not see the number of its occupants. He watched the car until it went out of sight.

60 I digress to observe that there is an aspect of Mr Lade’s observations which, in my view, well illustrates my earlier comment about the lack of objectivity in the submissions made to the Inquiry by Mr Ngo’s supporters. In his first submission to the Inquiry Professor Greig, after referring to the Crown’s submission that the white sedan seen by Mr Lade was the white Camry with Mr Ngo at the wheel, wrote:

“39. Like much of the Prosecution’s case, the allegation that this was Ngo in the Club Camry involved the concealment of discordant evidence.

39.1 To back up his claim that the car had to be the Club Camry, the Crown Prosecutor relied upon a statement by Heiko Lade, one of the two witnesses who had seen the car turning into Bowden Street.

39.2 The statement signed by Lade on the night of the murder was read out to the Court (ibid, 23 March 2001, 1888) as Lade was said to have been in New Zealand.

39.3 The Crown prosecutor summarized his evidence as follows: “all that he could say was that it was a white sedan. It was of medium size and not V8” (ibid, 6 June 2001,3312)

39.4 However, this was not all that Lade had said, because he had signed a further statement on the day following the murder which is on police files (NSW Police, Heiko Lade, Statement in the Matter of Newman, Cabramatta Police Station, 6 September 1994).

39.5 In that statement Lade had given his recollection of the registration number of the car the two men had seen as GHQ 456

39.6 There was no such registration number on a car though the police compiled a lengthy list of cars with similar number.

39.7 The reason all of what Lade had said was not revealed by the Prosecution was that it would have demonstrated the unlikelihood that the car had been the Club Camry as it had a different registration number.”

61 Bearing in mind that the registration of the white Camry was STQ 956, I would have thought that a tribunal of fact considering whether a witness had observed that vehicle might find it rather significant that the witness, who made his observations at night over only a few seconds, happened to recollect one letter out of three in position, and two numerals out of three in sequence and position corresponding with the registration number of the white Camry. I would also have thought that counsel for the defence would have used every legitimate means to keep this piece of evidence away from the jury and, properly, would have objected to it being part of any statement read.

62 Yet Professor Greig saw it quite differently. Apart from paragraph 39 quoted above, he referred to the subject in paragraphs 6 and 40.8:

“6. One of the two witnesses who saw a white Camry, said by the Prosecution to have been the Mekong Club Camry driven by Ngo, leave the vicinity of Newman’s house in the aftermath of the shooting also provided the Police with his recollection of the registration number of the car. This information was withheld from the Court by the prosecution no doubt because it would have shown that the vehicle was not the club Camry, see paras 36-39.

.....

40.8 We are supposed to assume that Dinh had delivered the bag to the driver of the mysterious white car which of course we now know from Lade’s second statement could not have been the “Club Camry”.

63 Mr Macsyniczuk was a student living at [Address suppressed] in September 1994, but by the third trial he was a serving police officer. He heard “4 or 5 gunshots” at about 9.30pm on 5 September and went out into Huie Street with Mr Lade. From there he could see into Woods Avenue and the vicinity of number 15. He saw either a white Camry or Holden Apollo car, they being, he said, the same car with a different badge, travelling down Woods Avenue towards him in a south-easterly direction. It turned left into Bowden Street and headed at speed towards Cabramatta Road. He did not see the registration plates or the number of its occupants but the car’s headlights were off. He then went to what he found out was Mr Newman’s home and saw a man on the ground. By then, there were several people present. He did not see any other vehicle in the vicinity and he estimated that only a matter of seconds elapsed between when he heard the shots and when he saw the Camry or Apollo, which he said had tinted windows.

64 Another Woods Avenue resident who gave evidence of the events was Mr Derek Mirfin, who lived at [Address suppressed]. From inside his house,

he heard 5 gunshots, which seemed to be coming from the direction of Mr Newman's house, 2 doors away. He went to his front door and stepped on to a porch from which he saw a very slow moving car heading in a southerly direction on the wrong side of the road, outside Mr Newman's house, close to the kerb. It had no lights on. He described the car as a Ford XD or XE Falcon but was not able to see its number plate. He had the impression that it was dark blue or green and the last he saw of it was as it approached the intersection of Woods Avenue and Bowden Street.

65 Mr Mirfin was distracted from his observations by the sound of a woman screaming, which prompted him to go inside and make a triple 0 call. He then went to Mr Newman's house where he saw Mr Newman lying on his back, near the front porch. Inside the house he found Ms Wang in a very distraught state. He made unsuccessful attempts to resuscitate Mr Newman until police and ambulance officers arrived soon after.

66 In cross-examination by Mr Nicholson, he denied seeing a white car at all but said he was inside his house for a short time with his mother after hearing the shots. He conceded that he may have been mistaken as to the direction the car he observed was moving when he first saw it outside Mr Newman's home as the model Ford he described had a front and rear somewhat symmetrical in shape.

67 Mr Mirfin was, by leave, recalled by the Crown after being excused:

"CROWN PROSECUTOR: Q. You told the Court earlier what your knowledge was of Falcons, would you tell the Court what your knowledge is, if any, about Fairlanes?

A. Fairlanes at that particular vintage?

Q. Yes, Fairlanes of similar vintage to the XD, XE, and XF Falcons?

A. Well, sir, I am aware that the basic body shell is exactly the same, they are approximately four to six inches longer, and there are a few luxury detail changes to them to the trim inside of course and the outside of the car, slightly different lights, and some items like rear quarter window appears in the Fairlane but not in Falcons.

Q. And what do you say about the details of the car that you saw and whether or not it could have been another type of car, other than a Falcon?

A. It is quite acceptable to me that I could have seen a Fairlane on the night, sir.

Q. Is there any other kind of car, Ford or otherwise, that has a similar body shape to the Falcons?

A. Not in my experience sir, no.

Q. Was there anything that you saw on that night that was inconsistent with it being the appropriate model of Fairlane?

A. No, there wasn't sir.

.....

CROWN PROSECUTOR: Q. Would you tell me which model of Fairlane corresponds in body shape to which model of Falcon?

A. The best way to answer this, I am not in particular a car enthusiast sir, I have been a motor cyclist all my life but I am aware that from the XD onwards, the first of that shape Falcon, that the Fairlane, the luxury car of the Ford line, the next one up from the Falcon shared the same shell, previous to the XD. The Fairlane was always at the top of the line car and was a totally different shape to the Falcon. But from the XE on, they all have the same shell. They are just a little bit longer in the floor plan, more leg room in the back plus the detailed changes to things like radiator grill and small changes to the lights.”

68 Mr George Dubinim lived at [Address suppressed] in September 1994. He was in bed on 5 September after 9pm when he heard four gunshots. A few seconds before that he had heard the sound of a man and a woman talking quietly from the direction of Mr Newman’s house, which had once adjoined his property. Immediately after the shots, he heard a woman say “Oh no” and then a man, in a voice he did not recognize, say “shut up”.

69 Another witness who gave evidence directly related to the murder scene was Mr T. I will refer later in some detail to his testimony, but suffice to say for present purposes that, in my view, it is highly likely that he was in the car from which the person who actually shot Mr Newman emerged. As will appear, he testified to the effect that his presence in the car resulted

from a deception practiced upon him by Mr Ngo and was entirely innocent of any criminal intent.

70 There being records which establish that the first triple 0 call, as I have indicated, was made at 9.31 and 10 seconds and that an ambulance was at the scene by 9.40pm, it is possible to state the following facts with a considerable degree of confidence:

- Mr Newman was fatally shot at or very close to 9.30pm on 5 September 1994.
- The shooting occurred shortly after Mr Newman arrived home and was witnessed by Ms Lucy Wang.
- The shooting was carried out by a male who emerged from and was carried away in a Ford Falcon or Fairlane approximately ten to twelve years old.
- A white Camry or Apollo was in the vicinity of the murder at the time it was committed.
- Ms Lucy Wang was in no way involved in the murder.

#### PREPARATIONS FOR A MURDER?

71 Several witnesses who presumably emerged during the police investigation of Mr Newman's murder testified as to observations made in the period immediately before 5 September 1994.

72 Sisters, Ms MU, Ms KU, and Ms NU, lived at [Address suppressed] in September 1994. Ms MU occupied a bedroom facing Bowden Street. On either 1 or 2 September, she was walking home mid afternoon and noticed a green Ford parked in Bowden Street across the road from [Address suppressed]. She described it as like her grandfather's Fairlane "but it

probably did not have all the gadgets and silver bits and things like that on it". On 3 September about 10pm, she was in her bedroom reading when she heard a noise outside which prompted her to go to the front door. She saw what she described as the same car parked in exactly the same position as the car she had seen one or two days previously.

73 On 9 September at Cabramatta Police Station, Ms MU identified a Fairlane ZJ 1979-82 as similar to the vehicle she had seen. There was evidence that her grandfather's vehicle was a Ford Fairlane of 1981 manufacture. While at the police station, she was shown Ford colour charts and identified "jade green" as the closest match to the car she observed. In cross-examination, she conceded that it may have been as late as 11pm when she saw the car on the night of 3 September. She also conceded that the occupants of the car, from where it was parked, would have had no view of Mr Newman's house.

74 Both Ms NU and her sister Ms KU occupied upstairs bedrooms at [Address suppressed], overlooking Huie Street. Between 9.30pm and 10pm on 3 September 1994, Ms NU was in her bedroom smoking a cigarette when she heard a car pull up in Huie Street. She looked out her window and saw a car parked underneath it. Its engine remained running for five or six minutes before being turned off. After about one hour the engine was restarted and the car was driven away. While the car was there she did not hear the sound of anyone leaving or entering it but she saw the shadow of one person inside. From the parked car there was vision to Mr Newman's house. She identified the car as a Ford Fairlane like her grandfather's car and said it was light in colour. She identified a Fairlane ZL manufactured from 1984 as similar to the car she observed.

75 Ms KU, at about 9.30pm on 3 September 1994, was folding clothes in her bedroom when she heard a car pull up in Huie Street. Shortly after she went to her sister Ms NU's bedroom and following a conversation looked out the window. She saw the same parked car with its radio lights on. At about 10.30pm she heard the car drive away and at no time did she hear

the sound of a car door opening or closing. She said the car looked like a V8 Ford Fairlane that her grandfather used to drive, but when she heard the engine she concluded it was not a V8. She could not describe its colour.

- 76 It was apparent to me when I conducted a view of the scene of the murder that persons in a car parked in Huie Street, as indicated by Ms KU and Ms NU, would have been in a good position to observe the front of Mr Newman's home without themselves being likely to come under notice.
- 77 Ms Joan Collins lived at [Address suppressed] opposite a cul de sac, Crabbe Place. Bowden Street to the south terminated in a dead end. On 3 September 1994 at approximately 3pm, she saw a white car, which she recognised as a Camry, parked in Bowden Street opposite her house, near the intersection of Crabbe Place, facing south. There was a single occupant in the driver's seat and it remained in the same place for five minutes or so. She then saw it make a U-turn and head up Bowden Street towards Cabramatta Road.
- 78 Mr L who lived in [Address suppressed] said that before 5 September 1994 he was conversant with the appearance of Mr Ngo as he had seen him in the streets of Cabramatta, in restaurants, and at community functions. He had also seen his photograph in newspapers and his image on television.
- 79 On Saturday, 3 September 1994, he worked with his wife Mrs L at a service station from 3pm. Afterwards they collected their child from a minder and about 9.45 pm approached their home by car. As he turned right from Bowden Street into Judith Avenue, he saw Mr Ngo standing on the footpath next to a parked white sedan. He looked at the man twice and said something to his wife. He then looked at the man again. He had never previously seen Mr Ngo in either Bowden Street or Judith Avenue. Although pressed by Mr Nicholson, in cross-examination, he maintained that he was not mistaken as to his identification of Mr Ngo.

80 Mrs L said that before 5 September she too was familiar with the appearance of Mr Ngo, having seen him in the streets of Cabramatta and his photograph in the local newspapers. When they drove home on the night of 3 September, she was sitting in the back seat holding her son. As they turned from Bowden Street into Judith Avenue, her husband said something which caused her to look out the car window. She saw a man familiar in appearance standing by a white car but could not, at first, identify him. Her husband told her it was Mr Ngo whereupon she looked at him again and made the recognition herself.

81 At one point, she said he was only a metre from her and was moving as though to cross the road. Although it was dark there was street lighting. She also was strongly pressed in cross-examination by Mr Nicholson as to her identification and conceded that she could have been mistaken.

82 No one alleged to be implicated in the murder of Mr Newman admitted to being in the immediate vicinity of his home during the first week of September 1994. Mr Ngo, in particular, denied his presence there and I will need to return to that subject when I consider his evidence.

#### EVIDENCE OF INDEMNIFIED WITNESSES

83 A number of witnesses who received indemnities or undertakings from the NSW Attorney General gave evidence for the Crown. The effect of the instruments of indemnity was that the witnesses were given certain immunities from prosecution, conditionally, inter alia, upon giving truthful evidence and cooperating with authorities. The most significant of these witnesses was Mr T and I will need to review his evidence in some detail.

84 He first met Mr Ngo through the Police Boys Club at Cabramatta and in April 1993 learned that he was involved in the formation of the Club. He applied for employment and was appointed to the full-time position of cellarman.

- 85 He was promoted, apparently at the behest of Mr Ngo, first in April 1994 to Trainee Manager and later to Personnel Manager. In March or April 1994, Mr T said that at the request of Mr Ngo he ascertained from Mr Morris the principal of the Club's security contractor, that he held a firearms licence. Later, again at the request of Mr Ngo, he asked Mr Morris if he could obtain a firearm and Mr Morris told him that he would try to do so.
- 86 Mr T had a girlfriend, Ms P, and, as it happened, he overheard her brother, Mr P, talking to a friend about the sale of a firearm. In response to his enquiry fMr P told him the asking price was \$300.
- 87 The next day he told Mr Ngo he could procure a gun for \$300 and was directed to obtain the money from the Club's safe and proceed with the transaction. He took the money and arranged with Mr P to complete the purchase. For this purpose, he travelled with Mr N and Mr Dao in the Fairlane to Mr P's house at Dulwich Hill. Mr P joined them and they proceeded to a townhouse in Botany. All went inside the town house which was occupied by a Mr Hieu who produced a soft carry bag containing a shortened .22 rifle. Mr N and Mr Hieu went outside to test the gun. When they returned a short time later, Mr N said, "it works". Mr T offered \$200 which was accepted, and the bag containing the gun was handed over to him.
- 88 Mr Dao then drove Mr T, Mr N, and Mr P away. After dropping Mr P off at his home, they went to the Club where Mr N was let out. Mr Dao then drove Mr T and himself to Mr Ngo's home but he was not there. Mr Dao drove Mr T home, where he put the gun under his bed. He told Mr Ngo of his purchase the following day and was told to keep the gun. Nothing was said about its purpose.
- 89 According to Mr T, in another conversation with Mr Ngo at the Club, he was told that Mr N would bring something to him, which he was to keep safe. Later on the day of that conversation, Mr N gave him a small

handgun wrapped in a rag. It was coloured brown, had a round ammunition chamber, and 2 plastic strips on the handle.

90 He unwrapped this gun in the presence of the Club Manager, Mr Zervos, who told him to put it away. He put it in a drawer in the Club manager's office and that night handed it to Mr Ngo. Subsequently, he spoke to Mr N as the transcript records:

“Q. Did you have any other conversations with [Mr N]?

A. Yes, sir.

Q. When was it that you had a conversation that's relevant to this matter?

A. After I saw the handgun that [Mr N] pass it on to me, and later on I spoke to him and I did ask him a few things, sir.

Q. Can you tell us what did you say to [Mr N] and what did [Mr N] say to you?

A. I have ask [Mr N] that has Mr Ngo have ask him to help him to get rid of someone.

Q. What did [Mr N] say?

A. And he told me, yes Mr Ngo have ask him that, and [Mr N] also asking me has Mr Ngo asked me the same question.

Q. What did you say?

A. I didn't say anything, sir.

Q. Up until this point in time, the day that you got this handgun, had Mr Ngo asked you to do anything for him, apart from buying a gun?

A. He not, like, directly at that time, he didn't directly ask me if I could do something for him, etc, sir.

Q. Was there any conversation in which there was any indirect request?

A. Yes, sir.

Q. When was that in relation to these events?

A. This was before all that thing happen, but like he asked me a few – he told me a few things today and the next day he told me another few things and then bit by bit. But there is a time that he say, told me that all these people, including Mr Newman and others, members of the prominent people in the community, that have differences from, with him and so that they are out there to get him down, or whatever, there.

And I think that time I did told him that if there is anything I can do, I can help him.

Q. When was that conversation that you told him that if there was anything you could do to help him, that you were willing? When was that conversation compared to the day you were given the handgun, wrapped up in cloth?

A. That was before that, sir”

91 Some time afterwards, he said that Mr Ngo asked him to take the shortened .22 rifle to the Thien Hong Restaurant in Cabramatta and there meet Mr N. He did so and, in the vicinity of the restaurant, Mr N pointed out a white Fairlane, which he said belonged to Mr Newman. They went to the first storey of a car park overlooking an arcade, which gave them a view of the entrance to the restaurant. Mr N had the brown pistol with him. While they waited, Mr N’s mobile phone rang and without answering it, Mr N said, “Newman is coming out”.

92 Thereupon, five or six people including Mr Newman walked within their sight into the arcade and towards the car park. Mr T and Mr N went downstairs, by which time however, Mr Newman was in his car and in the process of driving away. They both returned to the Club where Mr Ngo asked what had occurred. Mr T replied, “There was a lot of people, sir”. After this, he went home with the shortened weapon.

93 Subsequently, during what Mr T thought was early April 1994, he was asked by Mr Ngo to go to his home. There he found Mr Ngo, Mr N and Mr Dao present. Asked what Mr Ngo said, he replied:

“A. He have asked me on a particular night that I work, I will go along with [Mr N], Mr Dao will do the driving, where we will, because somewhere along he mentioned Mr Newman be attending function and while he was away we can get into his front yard and just hide there and wait till he come back, sir.

Q. Did he say what will happen when John Newman came back?

A. We were there and then Mr Newman, later on he come back .....

Q. Sorry, at Phuong Ngo's place? You have told us that he told you that Mr Newman would be at a function on a particular night and you would be able to go into his front yard?

A. Yes.

Q. Was there any discussion about what you would do in his front yard?

A. Yes. He said that we wait for Mr Newman when he come back and then when he get in the house, then we can shoot him, sir.

Q. In the house?

A. No, sir, when he get out with the car, sir.

Q. Was there anything said about who else would be there with you, in John Newman's front yard?

A. It was [Mr N]. That I will just go with [Mr N]."

94 Mr T testified that no more than a week later, at about 9pm, Mr Dao drove Mr N and himself to Mr Newman's house. He was carrying the shortened firearm, Mr N had the brown pistol. While Mr Dao waited in the car, Mr T and Mr N entered a neighbour's property and climbed over the dividing fence into Mr Newman's property. They squatted under an electricity box for about 20 minutes. Mr Newman then arrived home in his white Fairlane and alighted from it. However, they took no action and Mr Newman entered the house unmolested. They then returned to the car and were driven to the Club by Mr Dao where they resumed duty. Later that night Mr T spoke to Mr Ngo in the Club who told him that Mr N had informed him, "I was chicken out, cold feet or so, sir". Mr T said that sometime later Mr Ngo told him that Mr N had in effect withdrawn from the conspiracy.

95 After the incidents at the restaurant and Mr Newman's home, Mr T said that Mr Ngo asked him to enquire again from Mr Morris whether he could procure a firearm. He spoke to Mr Morris who said he would try to help and he communicated this response to Mr Ngo. Subsequently, Mr Morris came to him at the Club and said he had located a Ruger pistol, which was available for \$5,000.

- 96 Mr T rang Mr Ngo who told him to buy it. He took \$5,000 from the Club's safe and wrote out a voucher in Mr Ngo's name. Mr T later exchanged \$5,000 for a box said to contain the Ruger, although Mr T said that he did not actually see what was inside the box. He gave it to Mr Ngo.
- 97 A few days later Mr Ngo requested him to ask Mr Morris if he would help "get rid of someone". He spoke to him a day or so later, which he said was still within April 1994. Mr Morris said he would try to find a suitable person and about a week later told him that he had found someone, whom he did not identify, willing to carry out a murder at a cost in the range of \$10,000-\$20,000. Mr T conveyed this information to Mr Ngo and asked for a photograph of the putative victim. Mr Ngo said, "It's OK".
- 98 Subsequently, in the Club, Mr Ngo gave him a passport size photograph in a plastic bag, which he recognised as a photograph of Mr Newman. He told him to give it to Mr Morris, which he did. In a later conversation, Mr Morris told him that the man willing "to do the job" required a firearm. He told Mr Ngo this and was given a Ruger pistol, which he assumed was the pistol contained in the box he had earlier obtained from Mr Morris. Mr T kept this gun at the Club for a time and then gave it to Mr Morris.
- 99 A week or two later, Mr Morris told him that his car had been broken into and the firearm stolen. He reported this conversation to Mr Ngo and nothing further was said by Mr T to Mr Morris about the proposed murder of Mr Newman. However, Mr T discussed with Mr Ngo the possibility of hiring someone else to murder Mr Newman and was told to speak to Mr Morris about obtaining another firearm. He did so and several weeks later Mr Morris produced at the Club "a very big handgun which he calls a 45". The gun was silver in colour and Mr Morris told him it would cost \$2,500. He conveyed this to Mr Ngo who told him to pay for it, whereupon he withdrew \$2,500 from the Club's safe and paid it to Mr Morris, leaving a voucher in Mr Ngo's name. Mr Morris gave him the gun and he handed it to Mr Ngo.

- 100 A week or so later, Mr Ngo asked him to arrange for a silencer to be fitted to the brown gun. He spoke to Mr Morris on the subject and he, in Mr T's presence, made a phone call but spoke in a foreign language. The next day Mr Ngo brought him the brown gun, which he handed to Mr Morris who, subsequently, returned it and said it was too small for a silencer. Mr T gave it back to Mr Ngo and thereafter, according to his evidence, had no further contact with Mr Morris regarding guns.
- 101 Mr T said that during a management meeting at the Club in August 1994 it was decided to hold a full staff meeting, which he and Mr Zervos were to organise before 7 September, the date on which he was to accompany Mr Ngo to Taiwan. They arranged for the meeting to be held on 5 September and staff were notified. During the weekend of 3/4 September 1994, he said he had access to the Club mobile but only when on duty in the Club. When not in use it was kept on a charger in the manager's office from where he said it could be heard ringing in other parts of the building. He knew that Mr Ngo had recently been provided with the Council mobile.
- 102 He attended the staff meeting on 5 September, which was scheduled for 7pm, but he said did not actually start until 7.30pm. He confirmed it was held in the restaurant upstairs and said it was chaired by Mr Zervos. Mr T said that Mr Ngo was not present at the beginning but arrived about 30 minutes late and gave a short address. Mr Dao took the minutes of the meeting, which Mr T said lasted about 45 minutes. After it the staff were invited to stay for dinner in the restaurant.
- 103 Around the time the meeting was finishing, Mr Ngo asked him to arrange for Mr Dinh, who was on duty, to have his meal break before 9pm. Mr T arranged for another employee, Mr Trung Duong, to fill in for Mr Dinh while he had a break. He then commenced to walk downstairs and as he did so telephoned his girlfriend, Ms P, using the Club mobile. He found that she was still upset over an argument they had during the weekend and after a very short conversation put the Club mobile back on the charger in the

manager's office. He then went to the change box in the poker machine area where he relieved Michael Le.

104 While performing duty in the change box, he said that he saw Mr Ngo, Mr Dao, and Mr Dinh, at about 8.30pm, leave the Club together. Mr Dinh was wearing a green army jacket, which he had seen him wearing on several prior occasions. Shortly afterwards, he said that he heard a mobile phone ringing in the manager's office. When he went to investigate, he saw that the ringing phone was the brand new Council mobile, which had been placed on the charger. He answered it and found himself speaking to Mr Ngo who requested him to bring the Council mobile down to him. Within about a minute, he took the phone downstairs and out into the street through the Club's main entrance. Seeing no sign of Mr Ngo, he unsuccessfully looked for him in the immediate vicinity. He then used the Council mobile in his hand to telephone the Club mobile, which was answered by Mr Ngo who said he was on the way home. He asked Mr T to bring the Council mobile there. Mr T said he replied "OK sir, not a problem".

105 Mr T had available to him that night his sister's car and he drove it to Mr Ngo's home, which was located about 3 minutes walk from his own residence. When he arrived Mr Ngo was standing at the side of the white Camry and nearby was the parked Fairlane. He gave the Council mobile to Mr Ngo whereupon, as the transcript records:

"A. And then he asked me if I'm, if tonight, later tonight, if I'm going to my girlfriend place and I say "No" and he asked do I want to play card in the night and I told him "yes". And so he told me, well then I can just park my car at home and then we go in the same car and then we can, in the later in the night we can come back.

Q. So he told you to park your car at your place?

A. Yes, sir.

Q. And had you played cards with him before?

A. Yes, sir

Q. Generally where did you play cards?

A. In his house, sir.

Q. Did he say how you would get from your place to the club to resume work?

A. He say that we, he has told me to park my car at home and then we go in the same car to the club and then later in the night we can go back home.

Q. So it was your understanding that you were going to play cards after work at his place?

A. That's right, sir.

Q. So did you drive to your place?

A. Yes, sir, I drove back home.

Q. Did you park your sister's car?

A. Yes, sir.

Q. And did you, at any stage, see the Mekong Club mobile before you left Phuong Ngo's home?

A. Before I left Phuong Ngo's home, no.

Q. At any stage whilst you were at Phuong Ngo's home did you manage to look inside Mr Dao's green Ford Fairlane?

A. Can you put the question again?

Q. Were you able to see inside the green Ford Fairlane at Mr Ngo's home?

A. You, you can look into the car but I don't think that you can really recognise who in the car, sir, beside, you can see the shadows.

Q. Did you see any shadows?

A. Yes, sir.

Q. Are you able to say how many shadows you saw?

A. When I drove back home, I just go past the green Ford Fairlane and then I made a U-turn and when I drove past again I look on the side, I saw the two shadows in the car, sir.

Q. When you got to your place you park the car?

A. Yes, sir.

Q. You got out and you waited?

A. Yes, sir.

Q. And who came to pick you up?

A. Mr Dao came and picked me up."

- 106 He said that he entered the back seat of the Fairlane and found Mr Dinh also there. He knew that the front near side door had previously been damaged and could not be opened. Mr Dao drove to Cabramatta Road and then in an easterly direction towards the Club, but en route turned right into Bowden Street. He made a U-turn, parked the car and turned off the engine.
- 107 At that point, Mr Dinh donned gloves taken from a bag under his feet. He also took a gun from the bag, which Mr T recognised as the brown gun which Mr N had held during the incidents at the Thieu Hong Restaurant and at Mr Newman's house. About 10 minutes later, a mobile phone rang. Mr Dinh answered it and passed it to Mr T who recognised the voice of Mr Ngo saying, "Don't fall asleep". He did not respond.
- 108 A car approached in Bowden Street, which Mr T recognised as Mr Newman's white Ford Fairlane, and turned right into Woods Avenue. At this point, Mr Dinh cocked the gun and still wearing the army jacket left the car, walking towards Woods Avenue. As he went out of sight, Mr Dao started the engine and let the car roll slowly towards the point where Mr Dinh had disappeared.
- 109 Mr T said that he next heard 3 loud bangs following which Mr Dinh approached the car at a run, or fast walk, and entered it through the nearside rear door. He was still wearing the military type jacket and had pulled a hood over his head.
- 110 Mr Dao drove the car at speed up Woods Avenue, without headlights, but they were switched on as the car turned left into Warwick Avenue. As they drove up Woods Avenue, a car similar to the white Camry drove past them at speed in the opposite direction. Mr Dao proceeded via Warwick Avenue and Towers Street to Cabramatta Road, where he turned left. Mr Dinh made a call on the Club mobile in the vicinity of the intersection of Cabramatta Road and Cumberland Highway. He heard Mr Dinh say, in a

very short call, "Where are you?" In Cabramatta Road another vehicle, which he said was white and looked like the white Camry, over-took them at high speed and turned left at the traffic lights into Townview Road. Mr Dao drove into the service station on the corner. Mr Dinh got out of the car, carrying the bag into which he had placed the military style jacket, the brown gun, and his gloves. After a very short period, he returned to the car without the bag.

111 Mr Dao then drove the car back to the Club, arriving there within 10 minutes. Mr Dinh and Mr T entered it and resumed their duties while Mr Dao drove away. Mr T took the Club mobile into the Club with him.

112 About an hour later he answered a call on the Club mobile from Mr Nick Lalich, the Mayor of Fairfield, who wanted to speak to Mr Ngo. He went looking for Mr Ngo and found him in the poker machine area.

113 Shortly afterwards, Mr T, while watching television news in the Club's auditorium, saw a report of Mr Newman's murder. Mr Dinh, Mr N, and Mr Ngo were also present. After the Club closed at midnight, Mr Dinh and Mr T were driven by Mr Ngo to his home where they were joined by Mr Trung Duong and proceeded to play cards until morning. According to Mr T, there was no conversation about the murder of Mr Newman. At 6 am, the doorbell of Mr Ngo's house was rung, apparently by a television reporter with whom Mr Ngo left the house. Mr T returned to his home shortly after.

114 Mr T said that up to then he had retained the shortened firearm at his home. That night he took it to work and threw it into an industrial waste bin at the Club's premises. The following day he accompanied Mr Ngo and others to Taiwan, where he spent a week. During that week he asked Mr Ngo if he had got rid of the gun and received the reply, "everything's gone".

115 Mr T was interviewed by police twice in 1994, namely on 20 September and 8 December. Between those interviews, he said he had a conversation with Mr Ngo:

Q. Would you tell the court what the conversation was?

A. At one point that I, we, Mr Ngo have told me that is I was interviewed by the police etc, and just tell them that on that night that I have the phone with me all the time and that I did not leave the Club because I was on the duty. And anyway, I told him that's what I said in my first statement.

Q. Was there any discussion about which phone?

A. No, sir."

116 Mr T was arrested on 13 March 1998 and charged with Mr Newman's murder. He was indicted jointly with Mr Ngo for murder before Justice Wood on 19 July 1999. Following the termination of that trial before verdict, he said, in effect, that he was in a very depressed state and contemplated suicide.

117 In that state, according to his evidence, he was, albeit still in custody, persuaded with some reluctance to cooperate with the Commission. There over a period of several months he made a series of statements and was granted conditional indemnity from prosecution for the murder of Mr Newman.

118 His statements to the Commission, at least initially, contained false information and significant omissions. However, he consistently denied that what he said to the Commission was influenced by anything the Commission said to him about the information it had obtained from Mr N, "At no time do they mention [Mr N's] name". By August 1999, he was, however, aware from the Crown brief served on him while he was awaiting trial for murder, that Mr N had implicated him in criminal activity. The Crown addressed this subject in re-examination of Mr T:

“Q. By the time you came to provide your material for the first time to the Crime Commission after your trial on 8 August, you already knew what [Mr N] had in his statement and had said in evidence at your trial?

A. That’s correct, Yes.

Q. Was there the slightest mention in either of those, from [Mr N] about the two attempts on John Newman’s life?

A. No, sir.

Q. Prior to your telling the Crime Commission about those two attempts, did you have any information about what [Mr N] may have told the Crime Commission about those two attempts?

A. No, sir.

Q. Did you collude in any way at all, that is, get your heads together, you and [Mr N] in deciding what you would tell the police?

A. No, sir, not at any stage.

Q. When was the last time that you have spoken to [Mr N]?

A. Before I got arrested.

Q. Apart from seeing him in court, have you seen him or spoken to him since your arrest?

A. Apart from the time that I be in court?

Q. Apart from being in court?

A. No I haven’t seen him.

Q. Or spoken to him?

A. Not spoken to him.”

119 Asked in his evidence whether he had been to a greyhound club at Yagoona, he replied that he had been there many times, but never with Mr N or Mr Dao. He said that he had been to the Council Chambers with Mr Ngo on one or two occasions but not when Mr Newman was discussed, as far as he could remember. As to why, at the request of Mr Ngo, he was willing to participate in illegal activities, Mr T replied:

“A. It’s very hard to, for me to express, but I will try my best. Firstly, it just, after I work there, after I get to know Mr Ngo, like I can feel the, and realise Mr Ngo is.

Q. It is hard to hear you.

A. I said I realise then, get to know Mr Ngo and one thing that I have to commend for him is that he is very intelligent man, probably he is one of the most intelligent men I have ever come across with and I have respect that tremendously, and the way that he get around with people. There's a lot of things from him that I think is good to learn from and he's very persuasive, so it's like I always look up to him and I always trust in him so it's just like. And besides, that is all that I – see, when I was young and all that, I, when I was very young I haven't seen my father for very long time so it's sort of like, I look up to Mr Ngo as a father to me, or a brother, or close brother. And it's, the trust in him as well as person that I would learn from and for that trust of me and him, that I have never questioned him. I mean, whatever he tell me I just do it, take it. Never do I sit back and think it is right or it's wrong or question his authority. I have never done that.”

120 Mr T's evidence was potentially undermined by a number of matters which emerged during his evidence, particularly in cross-examination by counsel for all defendants. They included:

- That he told deliberate untruths to police when interviewed on 20 September 1994 and again on 8 December 1994.
- That his evidence under affirmation to the Commission on 23 July 1996 was untrue in so far as it related to the murder of Mr Newman.
- That after his trial on a charge of the murder of Mr Newman aborted on 8 August 1999, he made a statement to the Commission, parts of which were untrue and other relevant matters were deliberately omitted.
- That on 10 August 1999, he made a further statement to the Commission which contained matters which were false.

- That in a record of interview with Detective Newbery and Detective McNab on 31 August 1999, he gave deliberately false answers to two questions.
- That on 1 September 1999, he made a further statement to the Commission which contained one deliberate untruth.
- That on 22 October 1999 in a conference with Mr R Hulme, counsel for the Crown, and Ms Suzanne Young, he said things which were deliberately untrue.
- That on the afternoon of 22 October 1999 in a conference with Mr M Tedeschi, Mr Hulme, and Ms Young, he told deliberate untruths.
- That in a search of his home on 8 December 1994 the liner of an army style jacket was found, which contained traces of Winchester manufactured gunpowder residue, Winchester being the manufacturer of the cartridge cases found at the scene of Mr Newman's murder.
- That there were several discrepancies between his evidence and the evidence of Mr N, including his denial that he gave Mr N \$500 in connection with the acquisition of a gun; his denial that he gave Mr N \$1,500 from Club funds for the acquisition of a gun; his denial that Mr N, at his home, gave him either a gun or ammunition; his denial that he ever told Mr N to purchase a gun, while purporting to act for Mr Ngo; his denial that he ever engaged in a conversation with Mr N concerning a proposal to kill Mr Newman in his office; and his denial that he went with Mr N to the Yagoona Greyhound Club with a view to assassinating Mr Newman.

- 121 Invited to give reasons for his untruthfulness on multiple occasions, he mentioned his desire to protect his fiancé's brother, Mr P, and Mr Dao. In relation to the army jacket liner found at his home, he said that he had bought it at the Liverpool Disposal Store in the 1980s but had not worn it since 1988 and that his sister had taken to wearing it. He said that she had no interest in guns.
- 122 During the Inquiry, Mr Colefax inquired whether Mr Hastings wished steps taken to secure the attendance of Mr T to give oral evidence. Mr Hastings declined the proposal.
- 123 Of less importance to the Crown case than the evidence of Mr T was the nonetheless significant evidence of Mr N because he too directly implicated Mr Ngo in illegal activity, which contemplated the murder of Mr Newman. Mr N was, like Mr T, indemnified by the Attorney General. Again I will briefly summarise the relevant parts of his evidence as it was given at the third trial.
- 124 He had worked as a poker machine attendant in the Club since August 1993. He testified that in March or April 1994, he was approached by Mr Ngo in the Club auditorium and asked to "do a favour". He "asked me if I can arrange to get someone that kill John Newman and he willing to pay the money and Phuong Ngo asked me if I can get someone that non Asian to do the job, that it is better for him because no one will think that he, he do it".
- 125 He said that through working at the Club he had come to know Mr Dao, Mr T, and Mr Dinh and that they had all become close to Mr Ngo.
- 126 After his conversation with Mr Ngo, Mr N said that he spoke to an acquaintance, Mr C, a man of Lebanese extraction. He told Mr C that he wanted someone willing to kill Mr Newman and was asked to provide a photograph.

- 127 He reported this conversation to Mr Ngo at the Club. In his presence, Mr Ngo made a telephone call following which Mr Dao came to the Club with a piece of paper from which Mr Ngo cut a photograph of Mr Newman and gave it to Mr N. He subsequently gave this to Mr C. However, about a week later Mr C told him that he was unable to meet his request because of Mr Newman's high profile. He reported this to Mr Ngo.
- 128 Mr N testified that some time later he travelled with Mr T in the Fairlane driven by Mr Dao, first to a house where they collected Mr P, and then to a residence at Botany where a shortened .22 rifle was purchased for \$400 from the occupier. Mr N said that he test fired the gun in a nearby park before the purchase was consummated. He had a conversation with Mr Ngo the next day regarding the purchase.
- 129 According to Mr N, some time later Mr Ngo asked him if he could acquire a gun. For that purpose he travelled to the home of a Mr Ly at Wollongong with Mr Dao in the Fairlane. Mr Ly asked for \$500 on account of expenses which Mr N paid from money which, he said, had previously been given to him by Mr T. About a week later Mr N was once more driven by Mr Dao to Mr Ly's house. Mr Ly told him that he had been unsuccessful in his attempts to obtain a gun.
- 130 Some time after this Mr N said he approached a Mr TN, whom he knew as a person who frequented the Club. After negotiations during which Mr N told Mr TN that he wanted a gun with which Mr Ngo could shoot Mr Newman, he purchased from Mr TN for \$1,500 a brown coloured .32 automatic pistol and ammunition. The sum of \$1,500, he said, was provided to him by Mr T and at Mr Ngo's request, he gave the gun to Mr T. Later, he saw the gun in a box in the garage of Mr Ngo's home. On another occasion while he was at Mr Ngo's house with Mr T, he said that Mr Ngo produced and gave to Mr T a black pistol, which Mr T, at Mr Ngo's request, discharged into telephone books placed against a wall.

- 131 Mr N said that subsequently he participated, at the request of Mr Ngo, in three abortive attempts to kill Mr Newman, all of which occurred before he resigned from his employment with the Club at the end of April 1994. The first attempt involved both Mr Dao and Mr T. The former drove them to the vicinity of Mr Newman's house. While Mr Dao waited in the car, Mr N and Mr T, armed respectively with the .32 pistol and the shortened .22 rifle, entered Mr Newman's property and waited for him to arrive home. According to Mr N, Mr Newman surprised them with the speed he entered his house and they did not confront him.
- 132 The second occasion involved Mr T and Mr N, both armed, waiting in the vicinity of the Thieu Hong Restaurant at Cabramatta for Mr Newman to emerge from a dinner function. Because of the presence of other people they made no attempt to shoot Mr Newman and they later reported this to Mr Ngo.
- 133 The third abortive attempt to murder Mr Newman, according to Mr N, took place at the Greyhound Club, Yagoona, where there was a function in the auditorium attended by Mr Newman. Mr N and Mr T were driven there by Mr Dao in the Fairlane. Mr N and Mr T entered the auditorium. According to Mr N he was not armed but Mr T was. Although they observed Mr Newman's presence they made no attempt to confront him.
- 134 There were other occasions upon which Mr N said he had further discussions with Mr Ngo about the murder of Mr Newman. On one, Mr Ngo suggested that Mr Newman could be shot in his office and, on another that he could be shot while attending a meeting at the Council Chambers. Neither of these proposals was pursued.
- 135 Mr N resigned from the Club by letter dated 27 April 1994. He said that about that time he told Mr Ngo that he wanted to withdraw from the plot to kill Mr Newman. After four or five weeks, however, he asked for and was granted re-employment.

- 136 He gave evidence of an occasion about a month before Mr Newman's murder when Mr Ngo came to his home at night after he was asleep. His father aroused him and at Mr Ngo's request he dressed and accompanied Mr Ngo in the white Camry to the vicinity of the Club. Mr Ngo left the car, asking Mr N to wait for him. In the rear vision mirror, Mr N watched Mr Ngo engage in discussion outside the Club premises with Mr T and Mr Dinh for about 15 minutes. Mr Ngo then returned to the car and asked Mr N to drive it to his (Mr N's) home, which he did. Mr Ngo, he said, gave no explanation for this somewhat bizarre behaviour.
- 137 At about the same time, at Mr Ngo's request, he accompanied him in the white Camry from the Club to Mr Ngo's home. In the course of this journey Mr Ngo drove past Mr Newman's house in Woods Avenue. He said nothing as to his purpose in doing this.
- 138 Mr N said that in the weeks before Mr Newman's murder, Mr Ngo twice asked to borrow his car. On both occasions Mr N said that he refused the request but on the second occasion, Mr Ngo told him that he wanted to use the car in the killing of Mr Newman.
- 139 Mr N supported other evidence as to the staff meeting during the evening of 5 September 1994. He said he left the Club about 8.45pm with Mr Le, a fellow employee and they spent about half an hour in a nearby restaurant returning to the Club about 9.20pm. He went home about 9.45 pm but returned later about 10.15pm when he noted the presence of Mr Ngo, Mr T, and Mr Dinh. At one point, he said, while standing at the bar, Mr Ngo tapped him on the shoulder and said, and then repeated the words, "I did it". Shortly afterwards, Mr N saw a television broadcast which alerted him for the first time to Mr Newman's murder. He said to Mr Ngo "Is that what you mean"? Mr Ngo "laughed and smiled".
- 140 As in the case of Mr T, Mr N's evidence was potentially undermined by a number of matters, including:

- His false statement to the police on 20 September 1994.
- His failure to tell the whole truth, either at the coronial inquest into the death of Mr Newman or the committal proceedings in respect of Mr Ngo.
- The encouragement he gave Mr C to give false evidence.
- Discrepancies between his evidence and the evidence of Mr T in relation to events which involved them both.

141 In re-examination by the Crown, he said that he had given false or incomplete versions of the events surrounding the murder of Mr Newman on prior occasions in order to protect himself from Mr Ngo. Finally, in November 1999, he said that he decided to tell the whole truth because he had heard that Mr T had “turned around” and feared that he would be in trouble himself if he did not tell the truth.

142 Several of the persons named by Mr T and Mr N were also indemnified by the Attorney General and called by the Crown. The man known as Tong Mr TN gave evidence of purchasing a .32 calibre pistol from a Mr Fat Qui for \$3,500 and on selling it to Mr N. He knew Mr N through the Mekong Club and was told by Mr N that the gun was wanted by Mr Ngo, who intended to use it to kill Mr Newman.

143 Mr C said that he knew Mr N through a mutual interest in martial arts. He said that Mr N, “in late 1993 or early 1994”, asked him if he knew of a person who would “hit somebody”. He was handed a black and white photograph and a piece of paper with Mr Newman’s name and office address on it.

144 Mr C said that he hoped his cousin Mr A could assist but Mr A subsequently told him that Mr Newman, as a member of parliament was

“too heavy”. He told Mr N of this and so far as he was concerned the matter was not pursued further.

- 145 In relation to the sale of a shortened .22 rifle in the home unit at Botany, Mr Huie Trung Dang said that in 1994, following a telephone conversation with Mr P whom he had known at school, Mr P, and two other men came to his unit at Botany. He sold them a .22 shortened rifle for “\$600 or \$700”. Before the transaction was finalised some or all of them went outside, ostensibly to test the gun in a nearby park.
- 146 Mr Morris gave evidence that he was principal of, and worked for, [Company name suppressed], which had a contract to provide security at the Club. In that capacity he came to know Mr Ngo, Mr Dinh, Mr Dao, Mr T and Mr N, all of whom seemed to him to have a close relationship with each other.
- 147 Early in 1994, Mr T asked him about the acquisition of a gun, preferably fitted with a silencer. He in turn approached a Mr John Georges. In the result, he acquired from him a brown coloured Ruger pistol fitted with a silencer, together with ammunition and a manual relating to the gun, for several thousand dollars. He gave these to Mr T who reimbursed him for the cost.
- 148 Some time after this Mr T showed him a photograph of someone he wanted killed, and showed him a black and white photograph apparently cut from a newspaper or magazine of Mr Newman. There was discussion as to the cost of hiring a killer, namely between \$3,000 and \$5,000. He approached one of his employees, a Mr H, who said he would make enquiries and asked for the Ruger. This was provided on request by Mr T but later, according to Mr Morris, Mr H told him that his car had been broken into and the gun stolen. Mr Morris reported this to Mr T who asked him to acquire another gun in place of the one stolen. He then proceeded to acquire, for about \$3,000, a chrome coloured .45 Magnum revolver,

through a fellow employee, Mr A, who in turn purchased it from a Mr SM. The purchase price was provided by Mr T.

- 149 According to Mr Morris, in the period before Mr Newman's murder, Mr T showed him another pistol and asked if he could arrange for a silencer to be fitted. He made enquires and found that the pistol was too small for this to be done. The gun was returned to Mr T.
- 150 A statement by Mr Steve Morris was read to the jury at the third trial. He said that he knew both Mr Morris and Mr A and that sometime in 1994 Mr Morris had complained to him about problems at work and asked him to procure a pistol. He did so from a man called "Chris" at a cost of \$2,500. He described the pistol as having a chrome appearance and being of .45 calibre.
- 151 Mr Quy Van Nguyen known as Fat Qui gave evidence of selling a gun to Mr TN for \$3,500 and Mr P corroborated evidence given by others regarding the purchase at the Botany home unit of the .22 sawn off rifle.
- 152 I did not see any of the witnesses referred to in this part of the report and make no attempt to assess their credibility, a task which I do not regard as part of my function. Obviously the jury was faced with difficulty in assessing both the honesty and reliability of the witnesses. Having said that, however, I feel constrained to comment that having regard to the sheer quantity of evidence from such a variety of witnesses it would be unsurprising if the jury gave credence to some of it despite the obvious discrepancies. Although it is true, as Mr Hastings pointed out, by no means all of this evidence implicated Mr Ngo, but some of it did either directly or by reasonable inference. Moreover, in so far as Mr T and Mr N were said to have independently implicated Mr Ngo in a plot to murder Mr Newman, it seems to me almost inconceivable that they would do so, were it not the truth, given that Mr Ngo was their friend and, in effect, their mentor and patron. They themselves had no identifiable motive to kill Mr Newman other than a wish to assist Mr Ngo in whatever he required of

them. Furthermore, their various enterprises required significant funds and their evidence that these funds were made available on the say so of Mr Ngo, out of money belonging to the Club, seems to accord with other evidence as to the somewhat lax financial controls in place.

- 153 It might also be borne in mind that whereas Mr T could have been motivated by the offer of indemnity to cooperate with the Commission, he at the time being in custody awaiting trial for murder, a similar situation did not apply to Mr N. So far as the evidence relates he was never charged with any offence and was never in custody. There is no evidence that he was directly involved in Mr Newman's murder.

#### INDEPENDENT EVIDENCE SUPPORTIVE OF MR T

- 154 There was other evidence which, in my view, was capable of lending significant independent support to the evidence of Mr T.
- 155 For instance, he said that he was asked by Mr Ngo to arrange for Mr Dinh to be relieved and that he made this arrangement with Mr Trung Duong. Mr Duong, a barman and poker machine attendant at the Club, gave evidence. He said that he was not rostered for duty on the night of 5 September 1994 but he did attend the staff meeting and had intended to socialise for a while with other staff after it ended. Just before the meeting started, however, he said that Mr T asked him to relieve Mr Dinh at 8.30pm. Mr T reminded him of this request after the meeting closed and Mr Duong duly relieved Mr Dinh who was then working in the bar. When he did so Mr Dinh walked towards the stairs, Mr Duong assuming that he intended to go upstairs to the restaurant.
- 156 He had expected Mr Dinh to be away for about half an hour, the usual meal break. However, he did not see him again until he returned to his duties about 9.35pm. He could recall that he was upset by Mr Dinh's late return and had kept checking the clock.

157 Later that night, he joined Mr T and Mr Dinh in playing cards at Mr Ngo's home until about 3am when he went to sleep. He was still there when a reporter came to the door in the early morning seeking an interview with Mr Ngo.

158 Mr T also said that after making the short phone call to his girlfriend Ms P, he relieved Mr Michael Le in the change box. Mr Le testified that at about 8.30pm he was indeed relieved by Mr T albeit in the poker machine area, not the change box. He said that having been relieved he went to a restaurant outside the Club with Mr N and was away about half an hour, returning to the Club about 9pm. He put himself in conflict with Mr T however when he stated that Mr T at 9pm was still working in the poker machine area.

159 Another piece of independent evidence which, in my opinion, provides support to Mr T was the testimony of Mr Zervos who said that on an occasion before the death of Mr Newman, in the manager's office, Mr T showed him a firearm which he looked at very briefly and told Mr T to remove.

160 The evidence of Ms P regarding two telephone calls involving her to which I will hereafter refer also provided support for Mr T's version of events.

#### OTHER CROWN EVIDENCE

161 As I said at the beginning of this section it is unnecessary for me to mention the totality of the evidence against Mr Ngo.

162 I record, however, that such evidence included material from which motive could be inferred, namely, that there was considerable personal animosity between Mr Ngo and Mr Newman; that Mr Ngo, rightly or wrongly, regarded Mr Newman as an impediment to his political ambition to secure a seat for the ALP in either House of the NSW Parliament; and that Mr

Newman was directing unwelcome attention by relevant authorities to the affairs of the Club.

- 163 At the third trial, the Crown led evidence from Mr Lawrence Field of the Roads and Traffic Authority as to road signage at the intersection of Heathcote Road and Nuwarra Road and from Senior Detective Constable Ian McNab (Mr McNab) as to travel times by road from Mr Ngo's home at 1 Wellard Place Bonnyrigg. This evidence anticipated wrongly, as it turned out, that Mr Ngo would give evidence at the third trial along the lines of the evidence he gave at the second trial, to which evidence I shall make later reference.
- 164 Mr Field testified that as at September 1994 there was a roundabout at the intersection of Nuwarra Road and Heathcote Road and that traffic travelling south-east in Heathcote Road would face, at a point 200 metres north-west of the intersection, a black lettered sign on a white reflector raised material background 3.620 metres long and 2.035m high erected 2.5m above the ground. The sign pointed to Nuwarra Road constituting a T-intersection as it entered Heathcote Road from the north.
- 165 Mr McNab, in May 2001 conducted trials inter alia as to the time taken to drive at night from Mr Ngo's home to the intersection of Heathcote Road and Walder Road Hammondville. He measured the distance at 9.18 kilometres. His first journey, which commenced at 8.43pm and during which he drove at 60kph, took 14 minutes, 8 seconds. The second journey which commenced at 9.13pm and during which he travelled at 70kph occupied 12 minutes and 42 seconds. There were two further journeys, one commencing at 9.40pm with a maximum speed of 60 kph took 14 minutes and 13 seconds, and the other commencing at 10.12pm with a maximum speed of 70 kph took 11 minutes and 12 seconds.
- 166 Mr Vi Tuy Nguyen testified that between 9pm on 5 September 1994 and 8.30am the following day there was deposited in the letter box of his newspaper, Vietnam News Today, located at 48 Nuwarra Road, Chipping

Norton, a press release, including a photograph which purported to be issued by Mr Ngo in relation to his forthcoming delegation to Taiwan. 48 Nuwarra Road Chipping Norton is situated immediately to the north of the intersection of Newbridge Road and Nuwarra Road

167 There was also evidence from a Mrs Shirley Barrett referred to hereafter in relation to the Telstra Records in which she said that in a telephone call to her at 9.45pm on 5 September 1994, Mr Ngo told her that he was "on the way home". The Crown claimed that this was a deliberate lie as at the time Mr Ngo was driving away from his home.

### **THE MURDER WEAPON AND THE SEARCH FOR IT**

168 At the murder scene 4 cartridge cases and two spent .32 calibre bullets were found. Police in the hours and days following the murder searched the immediate area including creeks and drains. According to the evidence, no murder weapon was located.

169 Sergeant Sean Roach, attached to the Forensic Ballistics Section of the NSW Police Force, gave evidence that he had extensive experience and training in the examination of crime scenes involving firearms and, inter alia, in the examination of firearm and cartridge components by means of comparative microscopy. In the course of his career he said that he had examined many thousands of firearms.

170 He said that the markings on the 4 cartridge cases indicated they had been discharged by the same firing pin. The appearance of the bullets was consistent (but possibly not exclusively so) with them having been fired from an automatic 1935 Beretta pistol, particularly because the firing pin in earlier models of that gun had a distinctive flat nose with a pronounced bevelled edge.

171 Sergeant Roach also examined the remnants of a gun found in the Georges River at Voyager Point in June 1998 in circumstances which I will

hereafter relate. He concluded that this gun was too badly corroded to enable him either to fire it or to determine positively that it was the weapon used to murder Mr Newman. However, he found nothing inconsistent in the cartridges found at the murder scene having been fired by the gun found in the Georges River. He was, moreover, able to remove the firing pin and place it in a surrogate Beretta pistol which he fired. He found that this produced markings on the cartridge cases, which displayed the class characteristics expected to result from the discharge of a Beretta model 1935 pistol of .32 calibre. He added that he was not aware of any gun other than an early production run of a 1935 model Beretta which created a similar firing pin impression.

- 172 Mr Ronald Douglas, a retired firearms dealer, identified the gun found in the Georges River as a 1935 model .32 Beretta. He said this pistol was never marketed in Australia but was a mass produced weapon of not very high quality issued to Italian army officers in World War II.
- 173 Sergeant Gerard Dalton, a ballistics expert with the Tasmanian Police Force, contributed to the technical evidence in the case. From the firing pin impressions on the cartridges found at the murder scene, he concluded that a 1935 model Beretta .32 calibre was more than likely the murder weapon. Like Sergeant Roach, because of the corroded state of the gun found in the river, he could not positively identify it as the murder weapon.
- 174 A ballistics expert brought from Germany, Mr Leopold Pfoser, took the evidence a little further by his use of equipment apparently not available in Australia. Not only was he able to say that the bullets were consistent with having been fired from a .32 calibre 1935 Beretta pistol and from the same barrel but that it was “highly likely” that the firing pin provided to him from the gun found in the river produced the “wave shape markings” that his equipment detected on the cartridges found near Mr Newman’s body.

175 Although obviously a matter for the jury and not for me, the evidence clearly warranted a finding by the jury, as it seems it may well have done, that the gun found in the river was the murder weapon. The evidence at the Inquiry in my view enhanced the evidence at trial that the gun found in the river was the murder weapon. This was because at trial there had been conflict as to the time the recovered weapon had been in the water between Mr Terence Flynn, Manager of the University Analytical Laboratory associated with the University of NSW, who on the one hand said that it was possible the gun had been in the water since the murder or could have been there for up to seven years and Dr Ian Macleod, Director of Museum Services at the Western Australian Museum, on the other hand, who opined that the gun had been in the water for a period longer than three years and nine months.

176 The Inquiry sought further evidence in seeking to resolve the apparent conflict. As a consequence, Emeritus Professor David Young and Dr MacLeod jointly examined the corroded weapon at the School of Material Science and Engineering , University of NSW on 13 January 2009.

177 Professor Young, who from 1990 to 2004 was Professor and Head of Materials Science and Engineering, University of NSW, in a report dated 28 January 2009 detailed the various factors which affect the corrosion rate of a pistol immersed in water which he said included:

“Dissolved oxygen concentration, which limits the cathodic reaction.  
Conductivity, determined in this instance mainly by salinity.  
Chloride concentration, which determines the stability of passive oxide films.  
Water temperature, which affects oxygen solubility and chemical reaction rates.  
Dissolved metal pollutants, which can induce galvanic corrosion.  
Other dissolved pollutants, such as hydrogen sulphide.  
Biological and microbiological activity.”

178 He concluded his report with these paragraphs:

“If the pistol was in the Georges River for 3.75 years as alleged, the extent of corrosion measured on it indicates a corrosion rate. That rate is within the range of rates which have been measured in seawater.

Water in the Georges River is not seawater; it is an urban river subject to pollution and a tidal flow, with a sediment covered, rocky bottom.

The pistol corroded in a situation where it was at least partially buried in sediment. In the absence of information on the chemical, bacterial and vegetable matter content of the sediment, and in the absence of sufficient information on the water chemistry, it is not possible to estimate the corrosion rate to be expected of steel in this environment.

It is therefore not possible to estimate with any reliability how long the pistol was in the river.”

- 179 He reiterated this opinion in unchallenged oral evidence at the Inquiry.
- 180 Dr MacLeod, now Executive Director of Collection Management Conservation at the Western Australian Museum, in a report dated 22 January 2009, in effect withdrew his previous opinion and accepted the correctness of Professor Young’s views. In oral evidence, he said that he now agrees with Professor Young’s statement that it is not possible to estimate with any reliability how long the pistol was in the water.
- 181 This gives rise to two related questions, both more directly concerned with the Inquiry, namely, how did the gun happen to be in the river and for how long was it there. The Crown’s position was clear, namely that within half an hour of the murder it was thrown, or dropped, by Mr Ngo into the Georges River at Voyager Point where it was found nearly four years later as a result of the fortuitous input of Mr Roberts SC during the inquest as hereafter related.
- 182 The Georges River at Voyager Point appears to be over 100 metres wide. There was in 1994, and is today, a footbridge (although not the same footbridge) which gives residents of Voyager Point access to the railway station and suburb of East Hills. The bridge is about 8.5 kilometres (as the

crow flies) from the scene of Mr Newman's murder. Where there are now substantial modern houses and paved roads, there were in 1994 very few completed houses but a number in the course of construction. The main road to Voyager Point, Sirius Road, was not fully sealed and a bush track led to the footbridge. It was clearly not an obvious place to search for the murder weapon.

183 Police officers involved in the murder investigation assert that the first suggestion that a section of river, so far distant from the murder, be searched emanated from Mr Paul Roberts SC, Counsel Assisting the Coroner, at the inquest into Mr Newman's death in March 1998. He had deduced from Telstra records that the white Camry driven by Mr Ngo may have proceeded towards the Georges River and recommended to police that the river be "dragged", although he did not, so far as the evidence relates, identify any particular section. Mr Roberts gave evidence at the trials and there is, in my view, no reason to doubt his evidence, which was not challenged by the Defence.

184 Among the police officers to whom Mr Roberts made his suggestion was Mr McNab, who actually directed that the river at Voyager Point be searched. He gave evidence at the trial and before me on that subject. Asked by Mr Colefax why he selected Voyager Point, there was this exchange:

"A. Yes. When you look at the maps, Telstra maps we've been shown, there were two bridges that seem to be in that arc of the Hammondville cell tower, one of them was across the Georges River, the M5, and the other one was the footbridge at Voyagers Point. We identified those two areas."

And later:

Q. And what was it about the existence of bridges that caused you to focus on those two areas?

A. They were the two bridges in that area.

Q. What is it about the bridge that caused you to focus on that area rather than along the river bank where there's no bridge?

A. I presume that bridge is probably an easier starting point where you can get more to the middle of the water where it's probably deeper to be able to dispose of the weapon.

Q. And are you able to assist his Honour now in identifying how far out from the river bank you understand the weapon to have been found?

A. Yes. Trying to think in metres. I'd say probably 20/25 metres from the bank. From my memory and what I was told by the divers, it was near the second pylon of the former bridge that was there.

Q. This involves some speculation so please bear with me. Would a person be capable of throwing the particular type of gun from the river bank as far out as where it was found or was it more likely, in your opinion, to have been dropped from the bridge?

A. In my opinion, it would be more likely to have been dropped from the bridge. However, I think a person with a good arm would be able to throw it some distance."

185 In evidence to the Inquiry, Mr McNab specifically denied receiving any "tip off" about the gun other than the suggestion of Mr Roberts. He denied that police "planted it".

186 In cross-examination by Mr Jordan, Mr McNab said that the Voyager Point footbridge was chosen as the first site to search as opposed to the Hammondville Bridge where the M5 crosses the river, simply because it was more accessible.

187 The police diver who actually found the gun in the Georges River, Sergeant Raymond Busby, gave evidence at the trials and before me.

188 At the third trial, he said that on 9 and 10 June 1998, he participated in an underwater search of the Georges River in the area of the Voyager Point footbridge. The search was requested by Mr McNab and he (Mr Busby) was assisted by Constable Bisaro. He said his instruction from Mr McNab

was in general terms, "We want you to search this bridge". He described the search:

Q. Would you tell the court what you found and where it was?

A. When we started searching in the scuba gear we searched for a period of time and then located a - what felt like a pistol at the bottom of the river. It was in some rocks, amongst some rocks and that sort of thing, there was a lot of debris there.

Q. About what size were the rocks in that vicinity of the river?

A. The rocks, they were varying in size from small rocks to say the size of a soccer ball or basketball, similar.

Q. You were feeling around with your hands?

A. Yes.

Q. What was the visibility like there?

A. There was no visibility at that stage.

Q. When you felt what you thought was a pistol what did you do?

A. I signaled to Constable Bisaro, then I signaled to the surface and returned to the surface and saw that it was a pistol or looked like a pistol.

Q. Now apart from rocks and stones in the area was there other debris?

A. Yes, there was just metal type rubbish, a shopping trolley I think was there and there was just cable, just iron bars, similar sort of stuff discarded from the wrench.(sic bridge)

Q. Were there things like bike parts?

A. Yes, yes.

Q. Just general rubbish?

A. Yes.

Q. I think you said that you found - I can't remember your actual wording - was it in-between some rocks?

A. Yeah, the way the bottom of the river was, it was just rocky and there was - it was sitting on the mud type bottom but in-between surrounded by some -

Q. So it was not wedged in?

A. No, it wasn't wedged in.

Q. But it was surrounded by rocks?

A. Yes.

Q. How strong was the flow of the river at that point?

A. At that point there was a minimal flow, it wasn't causing any difficulty to swim against.

Q. Did you later swim further out and find in fact there was a much deeper channel?

A. Yes. It dropped off perhaps another metre to a metre and a half or thereabouts and as we moved further out into the river it - the current became stronger and increasingly more difficult to swim against.

Q. Where you found the gun, about how deep was it there?

A. It was about 4 metres I judged by the way up, by coming up."

189 When searching from a shore, Mr Busby said that an attendant would hold a line on a fixed shoreline point. The divers would then enter the water from that point, attached to the line, and search in an arc. After one arc had been completed the line would be let out and another arc searched.

190 At the Inquiry, I questioned Mr Busby about his methodology and the prospects of success in the search he was undertaking:

"Q. Can you explain to me how do you go about - you were asked or directed to search an area under the bridge, both sides, what do you do to cover the area?

A. There's different searches that we employ, and this particular instance we employed what is called an arc type search. So it will be directed from an attendant on the surface, standing in a fixed position, or seated in a fixed position. He will give us a length of rope, a fixed amount of rope, will keep that rope taut, and then search along the axis of that rope until we get to the nominated area indicated by the attendant. He will then give us a signal, and then let out a fixed amount of rope further, and then we will continue that arc back the other way.

Q. So you start closer in and work outwards?

A. Yes that's correct.

Q. Do you remember what the conditions were like on the seabed of the Georges River?

A. Yes I do. It was cold. And there was no visibility. And it was very rocky. And then sand out further.

Q. And how actually do you search?

A. By feel.

Q. Visibility was not good?

A. No no, it's by feel. In this instance two divers were together, so we would hang onto our harness, or the outside diver would hang onto the inside diver's harness. The inside diver has the rope to the surface, and then we both search with our alternate hand. So if we're heading right, then we're searching with our right hand, if we're heading left we're searching with our left hand.

Q. There was three people involved, one on the shore and two in the water?

A. That's correct.

Q. So there wasn't a big buildup of silt that the weapon could have sunk into; it was rocky?

A. It was rocky. There was a degree of silt, however, because there was no visibility, and silt is quite fine, I couldn't tell you what sort of degree of silt there was. I felt - you could feel hard objects on the bottom through the silt, so there may have been a fine layer of silt over it. I'm not sure.

Q. Starting out on this exercise, using the method you have stated, would you expect to find a gun if it was there?

A. Yes certainly. The amount of line that is given to us at each particular instance is probably only a foot, so it's expected that the diver - the inside diver would go over the outside diver's area and cover that more thorough.

Q. So you wouldn't regard it as a miracle to find it?

A. No, certainly not. Otherwise I wouldn't be employed doing what I am doing.

Q. Even though it had been there three and a half years?

A. Yes that's correct."

191 This evidence from Mr Busby was not challenged by Ms Pepper who cross-examined him on behalf of Mr Ngo.

192 Although at first blush it may seem startling to suggest, that nearly four years after Mr Newman was killed, the murder weapon happened to be

found where it was dropped by the murderer some kilometres from the murder scene, the evidence on the subject seems to me quite persuasive. Obviously, Mr Roberts' suggestion was informed by his understanding of the Telstra records to the effect that the white Camry proceeded after the murder in a south easterly direction, probably on Heathcote Road. A glance at a road map indicates that Voyager Point is located at a point where Heathcote Road and the Georges River come quite close to each other.

193 Acceptance of this evidence that the murderer discarded the murder weapon into the Georges River at Voyager Point would, of course, put an end to speculation that corrupt police officers, or perhaps someone else, "planted" the gun at a time convenient to themselves in order to bolster the case against Mr Ngo or for some other nefarious purpose. Such speculation incidentally assumes that if it were the murder weapon it was secreted, presumably for a lengthy period, in an environment where it would corrode and become encrusted with marine growth. This proposition seems to me patently absurd, unless it is also suggested that instead of genuinely investigating Mr Newman's murder, a number of quite senior police officers, for reasons unexplained, devoted themselves to fabricating a case against Mr Ngo. Otherwise, I would expect that the murder weapon was one of the most useful pieces of evidence the investigators could hope to acquire and that the earlier it was acquired the more useful it would be.

194 Mr Hastings and Ms Pepper submitted that there are "equally if not more probable hypotheses" regarding the disposal of the gun than the hypothesis of the Crown. They suggested

- That the discovered gun was not the murder weapon but some other weapon;

- That Mr T, Mr N or Mr Dinh disposed of the gun in the Georges River on the night of the murder or at a later time;
- That an unknown person disposed of the gun;
- That police “planted” the gun on the information provided by Mr Roberts.

195 Self evidently, some of these other hypotheses are possible, although I disagree that they are “equally if not more probable”. There is no doubt that Mr Ngo, after the murder drove in the direction of Voyager Point and it was an area with which he, somewhat reluctantly, admitted a degree of familiarity. Moreover, there was abundant evidence for the jury to conclude that the weapon found was the murder weapon. There was also credible evidence as to the whereabouts of Mr T and Mr Dinh, if not Mr N, which undermined the possibility that, at least on the night of 5 September, they deposited the gun in the river. As I indicated earlier, I regard the suggestion that police “planted” the gun in the river after Mr Roberts' advice as quite untenable.

196 The submission on behalf of Mr Ngo contended that he would not have had time to dispose of the gun, as the Crown asserts, given that, as hereafter related, he took a phone call in the Club at 10.38pm. There was no evidence to support this contention although the point has always been available. My own impression, having had the benefit of a view, is that the timing was not obviously impossible. Mr McNab's evidence suggested that it would take about twelve minutes to drive from Mr Ngo's home to the intersection of Heathcote Road and Walder Road. A road map suggests that this was about three quarters of the distance to Voyager Point. There was, of course, no imperative for Mr Ngo to be back in the Club by 10.38pm, that was merely the time Mr Lalich happened to call him. But, in any event, this question was squarely before the jury.

197 The issues which I identified for the Inquiry were as set out in paragraph 17 above. In my opinion, there is no evidence to suggest that the Crown failed to frankly and fully disclose the circumstances which led to the finding of the degraded gun in the Georges River and there was no contrary submission on behalf of Mr Ngo. Nothing has arisen in respect of this matter which, in my opinion, raises a doubt as to Mr Ngo's guilt.

## **THE EXPLANATIONS OF THE DEFENDANTS**

198 As has been indicated, at the third trial Mr Ngo was tried jointly with Mr Dao and Mr Dinh both of whom were acquitted. They are entitled to the full benefit of those acquittals and nothing I say in this report is intended to question the verdicts in their favour, which were, of course, exclusively based upon the evidence given at the trial and the directions of the trial judge, Justice Dunford.

199 Mr Dinh did not give evidence at the third trial, which was the only trial he faced. He did, however, make a statement to police on 18 October 1994 and participated in a record of interview with police on 13 December 1994. In the statement he said that he was on duty as a bar attendant in the Club from 6pm on 5 September 1994 until 12.30am the following day during which time he did not leave the premises. He said that he did not learn of the death of Mr Newman until 6 September.

200 In the record of interview Mr Dinh maintained the version of his movements on 5 September 1994 given in the previous statement, although he conceded that he overheard other staff talking about Mr Newman's murder during the evening while he was still at the Club.

201 Mr Dao was tried jointly with Mr Ngo at the second trial and jointly with Mr Ngo and Mr Dinh at the third trial. He gave evidence at both these trials. He also participated in a record of interview with Detective Senior Sergeant Col Henson and Detective Senior Constable Walpole (Mr

Walpole) on 19 September 1994, and in a record of interview with police Detective Sergeant Jenkins (Mr Jenkins) and Mr Walpole in the presence of his solicitor on 13 December 1994.

- 202 He was born on 18 February 1963 and had no previous convictions. In September 1994, he was employed by the Club as Community Projects Officer and occupied an office adjacent to Mr Ngo's office on the first floor of 88 John Street Cabramatta. He described Mr Ngo as "a good friend". He was separated from his wife but had the care of their two children, aged 3 and 4, and lived at Cabramatta.
- 203 At all times, Mr Dao consistently denied an involvement in any illegal activity. He maintained in his statement, his records of interview, and his evidence that sometime after 9pm on 5 September 1994, he took the white Camry from where it was parked, without the permission of Mr Ngo, and drove it to his parents' home where he collected his children whom they were minding and drove them to the Club, returning the white Camry to Mr Ngo's usual place. In the Club, he said that the children, as was the purpose in taking them there, chose some ornamental lanterns from a selection produced by Mr T. After this he drove them home in the Fairlane.
- 204 Previously, he said, he had attended the staff meeting and recorded its minutes, afterwards remaining at the Club until he left in the white Camry to collect his children. He said that while in the white Camry he did not use the car phone.
- 205 In the record of interview on 19 September 1994, Mr Dao said he left the Club in the white Camry between 9.10pm and 9.15pm; that the drive to his parents home took between 5 and 10 minutes and that he returned to the Club between 9.40pm and 9.45pm. He conceded that at the time he felt some animosity towards Mr Newman who at one stage had temporarily blocked his application to join the ALP.

- 206 In the record of interview on 13 December 1994, Mr Dao maintained that he left the Club on the night of 5 September at about 9.15pm but said the drive to his parents' home took between 10 and 15 minutes. He said that he could not remember the time he returned to the Club.
- 207 In his evidence at the third trial, Mr Dao once again said he left the Club between 9.10pm and 9.15pm on 5 September 1994 and drove the white Camry to his parents home. Since the records of interview were made, he said that he had timed the drive at night from the Club to his parents home and that rather than taking between 10 and 15 minutes, it took only about 4 minutes.
- 208 He agreed with the Crown Prosecutor that in the two records of interview he said he returned to the Club from his parents home between 9.40pm and 9.45pm, indicating that he was absent from the Club for about half an hour, a period which encompassed the time when Mr Newman was shot. He also agreed with the Crown Prosecutor that he did not make calls to Mrs Barrett at 9.42pm and 9.45pm from the car phone and was therefore not in the white Camry at 9.42pm. He accepted that, according to the timing of his version of events, he would have been back at the Club by about 9.30pm and that Mr T must also have been present.
- 209 Mr Dao denied that he made phone calls from the car phone at 8.58pm, 9.03pm, and 9.11pm. As to the first two of them, he denied he was in the white Camry at the time. He proffered an explanation for the third, namely that one of his children might accidentally have pressed a "recall" button, an explanation which loses any force it had by the circumstance that the 9.11pm phone call was not to the same number as the previous call.
- 210 I did not see Mr Dao and again it is no part of my task to assess his credibility. However, I cannot accept that, on any basis, he was in the white Camry beyond about 9.25pm on 5 September 1994 at the latest. By that time, on his own admission, Mr Ngo was in the white Camry

somewhere between the Club and his home from where he said he made a phone call at 9.40pm

- 211 I now turn to the explanations given by Mr Ngo himself. These are comprised in two records of interview conducted respectively on 14 September 1994 and 14 December 1994, in the evidence he gave at the second trial, and in the evidence he gave before me.
- 212 The first interview at Cabramatta Police Station commenced at about 11.30am on the morning Mr Ngo returned from Taiwan where he had been since 7 September. It was conducted by Mr Walpole, Mr Jenkins being also present. Police met him at the airport and drove him home. He was given the opportunity to change his clothes before being taken to the police station. In the interview, he denied any involvement in the acquisition of guns and he also denied having any part in the murder of Mr Newman.
- 213 At the interview on 14 September 1994, Mr Ngo was not directly asked as to his movements on 3 September 1994. He was, however, asked whether on that night he attended a fund raising dinner at the Serbian National Defence Club. He simply answered, "No", without elaboration, and "No, No" to the next question as to whether he was invited to the function.
- 214 Coming less than two weeks after the night concerned, these questions must, I would think, have directed his mind to his actual whereabouts on the night of 3 September.
- 215 As to his movements in the late afternoon of 5 September 1994, he said that about 6.30pm he met a Buddhist monk at the Buddhist Church of Australia at Wetherill Park to discuss a development application before the Council. He returned to the Club from this meeting at about 8.15pm and attended the staff meeting. After the meeting he said that he dined with

other staff members in the restaurant area where the meeting had been held.

- 216 He said that he left the Club between 9.30pm and 10pm to walk to his office, which took about 5 minutes, remaining there about one hour, leaving between 10.30pm and 11pm to return to the Club where he stayed until it closed at midnight. He said that whilst at his office he was telephoned by Mayor Lalich and told that a politician had been shot in Cabramatta. Later, sometime after 10.30pm when he was back at the Club, Mr Lalich rang to say that it was Mr Newman who had been shot.
- 217 At midnight, he said he left the Club and had a security officer accompany him to his car in accordance with his normal practice. The white Camry was parked where he had left it in its usual place in front of a solicitor's office, and he said that to his knowledge it had not been moved. Mostly, he said he kept the car keys with him but sometimes he left them at the Club reception desk. When he arrived home he found that his nephew and the son of a friend of his father who had been staying with him were in bed asleep.
- 218 This interview concluded at 2.33pm and comprised 404 questions and answers. At question 372, Mr Jenkins acknowledged that Mr Ngo had come to the interview after a long flight. Mr Ngo responded, "That's OK. That's OK".
- 219 At the second interview, which commenced at 1.30pm and was also conducted by Mr Walpole, a lawyer, Mr Harry Woods, represented Mr Ngo and Mr Jenkins was again present.
- 220 Given an opportunity to correct anything said in the prior interview, Mr Ngo repeated that he went to the temple, from there to the Club, then to the office, back to the Club, and then home. He reiterated that he left the Club to walk to his office between 9.30pm and 10pm. Asked to confirm that he then remained at his office for approximately an hour, he said that having

gone to the office he decided to go home to collect some mail but he returned to the office “straight away”. He said that he had driven home in the white Camry, arriving between 9.30pm and 10pm and that on the way from his office to where his car was parked, he had called at the Club to collect his keys, left either at the reception desk or in the manager’s office. Mr Walpole drew his attention to the apparent discrepancy between this answer and his answer on 14 September that it was not normal for the keys to be other than on his person, and that he did not think he left the keys at the Club on the night of 5 September.

221 When then asked whether he knew of anyone else using the white Camry on the night of 5 September, he said that it had come to his knowledge that Mr Dao had driven the car that night without his permission. He repeated that after collecting correspondence from his home he went “just straight to my office”.

222 At the interview on 14 December 1994, Mr Ngo was asked directly about his movements on the night of 3 September. After denying that he went to an ALP fund raising dinner at the Serbian Defence Hall, there were these question and answers:

“Q. Okay. We have with the task force – has information that approximately 9.50pm on Saturday, the 3<sup>rd</sup> of September 1994 you were identified by a number of sources standing next to a white sedan on the corner of Judith and Bowden Street, Cabramatta. What do you say about that

A. Judith and – and what street?

Q. Judith and Bowden Street, Cabramatta.

A. What did I do there?

Q. Sorry, I didn’t hear that?

A. what did I do there – Judith and .....

Q. Do you know where those streets are, sir?

A. No.

223 Later after a street directory had been produced.

“Q. The task force police have information that on Saturday, the 3<sup>rd</sup> of September 1994 ...

A. Mm.

Q. .... At approximately 9.50pm a number of people positively identify you as being – as standing next to a white sedan parked right on the corner of Bowden and Judith Street. What do you say about that?

A. It was not true. I was not in that area.

Q. I was further informed – task force police ...

A. Mm.

Q. .... by these sources that you were wearing dark trousers and a long-sleeved white shirt?

A. I can't recall what I wore on that night.

Q. Would you have any reason to visit any people in the vicinity of Judith and Bowden Street?

A. I had a friend in there years ago who since moved out of that a long time ago. I didn't have any reason to go there.

Q. Could you – care to tell me why people would supply us with this information?

A. Well, how could I know that because, as I said, you know, I used to have a friend who used to live there – who used to live further down at the end, very close to the - the reserve – to the parkland down there and then he moved to - Bonnyrigg. You know, he was the local real estate agent – 2 or 3 years ago – 3 years now – so since then I didn't go there to see .....

Q. So is it correct to say that you are denying being in that vicinity?

A. Oh, definitely not. I'm – I'm not – I was not there.”

224 At the second trial, the only trial where he gave evidence, Mr Ngo denied to his counsel, Mr Walker, that he had any part in the murder of Mr Newman, including the use of funds of the Club to purchase firearms. He also denied that he had ever seen firearms on the Club's premises.

225 He remembered that on the night of 3 September 1994 he had attended a 9.00pm screening of The Lion King at Hoyt's Cinema, Bankstown. I quote quite extensively from his evidence to Mr Walker on the subject:

“Q. On 3 September 1994 did you, at any time that day, use the Club Camry?

A. Yes, I did.

Q. And you accept that there is a fixed phone in the Camry?

A. That's correct.

Q. When you used the Camry on 3 September 1994 were you the driver on all occasions, or not?

A. I, I can't recall exactly, but I could have been the driver.

Q. Is there anyone else that you recall, 3 September 1994, Saturday, as the driver of the Camry?

A. Yes, other staff members who took me to the, the movie show that night.

Q. What movie show was it that you say you saw that night?

A. It was the Lion King at Hoyt's in Bankstown.

Q. How did you come to know where to go and what time that film would be on?

A. I did not recall until when I was already in incarceration at Silverwater Remand Centre, one night I saw an advertisement on the Lion King and I recall that I saw that movie on 3 September 1994, because that day was also the 25th anniversary of the death of Ho Chi Min, which was a leading member of the Communist Government in Vietnam and at that time I was finishing reading a book entitled "Du Colonialisme Oau Communism" by Professor Thaivankiem Sorbonne.

Q. And when do you say you had just read that book?

A. Yes, and in that book Professor Thaivankiem presented a parable of the image of a lion, a lion, a person, a prince originally, who had the kingdom, inherited the kingdom from his father king. When the kingdom was invaded and taken over by foreign owners and the prince run away and try very hard to reclaim his kingdom, one day he runned into a sorcerer who promised him, who teach him the magics that he could fight his enemies and reclaim the kingdom, on one condition, that the moment he reclaim his kingdom, he would be no longer a prince, a human being, but he become a lion. At the time he was so eager to fight to reclaim his kingdom and the independence of his kingdom, he accepted it and

eventually he did reclaim the kingdom, he did regain the throne, but he also become a lion.

Q. How long before seeing the movie had you read that book?

A. I was finishing at the same time.

Q. Did that parable in the book about Ho Chi Min and the movie which you saw, did that have any impression upon you at the time?

A. Oh, yes.

Q. You referred to remembering this when you were already incarcerated. Do you remember saying that?

A. That's correct.

Q. You were first incarcerated in 1998, is that correct?

A. That's correct, yes.

Q. You told the jury that 3 September 1994 was, you believed, the 25th anniversary of Ho Chi Min's death, is that correct?

A. That's correct.

Q. So you remembered reading this book with the parable?

A. Yes.

Q. A parable about what might be called a Lion King and then seeing a movie called "Lion King"?

A. That's correct.

Q. Can you explain to the jury why that coincidence of the book and movie did not lead you to remember when you first spoke to the police about having seen that movie, that Saturday night?

A. I couldn't recall it.

Q. What was it that led you to remembering it in 1998?

A. Because as I said, I saw an advertisement on the Lion King that night when I was laying on the bed of a prison cell.

Q. I have asked you about this coincidence you have described at some length to the jury between the parallel in the book and Ho Chi Min and the movie, was that a matter you kept to yourself that night?

A. No, I did - if I can finish, you know, the parable, then I can tell you. I told my nephew that night who had gone to the movie with me about the story and the meaning of that parable so--

Q. Is there something you need to finish off about the parable to explain?

A. Yes.

Q. Could you do that as shortly as possible?

A. After he regain the kingdom, the prince no longer a prince, he would become a lion and he went around and eat his own people from villages to villages and when the people from one village run to the next village to tell the villagers of the next village the prince is no longer a prince any more, he become a lion, he become someone who eats his own people, no-one believed it until the lion actually reached the next village. That is what exactly happened with the Communists in Vietnam. They went to, they tried to fight for independence of the nation against the French. They went to Moscow, that is the sorcerer, who taught them how to fight against the French for the national independence, but after they, after they regained the independence, the nation of independence, for the nation, they did not look after the interests of the people but they started another war from village to village to village, until the time they took over the whole of South Vietnam.

Q. This is a coincidence that struck you, I think you said?

A. Yes.

Q. Can you explain to the jury how you did not remember that coincidence when the police asked you about where you were on 3 September?

A. I couldn't recall it.

Q. Did you have any routine or habit about going to the movies in 1994?

A. Yes.

Q. What was it?

A. Once a week, on the weekend.

Q. What day or days of the week?

A. Yes, on the weekends. Unless I have functions that I had to attend to on the weekends, then most of the time I would, you know, go to the movies on the weekends."

226 In the course of testifying as to his movements on the night of 3 September, Mr Ngo raised an issue regarding the mobile phones which occupied some time both at the second trial and before me. His testimony demonstrated what I regard as the shifting nature of his evidence to meet perceived exigencies.

227 To Mr Walker, he had suggested that he parted with the Council mobile to Mr T or another manager.

228 Mr Tedeschi questioned him upon this subject:

“Q. Now, can you tell the jury any reason why you would have given someone else your brand new Fairfield Council mobile and kept for yourself, on the night of the 3rd, the Mekong Club mobile?”

A. To my recollection I just received that phone from Fairfield Council either on Thursday or Friday, probably Friday before that Saturday and Sunday night and a lot of people who were still used to my old mobile phone number, which was the Mekong Club number, so that's why I kept it for the weekend, just in case people ringing me on that old number.

Q. But wouldn't that be a reason for you to take both phones?

A. No, why do I need both phones?

Q. You can't remember, can you, who you say you gave the Fairfield Council mobile to?

A. Yes, I did, I remember I gave it to [Mr T].

Q. I thought you said in answer to questions by Mr Walker that you don't remember who it was, it may have been [Mr T] or another manager?

A. That's correct, it might be [Mr T] but more than likely [Mr T] than any other manager.”

229 In the Inquiry, Mr Ngo told Ms Woodburne that the reason he gave the Council mobile to Mr T was so that Mr T could enter names and telephone numbers of people he regularly called from a book he handed to him for the purpose.

230 The fact that Mr T had possession of the Council mobile during the weekend while Mr Ngo had the Club mobile gained importance in assessing, particularly against Telstra records, Mr Ngo's claim that he attended the 9.00pm showing of The Lion King at Hoyt's Cinema Bankstown. I will need to make further reference to this subject.

- 231 At the second trial he provided further information as to his movements on 5 September, namely that at 12.30pm he lunched in Sydney with Mr John Della Bosca, then General Secretary of the NSW Branch of the ALP, and Mr John Matour, the Assistant Secretary of the Communication Workers Union. He said that during the lunch his interest in becoming a member of the Legislative Council was discussed and that there was an indication by Mr Della Bosca that Mr Newman may not be the ALP candidate for Cabramatta at the general election to be held the following year.
- 232 After lunch, he returned to his office in Cabramatta and worked there for a period before going to meet the Buddhist monk at Wetherill Park. He returned to the Club for the staff meeting, parking the white Camry in its usual place.
- 233 He agreed that at 7.43pm he telephoned Mayor Lulich from the car phone and spoke to him for just over 6 minutes. About 15 minutes later he arrived at the Club and attended the meeting which had already commenced and at which he addressed the assembled staff. As he walked into the Club, he said he left his car keys either in reception or in the manager's office. He said it was his frequent practice to leave the keys in this way:
- “Just in case, if I either been around in Cabramatta or at the office and people at the Club need the car, they just ring me up and ask for my permission and then they can have access to the keys straight away, rather than run to my office or run around to find me and get the key from me.”
- 234 He said that he had made it clear that while the car was not being used by him it was available, with his permission, for use by Club staff for Club business.
- 235 He agreed that he took a phone call from Mr Quang Luie of Special Broadcasting Services (SBS) on the Council mobile at 8.27 pm which

lasted 9 minutes and 50 seconds. This conversation took place in the Club after he had finished speaking to the meeting.

236 He stated in his evidence that following the meeting he spent about half an hour dining with staff in the Club restaurant during which time he said that he retained possession of the Council mobile. He denied that he rang Ms P or that she rang him. He could not recall taking a call at 8.40pm from the Club mobile to the Council mobile nor making a call from the Council mobile at 8.43pm to the Club mobile, which, he said, would have been taken by Mr T or another Club manager. However, he said that it was his practice while in the Club to summon managers to him by using a mobile phone. He denied any conversation with Mr T concerning the “swapping” of the Council mobile for the Club mobile.

237 He also denied making calls from the car phone at 8.58pm and 9.03pm to the Club landline and a call at 9.11pm to the Club mobile. He said he was not in the car at any of those times as he was still at the Club. He could not recall taking a call at 9.31pm from the Club mobile to the Council mobile.

238 However, he agreed that he made a call from his home landline at 9.40pm to the Club mobile. As a consequence, he accepted that he was at home at 9.40pm and that he left the Club “around 9.30”. Reconstructing his movements, he said that upon leaving the Club, he walked to his office, where he decided to go home to collect correspondence etc. He then walked back to the Club to collect his keys, following which he walked to where his car was parked and drove home. He said that the drive from where his car was parked to his home took “roughly 10 minutes”.

239 During the course of the Inquiry, there was a view of places and locations mentioned in the evidence. Two counsel sought to retrace and time Mr Ngo’s movements from his evidence. Starting at the Club, they walked to his office, they then retraced their steps to the Club, walked from there to where Mr Ngo parked his car and drove to his home. All this took in

excess of 16 minutes and took no account of the time spent by Mr Ngo in alighting from his car and entering his house. On the other hand, the view took place in the middle of a week day whereas Mr Ngo's evidence related to a period about 9.30pm on a week night.

240 My own assessment is that it would be difficult, if not impossible, to replicate Mr Ngo's movements in under 15 minutes and, as I understand his evidence, he did not dispute this. On that basis, he left the Club no later than 9.25pm and as he conceded could have been in the general area of Mr Newman's house at the time of the murder.

241 He agreed that he made calls to Mrs Barrett from the car phone at 9.42pm and 9.45pm but denied that he told her he was "on the way home". He said that the white Camry was then on the road, he having left his home very shortly after the 9.40pm call. While at home, apart from the landline call to the Club mobile, he said that he collected some correspondence and went to the toilet. He denied seeing Mr T, Mr Dinh, Mr Dao, or the Fairlane in the vicinity of his home.

242 During his evidence he related to Mr Walker a circumstance which he conceded had not previously been mentioned, namely, that in the course of driving from his home back to his office he deposited a news release concerning his forthcoming visit to Taiwan at the newspaper office of Mr V T Nguyen at the corner of Newbridge Road and Nuwarra Road, Moorebank, about 7 kilometres in a direct line from his home.

243 Although he had been to the newspaper office before and knew the route, which from his home, he said, was via Holden Street, Brown Street, Elizabeth Drive and Newbridge Road, on this night he was diverted, as his evidence related:

"Q. What happened then this night?

A. I, from Elizabeth Drive, I just drove over to Newbridge, Newbridge Street and at the corner of Newbridge Street and Heathcote Avenue there was an accident or some car

broken down there, so the traffic was redirected to Heathcote Avenue.

Q. Which is the main road of that junction, Newbridge or Heathcote or both?

A. Both.

Q. What happened when you were redirected into Heathcote Avenue?

A. I followed Heathcote Avenue with intention to turn into Nuwarra Road, that intersection, but I missed because there is not traffic light at the time in there, so I missed that but the very first available left is intention, I pull in to check with the street directory and to come back on to Nuwarra Street.”

244 In elaboration, he said that he made a U-turn near the intersection of Heathcote Road and Walder Road, retraced his path for some distance in Heathcote Road and then turned right into Nuwarra Road.

245 He agreed that he made a call from the car phone at 9.51pm to the Club landline but could not recall to whom he spoke nor his precise position when he made the call.

246 Asked by Mr Walker about omissions from the two records of interview, there was this exchange:

“Q. In your first record of interview, you didn't make any mention at all of deciding to go from the office and to your home to pick up papers. You accept that, don't you?

A. Yes, I do.

Q. And then there was, as the jury has seen and heard, there were questions about that at your second record of interview, is that right?

A. Yes.

Q. Can you explain to the jury how it was that going home to pick up these papers to clean up your desk, as you have described to them, escaped being mentioned by you when you were asked by the police on 14 September 1994 to describe your movements?

A. I couldn't recall it.

Q. There was no mention in the first record of interview and none in the second record of interview about this errand to drop off a press release; you accept that, don't you?

A. Yes, I do.

Q. How was it that that escaped any mention of any kind in either of those two records of interview in 1994?

A. Because I couldn't recall.

Q. Before 5 September 1994, had you ever had occasion at night to go and get some papers from home that you wanted to work on at the office?

A. Oh yes, I normally do that. If I didn't have to attend functions or meetings, then in the afternoon, after five or six o'clock I went home and pick up the mail and correspondence to go back to the office to work.

Q. Before 5 September 1994 I think you told the jury you had dropped off press releases to this same office, is that right?

A. Yes, I did.

Q. Can you estimate how many times before then?

A. About, I can't recall exactly, but on many occasions.

Q. Do you have any explanation as to why you may have forgotten this particular one where you missed the turn that night?

A. Because is I, during the two interviews I had with the police, I could not recall it. But if you look at the tape of the second interview there, when the police has show great interest in small details of my movement that night, I started to think and try to remember what actually happen.

Q. Can you explain why this didn't come back to memory after the police started to prod you in the December 1994 record of interview?

A. Because I didn't, to me, I could not remember all those details without being actually concentrated and try to remember. I have had a very busy schedule and the first interview I had with them just when I just got off the plane after a long official trip in Taiwan, so I could not remember all the details, all the small details of what I have done that day.

Q. Were you tired on the morning of 14 September when you were interviewed?

A. Yes, I was very tired because all the official functions that we had in Taiwan at the time, I was the person who liaise with the other side, you know, to arrange the programme of

the days, of the visit, where we would visit, what speech we will make on what occasion. Yes.

Q. On 14 September, the morning of your first record of interview, had you slept on the plane coming back from Taiwan?

A. No, I have not.

247 After leaving the news release at Mr Nguyen's office, Mr Ngo said that he returned to his office arriving there about 10pm. He remained at work for about half an hour before returning to the Club. In the meantime, Mr Lalich had telephoned him regarding a news report that a politician had been shot in Cabramatta. In a later call by Mr Lalich to the Club mobile at 10.38pm, Mr Ngo said he received confirmation that it was Mr Newman who had been murdered.

248 Subsequently, at the Club, he received telephone calls from other acquaintances about the death of Mr Newman. He also spoke to staff and Club members about Mr Newman's death but denied that he said anything which indicated he had a hand in the killing or that he laughed about the matter.

249 He told Mr Walker that on the night of the murder he played cards at his home with Mr T and other members of the Club staff. As to why he did not mention the card game in his records of interview, he said:

"Because nobody asked it and just something that, sometimes I think that is not important, we just get together and play cards, that's what we normally have done."

250 Mr Ngo was extensively and closely cross-examined by the Crown Prosecutor. Inter alia, the cross-examination traversed the extent of his awareness that from the date of the murder he was a possible suspect (he acknowledged such awareness); his political ambitions; the nature and extent of the animosity between himself and Mr Newman; the time when he received, and the extent of his knowledge of, the Telstra telephone

records; his whereabouts on the night of 3 September 1994 (it being suggested that he had invented his claim that he watched the Lion King at Hoyt's Bankstown on 3 September); the means by which he travelled to the Bankstown Cinema (he claimed that he was driven there and back in the white Camry by an employee of the Club); the rules regarding his usage of the Council mobile; whether, and if so, to whom, he lent the Council mobile on 3 September; as mentioned earlier the circumstances in which he claimed to have possession of the Club mobile on the night of 3 September 1994; the extent to which his image was well known in the Cabramatta area; the closeness of his association with Mr Dao; the circumstances in which he came to be diverted from Newbridge Road into Heathcote Road; his failure in the journey to Mr Nguyen's newspaper office, given a compelling diversion from Newbridge Road into Heathcote Road, to make a left hand turn from Heathcote Road into either Junction Road or Nuwarra Road; the apparent coincidence that after he became aware of the Telstra records he mentioned for the first time his U-turn at Walder Road, located within the designed coverage of the mobile phone cell at tower 7 directed towards Hammondville and Voyager Point; whether he became aware that Mr Dao drove the white Camry without his permission on 5 September before the police interview on 14 September 1994; the closeness and nature of his relationship with Mr T and whether Mr T ever spoke to him about guns or expressed an interest in them, (a circumstance which he denied); whether Mr N was likely to bear ill-will towards him or towards Mr Newman; whether he manipulated Mr T into the Fairlane on the night of the murder in order to ensure his silence; whether he recruited Mr Dinh as the shooter because of the previous failures of Mr T and Mr N; his habit of withdrawing money from the cash float of the Club against vouchers signed on his behalf even though he was not the holder of any official office; and his relationship with Marion Le and the nature of her involvement with his case.

251 Before this Inquiry as its first witness, Mr Ngo gave evidence in chief to Mr Colefax. At the commencement, he adhered to his testimony given at the

second trial. He expanded that testimony to cover a range of matters raised by Mr Colefax, some at his counsel's request.

252 One such matter concerned his reasons for not giving evidence at the third trial. He said that he had been badly affected by the death of his mother in Vietnam on 20 March 2001 during the trial and, as a consequence, simply accepted without question the advice of his counsel that he not give evidence, even though he had planned to do so.

253 Another matter concerned a phone call at 8.40pm on 5 September 1994 from the Club mobile to the Council mobile. He asserted that between 8.37pm when the call from SBS concluded and 8.40pm he would not have had time as the Crown asserted to substitute on the charger in the manager's office the Council phone upon which he took the call from SBS for the Club mobile. He also claimed, although this was an issue upon which there was evidence before the jury, that it was impossible from inside the change box in the poker machine area to hear a mobile phone ringing in the manager's office some metres away. He claimed that the manager's office was made of sound-proof materials and the change box was constructed of "thick glass".

254 In relation to a Mr Albert Ranse, about whom I will need to say something later, Mr Colefax asked Mr Ngo why the issue regarding him was not pursued at the third trial. He replied:

"First because - at the second trial, he was questioned or cross-examined, and not just the police, they come to the view that - the police come to the view that it would not be helpful with the investigation. So I just took the matter, you know, as it was. And secondly - at the second trial - at the third trial, as I indicated to you I just left with my legal people who made the assessment from, from the end of March onward, so I just left it. But if you ask my opinion, whether I believe - whether Mr Ranse had anything to do with it or not, I'm saying to you that I don't know."

255 Mr Colefax, returning to the subject of Mr Ngo's decision not to give evidence at the third trial, suggested that it was prompted by his

knowledge at a late stage that Mr Field was to be called in the Crown case and the service upon his legal advisers of Mr Field's statement of evidence. Mr Ngo agreed that on 14 May 2001, the 43<sup>rd</sup> day of the third trial, Mr Nicholson made a statement to Justice Dunford which, at least, suggested that his client intended to give evidence. He also accepted that on 21 May, Mr Nicholson complained to His Honour that a statement made by Mr Field on 15 May had only recently been served on the Defence team.

256 However, he rejected Mr Colefax's proposition that he decided not to give evidence because of the testimony of Mr Field:

"A. No it is not correct because I don't see any reason why that would affect my evidence because I just - at the second trial I just give evidence and I would have to repeat it the same. "

257 After all other witnesses in the Inquiry had completed their evidence, Mr Ngo was recalled to the witness box. There was some short further examination by Mr Colefax during which he extracted from Mr Ngo the concession that previous evidence given by him to the Inquiry was incorrect, in so far as he had testified that it was not until he gave evidence to the Inquiry that he became aware of the very significant criminal record of Mr AB. He made the concession after being confronted with a reference he provided for Mr AB to the Department of Immigration in 1995 in which Mr AB's criminal record was recited.

258 Mr Ngo's explanation that he had simply forgotten about his knowledge in 1995 of Mr AB's criminal history, which included convictions for manslaughter and multiple counts of armed robbery, was, I thought, very unconvincing, especially having regard to the contents of his reference letter and the fact that Mr AB was his co-accused.

259 Following this further examination by Mr Colefax, Mr Ngo was comprehensively and at some length cross-examined by both Ms

Woodburne and Mr Hamill. Much of the cross-examination was, in my view, damaging to his credit.

- 260 Ms Woodburne established that he gave written instructions to his lawyers on 24 May 2001 that he did not wish to give evidence at the trial on the ground, in effect, that the damage caused by his exposure to cross-examination was likely to outweigh the beneficial impact of his evidence. Her cross-examination also raised questions as to whether his political ambitions extended to the Legislative Assembly and suggested the extent of what appears to have been a bitter personal and political relationship between Mr Newman and Mr Ngo in the period leading up to the murder.
- 261 Mr Ngo was taken by Ms Woodburne through his two police records of interview. He agreed that after leaving the Buddhist monk he could have been back at the Club by 8pm, but said his recollection was that his arrival was some time later conceding, however, that his time estimates were not precise. Nonetheless, he maintained that he did not leave the Club around 8.30pm as stated by Mr Bowen, but rather remained dining with staff until much later.
- 262 Ms Woodburne pressed Mr Ngo as to his differing versions of where he normally kept the keys of the white Camry, he having variously said that he normally kept them with him and that he left them either in the reception area or the manager's office at the Club. He told Ms Woodburne that after his first interview with police, he became aware of Mr Dao's claim that he had taken the white Camry on the night of 5 September in order to drive his children to his parents' home.
- 263 He was asked about a schedule of phone calls compiled from Telstra records made on 3 September 1994. Call 1 on the schedule at 8.07pm from the Council mobile was shown as being made to "Vicky Collins". Mr Ngo acknowledged being aware that the subscriber to the phone was actually the Department of Arts and Administrative Services with a user name of Edward L Grace, the Federal ALP member for Fowler. He agreed

that Mr Grace was his friend and supporter but would not accept that the call at 8.07pm was necessarily made by him:

“A. No, not at all. The reason first, even though the phone - I don't know, this is just a suggestion, the phone is registered with the Department of Arts and Administrative Services, Mr Grace as a federal member he would have at least two or three staff members. I don't know, even sitting here - I don't know Vicky Collins. I guess Vicky Collins must be one of his staff members. That's why the phone is registered in her name. And Mr T at the time, because of his involvement in the branch Labor Party, he may have discussed something with that staff member of Mr Grace. I don't know. But not - this phone does not actually specifically say that only Mr Grace holding that phone at the time, because if it was a case, I believe, I guess it would have registered under his name, not someone else's name. Why Vicky Collins' name come up, I don't understand.

Q. Listen to me Mr Ngo. That was the whole point of the evidence of Mr Finlay, wasn't it, to correct the record to establish that as at 3 September 1994 the subscriber was not Vicky Collins but the Department of Arts and Administrative Services with a user name of Mr Edward L Grace. So you agree, do you not, the point of the evidence was to show that the Vicky Collins subscriber name was wrong?

A. I don't recall Mr Finlay's evidence. But I still can't see why, if Mr Grace was the - who that phone was supposed to be located to, then why the name of Vicky Collins come up. I just don't understand.

Q. What I wanted to suggest to you Mr Ngo, that it was very clear to you at the trial that you would be cross-examined on your previous evidence on this issue, and there was a risk, wasn't there, that the jury would conclude that you had lied about the matter?

A. Not at all, because as I just explained to you, and had I been asked at the third trial that question, had I given evidence, I would have said the same. Because it didn't make sense.

Q. Now Mr Grace did give evidence in your case in the third trial did he not?

A. That's correct.

Q. And you recall don't you that he said the mobile phone to which the call was made was used by his Chief of Staff, Mr Geoff Collins?

A. He might have said that, but I don't remember.

Q. I suggest that Mr Grace said in that evidence, when being cross-examined by the Crown prosecutor, that although he had met T through you, he did not have any dealings with him; do you accept that?

A. That is what his evidence said, yes.

Q. Do you also accept that he gave evidence that to his knowledge his Chief of Staff did not have any dealings with Mr T?

A. That's his evidence, and I accept that.

Q. What I suggest to you is that all that points to you being the person who made that call at seven minutes past eight on 3 September 1994 using the Fairfield Council mobile?

A. It's not true. First, even though Mr Collins was Mr Grace's Chief of Staff, but he was also involved in organising the numbers to support Mr Grace, to fend off the attack at the time, and I was part of that. And Mr T was also helping us with that one at the time too. So Mr Collins could have spoken with Mr T, or a few others, senior, if you might call, members of the local branches at the time.

Q. But if as you say--

A. And Mr T was a delegate to those councils I mentioned to you before.

Q. If as you say Mr Collins was indeed organising numbers for Mr Grace, that is something that Mr Grace would have well known, wouldn't he?

A. Yes.

Q. What I suggest to you is that you realised that that evidence of that phone call indicated quite clearly that your evidence that you did not have the Fairfield Council mobile was not true?

A. I reject that."

264 Generally, Ms Woodburne's cross-examination of Mr Ngo highlighted major deficiencies in his testimony, as I think this further rather extensive extract demonstrates:

"Q. I suggest to you Mr Ngo that you being aware of the evidence against you that the L's had given, and you being aware of the Telstra material, constructed your story about seeing the Lion King movie at the 9pm session on 3 September 1994?

A. I don't accept that.

Q. There is nothing in your diary to indicate that you saw it, is there?

A. That I saw the movie, I agree, yes.

Q. And there is nothing in your diary to indicate that you saw the movie at the 9 o'clock session?

A. Nothing in my diary, of course not, no.

Q. And there is nothing to indicate that if you indeed saw it that weekend, that you saw it on the Saturday rather than the Friday for example?

A. From my diary, no. In fact my diary never shown - any - my diaries did not have any entries about me going to any movies at all.

Q. Of course you say, do you not, that it was the anniversary of Ho Chi Minh's death?

A. The 25th, yes.

Q. But as your nephew told the police when he gave evidence, there is certainly some controversy about whether that death occurred on 2 September 19--

A. No, no it's not.

Q. --69 or 3 September 1969?

A. No no it's not. The discussion that I had with my nephew was whether he's dead on the 1st, not the 2nd. The 1st September 1969, but because of the 2nd September 1969 was a national day of the communist Vietnam, so they postponed it to make the official announcement on the 3rd September.

Q. So you were convinced it was 3 September that was the official date of the death?

A. That's right.

Q. And, therefore, the anniversary of Ho Chi Minh's death was on 3 September 1994?

A. That's correct.

Q. But it was not just the anniversary of his death, was it, because it was the 25th anniversary of his death?

A. That's what I said, yes.

Q. A significant date?

A. 25th anniversary of his death, yes.

Q. So when the police asked you about what you had done on 3 September 1994, that date was a very significant date in Vietnamese history wasn't it?

A. No no, not significant date in the history of Vietnamese community, it's a historical fact because the Vietnamese refugees, we don't accept the communists regime, but the historical fact that I remember, because I was interested, I have always been interested in history of Vietnam, but when you talk - when I was talking to the police, that fact didn't cross my mind.

Q. You are a person, as you say, interested in the history of Vietnam, and for example you mentioned a date earlier this morning about the fall of Saigon to the communists in April?

A. Yes.

Q. And so when the police asked you about what you had done on 3 September 1994, you knew that that date was the 25th anniversary of the death of Ho Chi Minh?

A. Yes I knew, but I remembered at the time, I talked to the police, is totally different matter. I knew of course because it's part of my knowledge. You know, the date of his death, the date of his birth, the day of the nation, yes, it's my knowledge, but whether it come to my - it come to my attention of whether I remembered mentioning to the police, no I don't think so.

Q. I suggest that the very mention of that date to you by the police must have brought to mind not just the anniversary of Ho Chi Minh's death but the fact that 3 September 1994 was the 25th anniversary of his death?

A. No no, we don't celebrate it, we, the Vietnamese refugees, we don't celebrate it. I discussed with my nephew at the movie about that particular date. But not that, you know, we celebrate as such, just no, because we are from different camps; the communists on one camp, and we the refugees on a different camp.

Q. If you had indeed been to the Lion King at any session on that day, on 3 September 1994, that is what you would have told the police is it not?

A. Had I remembered when they interviewed me I would have told them, yes.

Q. I suggest to you that you did not tell the police that because you were, as stated by the L's, seen by them in Judith Street Cabramatta?

A. No I don't accept that.

Q. And what you were doing, I suggest, was conducting surveillance on Mr Newman's house?

A. No I don't accept that. I never been to conduct any surveillance at all.

Q. I suggest what you have attempted to do is utilise the information that the Mekong Club mobile had registered calls in the cells at Bankstown and Greenacre in an effort to place yourself as far away as you could on the Telstra evidence from the L's?

A. No. I just stated the fact. That's all.

Q. And to do that, you had to say that you had possession of the Mekong Club mobile phone that night because it was that phone which was registered as making, or receiving the calls through Bankstown and Greenacre?

A. I said it because I had the phone, that phone on that night. That's all.

Q. You said at the second trial, 2148, that your possession of the Mekong Club mobile that night was something you probably remembered for the first time in 1998?

A. I accept that, if what you read from the transcript.

Q. What I suggest, it's not something that you remembered, but something you stated or made up as part of your story about going to the Lion King?

A. No I don't accept that.

Q. You see, you had to put the Fairfield Council mobile phone in the hands of someone else, did you not, because calls 2, 3 and 4, which precede the session time, show that those phones called each other; and you might wish to look at MFI 30?

A. What page please?

Q. Second page on the chart of telephone calls on 3 September?

A. Yes.

Q. So that chart shows calls to, 2, 3 and 4, the Mekong Club mobile, and the Fairfield Council mobile in connection with each other on each of those calls?

A. So you are suggesting I have to place the Fairfield Council mobile phone on someone else hand--

Q. Yes?

A. To?

Q. To have you, with the Mekong Club mobile, registering at Greenacre and Bankstown?

A. No I don't agree with that. Very obvious, because I got that mobile phone, I told you, that the Council mobile phone, I gave it, and why I gave it to Mr T, and very obvious one of the call number 2 is between the two mobile phone, so it's very obvious I can't have two mobile phone at the time, as you suggested yesterday, as to why I should have both phones at the time, that just couldn't have one phone in one hand and calling the other phone with the other hand at all. So what you suggested yesterday, that I should have had two mobile phones at the time, just didn't make sense.

Q. Mr Ngo, what I suggest is that your story about your possession of the Mekong Club mobile does not withstand scrutiny because the Fairfield Council mobile is shown at call 7 as calling the Mekong Club landline; do you see that?

A. What time please?

Q. 23:31?

A. 23:31, yes.

Q. So that shows the Fairfield Council mobile calling the Mekong Club landline does it not?

A. Yes.

Q. Now if Mr T had the Fairfield Council mobile, that would be him using it to call the Mekong Club the very place where he was working that night?

A. But he wasn't there all the time. He could have stepped out to do something, or he might have just visited local clubs, because he said that at the time, from time to time he visited the local clubs to check their trading to compare with our trading. So it doesn't mean because he was working that day, that he just sit in his chair inside the Mekong Club every single time during his shift.

Q. You are just speculating about that, are you not?

A. No I'm not speculating that. I just said to you that's the fact. That could happen. Because he got the mobile phone and ring in the landline, that's the one of the possibilities. One of the many possibilities.

Q. I suggest Mr Ngo that there is another reason why your story about the attendance at the Lion King movie at the 9pm session does not withstand scrutiny, and that is because if you had possession of the Mekong Club mobile phone, as you say, you received on that phone a call during the course of the movie session, and if you go to call 5?

A. Yes.

Q. The time of the call is 22:26?

A. Yes.

Q. Camry car phone, calling Mekong Club mobile; do you see that?

A. Yes.

Q. And the evidence at the second trial was that the session time went for some 87 minutes?

A. I accept what you said, yes.

Q. And I suggest it only dawned on you, when you were being questioned by Mr Tedeschi about there being previews before a movie, and shorts before the movie, that you realised when the 10:36 phone call was drawn to your attention that there was a difficulty about the time of that call, so you invented the story of giving the mobile phone to the unnamed person who had dropped you off in the Camry?

A. I don't accept that, and I already gave an explanation to that in my evidence at the second trial."

265 Ms Woodburne cross-examined Mr Ngo upon his evidence that he was diverted from his usual route to Mr V T Nguyen's office by a traffic hold-up at the intersection of Newbridge Road and Heathcote Road and by his failure to recognise the intersection of Nuwarra Road and Heathcote Road. Again, I thought his explanations very unconvincing.

266 Finally, Ms Woodburne drew from Mr Ngo, rather reluctantly I thought, that on first coming to Australia, he first lived, not at Campsie as he had stated, but at the East Hills Migrant Camp located at Sirius Road in the area now known as Voyager Point. Although he was only there four weeks, he conceded that he became aware of the footbridge over the Georges River, which he had once used to catch a train at East Hills Railway Station.

267 Mr Hamill challenged Mr Ngo's evidence that his political interest was confined to a seat in the Legislative Council. He questioned him upon statements made to journalists and others in the period after Mr Newman's death. He also questioned the honesty and sincerity of his claim, at the time, that he intended to fully cooperate with the police investigation of Mr Newman's murder.

268 Mr Ngo acknowledged to Mr Hamill that by the first police interview on 14 September 1994 he was aware that he had been named as a possible suspect. He also acknowledged that he was asked specific questions about his movements on the day of the murder:

“Q. Yes, and you gave them answers which were wrong, didn't you?

A. No, I don't think it's wrong but the thing is it should have been more accurate with more details as I added on at a later stage, yes.

Q. Well--

A. But not deliberately wrong.

Q. No, I'm not asking you whether it was deliberate yet. I'm asking whether the answers you gave to the police on--

A. Yes, there was mistake in my answer, that's correct, I agree with you. “

269 In relation to his knowledge of the use of the white Camry by Mr Dao, there was this exchange:

“Q. When did you become aware that some other person - namely, Quang Dao - had used the white Camry?

A. Sometime in between the first and the second interview.

Q. Did you go and tell the police about that?

A. No, I didn't.

Q. Why not?

A. Because even though they asked me about, you know, the car, the Camry car, whether it was parked there or who used it, I didn't see that as important.

Q. By that stage you must have--

A. But at the time - as I said to you, I didn't - by the time I left the interview, I got the tape. I didn't listen to that. I didn't remember what I was asked.

Q. So you have no memory whether you said that to the police when you came in on 14 December 1994 for your second interview. Is that what you're saying?

A. Of the previous interview?

Q. Yes.

A. That's right.

Q. You've forgotten that?

A. No, I remember I was interviewed on previous occasion but not exactly the context of the interview.

Q. But are you saying to me that you did not know, when you went for the interview on 14 December 1994, that in the earlier interview in September you had told the police that as far as you knew nobody else had used the white Camry?

A. Well, I told the police at the first interview but whether or not I remembered - they asked me that question at the second interview, I can't tell you. I don't - sitting here now, I don't remember whether or not the police - they asked me. If you look at the record, question, they did ask me the question but whether or not at the beginning of the second interview whether I remember they had asked me that question or not, I can't tell you because it happened three months down the track from the first interview. "

270 Mr Hamill's general proposition to Mr Ngo, which he denied, was that over nearly 15 years the pattern of his accounts as to his movements kept changing to fit the evidence.

271 At the conclusion of the cross-examination, Mr Ngo was questioned by his counsel, Mr Hastings.

272 He told Mr Hastings, apropos his evidence to Ms Woodburne that on first coming to Australia he spent some time at the East Hills Migrant camp, that at the time he had very little money and could recall leaving the camp to go out on only one occasion. From the camp he moved to Campsie where he lived for a year. He told Mr Hastings that he has not been back to the Voyager Point footbridge since leaving the migrant camp.

273 He also told Mr Hastings that there were some fluctuations in his difficult relationship with Mr Newman:

"A. Again, for example, like - as I said the other day, just like the weather is of Melbourne. Sometimes it's cool. The next moment it's become very hot, and then will cool again, and hot again. And if we congregate together, then we - like we met more often and discuss community, the projects,

interests of the community, and we tried to work together to achieve that together. Like a support, you know, some community groups for their application for funding, we done that together, and things like that. “

274 He added that he was not the only target of Mr Newman’s attacks which included other ALP Councillors. There was one occasion when Mr Ngo said he had lunch alone with Mr Newman at a restaurant to discuss some community issue.

275 Having seen Mr Ngo in the witness box, I feel bound to say that I do not regard him as either an honest or a reliable witness. Particularly implausible were his explanations for giving false and misleading information to the police in the two records of interview as to his movements on the night of 5 September 1994, and his evidence as to the circumstances on the same night, which allegedly brought him to Walder Road, Hammondville. The rejection of his explanations does not, of course, necessarily mean that the particular matters agitated before this Inquiry do not give rise to a doubt about the conviction. However, I would not be willing to accept Mr Ngo’s evidence on any significant matter unless it was independently corroborated or against his interests.

## **THE TELSTRA RECORDS**

276 The Crown relied upon Telstra records in support of its case. Evidence at trial regarding those records was given by Mr Stuart Wilson, a long term senior employee of Telstra and its predecessor Telecom.

277 On any basis, some of the records of themselves, as I will indicate, supported but certainly, in the absence of other credible evidence, did not prove the Crown’s version of what occurred. Others, particularly records of mobile telephone calls, where their significance required interpretation, were more dubious. As I have indicated, one issue directly raised for consideration by this Inquiry is whether the probative value of some of the

records was exaggerated to such an extent that a miscarriage of justice occurred.

278 I have carefully read the evidence given by Mr Wilson at both the second trial and the third trial. In the outcome, there was, I think, no important difference but, in so far as I refer to his trial evidence, I will take it from what he said during the third trial. I will separately refer to evidence he gave before me.

279 Mr Wilson testified that he had been employed by Telstra and its predecessor for over 30 years and held a number of technical qualifications. As Network Security Manager he had an intimate knowledge of the Telstra Mobile Network in Australia. Although mobile phones are now operated in digital technology, in 1994 the system was analogue and involved 3 parts, mobile phones, base stations and exchanges.

280 There were about 1,000 base stations consisting of visible towers, and 50 exchanges. Calls from a mobile phone were received by a base station, relayed to an exchange and thence to another mobile phone, or to a landline. In the former case, the signal would be relayed from the exchange to a base station and from there to the receiver's mobile phone.

281 For the most part, base stations comprised 3 cells, each of which covered an area of about 120 degrees i.e. a circle of 360 degrees in total. Each cell constantly transmitted a signal on a particular frequency. A mobile phone which was switched on, even though not in active use, continuously acquainted itself with the location of the base station from which it was receiving the strongest signal, usually, but by no means always, the nearest. When a call was made from a mobile phone, it automatically selected the frequency for the transmission of the call which corresponded with the frequency of the strongest signal it was receiving at the time. A mobile phone to which a call was directed would, in the same way, receive that call through the cell providing the strongest radio signal to it at the

time. In other words, a call made on a mobile phone went first to the cell of the base station from which it was receiving the strongest signal and a call to a mobile phone was transmitted to that phone by the cell from which it was receiving the strongest signal.

282 In the case of a call made on a mobile phone, Telstra recorded the time and length of the call and the location of the cell by which the call was first received. Sometimes, but not always, Telstra recorded the location of the cell from which a call was received by a mobile phone.

283 As to whether each cell covered precisely a radius of 120 degrees, Mr Wilson said that this was “typically plus or minus a few degrees”. However, the outer rim of each cell’s coverage was imprecise and affected by many topographical factors, such as buildings, trees, or even wire mesh fencing. As a consequence, the strongest signal received by a mobile phone located even quite close to a base tower may in fact have been a signal from a cell in a base tower much further away.

284 The telephones of particular relevance to this case were those to which I have previously referred, namely, the Club landline; the car phone; the Council mobile; the Club mobile; and Mr Ngo’s landline.

285 It is convenient that I now list the telephone calls taken from the records of Telstra, made on the night of 5 September 1994, which featured in the trials of Mr Ngo. In doing so, where appropriate, I will indicate the Crown’s purpose in adducing the evidence; any explanation given by Mr Ngo or any of his co-defendants; the comments made by Mr Wilson; and my own comments.

1. A call at 7.43pm from the car phone to Mr Lalich. There seems no doubt that this call to the then Mayor of Fairfield was made by Mr Ngo. It was first received at cell 11 which is located at 8 King Road Prairiewood and suggests that Mr Ngo was on his way to the Club after meeting the Buddhist monk, as he himself testified.

2. A call at 8.27pm which occupied 9.8 minutes from Mr Quang Luu of SBS to the Council mobile. Mr Ngo admits taking this call in the Club about the time the staff meeting was closing.

3. A call at 8.31pm lasting 1.4 minutes on the Club mobile to the landline of Ms P, Mr T's girlfriend. As earlier stated, both Mr T and Ms P gave evidence about the call to the effect that Mr T was seeking to repair his relationship with Ms P following an argument between them during the previous weekend but was rebuffed. The call was first received at cell 2 located at the corner of Cabramatta and Fairview Roads Cabramatta. Mr Wilson said that this was consistent, but obviously not only consistent, with the Club mobile being operated from within the Club. There seems no reason to doubt the evidence of Mr T and Ms P regarding this call.

4. A call lasting .2 of a minute at 8.40pm from the Club mobile to the Council mobile. The call was first received at cell 5 in Bonnyrigg Avenue, Bonnyrigg. Mr Wilson said that this was consistent with the call having been made from somewhere between the Club and Mr Ngo's home at Bonnyrigg, but agreed that it was also possible but less likely that the call was made from within the Club. Although he conceded that the record showing the call being received through cell 4 at Cnr Hume Highway and the Horsley Drive, Carramar was consistent with the Council phone being at the Club, he thought it more likely that such a call would have been received through cell 2. However, despite this caveat, it may, I think be safely concluded that the Council mobile was in the Club at 8.40pm as that is where it was on both Mr T's and Mr Ngo's version of events.

The Crown asserted that the call supports the evidence of Mr T that Mr Ngo, in a short call and as part of a ruse, asked him to bring to him the Council mobile, which Mr Ngo said he had left in the Club.

The Crown also asserts that it supports its contention that by 8.40pm Mr Ngo had left the Club. On the other hand, Mr Ngo says that it supports his contention that at 8.40pm he had the Council mobile with him in the Club. The evidence is, in truth, in my view, quite neutral as to the whereabouts of the two phones at the time of the call. It is consistent with Mr T's evidence that in a short call Mr Ngo asked him to bring down to him the Council mobile but also consistent with Mr Ngo's testimony that at the time of the call he had the Council mobile with him in the Club.

5. A call at 8.41 pm lasting .2 of minute from Ms P's landline to the Club mobile. She said that she made the call and spoke for some seconds to a male who answered it, believing it was Mr T, before realizing that it was not and terminating the call. The Crown asserts that it was Mr Ngo, or someone in his company, who took the call thereby supporting its case that at 8.41 pm he was in possession of the Club mobile. Again there is no reason to doubt the evidence of Ms P, a solicitor, regarding the call, although, of course, she does not purport to identify the person to whom she spoke. Mr Ngo denied receiving the call and asserted that he was still in the Club at 8.41pm.

6. A call at 8.43 pm lasting 0.1 of a minute from the Council mobile to the Club mobile. This call was first received at cell 2 and was transmitted to the recipient through cell 5. According to Mr Wilson it was consistent with the records that the call was made from within or in the vicinity of the Club and that receipt of the call through cell 5 was consistent with the Club mobile being somewhere between the Club and Mr Ngo's home.

According to the Crown, this is the call that Mr T claims he made to Mr Ngo from just outside the Club when he was trying to locate him and the record is certainly consistent with but not probative of that fact.

Mr Ngo, in his evidence at the second trial, which he adopted at the Inquiry, gave this as an example of his practice when in the Club to use a mobile phone to speak to someone in another area, such as Mr T.

7. A call at 8.58pm from the car phone to the Club landline occupying 1 minute. There was no evidence as to who took the call. It first went through cell 5, consistent, according to Mr Wilson, with the Camry being near Mr Newman's house or, indeed, anywhere between the Club and Mr Ngo's home.

The Crown says that the call supports, or at least is consistent with, other evidence that at 8.58pm Mr Ngo was in the white Camry between the Club and his home, possibly in the vicinity of Mr Newman's house. Mr Ngo denied making the call and denied that he was in the white Camry at 8.58pm, asserting that at that time he was still in the Club.

This call, in my opinion, presents considerable difficulty for Mr Ngo, as, if he was not in the white Camry at the time, the call is entirely unexplained. Mr Dao denied being in the white Camry at 8.58pm and there was nothing to suggest the unlikely circumstance that someone else took the white Camry without Mr Ngo's permission.

8. A call at 9.03pm which lasted 1.6 minutes. This was from the car phone to the Club landline and was transmitted through cell 5 consistently, according to Mr Wilson, with having been made from somewhere between the Club and Mr Ngo's home. The Crown claimed that it provided the same support for its case as the call at 8.58pm. Mr Ngo again denied making this call or being in the white Camry at the time.

The call presents Mr Ngo, in my opinion, with the same difficulty presented by the 8.58 call.

9. A call at 9.11pm from the car phone to the Club mobile, which lasted 0.2 of a minute.

The Crown asserted that this was the call by Mr Ngo, referred to by Mr T, which was answered by Mr Dinh in the Fairlane. The call, which initially went to cell 12 located at the Racecourse, Governor Macquarie Drive, Warwick Farm, was said by Mr Wilson to be consistent with it emanating from the vicinity of Mr Newman's home and was extremely unlikely to have been made from the vicinity of the Club. The call was received through cell 8, located at 40 Terminus Street, Liverpool and, according to Mr Wilson, this was consistent with the Club mobile being in the vicinity of Mr Newman's home.

The Crown says that the call is consistent with its case that at 9.11pm, Mr Ngo was in the white Camry and Mr T was in the Fairlane with Mr Dinh. Mr Ngo denied both that the call was made by him and that he was in the white Camry at 9.11pm. Mr Dao claimed that he was in the white Camry from about 9.10pm but denied making the call himself, although as indicated he suggested that the call may have been made by one of his children pressing a redial button which, as mentioned earlier, cannot have occurred. Mr Dinh gave no evidence on the subject but denied that he ever left the Club.

Unless Mr T's evidence or Mr Dao's impossible explanation is accepted, the call is unexplained and again presents Mr Ngo with some difficulty.

10. A call at 9.31pm from the Club mobile to the Council mobile lasting 0.7 of a minute. The Crown asserted that this was the call

made from the Fairlane in the vicinity of Mr Newman's home to Mr Ngo in the white Camry, very soon after the murder wherein, according to Mr T, Mr Dinh enquired as to Mr Ngo's whereabouts. The call went first to cell 13 at 4 Hume Highway, Liverpool South and was received through cell 2. Mr Wilson's evidence was to the effect that it was consistent that the call was made in the vicinity of the intersection between Cumberland Highway and Cabramatta Road and was received somewhere in the area between Mr Newman's home and Townview Road.

Mr Ngo does not dispute that he was in the white Camry and had possession of the Council mobile at the time.

11. A call at 9.40pm occupying .6 of a minute from Mr Ngo's landline to the Club mobile. Mr Ngo admitted in evidence given at the second trial and before me that he made this call, although he did not state, nor was he asked to state either the recipient or the purpose of it. The call is important in that it could support Mr Ngo's evidence that he was then at his home. It is equally possible that the call was made by his nephew who, according to his evidence, was accustomed to call his uncle on the Club mobile.

12 & 13. Two calls made respectively at 9.42pm lasting 1.8 minutes and 9.45pm lasting 2.7 minutes from the car phone to the landline of Ms Shirley Barrett. She gave evidence at the second trial by video link from a hospital bed but died before the third trial where her previous evidence was read to the jury. Possibly the earlier of the calls was terminated for technical reasons as Ms Barrett could not recall it. She said the later call concerned arrangements for the journey to Taiwan on 7 September, she being one of the travelling party. As I have previously indicated, she said that Mr Ngo told her he was on his way home. The call at 9.42pm was first received through cell 9 and the call at 9.45pm through cell 8, both cells being

located at 40 Terminus Street, Liverpool. The calls were consistent, according to Mr Wilson, with the Camry proceeding away from Cabramatta along Elizabeth Drive towards Liverpool.

The calls established that by 9.42pm Mr Ngo was in the white Camry travelling towards Liverpool as he himself testified.

14. A call at 9.51pm from the car phone to the Club landline which occupied 1.5 minutes. There was no evidence as to the identity of the person who took the call. It was first received at cell 7, located at the Water Tower Clyde Avenue, Moorebank, which faces south-east towards Hammondville. Mr Wilson said that this was consistent with the white Camry being in the area, which encompassed not only Hammondville but also the area where the gun was found in the Georges River at Voyager Point.

The Crown relied on this call as supportive of its case that by 9.51pm Mr Ngo was on his way to throw the gun into the Georges River at Voyager Point. As I have indicated, Mr Ngo had an innocent explanation for his whereabouts at 9.51pm within the area covered by cell 7.

15. A call at 10.38pm by Mayor Lulich to the Club mobile. It seems undisputed that this call was answered by Mr T in the Club and that he, at Mr Lulich's request, took the phone to Mr Ngo. The call established that by 10.38pm, Mr Ngo was back in the Club.

286 While the mere fact that a number of calls were made from and to a particular phone, at a particular time, and were of a particular length, was significant, as I have pointed out, the expert evidence given by Mr Wilson did not take the Crown case very far. He frequently used the expression "consistent with" to mean just that, more a synonym for "possible" than anything more specific. Justice Dunford made this abundantly clear during the course of Mr Wilson's evidence and in his summing up. For instance

when Mr Nicholson objected to the word “consistent”, his Honour responded, “it means it could have been made from that point. That is probably as far as the witness can go”.

287 In his summing up, Justice Dunford dealing with the Telstra records made frequent use of the word “consistent”, including in this passage:

“Now the Crown submits that calls at 9.42, 9.45 and 9.51 are within twenty-two minutes of the shooting at 09.29. The Crown submits that Phuong Ngo could have gone home to get the papers to take to V T Nguyen and drop them in after he went to Voyager Point on his way back to the club.

The other thing is that Mr Wilson agreed that the calls were consistent with the two routes shown on exhibit AE. The yellow route suggested by, I think it was Mr Nicholson, in cross-examination. Yes. Mr Wilson agreed that the identification of the cells made the calls consistent with either of those routes.

Now Mr Nicholson said that it was wrong to say that the last of those calls put the accused Phuong Ngo at Voyager Point. Well, that is quite right. It did not. If anything, it put him in the direction of Voyager Point. Mr Nicholson pointed out that it put him much closer to Nuwarra Road than it did to Voyager Point.

He also said, that is, Mr Nicholson, that in relation to the 9.51 call obviously Phuong Ngo was preoccupied with chatting on the phone and had missed a turn-off, or, alternatively, he had a special way of going to Mr V T Nguyen’s place in Nuwarra Road up at Moorebank. There is another map which show where that is, but it is up around this area somewhere (indicated).

He submitted that it was much closer to Nuwarra Road than Voyager Point, and puts him in the situation where Ngo says he was heading for V T Nguyen’s place and much closer to that. Well, Mr Nicholson was not entitled to put to you, that Mr Phuong Ngo was obviously preoccupied with chatting on the phone, or that he must have missed a turn-off, or must have known a special way to V T Nguyen’s place. Any of those things may have been possible, but it is not obvious or necessary that any of them was the case.

The Crown did not submit that the last call put the accused at Voyager Point, but submitted it put him on the way to Voyager Point.”

- 288 Moreover, so far as this Inquiry is concerned, the Telstra records lose much of their limited significance by virtue of Mr Ngo’s evidence at the second trial (which was not before the jury at the third trial) and before me, where he admitted that at the time of Mr Newman’s murder at 9.30pm, he was in the white Camry somewhere in the area of Mr Newman’s home and that he later drove in a south-easterly direction in Heathcote Road as far as Walder Road, within the area designed to be covered by the south-east facing cell of Tower 7.
- 289 According to the travel times recorded by Mr McNab, it seems to me that Mr Ngo, if he had made the 9.40pm call from his home, could barely have reached Walder Road by 9.51pm. Probably, in my view, he would not have had time to make a U-turn, consult a street directory, retrace his path in Heathcote Road, turn into Nuwarra Road and travel along it for a sufficient distance to bring himself behind the south–east facing cell of tower 7, a scenario suggested by Professor Coutts to whose evidence I shall make reference in due course.
- 290 Nonetheless, Mr Ngo’s supporters sought to create a major issue out of what seems to me a relatively minor feature of the case. For this purpose in particular, the services of Professor Reginald Coutts were enlisted. He has a wealth of knowledge and experience in the field of telecommunications and between 1993 and 2003 held the chair in Telecommunications at the University of Adelaide. No one doubts his expertise.
- 291 Mr Breen, as it appears, gave him his first instructions by letter of 26 December 2007. Rather than set out assumptions and seek an expert opinion upon them, Mr Breen laced his letter with factually untrue, irrelevant, and emotionally charged comments such as, “My client is convicted on circumstantial evidence”; “the Crown case was based largely

on undisputed Telecom evidence”; “the phone records did not allow Mr Ngo to dispute that he was in the vicinity of the crime”; and “the expert evidence I am hoping to lead will indicate the possibility that my client was never inside the defined arc of the mobile phone tower, as he has always maintained” ( my underlining)

292 Mr Breen also included a paragraph which one would think must have been designed improperly to influence Professor Coutts thinking:

“There are many people in the community including legal academics who believe Mr Ngo is innocent of the murder of John Newman. Apart from the Telecom evidence, there are also questions around the nature of a joint criminal enterprise and inconsistency of verdicts. Mr Ngo went to trial as the so-called mastermind of the crime. His co-accused, the alleged driver of the getaway car and the alleged shooter, were both acquitted. Mr Ngo is convicted of a crime for which there is no known perpetrator.”

293 In similar vein are sentences in Mr Breen’s letter 2 days later:

“Of course, the idea that Mr Ngo would arrange contract killers to kill Mr Newman and then take an active role in disposing of the murder weapon is such an unlikely proposition that I can scarcely believe the prosecution had the audacity to run it. It is hardly surprising the alleged killers were acquitted.”

294 There followed further communications between Mr Breen and Professor Coutts which culminated in a meeting in Adelaide on 24 January 2007 after which Mr Breen sent the email:

“Dear Reg,

Yesterday’s meeting was a triumph. I thoroughly enjoyed our time together and the maps were sensational. I enclose for your information a copy of a report to Phuong Ngo. I hope I got it right. I sent a copy to Les Smith, the amateur scientist I mentioned who is credited with discovering that the so-called foetal blood in Lindy Chamberlain’s car was in fact sound deadner. Les has been helping with the Phuong Ngo’s case and he attended every day of the third trial

I look forward to hearing from you at your convenience.

Best wishes  
Peter Breen”

295 On 25 February 2008 Professor Coutts felt able to email Mr Breen,

“Peter

Some issues for the courts!

As I said I believe there is sufficient to put up a case of ‘unsafe evidence’ where there seems a reasonable probability (eg >10%) of the call being detected by the ‘green’ sector even though the call was made rel (sic) close to the back of tower 7 nominally in the ‘red cell’ coverage.

The defence let them get away with it!!

Will aim for a draft by Wednesday.  
Regards”

296 At about the same time, Professor Coutts became involved in providing advice to an ABC Four Corners programme for which he was interviewed on screen.

297 By 2 March Professor Coutts had apparently provided a draft report to Mr Breen who, in an email, suggested additions and amendments. On 1 April 2008, Mr Breen sent a further email to Professor Coutts:

“Hi Reg

I’m a bit slow answering your questions, but Phuong Ngo was delighted with your report. He suggested getting you to do something on each tower, and I mentioned the little problem called money. I’ll keep you posted on the results of our lotto number.

Debbie Whimont was also very pleased with the report and your contribution to her program. Email attached. I understand the program will go to air next Monday.

You may be interested in my submission to the Law Reform Commission inquiry on complicity. The inquiry seems to be designed for the Phuong Ngo case.

I look forwards to catching up again.  
Best wishes

Peter.”

298 Professor Coutts’ “Final” report dated 22 March 2008 but apparently not actually finalised until some time in May was sent to the Chief Justice, in support of Mr Selby’s application. If judged by the standards established by **Makita (Aust) Pty Ltd v Sprowles 52 NSWLR 705**, it would, I think, have been found wanting. However, its most serious deficiencies are its mis-statements of the facts and its comments unrelated to Professor Coutts’ expertise, as illustrated in the following paragraphs:

“A detailed critique of this argument of evidence and the way the expert witness evidence is treated is provided in Attachment 1 and this critique can be summarised.

From the assessment of the Transcript from the third trial covering the expert witness evidence by Stuart Wilson, the prosecution builds a case of the use of cell site records from the night of the murder based on Mr Ngo being at the murder scene as ‘consistent with’ the cell site records provided by Telstra corresponding to mobile phone calls made that night.

The cell site records of the calls are ALSO consistent on the whole with Mr Ngo not being at the murder scene, but rather where he testifies he was located at the time. Unfortunately the defence did not challenge the prosecution interpretation of the expert witness evidence.

Overall my view is the prosecution ‘skilfully’ built a message to the jury that cell site records could be used to reliably confine the area of the mobile phone use at the time of the call being made by progressively introducing terms like ‘coverage’, ‘consistent with’ and ‘dominant cell’ to confidently support the Crown case against Mr Ngo. The defence on the other hand seemed to produce confusion and impatience by both expert witness and the judge!

Given all the discussions in the case about the coverage from the various cells referred to in the Transcript, I am surprised there was no attempt to table coverage maps or drive-around reports of the area that could have been obtained from Telstra. The material certainly would have been available. Further Telstra would have had a radio planning software tool that could have provided predicted coverage for the various cell sites including Tower 7 to be

further discussed and the results of measurements of field strength would have been potentially available.

While there are at least 2 of the 20 calls that need further examination, the call at 9.51pm that the prosecution argument places Mr Ngo at the site of the allegedly discarded murder weapon needs particular assessment.

It is not the expert witness statements that are at issue but the way the information is handled by the court process that is of concern in that misleading inferences are left unchallenged.”

299 Rather than denying that he was in the general area of the murder scene at the time of the murder, Mr Ngo admits that he was. Moreover, it was never the Crown case that Mr Ngo was at Voyager Point at 9.51pm, rather that he was travelling in the direction of Voyager Point.

300 During May 2008, Mr Breen appears to have worked with Professor Coutts on the production of the “final” report to be included with Mr Selby’s submission. In that month Professor Coutts met Ms Le and thereafter was in regular communication with her. She seems to have copied to him every piece of material which came into her possession regarding the case, including confidential legal advice, despite being requested not to do so. On 29 May, she emailed him:

“Good morning Reg  
I see that you are another night owl! Thank you for your prompt response and for the Report. You can see that since I first set eyes on the Report a lot has been achieved with it – the four corners programme; the garnering of Hugh’s interest; the lodging of the application and the very quick response from the Chief Justice of the NSWSC and the Registrar of same. Not everyone is immediately able as Debbie Whitmont was and as I was to see the immediate significance of your evidence and have the opportunity to use it productively to assist Phuong. Obviously the CJ has also quickly grasped its significance so we will now wait and see.

It might be of interest for you to know that Peter Jackson is the Solicitor on the record for Phuong’s Appeal; Hugh Selby

is an academic at ANU who is an expert in evidence (he trains police and other witnesses as well as lectures in the subject) and has just put together a book with others on Appellate Law.

There are a number of well meaning people on the periphery of this case – you will have sensed this – and they have various agendas none of which are mine. My sole agenda is to see an innocent man walk free and get on with his life. Phuong saw you on television and he and I are so grateful that Peter Breen was able to track you down and that you were able to do the report. Hopefully we can now get you commissioned to do a further analysis which can incorporate this latest “evidence” from Wilson and the other crucial call from the Mekong Club. Please do not assume that information is being shared between Peter Breen and me at the moment – sorry about that – Peter has fallen out with Hugh having lodged the application. Debbie W, Don Grieg (sic) and I saw Phuong at the weekend and he is grateful to all concerned but he is so isolated in there and it is frustrating for him not to be able to speak to people like you himself! Every letter he receives and sends is censored and every phone call monitored...

Once again, my sincere thanks and Phuong’s for your cooperation and I was sorry to have missed the opportunity of another chat in person over at least a coffee.”

- 301 The apparently close association between Professor Coutts and Ms Le continued beyond the Chief Justice’s Direction establishing this Inquiry and up to the time Professor Coutts produced further reports commissioned by the Inquiry and gave evidence.
- 302 By late July, however, he had been informed by Mr Ngo’s solicitor, Mr Peter Jackson, that “Peter Breen no longer has anything to do with the matter”. Mr Breen seems to have restrained himself for a time but re-entered the scene when he sent to Professor Coutts on 19 December 2008 a rather detailed comment about his draft reports.
- 303 Two reports of Professor Coutts were admitted into evidence before the Inquiry, what he described as a draft report dated 30 November 2008, and a “final” report dated 7 December 2008. He also gave oral evidence. Mr Colefax took time to draw from him matters which tended to compromise

his objectivity, to some of which I have referred. For this Mr Colefax received public criticism from those whose conduct he had impugned but, of course, he was doing no more than his duty.

304 During Mr Colefax's questioning of Professor Coutts, there were these exchanges:

"Q. Then Ms Le wrote to you by email on 5 September at 8.30 am responding to that email of the 4th in these terms:

"Thanks for your email. At last I know I'm not alone. To quote you", and then Ms Le reproduces your last second last sentence. Then she says: "Exactly how I feel and worse especially since they do not seem to have any intention to consult anyone (importantly you) who might have a clue more than they do ."

Do you see that?

A. I see that.

Q. And the "they" you understood to be Mr Ngo's lawyers, didn't you?

A. Yes.

Q. So do you see how Ms Le is trying to, whether consciously or unconsciously, intentionally or unintentionally seem to be putting a wedge between you and Mr Ngo's lawyers?

A. Yes, I can see how it would be read that way but I'm confident it was unintentional.

Q. Even accepting that, which is probably a reasonable gloss, didn't you feel concerned that this unintentional wedge was being developed between you and the lawyers to an extent that you should have rung up Mr Jackson and said "Look, I'm not very happy about this"?

A. In hindsight I should have rung up Peter Jackson and really had a direct communication because I was concerned at the wedge developing.

Q. Can you go please to the next flagged document, please, Professor. You have in front of you a copy of an email from Ms Le to Mr Jackson on 5 September 2008 at 10.16 am?

A. Yes, correct.

Q. What she there wrote to Mr Jackson, do you see the subparagraph headed "Issue 2"?

A. Yes.

Q. What Ms Le wrote at the end is this:

“We already know the problems of buildings and topography  
“

A. Where are we looking at now?

Q. Issue 2, the last sentence in that paragraph?

A. Okay.

Q. I'll start again:

“We already know the problems of buildings and topography  
- let's remember that Phuong is innocent so Wilson is wrong  
and work from that basis.”

Then she went on:

“The cell site information was used in an unsafe way which went unchallenged to convince the jury Phuong was lying over those four times Wilson gave evidence - Inquest, the committal and the two trials - I am, I think, the only person who sat through them all and saw the changes and understands to some degree what happened. In my opinion, Peter Hastings needs to sit down with Professor Coutts and go through the Telstra 'evidence' with him before trying to come to grips with what Wilson is saying.”

Then there's another sentence that's not significant and then she says:

“I believe that it is critical to utilise the expertise available to us now and if Professor Coutts comes up with something adverse (if that is what we are all afraid of as lawyers) then so be it. This case must be run on the conviction that Phuong is innocent - not that he is being defended.”

Q. That email quite clearly was passed on by Ms Le to you, if you look at the top of the page?

A. Yes, well it came up in the subpoena.

Q. Even at this stage, Professor, did you start to get a little bit concerned that you were being guided into the way that you ought to be thinking in relation to this case by Ms Le, by bombarding you with these thoughts of hers?

A. I wouldn't use the word "guided" because again I think it was more driven out of Marion Le's frustration in the progress.

Q. What was the point in sending this material to you as you understood it?

A. As I said, because I can only guess at her reasons, Marion was something who communicates emotionally in how she feels about an issue and she does that with occasional emails.

Q. When you read that didn't the words Mr Jackson used in the letter to Mr Ngo, didn't that send off any alarm bells in your head?

A. No, it didn't.

Q. Could you go to the next tabbed document. Do you see that on that page there's a reproduction of the email that Ms Le sent to Mr Jackson and copied to you that we looked at a moment or so ago?

A. Yes.

Q. But that you're also now being informed that the email had not only been sent to you but had been sent to Ms Whitmont of the ABC?

A. I can see that.

Q. And for some reason Ms Le thought it was important to let you know Ms Whitmont's reaction to her email; do you see that?

A. I see that, yeah.

Q. What did you understand the purpose of you being told the ABC's journalist's reaction to the email was? How did you think that was being used?

A. I have no idea. All I knew was Marion Le and Deb Whitmont spoke on this matter quite often and they shared communications quite often and as you say, I was also being drawn into the net.

Q. Very well expressed, Professor, if I may say so.

A. Thank you.

Q. Could you go to the next document. Is that an email of 8 September 2008 sent at 2.48 pm from Ms Le to Mr Jackson at the top?

A. Yes, I have that.

Q. Underneath that is there an email from Mr Jackson to Ms Le on 8 September 2008 sent at 2.40 pm; do you see that?

A. Yes.

Q. Do you see that in that email Mr Jackson makes a reference to some personalities in his inquiry; do you see that?

A. Yes.

Q. Do you see that he's made a totally unhelpful and unfortunately expressed reference to his Honour?

A. Sorry where is that? It's small printing. Is this the first email?

Q. Paragraph starts, "he apparently is waiting"?

A. Sorry, yeah.

Q. See there you have been provided with those insights by Ms Le. What did you think the purpose of you receiving that information was?

A. I have no idea. It was--

Q. Draw you further into the net you think?

A. I think I was there by then.

Q. Could I ask you to go to the next tabbed document, Professor. You'll see that there's an email of 8 September 2008 at 2.40, the one we just looked at again has been attached to a message from Marion Le to you?

A. Sorry, where is this?

Q. The email we just looked at?

A. Yep.

Q. You can pick up at about 1 inch from the top?

A. Heads "Dear Marion".

Q. If you go up a fraction you can see the header, who it's from, who sent it?

A. Have I got the right one?

Q. (Counsel approached) see that there is set out a copy of the email we were looking at a moment ago which was sent on 8 September at 2.40am and at the top there is a comment from Ms Le to you, see that?

A. Yep.

Q. She wrote:

"I have sent you Phuong's letter and attached it by Express Post and also took the liberty of putting in some of my analysis on the 5 September calls. Debbie and I have decided that tomorrow we will listen first and then we will try to persuade the legal team that they need to consult with you

face to face before anything further happens. I have also sent to you two pages where my friend Robert and I noted some redirects and the problem Phuong addresses in his letter."

You agree don't you, Professor, that this is yet another communication and the provision of information to you by Ms Le in contravention of the regime that Mr Jackson had clearly put in place?

A. True.

Q. If you go to the next tabbed document please. That's a three page document, is it not, with an email of 12 September 2008, 7.51 am at the top of the page?

A. Yes.

Q. Could you go to page 2 please and do you see that that's an email from Mr Hastings to Mr Shehabi of 11 December 2008 at 12.13 pm?

A. Yep.

Q. Do you see that Mr Hastings in the email records a conversation that he had with me and that he provides certain advice and observations to his instructing solicitor?

A. Mm hmm.

Q. And you'll see from page 1 that that otherwise confidential material was apparently sent by Ms Le to Ms Whitmont with the words, "Can you read this and get back to me please"; do you see that?

A. Yes, I can see that.

Q. Then above that do you see that Ms Whitmont replied to Ms Le in these terms:

"I can't really work out how to put this to Professor Coutts as he doesn't need me to tell him. For what it's worth maybe you can just pass on to him that I think it's really important he does a report as that will guarantee him a voice in the inevitable debate about the phone evidence (even if it seems to have been shot down, smoke and mirrors worked before) and there are real questions about the Cross Roads call and the methods used to test its meaning. The problem is the lawyers don't know what to ask him to do because they haven't spoken to him about what he might be able to do (go figure that) but I get the feeling they'd like him to think of something."

Then at 7.51 am, Ms Le forwarded all of that to you, didn't she?

A. Guess so.

Q. And you read it?

A. Yes I recall reading that. I thought it was fascinating.

COLEFAX

Q. Fascinated as one would, were you even now a bit disturbed at the conduct which you've been engaged in?

A. I think I was already at that state.

Q. Can you go to the next document that's flagged, please, Professor. That should have in front of you a three-page--

A. Is this 12 September?

Q. 10.40am?

A. Yes, yes.

Q. Good, thank you. I'm just going to ask you some questions about the front page, not the second or third. On the front page there is an email - I withdraw that. There are two emails. The first one was sent by you to Marion Le at 9.39am on 12 September?

A. Yes.

Q. You see that?

A. Yes.

Q. And you wrote this:

"As I understand it, the prosecution never introduced the call evidence of the three calls as it did not suit their case in that it did not support Ngo casing Newman's house as asserted. Conversely, if Peter Hastings now introduced it to refute the evidence that Ngo was at Newman's house, he will need 'expert' evidence to convince the Inquiry that 'the cell phone location evidence' is not sufficiently clear except in this case! Does he argue the prosecution withheld evidence (including the drive test info which would have been available)? Does he argue the defence was negligent? I need to work with the barrister as the legal strategy and the use of evidence are linked! Look at how the prosecution did it."

Q. Professor Coutts, what were you seeking to convey by the second-last sentence I read to you; namely, "I need to work with the barrister as the legal strategy and the use of evidence are linked"?

A. The - is that the technical evidence is a minefield of potential evidence. The question is which items - in this case, which calls, right - are relevant for the case being

argued or, conversely, for the truth of the matter to come out. And that's the direction that I was looking for.

Q. Do you not think, Professor, that it rather looks as if you as the expert and Ms Le as the concerned friend are seeking to dominate the lawyers as to the manner in which your report and the evidence ought to be adduced?

A. Certainly I wouldn't be using the word "dominant" because we were getting - I was certainly getting no direction about what they wanted me to consider.

Q. Then, Professor, why didn't you say to Mr Jackson, the solicitor on the record, "Look, Mr Jackson. I've been dangling around here for nine months."

A. That's a very good description.

Q. "I've got Marion Le in my ear every five minutes and other people as well. I haven't got the faintest idea what you want me to do as an expert. I get confidential information that I shouldn't be seeing. What exactly do you want me to do and if you don't tell me what you want me to do in a timely way--

A. I won't be able to do it.

Q. --I won't be able to do it." What was the difficulty, Professor Coutts, in making that simple communication with Mr Jackson?

A. I can see no difficulty now. That's what I should have done.

Q. And because now you can see that the very warning that Mr Jackson conveyed to Mr Ngo has come to pass?

A. Correct."

305 In later testimony to Mr Colefax, Professor Coutts conceded that in preparing his reports he had no information as to where Mr Ngo said he was at the time of the 9.51pm phone call. In particular, he said that he was not aware that he gave no evidence at the third trial but did give evidence at the second trial, putting himself at one stage at the intersection of Heathcote Road and Walder Road. He agreed that such intersection is within the south-east facing cell of tower 7.

306 As I understood Professor Coutts' evidence, in his opinion the 9.51 call could have been made either from the vicinity of the Walder Road/Heathcote Road intersection or from Nuwarra Road in the area

immediately at the back of tower 7. The latter circumstance would arise from what he described as the "back lobe characteristic", explained thus to Mr Colefax:

"Q. In your report you refer on a number of occasions to this notion of back lobe characteristics as supporting your contention that Mr Ngo could have been on Nuwarra Road when the call was made. But you don't explain in the report, and perhaps it was because really you didn't have enough time, but you don't explain what this notion of back lobe characteristics is and how it works. Do you think you could, bearing in mind the non-technical audience to whom you're speaking, could you try to explain in layman's terms what this notion of "back lobe characteristics" of the antenna is?

A. Okay. The antennas employed have been designed to provide forward gain--

Q. Forward gain?

A. Yeah, a gain, an amplification, right, increased in the received signal in a particular direction, right, like the south-eastern sector as you've seen provides significant amplification of the received signal and also the transmitted signal within that sector. Now ideally is that there would not be, that antenna facing south-easterly, would not receive a signal of sufficient amplitude to be received either in the north-eastern or western sectors. Ideally, right, it would, shall we say, have an infinite front back ratio. In practice of course you can't actually achieve that both in the design of the antenna then when you put the antenna on site, you have to consider relevant factors, but what it means is the antenna, in attempting to focus in a particular area or sector, right, increases the gain in that direction so it can receive weaker signals further away from the base station than if you were using a omni direction antenna, but practical antennas have what we call "side lobes" and "back lobes" and they, as you saw in an earlier report, they can, if the signal is close to the back or to the side of the antenna can be received.

Q. So does it boil down to this, and correct me if I'm wrong, that the antenna say at tower 7 - might I approach, (approached) which you'll see the two blue firm arms of the tower then the dotted line facing in the south-east direction, are you saying that is the direction in which the antennas are focused and intended to pick up?

A. Yes.

Q. But by some technical mechanism, behind the tower up for a certain range anyway, it could have picked up a call from behind the tower?

A. Yeah, correct.”

307 Later there was this further exchange:

“Q. Professor, can I just ask you yet again, in order to activate this theory of yours, your theorem that back lobe characteristics of this tower were such that if Mr Ngo had been in Nuwarra Road at 9.51 and made the phone call it could have been detected in tower 7, you still would want to know a lot more, wouldn't you, about Mr Ngo's movements before you could apply that technological theory to the events of the evening?

A. Again, I'm not trying to show that the phone was at a particular location, I'm in fact trying to show the completely opposite, that because of the complexity of the situation, close to the antenna, and because of many other elements, one cannot be definitive about the location of the phone. “

308 In relation to his opinion that the 9.31pm call could have been received by Mr Ngo in the vicinity of the Club and the statement “Mr Ngo asserts he was in the vicinity of the Mekong Club when he received the call”, Professor Coutts conceded that he was not aware that Mr Ngo had agreed that at 9.31pm he was in the general area of Mr Newman's house albeit not actually in Woods Avenue.

309 A good example of the failure of those communicating with Professor Coutts to give him a proper factual basis for his reports and, if I may say so, of his failure to insist upon that being done, appears in the following extract from the cross-examination by Ms Woodburne:

“Q. You have pointed out probably on more than one occasion you had been told Mr Ngo had always maintained he was never in that sector of the tower?

A. Sure and that was important to frame the alternative scenario.

Q. As we have seen you were given a map that is exhibit 96?

A. Yes.

Q. Which represented that Mr Ngo had on his account not been in that sector?

A. Sure but similarly until we had the discussion today I did not realise or I didn't know the scenario I should have tested was in fact where it was close to the intersection of the two cells which would actually give a more positive. That is what I mean.

Q. That information had not been given to you?

A. No.

Q. Now you had been told, hadn't you, we looked at this email earlier from Mr Breen dated 9 January 2008, that Mr Ngo was seeking to know the statistical possibility?

A. Yes but I told Peter on the 'phone --

PATTEN J: Just wait for the question.

WOODBURNE

Q. From his car 'phone being received from the back of tower 7 from a distance of 500 metres rather than the south eastern sector as indicated on the map?

A. Mm.

Q. And you had also been told in that email, he wanted to know whether the chances would diminish at one kilometre, two kilometres and three kilometres. Now did you take it from that email that Mr Ngo had said he made the call from 500 metres behind or one kilometre, two kilometres or three kilometres?

A. I didn't indicate one way or another.

Q. Whatever the distance was you understood that Mr Ngo had said that he had made the call from behind the tower?

A. That is correct.

Q. Now had you been shown any other document other than that email from Mr Breen in which Mr Ngo stated that he made the call from behind the tower?

A. Not that I recall.

Q. Had you been shown by that stage any transcript of evidence given by Mr Ngo?

A. No, I haven't seen, I don't think I have seen any transcripts.

Q. I am concentrating on this early in the piece before the first report but at that stage, 25 February 2008 did you even know whether Mr Ngo had given evidence?

A. Again I can't remember when I was told he didn't give evidence at the third trial. I don't recall.

Q. At that stage you made, when you think of February 2008 when you made that comment in the email "the defence let them get away with it"?

A. Blood went to my head.

PATTEN J: Just wait for the full question.

WOODBURNE

Q. I take it you did not know what instructions Mr Ngo had given to his defence solicitor or barrister when Mr Wilson was being cross-examined?

A. No.

Q. And you say you didn't know those instructions what they were in any of the trials?

A. No.

Q. Without being privy to those instructions and whatever strategy the defence may have been taking, do you think it is perhaps fair to say you were not really in a position to make an assessment that "the defence let them get away with it"?

A. Again you have to see it in the context of an email as somewhat of a flippant remark, like one has a conversation in a coffee shop. "

310 In my opinion, Professor Coutts' objectivity as an independent expert was severely compromised by supporters of Mr Ngo in communication with him, especially Mr Breen and Ms Le. His reports suggest that among other things they led him to assume that Mr Ngo had been poorly represented at trial and was the victim of a miscarriage of justice. I hasten to add that I exclude from criticism the impeccable conduct of Mr Jackson and counsel instructed by him.

311 However, in the outcome, for the purposes of this Inquiry, in my opinion, nothing really turns on the evidence of Professor Coutts. It is clear from the evidence of Mr Wilson and Professor Coutts that mobile phone records have an extremely limited, if not non-existent, role to play in pinpointing the

whereabouts of a person at a particular time. At most, they may provide an indication of the direction a person is travelling and, in this case, probably did so in relation to the movements of the white Camry in the period immediately after Mr Newman's murder.

312 However, any value in the evidence was obviated by Mr Ngo himself conceding that he was in the white Camry, not far from the murder scene when it was committed, and that thereafter he drove in a south-easterly direction in Heathcote Road as far as Walder Road, a location within, or very close to, the designed ambit of the south east facing cell of tower 7.

313 I accept Professor Coutts' view that it was theoretically possible for a mobile phone call made in Nuwarra Road behind tower 7 to be relayed through the south-eastern cell, but Mr Ngo does not assert that he made the call from that position. In my opinion as already stated, it would have been, on his own evidence, probably impossible for him to have done so.

314 Mr Wilson, the expert relied upon by the Crown at the trials of Mr Ngo, also gave evidence at the Inquiry and took issue with some of Professor Coutts' opinions. In part, his testimony at the trials was factual, albeit informed by his special knowledge and, in part, constituted opinion evidence. As a consequence of being involved from a very early stage in the murder investigation, almost inevitably he became somewhat of a partisan in the Crown case and suffered criticism as a result. Despite this criticism, I have no difficulty in accepting him as a reliable witness and to the very limited extent he is in conflict with Professor Coutts, I would prefer his evidence.

315 As I understand Mr Wilson's evidence, given both at trial and before me, he was never guilty of overstating the usefulness or significance of mobile phone records. He accepted that a call made by a mobile phone in Nuwarra Road behind tower 7 could have been relayed through the south-east facing cell but thought this unlikely. In this respect he is in slight disagreement with Professor Coutts but this does not seem to me to

matter in the light of Mr Ngo's evidence and, indeed, in any event may only be a matter of semantics.

316 Extensive submissions were made by Mr Hastings and Ms Pepper on behalf of Mr Ngo regarding the telecommunications evidence. Mr Wilson was criticised as being "far too close to the Police" but as indicated in the circumstances of the case, I do not regard that as detracting from the force of his evidence.

317 I agree with the submissions in so far as they suggest that the Telstra records had very limited significance but I do not accept the proposition that at trial the evidence was elevated to an unwarranted level of probative value. No doubt it is a matter for judgment upon which minds could differ but, in my view, a fair reading of the Crown Prosecutor's address to the jury does not indicate that he elevated the evidence. Justice Dunford certainly did not. The submission on behalf of Mr Ngo indeed went so far as to contend that the telecommunication evidence should have been rejected on the basis that its probative value was outweighed by the danger of unfair prejudice.

318 However, I reject that contention, first for the reason that the objection could have been, but was not, taken at either trial when Mr Ngo was represented by two different and highly experienced senior counsel, and second because it could have been raised, but was not, in the Court of Criminal Appeal when Mr Ngo was represented by a third highly experienced senior counsel. In my opinion, there was in any event considerable probative value in the evidence, particularly in so far as it was indicative of the direction of travel of the white Camry in the period after the murder, and in other respects I have mentioned. I fail to see how it could be characterised as unfairly prejudicial.

319 Mr Hastings submitted in oral argument that there was procedural unfairness in that if the telecommunication evidence had been rejected, Mr Ngo may never have given evidence. This, of course, is pure speculation

but does not seem to me a relevant matter for my consideration. Mr Ngo did in fact give evidence and I can hardly ignore it.

320 In relation to the first issue set forth in paragraph 17, having had the benefit of further evidence from Mr Wilson and the evidence of Professor Coutts, I conclude that the mobile telephone records did not evidence the whereabouts of the caller at a particular time but did, in combination, tend to reveal a direction of travel. In no respect were those records inconsistent with the Crown case and in some respects, as I have indicated, tended to support it. More significantly, in my opinion, nothing in the telecommunications evidence when considered in the light of Mr Ngo's own evidence raised any doubt as to his guilt.

#### **ALBERT RANSE**

321 Ms Marion Le, a long time friend and supporter of Mr Ngo, asserts that on 9 April 1998, a Mr Albert Ranse confessed to her that he was the murderer of Mr Newman and also told her that he acted alone; that he fired three gun shots; and that he drove a white Mitsubishi Magna to the murder scene, which he later destroyed by fire.

322 On 21 and 22 February 1999, she secretly recorded some hours of conversation between herself and Mr Ranse while they were travelling together in a car driven by Ms Le. Ms Le makes no secret of the fact that during the conversation she sought to induce Mr Ranse to repeat and be recorded as repeating the alleged confession made nearly a year previously.

323 The video and audiotapes recorded by Ms Le eventually came to the notice of police and, as a consequence, she was interviewed by the then Detective Inspector Nick Kaldas (Mr Kaldas) and Detective Cook at Strawberry Hills Police Station on 18 March 1999.

324 To those police officers, Ms Le elaborated upon the confession she said was made to her. It allegedly occurred a day after Mr T's arrest and followed his bail application to the Supreme Court, which both she and Mr Ranse attended. After they returned to Cabramatta, Mr Ranse, by telephone, told her that he wanted to talk to her privately. They arranged to meet at a nearby Leagues Club and while walking up the stairs from the car park, according to Ms Le in the record of interview:

“When we got to the landing he suddenly turned around and he said to me, words to the effect that, you know Marion you should not get so upset about this I am telling you there was only one person who um committed that crime, he, it's bizarre what they are saying about all those cars there was only one car, it was a white Mitsubishi, it was one person involved, there was only three gunshots, the person was wearing a leather jacket. And I said how do you know, how do you know this and he said Marion can't you hear what I am telling you I hated that bastard, I hated him for what he did to my son. I was not prepared to let him get away with it. He deserved to die, I do not feel any regret at all but I hate to see what it's doing to you and to the other people. He put my son away for a long time and he deserved it, I told him I'd kill him and I killed him. I just stood there and I was completely overwhelmed by the emotion and I actually put my arms around him.

.....

And hugged him and he said, I said why are you telling me this and he said well I suppose in a way I want someone to tell me it's alright. And I said well it's not alright but what did you do, how did and so then he said that it was his white Mitsubishi that he burnt it in Lansvale a month afterwards and he said and even he sort of laughed, he said actually I even managed to get the insurance on it. I put that in my head, I went back and I wrote down the notes, I was completely flummoxed, we were there for twenty minutes, about twenty minutes and my notes say white Mitsubishi, leather jacket, one person involved, burnt the white Mitsubishi at Lansvale a month afterwards made an insurance claim. He said that his wife was aware of it, well she knew about it, she warned him not to tell me, he said that he parked around the corner and when he saw Newman's car coming he went around and then he gave me the details of what he did but he also said that he parked

there many times over several weeks or several days. I've got down weeks, waiting for the right time and he laughed and said, the amazing thing was I sat in the court on the day that [Mr and Mrs L] gave evidence and they even thought that Phuong Ngo was me.

.....

Anyway that is exactly what he told me. He said that the gun, he said what you have to remember about this is they do not have a gun and I said well where is the gun, he said I'm not that stupid I'm not going to even, Marion I'm telling you this once, I will never say it again, I will never open my mouth and repeat what I'm telling you now, you will never be able to use it against me because it will be your word against mine and they're not going to believe you but I need you to know the truth. I did that bastard as I had told him I would and I know where the gun is. The jacket I can take you and show you, I think he said I can take you and show you the jacket now and in my mind I have a recollection that I thought it was hanging in a wardrobe or something but he actually clearly said it was a leather jacket. Now he always all the time I've ever known him he's worn those kind of leather jackets.

.....

He told me that he waited around the corner and as he saw Newman coming down the road towards them he waited until he got around, the lights went on, then he came around the corner, drove in behind him, right behind, the car went right behind, then he said he got up out of the door and he stood and he showed me, he stood and he said I looked at the bastard and I shot him twice, he said she, the bitch, now these are his words, I mean, you know.

.....

The bitch was screaming so fucking loudly, I thought I'll do you too you bitch but he said as he turned the gun and he looked at her and he thought I never hurt a woman yet or you know he's just thought I'll let her be and he deflected the third shot away from her and then he said he got in the car and he skidded off went around the corner and off. Then he said, I said what did you do and he said well I didn't go straight home I went back and then I don't remember where he said he went it was some bar or something.

.....

And I think he was there ..... I don't remember this part very clearly because in my mind I was reeling under what he was telling me. I didn't know whether he was telling me the truth, I, all I was getting in my head was, I must remember the insurance claim. I must remember he knows where the gun is and the other thing was the fact that the leather jacket and the car came in behind. And I said but there was a green car, he said there was no fucking green car, I'm telling you it was a white car, it was my car. Now I don't even know to this day whether he had a white Mitsubishi at that time, I have no idea, I mean that's what I'm thinking.

.....

He said that he'd staked it out over a few days or I've written down weeks here but it might have been days because which I wrote this I was, I was completely thrown. Like this is a person that I have known for a long time so, and I have (...ind...)

.....

I wrote down weeks but I know he said he staked it on the Saturday night because he knew that Newman was going to the Serbian and he thought he'd be able to throw blame on the Serbs and the Croats, I mean he thought that's what they would think."

325 Police led by Mr Kaldas investigated the alleged confession. Mr Ranse was interviewed three times and in addition made three statements, although, in part, the interviews and statements were concerned with the proposed prosecution of Ms Le for offences under the Listening Devices Act. Inquiries were also made as to whether he had owned a white Mitsubishi motor vehicle. Ultimately, Mr Kaldas produced a report dated 21 March 2000 in which he concluded that there was no substance to any suggestion that Mr Ranse killed Mr Newman. I will need to make further reference to all these matters.

326 The first record of interview between Mr Kaldas and Mr Ranse (Detective Sergeant Greig Newbery also present) took place at Cabramatta Police Station on 23 March 1999. Mr Ranse said that he was born on 6 August 1949 and agreed that he had, at the request of the police, watched and listened to the tapes, produced by Ms Le.

327 The record of interview proceeds:

“Q18 Mr Ranse, as I explained to you just prior to the interview, we’ve received an allegation accompanied by this material that you’ve had the opportunity to view the first part of – I appreciate you haven’t seen the whole lot – the allegation is that you have actually informed at least one person, Miss Marion Le, that you were involved in the murder of John Newman; would you agree that’s what I explained to you before we started?

A. Yes, that what you .....

Q19 Yeah. Now you agree you also said to me that that is not true and that it was simply talk between yourself and Miss Le?

A. That’s right.

Q20 Okay. Well, perhaps if you can just start at the beginning for me and outline for me, to the best of your memory, as far as you can remember, the various times you’ve discussed this matter with Miss Le and then we’ll get on to the last occasion?

A. The tape, yeah.

Q21 Yes.

A. Well, every time the case came up that had been the Supreme – at the inquest or the other hearings; I believe a bail application and the – what was the one before that, the one on (ind) to find out the charges ...

Q22 It was the committal hearing.

A. The committal hearing. Yes, Marion and I used to – Marion used to come up to Sydney and we used to go out and drink very heavily – we’re both very heavy drinkers – and during that time I guess I may have at certain times suggested that to Marion.

Q23 Right. So, you agree that is what you said to her?

A. Yeah, I could have, yeah.

Q24 Okay.

A. I do.

Q25 Okay. How many occasions do you think you may have discussed this matter with her?

A. Oh dear. It’s very hard to say because every time came up and we got on the grog and I suppose it was the, you know, the talking point with her – at the end of the night anyway we used to – we used to talk ,, (ind) ... I suppose fantasise whatever under alcohol but ...

.....  
Q27 Now just getting to the occasion where this tape was created, I've been informed that it was the 21<sup>st</sup> and 22<sup>nd</sup> February this year, about a month ago roughly; can you just tell me how you came to be with Miss Le on that occasion?

A. Oh right. I just had a split up with my wife and I'd stayed in town for two or three days. I was drinking very heavy, Phuong's case came up for bail appli – we got there late actually – then after that we decided to go out and get drunk, I suppose get on the grog, which was quite common, Marion and I, and at the time I was having a lot of troubles with my wife, I was, I was actually thinking about splitting from my wife so Marion – and I'd expressed this to Marion and she was quite – and she'd known about this for a couple of days, I'd been talking to Marion for a few days before this because I couldn't sleep and I guess that I'd been awake for about three days ...(ind)..... even for a couple of days (ind) certainly non compos mentis as far as the brain's gone and, you know. But actually after that you – while the taping was going on, all I wanted to do was that morning was to go in and get on the grog as Marion's here, go drinking.

Q28 Right.

A. Then she raised certain things in the car which I thought was quite strange because all I wanted to do was get on the grog.

Q29 Right.

A. And Marion and I often talked and I suppose under alcohol fantasised about things like the Newman case, her nephew's case.....

Q30 Right.

A. ....things like that and so it was of no surprise, I suppose, that she raised it and it was also of no surprise that I answered being like that. But yeah, but there was nothing, absolutely nothing that (ind) that thing that I've never done to Newman. (ind) the other day, things had just – a lot of coincidences, that's all, that sort of thing.

Q31 Right. So I'll just make sure I've got it clear; you're saying that what – even though you may have told Marion Le that you did commit the murder on John Newman, you're saying that's definitely not the case?

A. It's not the case, no.

Q32 Did you have an involvement in the murder of John Newman?

A. I certainly did not.

Q33 Did you have any knowledge as to who actually killed

...

A. No.

Q34 John Newman?

A. Certainly not."

328 In the record of interview, Mr Ranse was also questioned about his ownership as at September 1994 of a white Mitsubishi. He said that he had previously owned such a vehicle but it had been stolen and found burnt out some months before September 1994 and he had received an insurance payout.

329 In relation to a murder weapon, there were these questions and answers:

"Q54 Right. I've also been informed that you stated that you knew or you had possession of the gun that was used to murder John Newman and that the police would never find it. Is that - would you care to tell me anything about that?

A. That was – that was fantasising fuckin' conversation. I don't think I ever actually mentioned the gun but she kept trying to get me that day to say and I kept remember – she kept saying to me, "Where did you put the effing gun", and I kept thinking to myself, I wonder what I'm going to say now, so I got out of the car and I walked over and then I'd come back and I said, "I'm sick, I'm sick, I want to go", and she kept saying to me, "Where did you put – help me out on this" and I kept saying – oh, every time she said that I said, "Oh, I've got to go", and basically I was just stalling because I didn't – I had no answers for her, of course.

Q55 Okay. But do you have any knowledge about anything .....

A. No.

Q56 ...to do with the murder weapon?

A. No. I did not."

330 Questioned at the interview about his whereabouts on the night of the murder, Mr Ranse was vague and, in effect, said that he could not remember. He conceded he disliked Mr Newman, "John and I used to have flaming rows ..... just an inter Labor Party thing".

- 331 Mr Ranse's statement to police of 14 April 1999 focussed on the proposed prosecution of Ms Marion Le for alleged breaches of the Listening Devices Act. Nothing in the statement adds anything to the purposes of my Inquiry.
- 332 His second statement of 27 May 1999 virtually exclusively dealt with events leading up to the recording of the car conversations with Ms Le. Again it has no bearing on this Inquiry.
- 333 The second record of interview took place on 28 May 1999 at a location unrevealed in the record, although established by other evidence as Parramatta Police Station. Again the interviewer was Mr Kaldas. This time Mr McNab was present.
- 334 During the course of the interview, Mr Ranse identified documents produced to him as relating to the white Mitsubishi registration PZJ 215, which had been stolen and burnt some months before September 1994.
- 335 In this interview, Mr Ranse was further questioned about his movements on the day and night of the murder of Mr Newman. His memory, it seems, having been refreshed by his wife, he was able to say that during the day they had conducted house to house interviews for the McNair Anderson Organisation, which, because he did not have a car, all took place within walking distance of his home at Cabramatta. They had then gone to the Cabramatta RSL and upon their return, Mr Ranse had "gone to sleep because I'd drunk a bit". He said his wife visited a friend next door but returned during the night to tell him she had heard news of Mr Newman's death.
- 336 The third record of interview with Mr Ranse took place at Cabramatta Police Station on 23 June 1999. Mr Kaldas was the interviewer and again Mr McNab was present. Mr Kaldas referred in the record to the previous interview at Parramatta on 28 May 1999. Mr Ranse reiterated that he had nothing to do with Mr Newman's murder. He also reiterated that he did not

own a car at the time and did not acquire one until some time later when he bought a white Barina.

337 Mr Kaldas in his report made reference to documentation including police records, which established that a white Mitsubishi Magna actually registered to Mr Ranse's wife, America, was found in a burnt out state on 12 April 1994. Mr Kaldas also referred to insurance documents which revealed that the vehicle was declared a total loss. He was critical of the part played by Ms Le, noting that between 15 March 1998 and 28 November 1999, she had visited Mr Ngo in jail on 56 occasions.

338 Mr Kaldas' conclusion contained these paragraphs:

"As stated previously there is no evidence that Albert Ranse confessed to Marion Le that he killed Newman, apart from her allegation that this occurred.

Further, her role in this whole affair, her relationship with the defendants, and her pattern of behaviour must be considered when her veracity is weighed up.

In essence, the five critical elements of the alleged confession from Ranse are:

1. That he acted alone; there was no second car, let alone a green one.
2. That he used his white Mitsubishi and later burned it for insurance at Lansvale a month after the murder.
3. That he wore a leather bomber style jacket.
4. That he still had the gun which police would never find.
5. That the motive for the murder was that Ranse had made inquiries and ascertained that Newman had caused his son's case to be reviewed and the sentence increased.

Even if Ranse did say these things to Ms Le, each of them is clearly not possible.

1. For that to be true, numerous witnesses, including Lucy Wang, the only eyewitness, would have to be completely wrong, not only about the car, but the fact the shooter did not go around to the driver's side. The various nearby residents (who are too numerous to mention) who saw the second car would all have to

not only been making a mistake, but all are making exactly the same mistake. Firstly about the make and model of the white car, then about the existence of the second car.

2. Albert Ranse did own a white Mitsubishi which was burnt out at Lansvale. However, it was stolen and burnt out some 5 months prior to the murder of Newman.
3. Again, Lucy Wang has stated that the murderer was wearing an army style jacket, and identified one from a shop. One of the accused owned such a jacket, and gunpowder residue consistent with the ammunition used in the murder was found on it.
4. In view of the weapon located in the Georges River, the circumstantial evidence of the accused being in that vicinity (as per mobile phone record), and the result of the examination of the weapon by German experts, this matter also does not need answering. Suffice to say there is a strong denial from Ranse that he ever said that, and Ms Le does not ever bring it up with him in the recorded material. There is only her word that it was ever spoken.
5. Ranse has denied that he thought Newman had made written submissions, but felt he sometimes made phone calls to various people to get his way. An examination of the file held by the office of the DPP in relation to this matter revealed that no representation was made by anyone, certainly none by Newman.”

339 Both Mr Ranse and Mrs Ranse gave evidence in the Crown case at the second trial but neither was called at the third trial. Mr Ranse did little more than repeat what he had said in his police records of interview.

340 Mrs Ranse did, however, give a different version of their movements on the day of Mr Newman’s murder in that, according to her, they were at home painting a flat in which her sister would stay during a forthcoming visit to Australia. She confirmed that on the night of the murder, Mr Ranse, who had been drinking beer during the day and into the evening, fell asleep on the lounge. While he slept, she left to visit a friend on the

same floor in the same block of apartments. He was still asleep when she returned and put him to bed.

341 Mrs Ranse testified to the theft and burning of their white Mitsubishi Magna months before the murder and said that they did not acquire another vehicle until mid to late September 1994 when a Holden Barina was purchased.

342 She agreed that in the days before the recorded conversations of 21 and 22 February 1999, there were strains in the marriage, partly due to her husband's excessive consumption of alcohol, and that on Saturday 20 February they had "a big argument". He left for work and did not return home until the following Monday.

343 She told Mr Walker that it was not until 23 March 2000 that she was asked to recall her movements on 5 September 1994 and that she had no diary to assist her.

344 Mr Kaldas, at the second trial, was questioned upon the Ranse matter and expanded upon the reasons for his rejection of Mr Ranse as a suspect in the murder. I do not need to dwell on this. There was, however, an exchange with Mr Walker which directly relates to an issue before me:

"Q. Two records of interview between you and Mr Ranse is that correct?

A. Yes.

Q. And also – I may have misled you there – were there three records of interview between you and Mr Ranse, is that right?

A. No there was two.

Q. And there was also another document in the nature of a document explained to you but not prepared for your assistance by Mr Ranse, is that correct?

A That's correct.

Q. They span from mid March to the end of May 1999, is that correct?

A. Yes.”

345 Ms Le’s evidence to the Inquiry did not add anything of relevance not already before the Inquiry. She was, however, given an opportunity to explain her diary records, which became Ex 70.

346 Towards the foot of a whole diary page for 9 April 1998 amongst other writings are:

“Albert -- very drunk and I → Leagues Club – 20 mins

Albert – white Mitsubishi – leather jacket - one person involved

↑burnt Lansvale month after - insurance claim

Parked around the corner - America aware/knows.

Pulled into the drive

Parked there many times over several weeks -

Waiting for the right time.”

347 Ms Le claimed that the above entries, which appear to have been made with a variety of pens, were written reasonably contemporaneously and support her evidence as to the admissions made by Mr Ranse. This proposition seems rather doubtful to me in light of her evidence to Ms Woodburne:

Q. I think I can leave that with you for the moment (retreated). Could it be that the entry written by you, that is the entry which appears to specifically pertain to the alleged confession is in fact an entry that was written not on the one occasion but on a number of occasions?

A. I think if you looked at the diary in its totality you can see that quite often I am changing pens on the same page, depending on, you know, which pen is there and sometimes there are several on my desk. So that is very common from the diary that I use one pen here and this one is the same, page after page, so, I cannot - I recall when I wrote them, except for the one that is at the bottom where it says that you know - well the two entries, which read very drunk and parked there many times over several weeks waiting for the right time, my recollection of that - my reconstruction of that is that those entries, those two were possibly recorded after the visit by America and Albert to Canberra which is recorded later somewhere in my diary, that they came to

Canberra, sorry here - 28th of April, and it looks to me like it is the same pen so my recollection is probably correct, that, on that day when they came he added - told me some other information and I've written it on that page. My recollection is that I went back to that to look at the earlier one afterwards and then, where I wrote parked around the corner I added the extra because, that information, I recall when speaking to me on the 28th of April that he had in fact also told me that on the 9th of April. So I used the same pen, if you want to have a look, it is in fact the same pen, so I would think that my recollection of that is correct, but the rest of it, so, when I say the very drunk and the parked there many times were added after that meeting with him on the 28th of April.

Q. I see, so-

A. And in fact it is as I say the same pen.

Q. So, from what you are saying, that, there are entries in your diary appearing on a certain day which in fact weren't made on the day attributed at the top of the page?

A. Well only, I would say, on that particular one.

Q. The explanation you have given us does not account for the use of the texta pen, the texta black pen for example for the words, "Pulled into the drive" which appears between the blue pen and the black biro, with the words "parked there many times" which you've given an explanation about; do you see that?

A. I don't know what that is but I don't think that's that pen, it doesn't look like that at all.

Q. Doesn't it have the same appearance as the darker texta pen above in the other entries?

A. I don't think that pen, sorry, I'm not trying to be difficult, I agree it's a different pen but I don't think it's the same as that so it looks like I've used four or five different pens. I don't have any recollection of - the only thing I can possibly think about that one is that I remember going back to the unit and lying in the bed and thinking to myself oh my God, what am I going to do about this? And as I lay there, I wrote, you know, I wrote this out when I got out and then I can remember just lying there with my head totally spinning and it is very possible that I picked up yet another pen, because again if you look in my bag you'll see I have literally numbers of pens in my bag and I picked up one and probably wrote that because if anyone has ever told you he's committed a murder, which I presume no one has but, to me-- "

348 Somewhat surprisingly, Ms Le, according to her testimony, did not tell Mr Ngo of the alleged confession for nearly a year, not long before her first interview with police on the subject and after she had recorded her car conversations with Mr Ranse.

349 However, Ms Le told Ms Woodburne that she did, at the end of July 1998, tell Mr Warren Nicholl, an ACT Magistrate, Mr Michael Lee (Mr Ngo's then solicitor) and Mr Jackson, then acting for Mr Dao, of the alleged confession.

350 The recordings of the car conversations between Ms Le and Mr Ranse on 21 and 22 February 1999 were in part played to the Inquiry and transcripts were tendered. The recordings occupy in all about 5 hours. It is clear from them that Mr Ranse frequently complained of being tired to the point of exhaustion and was emotionally upset as a consequence of his marital problems. At times Ms Le badgered him for the admissions she was seeking but, to my mind, without success, although it does appear that on occasions he did not take the opportunity to deny unequivocally matters she put to him. A good example is the extract hereunder taken from tape 6 on 22 February 1999:

“ML Just walk through it like you did with Cheung when you told you Cheung, think, think, think, think, think.

AR If I knew I could ..... I really do have a splitting headache.

ML But Albert I've got a splitting headache I've got a splitting headache.

AR Listen though but I've been .....

ML .....because I've you know ..... you've got a splitting headache, for god's sake you've told me this information, what do you want me to do? That's ..... you know I'm (ind) I guess I'm sick of feeling sorry for everybody else's splitting headache.

AR But I mean you weren't to feel sorry for me splitting headaches I've got a fucking .....

ML Well just tell me.

AR .....splitting headache I don't remember much about what happened I was, I was ..... I just remember much about .....its like I don't remember much about what happened with America, I don't remember it . I just .....

ML Well what do you remember because when you told me before you did remember.

AR Yeah I remember.

ML right so what do you remember just tell me what you remember. What did you do?

AR What time are you talking about? What, what's I ....

ML Oh that's what I'm asking you Albert.

AR I'm asking you but I can't remember (ind).

ML You're saying, I don't know I don't know what time I'm asking you to give me the time then I can place Phuong. You have to remember and what about the green car did you see a green car?

AR No.

ML No green car?

AR No

ML Just one car.

AR Just one car.

ML Who's car, your car?

AR My car that I burnt.

ML Alright so you burnt your car.

AR Mm

ML You didn't see any green car?

AR No.

ML Right now go through it again. If you've got .... Just remember the time for me Albert, what did you do, where were you first, you went there, tell me the times. I just want the times.

AR I can't remember I was, I was right out of it, I was, I don't remember ....

ML Alright so what do you remember, you remember what? John Newman home.

AR I really have a headache.

ML I have a headache but Albert please.

AR Marion I've had three days fucken not sleeping you know and I'm .....

ML I know but please tell me Albert please I .....

AR ..... going off me head."

351 Mr Peter Jackson, Mr Michael Lee, Mr Kaldas, Mr Bret Walker SC and Mr Peter Pearsall, all gave evidence to the Inquiry regarding the alleged confession. Mr Jackson said that Ms Le told him, on an occasion the date of which he could not recall, that Mr Ranse had confessed to her that he murdered Mr Newman. He told her that this was a very serious matter and that she should seek advice from a senior criminal law barrister.

352 According to Mr Jackson, Ms Le told him that she had already spoken to Mr Lee on the subject of Mr Ranse's alleged confession. He denied that Ms Le told him that she did not trust Mr Lee.

353 Mr Lee, now a barrister, but in 1999 a partner in Corrs Chambers Westgarth Solicitors, said that he acted for Mr Ngo in both the first trial and the second trial and in the committal proceedings. He worked as "co-counsel" with Mr Walker, with whom he said he thought he had a close professional relationship. He said that anything significant which came to his notice regarding the case was discussed with Mr Walker.

354 His recollection was that he was unaware of Ms Le's allegations concerning Mr Ranse until he learned of the recorded conversations in the first part of 1999. He did, however, remember that sometime earlier Ms Le told him there was "something big and important" without disclosing what it was. She had added that she did not know whether she could trust him or Mr Walker. Mr Lee's response was to the effect that if it was important she should speak to somebody about it. He did not regard himself as her lawyer.

355 Mr Kaldas said that when he interviewed Ms Le on 18 March 1999, he formed the opinion that she herself was uncertain as to whether the confession of Mr Ranse, which she related to him, was genuine. However, as stated earlier, he interviewed Mr Ranse on 3 occasions, received 2 statements from him and made other enquiries before making a report. As a result of what Mr Kaldas described as an "oversight", his report, whilst referring to the interview of 28 May 1999 and, very briefly, its contents, did not annex a copy of the record. On the other hand copies of the records of interview respectively dated 23 March 1999 and 23 June 1999 were annexed and there was a brief reference to the contents of the former in the body of the report.

356 Examined by his counsel, Mr Bodor, at the Inquiry, Mr Kaldas explained his method of interviewing Mr Ranse:

"We are obliged to tell someone the allegation against them before we interview them. We are obliged to afford them the opportunity if they would like someone to assist them like a lawyer, normally we try to help them with that as well. The allegation was that I forewarned Mr Ranse ahead of time what the allegation against him was and that I gave him time to prepare himself before he was interviewed. Neither of those allegations were true. What we did was follow protocol, which was to go to his house, we told him we wanted to speak to him and we asked him to come with us. He wasn't arrested. He was asked to come with us so we could speak to him, and we had to tell him what it was that we were going to talk to him about. It wasn't a gap of two or three or four hours to give him time to form his thoughts or

lies of whatever it was alleged. He was simply taken from his home straight to the Police Station at Cabramatta and he was interviewed on video. There was no nudge or wink or anything else during the interview. In fact all three interviews with Mr Ranse were recorded on video and audio. So I reject the allegation that we somehow broke the rules by forewarning him and giving him time to go and prepare himself.”

357 Questioned by Mr Bodor as to why he rejected Mr Ranse as a suspect in the murder there was this exchange:

“Q. Now all the information that you had pointed to the fact that there was involved in the matter three people, is that correct?

A. Yes.

Q. That is, there was a driver?

A. At least. There had to be three, there could have been six involved, sorry, I interrupted you.

Q. You at least had a driver?

A. Yes.

Q. You at least had a shooter?

A. Yes.

Q. Who got into the passenger seat of the car?

A. Yes.

Q. Was that the green or the white car?

A. The green car.

Q. And you at least had a driver of the second car?

A. At least.

Q. The Ranse so-called confession that was supplied to you by Marion Le included how many people involved in the offence?

A. In that view he was the only one involved and for that to be correct not only did a whole range of witnesses have to be wrong but they had to have made the same mistake which was to think that there was one car instead of two.

Q. Now there was a theory floated that some witnesses only saw one car whereas some saw two?

A. Yes.

Q. A number of witnesses I think 3 or so claimed to have seen two cars?

A. Yes.

Q. Other witnesses claimed to have seen one car or the other, but one car?

A. Yes. There were quite a number of witness who say they saw the green Ford, there were quite a number of witnesses who say they saw the white Camry. There are other witnesses who say they saw two cars. So for that theory to be correct that Mr Ranse, according to his alleged confession to Ms Le, acted alone in a white car on his own, somewhere around 15-20 witnesses would have had to have been completely mistaken, and that is the context in which we had to look at the evidence of his confession.

Q. You were an investigator for how many years at the time of this investigation?

A. Somewhere around 10 years.

Q. And had you been involved in investigating cases which commonly called circumstantial cases during that 10 years?

A. Yes.

Q. And what was your view in collecting information of circumstantial cases?

A. You have to look at the totality of the evidence and not single out one aspect of it and say, if this aspect is not right, then the rest of it must fall. With this case we had to look at to the totality of the evidence, which is the witnesses that see the car and the fact that the car actually matched the vehicles that were under the control of the suspects in this matter. We looked at the Telstra evidence, which was ultimately corroborated by Mr Ngo in his evidence in the second trial. We looked at the evidence in relation to soliciting to murder, three different groups, we looked at the evidence of purchasing or attempting to purchase weapons and there were other bits of evidence as well, and for the theory in relation to Mr Ranse to be correct, all of that evidence would have to be discounted. So the body of evidence that pointed to the suspects that were ultimately charged is quite significant. The body of evidence in relation to Mr Ranse consisted of an alleged confession that he allegedly gave to Ms Le for which there were no contemporaneous notes and the circumstances of which are in fact contradicted by the facts we know.

Q. That alleged confession, do you recall sitting there now, whether that was provided or allegedly provided before or after bail application by Mr Ngo?

A. There was no mention made in an affidavit that Ms Le made in support of his bail application in the Supreme Court. Nor was there any mention made of alternative suspects let alone Mr Ranse in the bail application for Mr Ngo.

Q. And is it your understanding that that bail application took place before or after the supposed confession by Ranse to police?

A. After the confession.

Q. It was in fact a matter of weeks?

A. Yes.

Q. And that is when Mr Walker appeared at the bail application?

A. He did.

Q. And cross-examined you at length?

A. Yes.

Q. And the strength of the Crown case was one of the considerations before the Bail Judge?

A. Yes, as it always is.

Q. Did you ever have a conversation with Marion Le saying that the case had been confused by virtue of the Ranse confession?

A. No I don't recall ever saying that.

Q. Did you ever hear of such a suggestion before today?

A. No."

358 It is apparent from what I have said that Mr Kaldas conducted three interviews with Mr Ranse and gave evidence at the second trial of Mr Ngo that there were only two. That there may have been a sinister motive for this was raised by Mr Selby in his submission to the Chief Justice and Mr Kaldas was questioned upon the subject when he gave evidence at the Inquiry. There was this exchange with Mr Colefax:

"Q. So there Mr Walker was suggesting to you that there were there were in fact possibly three records of interview?

A. Yes.

Q. Between you and Mr Ranse?

A. Yes.

Q. And it was you who had conducted the three records of interview?

A. Yes.

Q. And you had prepared yourself for giving evidence by refreshing your memory about the report?

A. Yes.

Q. Would that refreshment of your memory have also involved re-reading the records of interview?

A. It could have. But I don't recall doing that.

Q. Are you able to - and you know why I am asking the question Mr Kaldas?

A. Of course.

Q. It's the subject of a serious allegation that has been made. Are you able to tell his Honour why it is, or how it came about that when you gave sworn evidence to the Supreme Court, you did not refer to the fact that there were three records of interview?

A. All I can say is I was clearly mistaken. I think Mr Walker was clearly right. And just to put that into context--

Q. Yes?

A. I obviously hadn't prepared myself on that as any near where as what I should have. Additionally there were two other issues that are very relevant: One is that I actually discussed the contents of the second interview during the third interview, and I declared a date and some of the contents of it, and in my report to the DPP I clearly outlined that there was a second interview, and clearly outlined the date 28 May. So I'm well aware of the allegations that has been made, that there was a deliberate attempt by me or others to hold back the interview. Had we wanted to do so we certainly wouldn't have mentioned it in the third interview, and would not have mentioned it in a report to the DPP. I really can't take it any further than that, apart from what that it's a mistake on this occasion and the Court. "

359 In an affidavit sworn 16 October 2008, Ms Monica Millward, a solicitor employed by the Director of Public Prosecutions, attested that a copy of the record of interview dated 28 May 1999 was not part of the archived material in her office relating to the trial of Mr Ngo. Nor did an express reference to it appear in a letter to Mr Dinh's solicitor dated 29 March 2000, recording the documents served upon his co-accused, although it

might be recorded that the letter did refer to Mr Kaldas' report of 21 March 2000.

360 Mr Walker told the Inquiry that he cannot recall whether at the second trial he had copies of three records of interview between police and Mr Ranse or only two. Reconstructing from the transcript of evidence given at the second trial by Mr Kaldas extracted above in paragraph 344, Mr Walker said that he had probably seen the internal references to there being three interviews. He added, however, that if he had three records of interview and Mr Kaldas had twice sworn there were only two, he would have pursued him on the subject in cross-examination.

361 As to the forensic purpose, so far as Mr Walker was concerned, of pursuing the Ranse matter, there was this exchange with Mr Colefax:

“Q. Now Mr Walker, returning to the topic that we are about to discuss, you mentioned the forensic purpose of pursuing the Ranse issue. Can you tell his Honour how it was that the Ranse issue first of all came to be agitated in the second trial by the Crown?

A. I should preface it with two general statements. The first is, again, depending almost entirely on reconstruction but in this case I do have a broad impressionistic recollection of this aspect of the second trial. And in answer to your question, it very much related to the long running differences between the Crown and the Defence about the extent and nature of disclosure, that was a history. The Ranse episode was to put it mildly complicated by the problematic lawfulness of the recording, apparently covert recording of Mr Ranse, which was I think as you can see from the records of interview the main basis of the police investigation. I gather from the transcripts that you have shown me that there was some dealing between Mark Tedeschi and me in relation to splitting the case or not. I have tried but I cannot recapture all of that, I'm afraid, however, I have no doubt, sitting here now, and not trying to put myself back in the position then, because I think that would be impossible for me, I've no doubt, or I hope that I would have seen it as preferable for me to be able to ask Mr Kaldas in particular some questions about this during the Crown case. But I can't recapture how it was that it fell out in the sequence of the trial. That I think is an answer to that question.

.....  
Q. Were you seeking to prove that Mr Ranse was the murderer of Mr Newman?

A. No, that strikes me as Quixotic and forensically suicidal, no I did not.

Q. What was the forensic purpose of your cross-examination both of Mr Kaldas and of Mr Ranse?

A. Well concentrating first on Mr Kaldas, it was that the police had failed adequately to follow-up something which was sufficiently serious to require following up, that is, to expand the possibility of showing the jury that my client had been the subject of an investigation resulting in the prosecution which as it were assumed its own conclusion without sufficient care to explore contrary possibilities. So it was the unexcluded possibility, and the lack of exclusion was by reference to the lack of rigour in the following up of the various possibilities. The various possibilities for corroboration or not -- contradiction or not, of Mr Ranse's recorded confession.

Q. Alleged confession?

A. It would appear the police investigation proceeded on the basis that he had confessed. The only question was whether it was in a class of confessing to be an accomplice of Ned Kelly or a genuine confession from him.

Q. And the forensic purpose of the cross-examination of Mr Ranse was what?

A. Look, doing the best I can I am bound to say I think it is because he was put in the box and I had to do something. I mean, I think if I had my druthers Mr Ranse would not have been called, but we don't have your druthers.

Q. You have now seen that second record of interview in recent days, assuming that you didn't have it, when you were conducting the second trial would you have conducted the cross-examination of Mr Kaldas or Mr Ranse differently?

A. Look I really don't know. I cannot point to any differences at any parts of the transcript that does exist but I suppose that is a false basis from which to answer your question because if the brief was different maybe the approach would have been different to either or both of those witnesses. I don't know.

Q. You told his Honour about the forensic purpose of the cross-examination of Mr Kaldas, does the so-called missing record of interview affect what you would have done in respect of that forensic purpose?

A. Well, at the high level of abstraction that I was talking about earlier, that is, seeking to provide substantiation for an un-excluded possibility, to be added to many other things in the case obviously, that at that high level of abstraction, no, the aim was the same. The question however - your question could also be understood with my method of trying to achieve that aim may have altered, I don't know. "

362 In cross-examination, Ms Woodburne put to Mr Walker, after excluding other documents in his possession as a possible source, that the record of interview dated 28 May 1999 available to him, could have been the only source of him putting to Mr Ranse at the second trial that his alibi for the night of the murder was that he was "drunk on the sofa at home". There was then this question and answer:

"Q. So this suggests very strongly to you, doesn't it, that indeed, you had this document in your possession at the time that you asked the drunk on the sofa question of Detective Superintendent Kaldas?

A. Reconstructing and having no other documents apart from those we have been through, yes it does, but that is reconstructed. "

363 Mr Hastings, in cross-examination of Mr Walker, referred to the reference in the interview of 28 May 1999 by Mr Ranse to the fact that his wife had kept a diary, which recorded his movements on the day of 5 September 1994. Mr Walker agreed that if he had been aware of this it would have produced ammunition for cross-examination of Mr Ranse and particularly of Mr Kaldas.

364 Mr Pearsall said that he was almost certain that in the third trial the Defence had only two records of interview between the police and Mr Ranse. He agreed that the reference in the interview of 23 June to a previous interview on 28 May might have put him on notice that there were three interviews, but on the other hand there was the evidence of Mr Kaldas at the second trial that there were only two.

365 He agreed with Mr Colefax that a forensic decision was taken at the third trial not to pursue the Ranse issue:

“Q. Would you tell his Honour what the combination of reasons was?

A. Certainly. I suppose in any case where - one's hesitant to try and run an alternative hypothesis to show that, well that my client couldn't have shot the person or been responsible for it, it was some other person. But that can be run. Sometimes a hesitancy in doing so. But in this case there was - there was at the time a consideration by the defence that Lucy Wang may have been involved in the matter. I can't recall the exact nature of how that was presented at the time. No doubt examination of the transcript of Mr Nicholson's cross-examination, or the questions he sought to ask would shed more light on that. That was something we were considering at the time as an alternative hypothesis. So I suppose as a general proposition you don't want to be inviting the jury to too many alternative hypotheses.

The overarching reason why I was disinclined to pursue the idea that Mr Ranse might have been responsible was that we concluded that to effectively do so would mean calling Marion Le. Now at the end of the day our concern was that even if Marion was accepted, and I've always regarded her as an honest witness, even if she was accepted, the most we would get would be a position where the jury thought well, it might be possible that Ranse said these things, but the difficulty would remain that Ranse's details of his involvement, appeared to be pretty much, in all relevant respects, inconsistent with what could be shown to be the real circumstances of the shooting. “

366 Asked whether if he had been in possession of the 28 May 1999 record of interview there would have been a different approach, he replied:

“Prima facie I say it probably wouldn't have, but the other point of course is that on the material that we had prior to that, the Ranse account was much more consistent. The middle record of interview was inconsistent in that it seemed to say that it wasn't that he was just being at home with his wife but in fact he'd gone out, I think gone and done some interviews with a survey company who he was then working for and then had gone to the club, to a club, and then been drinking and gone home and gone to sleep and was drunk. Now, that probably all would have been, I suppose, all consistent with his movements in the latter part of the evening on whatever account, except there was a line there where he seemed to be saying that he knew he didn't have a car at that stage because he remembered walking home from the station and talking to somebody on the evening, and

my impression was he was informed that Mr Newman had been killed. So I suppose if we'd have had that at the time, further inquiries could have been made. But I do say as a general proposition that it wouldn't, although it's been said over a period looking back, that I wouldn't have been inclined to do anything differently. "

367 A number of questions relevant to the Inquiry arise from the matters raised in this section of the report. First, I feel obliged to say that I found Ms Le an unsatisfactory witness. She seemed to me so absolutely convinced of the innocence of Mr Ngo as to be blind to any circumstance indicating the contrary. To my mind she has wholly lost objectivity.

368 Notwithstanding, however, I am prepared to accept the probability that Mr Ranse, possibly affected by liquor, said something which Ms Le construed as his confession to the murder of Mr Newman, whether he intended it to be so construed or not.

369 However, I agree with Mr Kaldas' report. In my opinion, there is no reason to think that Mr Ranse, acting alone, was responsible for Mr Newman's murder. From what is known of Mr Ranse, it seems unlikely that he had either the capacity or the means to carry out the murder, but more significantly, such a scenario is very much at odds with all the direct evidence. As I have previously observed, there is no reason to doubt the evidence of Ms Wang, supported as it was in material aspects by other witnesses to the effect that the shooter wore a green army style jacket, not a brown leather one; that he returned to and entered the nearside door of a car which did not turn into the Newman driveway but rather stopped across it; and that there were two cars involved in the crime.

370 Neither Mr Walker nor Mr Pearsall (and presumably his leader) seemed to regard Mr Ranse as the possible killer, which, of course, is not to ignore the fact that there may have been a forensic advantage in raising the subject.

371 Although, as Ms Woodburne's rather effective cross-examination of Mr Walker revealed, a respectable argument may be mounted that he had a copy of the record of interview of 28 May, I think it more likely, on all the evidence available to me, that he did not. However, it is likely, I think, that he had Mr Kaldas' report of 21 March 2000, which not only referred to the 28 May record of interview but contained a brief summary of it. In any event, as it transpired, it would be more significant if Mr Nicholson and Mr Pearsall did not have the record of interview of 28 May during the third trial. There is no evidence that they were provided with documents for the third trial which were not provided to Mr Walker and, in light of Mr Pearsall's evidence on the subject, I think it probable that they did not have a copy of the 28 May document. Such a conclusion is perhaps reinforced by the letter from the Solicitor for Public Prosecutions to Mr Jackson dated 3 December 2001. He had acted for Mr Ngo in the third trial and in December 2001 was acting for Ms Le in the prosecution of her under the Listening Devices Act. The letter omitting formal parts read:

"At 4 pm today it came to the attention of the prosecution that Albert Ranse was interviewed in relation to this matter on 28<sup>th</sup> May 1999.

I am enclosing a copy of the transcript of that interview and I apologise for the late service of this document."

372 It is unfortunate that Mr Kaldas, in his evidence at the second trial, stated and restated that there were only two interviews with Mr Ranse. However, I accept his evidence given to the Inquiry that this was an inadvertent and innocent error with no sinister intent. Nonetheless, the Crown cannot altogether escape any consequence by pointing to the fact that careful scrutiny of the record of interview of 23 June 1999 would have put the defence on notice of a third interview on 28 May.

373 The question remains whether failure of the Crown to serve a copy of the third record of interview caused the Defence to suffer significant prejudice, not in the sense that it was deprived of the opportunity of establishing Mr Ranse as the killer, but in the sense that it was deprived of the opportunity

of showing that a relevant line of investigation was not fully pursued due to the police having closed their collective mind to the possibility that anyone other than Mr Ngo was the killer. Mr Hastings' written submissions dealt with what might be termed "the Ranse Matter" in a single paragraph:

"Finally the third trial was procedurally unfair in four significant ways which compounded the evidentiary flaws referred to above:

(a) .....

(b) second, the failure to disclose the third Ranse interview was important because as Mr Brett Walker SC, counsel for Ngo in the second trial (T314-315), and Mr Peter Pearsall, junior counsel for Ngo in the third trial (T712.36-713.24), stated this would have allowed further lines of inquiry to be made of Kaldas in relation to a motive attributed to Ranse, the inconsistencies he had given as to his whereabouts on the night of 5 September 1994 and the whereabouts of his diary (all of which were conceded to be "significant" by Kaldas": (T 169.5 and 171.03. 03-161.09)

(c) .....

(d) .....

374 On the whole of the material before me, I have concluded that there was no significant advantage denied to the defence by Mr Kaldas' error and the failure to serve a third record of interview. The possibility that Mr Ranse was the murderer was, I think, in fact fully investigated and he was properly excluded. He was interviewed, statements were taken from him, and the details of his "confession", as recounted by Ms Le, were checked against well-established facts. Importantly, while it was confirmed that he had owned a white Mitsubishi Magna which was destroyed by fire and was the subject of an insurance claim, it was also conclusively established that all this was months before the murder.

375 There were, it is true, references to a diary kept by his wife, which indicated that on the day of the murder he worked for the McNair

Anderson Organisation, and this, possibly, could have been checked, but where he was during the day does not seem to be of much significance. As to the diary, Mrs Ranse denied on oath that there was one available, presumably at the time she was asked about the matter.

376 At the third trial, Mr Kaldas' mistake could have been used in an attempt to discredit him and cast doubt upon the thoroughness of the investigation. However, he would, no doubt, have explained his error as inadvertent and it seems likely to me that this explanation would have been accepted by the jury, given that the record of interview on 23 June 1999 refers specifically to the interview of 28 May 1999; to the fact that it was held at Parramatta unlike the other two held at Cabramatta; and that the police officer with Mr Kaldas was Detective McNab as opposed to Detective Sergeant Newbery who was present at the interview on 23 March 1999. Moreover, the defence had Mr Kaldas' report, which even contained a brief summary of the 28 May interview.

377 I should also point out that those representing Mr Ngo did have a copy of the 28 May interview by the time of the appeal to the Court of Criminal Appeal, yet chose not to raise the matter.

378 The material in this section relates to the fifth issue identified above as appropriate to be resolved by this Inquiry. In turn, the issue arises from a paragraph at page 2 of Mr Selby's submission to the Chief Justice.

“Moreover, following Ngo's conviction it came to light during the later unsuccessful prosecution of Ms Marion Le (a friend and supporter of the accused Ngo) for breaching the Listening Devices Act, that an important interview between one of the Newman case investigators (Inspector Kaldas as he then was) and Mr Albert Ranse was not disclosed to the prosecution or the Ngo defence. That interview contains information which is inconsistent with the evidence given by both Inspector Kaldas and Mr Ranse at the second Ngo trial. Had that information been disclosed before or at the third trial at which Ngo was convicted then the defence could have used it for impeachment purposes, and to demonstrate that

there was at least one other person with a plausible motive and opportunity to kill Newman.”

379 Mr Selby introduced the section of his submission which sought to support the paragraph quoted above with the following statement:

“In this section we will consider the details of the Ranse confession and demonstrate how closely they coincide with facts that were revealed in the course of the Newman trials. We will then examine the extent to which the Police were prepared to go to cover up his likely involvement in the Newman murder. Finally, we will submit that in light of these various factors, Ngo’s conviction should be quashed.”

380 Much of the burden of Mr Selby’s supporting material focused on his proposition that Mr Ranse was “a very credible alternative suspect”, so that no jury could have held Mr Ngo guilty of Mr Newman’s murder “beyond reasonable doubt”. Such a hypothesis should, in my opinion, be rejected for reasons which I have stated and which appear in the report of Mr Kaldas. There was, I think, no reasonable basis for Mr Selby to assert that “the details of the Ranse confession” coincided with facts “revealed in the course of the Newman trials”. The truth is quite the contrary.

381 Moreover, there was, in my view, little difference in substance between the three records of interview, especially as to the movements of Mr Ranse during the evening. On 23 March 1998 the relevant questions and answers were:

“Q.59 Okay. On the night of the murder of John Newman, which was the 5<sup>th</sup> of September, 1994, can you recall where you were?

A. No, look, I was – I think I was out at that – but it wouldn’t have been – if it was at half past – I don’t even know what the time John died at, to be honest with you, I think it was 10 o’clock or half past 9 or something. If it had been that late – I would imagine I’d have been at home anyway, to be honest with you. I did make a thing where I told them that I ...

Q.60 Yes. Yes.

A. I think I went out that night because I was absolutely amazed that it happened the night that I went out actually.

Q. 61 Right. As you said, you had – so, you don't exactly recall ...

A. Where I was.

Q.62 ...where you were on the night:

A. No, but I got interviewed not long after it but I think I told – I was quite, you know, told them.

Q.63 Right.

A. Even that I knew him straight afterwards.

Q.64 right.

A. It's that long ago. Did you – did you get the ....

Q.65 Yes, I'm just searching through here. I'm aware that you were interviewed by police not long after the murder, a matter of days, on two occasions, I think, and you declined to make a written statement at that stage and you also outlined the nature of your relationship with John Newman, which I think you mentioned that you – well, if you can just outline for me your relationship with John Newman.

A. It was very volatile ...

Q.66 Yes.

A. ...and John and I hated each other and it was – it was no secret everybody knew it and he went to the press about it often. John and I used to have flaming rows.

Q.67 Right. Right.

A. One of those things, just a inter Labor Party thing."

382 No questions were directed to Mr Ranse as to his movements during the day.

383 In the 28 May interview, the subject of Mr Ranse's movements on 5 September was covered in these questions and answers:

“Q.64. Okay. There’s a couple of matters I just want to canvass with you, in relation to your movements at the time of the murder of John Newman. As you’re no doubt aware, Mr Newman was murdered on the night of the 5<sup>th</sup> September 1994. Now, you mentioned to me before the interview that you’ve had access to some of the record ..

A. I found that - my wife and I after the interview with yourself about the tapes, well, I came home and my wife looked through and she – she found the copies of the things to do with the car ...

Q.65 Right.

A. ... and she also found an old diary.

Q.66 Right.

A. And she said in the diary it was stated that I’d worked for McNair Andersons doing interviews on that day and my wife has always explained to me that on the day of John Newman’s murder that we had done the interviews, we’d been to the Cabravale RSL and that I’d come home and gone to sleep because I’d drank a bit and that she had been in next door, the unit next door, when she heard the news about John Newman’s murder. She remembers tat and come in to tell me apparently.

Q.67 Right.

A. And she always said, right from the beginning, that that’s exactly where I was. I have always stated I didn’t know because I was drunk and I didn’t want to tell a lie and pretend that - that I had a witness to this – for that time.

Q.68 No.

A. But I was at home lying on the lounge and my wife said she was next door and came in to tell me about John Newman’s death.

Q.69 Right.

A. That’s it.

384 In answer to a later question, Mr Ranse said that he would have concluded the interviews about 5pm and that he then went to the Cabravale RSL Club:

Q.75 Yeah.

A. And then after a couple of hours of drinking and knowing what I do when I do interview I just keep going till I finish 'em so I'd have had nothing to eat that day so I'd have gone and have a few beers and I would have been drunk and I'd have – I came home and my wife said that because I was drunk and I was lying on the lounge she went next door and that she heard the news about John Newman's death and came in and told me but I was too drunk to respond and she went back to her friend next door.

Q.76 Right.

A. And that's – she's always said that right from the word go, so ...”

385 In the final interview on 23 June, Mr Ranse was not asked to detail his movements during either the day or the night of 5 September 1994.

386 The evidence given by Mr Ranse to the Crown Prosecutor at the second trial as to his movements on 5 September 1994 was encompassed in this exchange:

“Q. Mr Ranse, did you have any involvement whatsoever in the death of John Newman?

A. No, certainly not.

Q. Do you have any information to give us concerning how John Newman came to be murdered?

A. No, certainly not.

Q. Do you know where you were on 5 September 1994?

A. Yes, I was at home.

Q. With your wife?

A. With my wife, yes.

Q. And her name is America Ranse?

A. Yes.

Q. What sort of condition were you in at the time?

A. Her sister was coming out so I think I painted the house and I had had a few beers and fallen to sleep on the lounge.

Q. Do you know about what time it was that you fell asleep on the lounge?

A. I, I have got a telephone record of my son ringing up from Junee gaol at six o'clock that day, so I would say he kick

started me on the, having a few drinks and I had probably gone and had a few drinks and then got drunk and laid down.

Q. When you did lie down, was your wife still at home?

A. Yes, my wife was still there, yes.”

387 Mrs America Ranse, who gave evidence at the second trial, explained their movements on 5 September 1995 to Mr Tedeschi:

“Q. Do you recall the day that John Newman, the state member for Cabramatta, was killed?

A. Yes, I do.

Q. Do you remember going to work the next day and hearing everybody talk about it?

A. Yes, that's right. So I didn't hear anything until the next day.

Q. And do you now know that the date of his death was 5 September 1994?

A. Yes.

Q. Have you checked your office records where you worked at that time and ascertained that you did not work on 5 September 1994?

A. That's right.

Q. And do you tell the court that that day you were at home?

A. Yes, I was.

Q. Do you remember anything that happened during the daytime of that day?

A. We were doing some work in the house as my sister was coming with a permanent residency in a few weeks.

Q. And were you in fact painting a flat for her to stay in?

A. Yeah, we were fixing her room and painting the flat.

Q. When you say "we", who do you mean?

A. My husband and myself.

Q. And did he have anything to drink that day?

A. He had some beers when he was eating. After having a conversation with his son, he, I have a records of the telephone conversation between him and his son ringing him from gaol.

Q. When you say the "records"?

A. The telephone records, yeah.

Q. The Telstra records?

A. Yeah.

Q. Do you know what time that call was from his son?

A. Yes, it was a reverse charge call about six o'clock pm and they spoke for 12 minutes.

Q. What did Albert do after that call?

A. He got a bit upset. He is always sad when his son rings and we were cooking and then after he ate, he had a few drinks and fell asleep in the lounge.

Q. Did you go somewhere that night?

A. About ten o'clock, after finish washing the dishes I went to see my friend who lives next door, used to live next door.

Q. Did you live in a block of apartments?

A. Yes, that's right, so it's on the same floor, probably just two doors from us.

Q. Prior to you leaving your flat about ten o'clock, was Albert still asleep on the lounge?

A. He was still asleep.

Q. And how long did you speak to your girlfriend?

A. Just for an hour, we normally do that. She comes to visit me or I just go to visit her when my husband is, you know, asleep.

Q. When you went back to your flat about an hour later, where was Albert?

A. He was still in the lounge room.

Q. Still asleep?

A. Still asleep, so I woke him up and I took him to the room."

388 At page 169 of his submission, Mr Selby said:

"If the Ranse's alibi as divulged in Court was to have any chance of success with the jury, it was necessary that the May interview and its contents be withheld from the Defence. This was achieved by the lies of Kaldas and Ranse that there had been only two interviews between them (Kaldas, D31, p 112; Ranse, D33, p 1990).

If the contents of the second interview had been revealed at the time of the second trial Ranse's alibi would have been

treated with disdain, as would Kaldas' claim to have "investigated" Ranse's possible involvement in the Newman murder."

389 The force of that submission escapes me, especially given my conclusion that Mr Kaldas' error was inadvertent. In my view, there is no conceivable basis for asserting that the error, in all the circumstances I have recounted, led to a miscarriage of justice. Accordingly, I would answer the fifth of the issues listed in paragraph 17, by saying that while the Crown did not fail to disclose to Mr Ngo the existence of a record of interview between police officers and Mr Ranse on 28 May 1999, it did fail to provide the defence with a copy. Such failure was, however, inadvertent and did not lead to a miscarriage of justice. Almost certainly, it had no impact whatever upon the third trial.

#### **THE EVIDENCE OF MR T AND MR N**

390 In this section I deal with issues two and three, identified in paragraph 17.

391 As stated above, both Mr T and Mr N gave evidence, which implicated Mr Ngo in a range of unlawful activity. In some instances the evidence obviously related to the same incident, including the evidence as to their attempts to murder Mr Newman, once at the Thien Hong Restaurant, and once at his home.

392 The Crown Prosecutor at the third trial in his closing submissions said:

"I'm sure that the Defence will try and make much out of discrepancies between [Mr T] and [Mr N] and they are undoubtedly there. There is one particular area which I am sure they will focus on. That is, that [Mr T] gives evidence about being involved in two attempts: the Thien Hong Restaurant attempt and the John Newman home attempt. [Mr N] gives evidence about three attempts and two plans. Those three attempts being Thien Hong Restaurant, John Newman home and the Greyhound Club. The two plans were the Fairfield Council plan and the John Newman office plan. I use the term "plan" because it was a very loose sort of

idea. It wasn't even a definite plan. Now, ladies and gentlemen, I'm sure the Defence will say: look, these two men can't both be telling the truth. Obviously one of them is not telling the truth. Ladies and gentlemen, there are a few possible explanations. They can't both be 100 per cent correct. That's obvious. [Mr N] says there were three attempts. [Mr T] says he can only remember two attempts. So, in relation to the attempts, there are, we would submit, two possibilities. Possibility 1 is that [Mr T] is correct and [Mr N] is incorrect. If [Mr N] is incorrect, but [Mr T] is correct, what that means is not that [Mr N] is telling lies but maybe [Mr N] is wrong in his memory that [Mr T] was there. Maybe [Mr T] did not attend that attempt. On the other hand, the other possibility is that there was so much going on during that period of approximately two weeks, so much happening in terms of buying guns, finding shooters and the attempts, that maybe [Mr T] does not recollect the Greyhound Club attempt. He says that he had been many times to the Greyhound Club, but he does not remember being there with [Mr N] for an attempt on John Newman's life. We just don't know, ladies and gentlemen. In the end it might be one of those imponderables where again you are just not able to be definitive about why there is that discrepancy. But I submit to you again what I said to you yesterday: That these two people, [Mr T] and [Mr N], have independently come up with two attempts and it defies logic that they could completely independently come up with those two attempts unless they actually happened. Of course, they both came up with those two attempts after [Mr T] had rolled. It is not as if [Mr T] already knew about what [Mr N's] evidence was going to be from when he was an accused and then moulded his evidence to fit in with [Mr N]. Both of them independently came out with it sometime after [Mr T] had rolled, at a time when there was no possibility of concoction between them.

At the end of the day we would submit that there is no ready answer for why there are those discrepancies, but it is not a matter which would cause you to disbelieve [Mr T] or [Mr N]. I mean, what possible reason would [Mr T] have for admitting that he was present at the Thien Hong Restaurant attempt, present at the John Newman home attempt, but not present at the Greyhound Club? If he was going to admit the first two, why would he tell lies about the third one? It just doesn't make sense.

The other thing, ladies and gentlemen, is this: If [Mr T] and [Mr N] had decided that they were going to concoct some story together, then surely they would have got the same story together; they would have both made sure that they both had the same attempts. So the fact that they are

different, the fact that [Mr T] has two attempts [Mr N] has three shows only too vividly that there has been not the slightest degree of concoction between them. Each of them is doing his best to give his recollection of what happened. So, in a sense, that major discrepancy shows an absence of concoction by each of them.”

393 Justice Dunford dealt with the matter in his summing up:

“He, [Mr T], agreed that when he came to provide the material to the Crime Commission for the first time, after his first trial on 8 August 1999, he already knew what [Mr N] said in his statement, and had said this in evidence in the first trial, there was nothing, not the slightest mention in either of those, in the statements or at the trial, from [Mr N] about the two attempts on John Newman’s life.

Prior to telling the Crime Commission about those two attempts he did not have any information about [Mr N] may have told the Crime Commission about those two attempts. He in no way colluded with [Mr N] in deciding what he would tell the police and the last time that he had spoken with [Mr N] was before he got arrested.”

394 It appears that Mr T first mentioned to authorities his involvement in two attempts to murder Mr Newman at the Commission on 27 October 1999. He referred to the incidents in these terms:

“The following evening I was at work and I had placed the sawn off rifle in a bag which I put in the boot of my sister’s car that I was driving at the time. Between 8.00pm and 10.00pm that night, I received a telephone call at the Club from Phuong. He said, words to the effect, “Take the gun with you, go to the Council car park where you will meet [Mr N]. Wait for my instructions” The person “[Mr N]” that Phuong referred to was [Mr N].

I went to the car to get the bag containing the gun and walked to the council car park. When I got to the car park [Mr N] was already there and I said words to the effect, “Where’s Phuong?” He said, “Phuong’s probably in the restaurant, he’ll ring us on the mobile if he needs us”. We had a look in the car park and I noticed Mr Newman’s car, a white Ford Fairlane, which was the same colour and type that [Mr N] had. We walked up to the first floor of the car park and sat there. There was no other cars on the first level car park at that time, it was just us. [Mr N] showed me a small automatic pistol, which I recognised as the one he had

given to me at the Club a few days earlier. There was no real plan between the two of us. I was expecting Newman to come out of the restaurant and we would approach him and [Mr N] would shoot him. My job was to go with [Mr N] to back him up. [Mr N]'s mobile telephone rang and I heard him speaking to somebody in Vietnamese. I heard him say, "Okay". [Mr N] then said to me, "He's coming down." I looked down into the alley and I saw there was five or six people walking towards the car park including Mr Newman. We didn't say anything to each other we just looked at the people. When Newman walked under us, we went down to the ground floor of the car park. When we got down, Newman was already in his car and he drove off. Both [Mr N] and I walked back to the Club.

Phuong came back to the Club later that night and he said to me, "What happened?", I said, "There were a lot of people with him". I didn't discuss this matter with Phuong or [Mr N] again.

A few days later I received a telephone call from Phuong to come to his house. When I got there I saw that Phuong, Quang Dao and [Mr N] were already there. Phuong said words to the effect, "Newman will attend a function on ...." And then he named a date which I cannot recall. He then went on to say, "He will be coming home late in the night. You and [Mr N] can hide at his house and shoot him, Quang Dao will do the driving." I said words to the effect, "I am on the night shift." He said, "As long as you give the staff a break before you leave, I will look after the place when you are gone". I can't remember the details but I remember there was an arrangement that I would be picked up by Quang on the night of the proposed murder.

One or two days later during the evening I was working at the Mekong Club when at the arranged time I went out to my car and retrieved the sawn off .22 which was still in the bag. I met Quang Dao who was driving his vehicle and to my memory [Mr N] was already with him. Both [Mr N] and I sat in the back of Quang's car and he drove us to the vicinity of John Newman's house. I cannot recall the conversation at the time but I believe that the plan was that after the shooting we were going to run back to where Quang Dao was parked. I took the sawn off .22 out of the bag and I saw that [Mr N] had a small semi-automatic pistol. We walked a short distance and [Mr N] indicated a house in the street which I would describe as brick, single-storey house with a car port. I can recall that it was a very dark night and that it was raining. There were no vehicles parked at the premises at the time and we walked into the next door neighbours front

yard and down the side of their premises. The fence separating the next door neighbours house with John Newman' house was a low brick fence and we jumped over that and waited at the side of the house near the power box. Within half an hour a car drove into the car port, a man got out of the vehicle and I recognised this person as John Newman. Both [Mr N] and I stood there watching him, I was waiting for [Mr N] to do something, but he didn't move. I saw Mr Newman walk from the car port towards the house and I then heard him go into the house. Both [Mr N] and I left and walked back to Quang Dao's car, who had waited for us. When we got back into the car Quang said something similar to "what happened?" I said, "nothing". Quang then drove me back to the club.

Later that night I can recall seeing Phuong at the Club and it was obvious that he had already spoken to [Mr N] or Quang Dao. He looked angry and he said to me, "[Mr N] told me that you got cold feet."

395 In the statement of 27 October 1999 from which I have quoted, Mr T recited that he had made two previous statements to the Commission, which contained errors and omissions. He explained that he had not wanted to involve the family of his fiancé, Ms P, nor did he wish to involve his friend, Mr Dao.

396 Mr N made a statement to the Commission on 1 November 1999, which he said contained incidents he had not previously disclosed. He explained:

"I was more than Phuong Ngo's best friend. Phuong Ngo saw me, [Mr T] and Quang Dao as his little brothers. Of the three of us I was the closest to Phuong and he trusted us all. I last saw Phuong when I gave evidence at his trial. I have not spoken to him for several years. I have not seen or spoken with Quang Dao since 1995. I last saw [Mr T] when I gave evidence at his trial and I have not spoken to [Mr T] for several years.

I first heard from television reports that [Mr T] had turned around, that is to give evidence for the Crown. I don't know what evidence [Mr T] will be giving but I know that if he gives all the evidence that he is capable of giving, then it will come out that I have not disclosed all the facts known to me. I now have no choice but to state all the information that I have,

even though I feel that I am betraying Phuong, because it is the right thing to do. I have always been scared that Phuong or persons close to Phuong would harm or kill me, or members of my family. This threat is more real now.”

397 As to the two attempts to murder Mr Newman, he said:

“I recall one occasion in early 1994 which I was at the Mekong Club with [Mr T] when Phuong approached us and said words to the effect, “I am going to a function tonight, John Newman’s going to be there, you and [Mr T] can do the job”. I understood him to mean that Tuan and I would have an opportunity to shoot John Newman. He then went on to say “It is a function at the Thien Hong Restaurant, you have to go into the car park and go up to level one and wait for my signal. I will ring you on your mobile telephone”. At the time I did not have a mobile telephone but [Mr T] had one. I assumed that Phuong was going to ring [Mr T] on his mobile telephone. At the time I knew that we had both the .22 calibre sawn off rifle and the automatic pistol. I recall that Phuong said words to the effect, “John Newman usually leaves early and he will be by himself”.

I went home that afternoon and I had an arrangement to meet [Mr T] back at the Club that evening. When I returned to the Club I saw [Mr T]. [Mr T] had obtained both of the weapons, which I saw in a black school bag. We left the Club together with [Mr T] carrying the bag containing the weapons. We walked to the car park which is only a short distance from the Club. We went around and check all levels of the car park to see if anybody was there. We saw one male person in the stairway, we looked at him and he looked at us and then we walked out. About half an hour later we came back and he had gone. We sat in the stairway and waited for Phuong to ring us. Whilst we were waiting, [Mr T] gave me a gun, I can’t recall if it was the pistol or the sawn off rifle. I recall that the steel door on the ramp leading to the level one car park was locked and there were no cars on level one.

I think it was after 9.00pm but before 12.00 midnight when the phone rang. I have a recollection that we had an arrangement with Phuong that we were not to answer the telephone as this would leave a record with the phone company. I think he had to ring in a certain number of times and then hang up which would indicate that Newman was on his way out. To my memory this is what occurred and neither [Mr T] or I spoke with Phuong as the phone rang a couple of times then stopped.

[Mr T] and I got out from the steps on level one and then we walked to the other side of the car park, on the same level and we got ready by taking our guns out. We sat there and waited behind the concrete barriers on level one of the car park which gave us a view of the restaurant. We saw some people coming out of the restaurant and then we saw John Newman walking towards the car park. He was walking very fast and I thought that we may miss him. [Mr T] said, "Let's go down to the ground floor. When we're down on the ground floor, we'll just walk up to him and shoot him". Both [Mr T] and I walked down to the ground floor level and we saw there were too many people near John Newman and I saw Lalich speaking with Newman. [Mr T] said words to the effect, "Oh shit, there is Nick Lalich we had better go or he may recognize me and say hello". Both [Mr T] and I then walked back to the Club.

Phuong came to the Mekong Club late that night and there was an arrangement to go back to Phuong's house later that night.

About midnight [Mr T] and I met with Phuong at his home. [Mr T] said words to the effect, "We saw too many people and then we saw Nick Lalich, that is why we had to walk off". I cannot recall Phuong saying anything.

.....

I can recall one time when [Mr T] and I had a meeting with Phuong at his place. Phuong said words to the effect, "On ...[a particular day, I can't recall now] John Newman will attend a meeting and he will be home at ... [a particular time of the night, I can't recall now]. Quang Dao will drive you, Quang Dao can't shoot but he is willing to drive you." He went on to say, "You guys have to drive to this street, Quang Dao will drop you at a certain point, and then you guys will jump out of the car and go in and wait for John Newman to come home. Quang Dao will drive down to the other street and wait for you, when Quang Dao hears a couple of gun shots he will drive up, turn off his lights, you two will jump in the car and then you'll go". We said we would do it.

A couple of days later, I think the date was in March of April 1994, [Mr T], Dao and I were all at the Club. I can't recall the time but it was night time, [Mr T] Dao and I left the Club and drove to John Newman's house in Quang's car. [Mr T] had with him the black school bag which contained the sawn-off.22 and the small pistol which I had bought from Mr Smith.

When we were traveling to John Newman's house [Mr T] gave me the pistol and I checked that it was loaded.

I can't remember the street that Quang parked in but I will be able to indicate it to police. Both [Mr T] and I walked to John Newman's house, and walked down the side of the neighbour's house and jumped over the fence. We waited at the side of the house near the electric meter for John Newman to come home.

Whilst [Mr T] and I waited we discussed coming out of the side of the house to shoot Newman as soon as we heard his car door slam. We waited there for about half an hour until finally a car pulled into the carport and I recognized it as a white Ford Fairlane, as I had a similar model although mine was older. We heard the car door slam and I heard John Newman talking which made me believe that he was with somebody, although I didn't see anybody. Both [Mr T] and I walked out from the side of the house and by the time we walked out John Newman was already inside the house. Both [Mr T] and I jumped back over the neighbour's fence and walked back the way we came in. As we were walking away from the premises I saw Quang Dao's car driving towards us, both [Mr T] and I got into the car and Quang drove us back to the Club."

398 It was claimed by Mr Selby in his submission to the Chief Justice that in a trial conducted before Judge Norrish and a jury in September 2003, Mr T and Mr N both gave evidence against Mr Ngo and Mr Dao on charges of malicious wounding and demanding money with menaces (the Dung trial), which undermined both the independence of their evidence and the substance of it.

399 Mr Selby also claimed that the evidence of Mr TN at the third trial was undermined by its lack of independence demonstrated during the Dung trial. He quoted the following transcript extract::

"Hoenig: Q. [Mr N], prior to you giving evidence in the trial in the Supreme Court in 1999, the one Ms Rigg asked you about, at the Crime Commission and any time prior to that did you have a conversation with [Mr TN]?

A. Yes.

Q. Had Crime Commission officers brought [Mr TN] to you so that you may have this conversation?

A. Yes

400 Curiously, Mr Selby omitted from his quotation the very next question and answer:

Q. And it was as a result of that conversation with [Mr TN] that you then admitted to the Crime Commission officers of purchasing the .32 from him?

A. No, I was admitted before I saw [Mr TN].”

401 Before Judge Norrish, Mr T was cross-examined by Ms Belinda Rigg, counsel for Mr Dao, in relation to statements made by him to the Commission as to his dealings with officers of the Commission generally; as to the indemnity granted to him in respect of his involvement with the conspiracy to murder Mr Newman; and as to whether that indemnity had been put in jeopardy.

402 Relevantly to this Inquiry, there was this exchange with Ms Rigg:

“Q. In relation to other matters that you’d spoken to officers of the Crime Commission about, so you agree with the general proposition that they would convey information to you as to allegations that they were investigating and sometimes even where those allegations were coming from?

A. Possibly.

Q. So for example, on other occasions, apart from the incident that you’ve described in your evidence today, the officers of the Crime Commission might for example come to you and say, “[Mr N]’s told us X, is that right?” Or, “Why haven’t you told us about?” Questions of that kind, didn’t they?

A. Not on this matter.

Q. They did in relation to other matter, didn’t they?

A. On other matters they sort of like go to me if that thing happen, like they say, “there’s an incident here, is that – right? So, yes.

Q. So they'd put a proposition to you and ask you whether you agreed that it happened or not?

A. On the other matter, yes.

Q. You knew a lot of the times where that information was coming from, didn't you, because you knew they were still talking to [Mr N] as well?

A. That's what my understanding.

Q. On some occasions they would even shout at you and say, "[Mr N] remembers this, why don't you remember it?" Things like that?

A. True

Q. And on occasions, to your feeling, put you under a lot of pressure in the way that they interviewed you about different matters?

A. No, not that I was under pressure or anything. I was sort of more try to recollect, see if I can remember, that's all.

Q. Having not remembered a moment ago anything different from the manner of questioning on this occasion as compared on other occasions in the preceding months with different matters, and not remembering the precise questions, why do you say that they didn't do that when they questioned you for this matter?

A. Because as far as I can recall was after they have asked me if is there anything that I want to clear or come forward and I say, "yes, there are other incidents that I want to come forward", and so we go in and make a statement and I just – on this matter I just tell them what I could remember, what I can recall and that's it.

Q. Did you get the impression that they had been speaking with [Mr N] about another matter or matters that you should be telling them about?

A. No, I didn't get any impression that anything that they have talked to [Mr N] nor do I know if they have been talking to [Mr N] about this matter at all, no."

403 Mr N was also cross-examined by Ms Rigg on the subject of his dealings with the Commission:

"Q. Between August and October of 1999 you realized that [Mr T] was talking to officers of the Crime Commission, didn't you?

A. Yes.

Q. You knew that he was capable of giving them an account of the attempts that you had made with him to kill someone, didn't you?

A. At that time I didn't know what [Mr T] going to say to the Crime Commission but since then I decided I'm not going to hold anything back, I going to tell them everything.

Q. You realized at that stage during those months of 1999 that it could be exposed that you had lied while you had been under an undertaking to actively cooperate and tell the whole truth, didn't you?

A. Like I said, after [Mr T] had turned around and I don't know what he going to say to the Crime Commission, that's when I started telling everything.

Q. And you had to correct certain bodies of evidence that you had previously given that were incorrect, didn't you?

A. Yes

Q. You had to admit that you had previously lied, didn't you?

A. Yes.

Q. You had to admit that you had lied in various statements to the police, didn't you?

A. Yes.

Q. And you had to admit that you had lied under oath at the inquest and the committal proceedings, didn't you?

A. Yes."

404 Two very senior officers of the Commission gave evidence as to the procedures adopted by the Commission in interviewing Mr T and Mr N. The first was Mr Timothy O'Connor, Assistant Director Investigations, a position he has held since August 1998. In 1999 he was involved with the investigation into the murder of Mr Newman.

405 He said that he was aware that on various dates on, and after, 7 August 1999 both Mr T and Mr N attended the Commission and made statements concerning the Newman matter. He identified a number of statements, including the statement made by Mr T on 27 October and the statement made by Mr N on 1 November in which each, apparently for the first time, mentioned the attempts to murder Mr Newman at the Thien Hong Restaurant and at his home.

406 Mr O'Connor said that at the time both Mr T and Mr N were subject to a witness protection scheme and when at the Commission's premises were isolated from each other and unable to converse.

407 As to the benefit to the investigative process of having Mr T and Mr N at the Commission at the same time, there was this exchange with Mr Colefax:

“Q. Yes. Would there be any investigative value in T and N knowing that the other was present at the Crime Commission at the same time?

A. I would have to say yes to that question.

Q. And could you expand on why there would be investigative benefits in one witness knowing that the other was speaking to you?

A. Because, when information was provided to the Commission by one witness, it would have been a very simple matter of going to the other room and checking it with the other witness and getting the version from that witness and seeing if they were similar, dissimilar. It gave us a means by which we could value the evidence or the information we were getting.

Q. There is a risk, isn't there, in that process, in that one of the witnesses may discern what the other one had conveyed?

A. It wasn't a case of conveying information from one to the other. It may be a case of: "What can you tell me about X?", rather than giving details about X to the witness.

Q. So it might be that you directed the witness's attention to a topic?

A. Yes.

Q. Letting the witness possibly suspect that the topic had been raised with the person who had been seen?

A. Absolutely.

Q. But it wouldn't have been a case of revealing to one witness what the other one precisely said; is that what you're saying?

A. Absolutely, during the interrogation stage, yes.”

408 Ms Woodburne, in her cross-examination of Mr O'Connor, raised the subject of the Commission's officers interviewing Mr TN. He agreed that on one occasion, namely 9 December 1999, Mr TN and Mr N were at the Commission premises together. As the transcript records:

"Q. Now, do you have any Policy Guidelines or any practice in relation to witnesses and whether they are or are not brought together, and by that I don't mean in the same building?

A. No defined policy in guidelines, however there is a practice that I've used in the past and I may have used in this case where, if and I'm only recreating or reconstructing what I think occurred, if [Mr TN] wasn't cooperating, refusing to assist, it is possible that under supervision I would have allowed Mr N to say to him "I am cooperating with the Commission, I suggest you do the same" or something to that effect.

Q. And is there any circumstance in which you would allow Mr N to convey the ---

A. Absolutely not.

Q. --[Mr TN]?

A. If we had allowed Mr N to speak to [Mr TN] he would have been under strict guidelines, he would have been supervised, they wouldn't have been alone, I dare say Mr N's lawyer would have been present, I would have been present and it would have been limited to: I'm cooperating and you should. Certainly not suggesting or imparting any of his evidence on [Mr TN]. "

409 Mr Hastings closely cross-examined Mr O'Connor and pressed him on the matter of independence of witnesses. There were these questions and answers:

"Q. If you're going from one door to the other prompting one witness about something and then going back to the other and prompting him about something else, they are no longer giving independent versions of these events, are they?

A. No, I disagree with that proposition.

Q. How can it be independent when there is this process of cross-fertilisation?

A. An example, witness 1 tells us about an event. Witness 2 refuses to disclose his or anyone else's involvement in an event, so you put to witness 2: "What can you tell me about X? The event?" Witness 2 realises, well there's no point

covering it up, they already know about it so I will tell them my version. So their version is completely independent, they have just been encouraged to disclose or disgorge that information.

Q. And that's your concept of independence, is it?

A. Yes.

Q. Of course the added component in the scenario that was put to you was that the two witnesses would know that the other was present in the premises at the same time so that when you went from one door to the other, the other person would readily draw the inference as to the source of your suggestion, wouldn't they?

A. Mm. I don't think it was done like that. I can't remember actually doing such a thing, I can remember putting things to one witness to the other but I certainly can't recall going from room to room. “

410 Mr O'Connor remained unshaken that his method of questioning witnesses, while varied to meet the circumstances of the case, never apprised a witness of what another witness had said to a sufficient degree to deprive the first witness of independence. However, as a consequence of matters raised in Mr Hastings' cross-examination, Mr O'Connor said that he believed the first information as to the attempts at the Thien Hong Restaurant and at Mr Newman's home came from Mr N rather than Mr T, even though Mr N's statement on the subject bears a later date.

411 There was one exchange, which I found illuminating, between Mr Hastings and Mr O'Connor:

“Q. Can I suggest to you without you having taken to N the fact that T had said something about this, he wouldn't have said anything at all?

A. That's quite possible but he could have forgotten it. These people were committing lots of crimes. They were struggling to remember things.

Q. Even though they'd been sitting there for days and being interviewed for days--

A. Absolutely, yes. N struggled in relation to the Minh exercise. I remember him giving a version about that.

412 The second senior officer of the Commission to give evidence at the Inquiry was Mr John Giorguitti, Director of Operations and Solicitor to the Commission, positions he has held for many years. He was aware that Mr T was interviewed in his office on several occasions in the period August to December 1999, but he did not actually conduct the interviews. His relevant function was only to provide Mr O'Connor with access to the Commission's computer system. He said that he could not recall an occasion when Mr T did not have his lawyer present at an interview.

413 Mr Giorguitti had prepared a chart, which became exhibit 115 and constituted his reconstruction, from various records, of the dates and times Mr T and Mr N attended the Commission between 5 August 1999 and 16 December 1999. The chart also indicated the occasions on which lawyers representing Mr T and Mr N were present, that particular information having been reconstructed from records in the Attorney General's Department as to the payment of fees.

414 One entry showed that Mr T was at the Commission on 16 September 1999 without a lawyer when "WITSEC discussed". In relation to this entry there was this evidence:

"Q. This is an entry, I think, that you might want to explain. It records that Mr T was at the premises on 16 September.

A. Yes.

Q. There appears to be no invoice or legal representation available, and you've got under "Comments", "WITSEC discussed" question mark.

A. Yes.

Q. Now, what were you trying to convey by that?

A. Well, I finished that at about 10 o'clock last night and I know I spent time over this period with T about what was to happen to him in the program. He was new to the program. N was already in the program. A complicating factor for T was that his family wasn't in the program, and he then had a girlfriend who also wasn't in the program. The second trial, I think, had been vacated. And he was essentially sitting in his secure safe house twiddling his thumbs, and it was my job to make sure he didn't go crazy, so to speak. This is just

a vernacular, but you get the drift. So I explored with him, well, "what it is that you want to do", future and so forth.

Q. Discuss what courses he might do?

A. Courses, books he was interested in and--

Q. Provided him with books?

A. --over time provided him with books. And also he wanted to do a course. He wanted to get on the Internet. And the Commission provided him with a computer in a covert name and also with, you know, covert assumed user name and so forth. When I was driving up in a taxi this morning, Janette Tompson mentioned to me that she had come across in a file records of the computer provided and also the books. So I've had those faxed up and I've given you a copy. And specifically the computer was provided on 16 September 1999. So he would have been shown how to connect it, how to use the modem, and at that stage it would have been a dial-up modem, and he would have spent some time getting familiar with that. I then also have faxed up the receipts of different books. There was one purchased on 7 September, another one 7 September, and so - and on 15 September we purchased a 12-month Internet connection over the day, and I'd say that I've spoken to him earlier about these things and he came in on the 16th to look at - to go through that. On 17 September--

Q. Sorry, Mr Giorgiutti. We have to interrupt. We don't want to unnecessarily interrupt you. Can I just short-circuit it this way. Is this the bundle of documents that you've produced relating to the provision of materials to T while he was in WITSEC?

A. Yes."

415 Mr Giorgiutti told Ms Woodburne that his contact with Mr N was limited:

"Q. Did you personally have any dealings with Mr N?

A. Mr N was already in the witness protection program so I don't have a recollection of having dealt with him in that regard as I dealt with Mr T. When he attended on the 24th of, I think, August 1999, he was there with a junior lawyer from Murphy's firm, and I don't know how it came to be but there was a decision taken that, given the seriousness of the matter and the fact that Mr N held an indemnity, and it appeared that he hadn't made full and frank disclosure, that the principal of that firm should be asked to come to the Commission. I rang Chris Murphy, who I've known for quite a long time, and he attended at the Commission. I told him why N was there, the junior lawyer was there, and told him

that it was important N having indicated - not to me but indicated to Tim O'Connor - that he had more to say, that he hadn't made a full and frank disclosure, and I then left Murphy and the lawyer with N.

Q. Bearing in mind then the nature of your role, did you at any time speak to Mr N and convey to him the contents of Mr T's statement?

A. No.”

416 As to whether Mr T and Mr N were kept apart:

“Q. Were you indeed aware of the need to keep these witnesses apart?

A. Yes. If I can just say at this point, independent of the integrity of the statement-taking process, both these witnesses were in the witness protection program. The WITSEC people would not allow two such people to be put together because even if it's inadvertently they could compromise either their identity, their location; and in fact if it were to happen, the immediate response of WITSEC would be to reidentify and relocate those witnesses. And if we did it, we would have an obligation to tell WITSEC that we've done it because they would have taken that very seriously, leaving aside the integrity of the statement-taking process. The WITSEC people take the security of the witnesses very, very seriously and wouldn't be so concerned about statement taking. That's paramount also in what we do when we have their witnesses. So apart from the statement taking, it's important to keep protected witnesses as isolated as possible.”

417 Mr Giorgiutti was cross-examined by Ms Pepper and there was this exchange concerning his evidence that a lawyer was present representing Mr T and Mr N each time they were interviewed by the Commission:

“Q. Mr Giorgiutti, I believe you told Mr Colefax this morning that Mr T's lawyers were present at all times while he was being interviewed by the Commission; you recall that evidence being given?

A. Yes.

Q. Now the fact is that you weren't present at those interviews?

A. No.

Q. So the fact is you just don't know whether or not during the course of those interviews lawyers were in fact present at all times, do you?

A. Well the arrangement was that the lawyers be present. If I have given my computer to access to Tim O'Connor for the purposes of the statement, the lawyer would have been present.

Q. The fact is, isn't it, that you just don't know, because you weren't there, whether the lawyers were there for the duration of the interviews, do you; that is a fact isn't it?

A. What do you mean I wasn't there?

Q. You have given--

A. I was at work that day.

Q. You weren't present during the interviews?

A. No, but I'm present to log on the computer to make the computer available. Throughout the day I'm responsible for making sure that these people don't die of malnutrition or thirst. I have to look after the WITSEC people. And from time to time I go in there to see how things are progressing, so that I can indicate to WITSEC, who aren't in the interview, what arrangements they need to make to take the witnesses away, which of itself is sometimes a large undertaking for WITSEC.

Q. But you are not physically present at the interview room during the interviews with Mr T were you, for the whole duration of the interview?

A. Not for the whole duration, but I'm around and about sufficient to know if a lawyer hasn't turned up, or if you were to sort of abandon ship, and that is not to say that they don't go and have a toilet break, that sort of stuff, but in principle the lawyer was to be there, and if for example a lawyer left and went to court and appeared somewhere, and wasn't present at the interview, and I knew of that, I would report that to the Commissioner, and I would expect to have a recollection of that, but I don't.

Q. I think you talked about being in principle, so of course you wouldn't know if the lawyer nipped out for a toilet break, to use your expression, would you?

A. I'm not a betting man, but in fact they probably did go out for a toilet break, as would have the witness, and as would Tim O'Connor. If you're there for a whole day, that is what you would expect to happen.

Q. So from time to time the lawyers may well have left the interview room without you knowing. That is a fair proposition, isn't it?

A. For those limited purposes.

Q. Whatever purpose that may be, you weren't there at the interview room the entire time Mr T was being interviewed. I think you've already accepted that fact. So it's fair to say, isn't it, that if they did leave temporarily, you wouldn't necessarily know about it?

A. There was no monitoring of the statement taking process, so you could say that all of those people were together in the one room for the whole time, no. "

418 Ms Pepper pressed Mr Giorgiutti in relation to the practice of referring a witness to what another witness had said in an attempt to extract further information:

"Q. I will put one last scenario to you Mr Giorgiutti. Certainly, you wouldn't say, that the version of events were independent where you had revealed the identity of one witness to another witness and said - the other witness' given a completely different version of events?

A. In circumstances where you don't tell a second witness what was said by the first witness?

Q. In circumstances where you do?

A. If you go to this case here, T comes along on 7 August and gives a statement about what he says occurred. At the same time he says - I'm not prepared to give evidence against whatever. Someone else, N, learns that T has, to use the vernacular, rolled over, N in his own mind knows that if T surely has rolled over then N has (sic not) made a full and frank disclosure. So N comes forward and says - I want to make a full and frank disclosure, and does. Now there is nothing wrong with going to T and saying, do you remember how you made a statement? Guess what, N has made a further statement, and made what he says is now a full and frank disclosure, and he covers things that you haven't told us about, what do you say about that? And then proceed to elicit from T what it is that he, N, was offered in the first place.

Q. You put to T, N has said X Y Z?

A. There is nothing wrong with disclosing to T that N is the person who is now providing a further statement.

Q. Anything wrong with disclosing to T the substance of what N has said?

A. I wouldn't go and give N the evidence that N gave, no. "

419 It was undoubtedly the Crown case that Mr Newman was shot with a .32 Beretta and that this was the gun purchased by Mr N from Mr TN for \$1,500 and later handed to Mr T at the Club. The same gun which Mr T, in turn, showed to Mr Zervos and later gave to Mr Ngo.

420 Mr N's evidence, as indicated earlier, was that his first conversation with Mr Ngo about guns occurred in March or April 1994 and that his approach to Mr TN occurred after the shortened .22 rifle had been acquired at Botany and after he had made two trips to Wollongong to see Mr Ly.

421 Mr TN, who gave evidence about selling a .32 gun to Mr N albeit for \$3,500, was vague about when the transaction occurred but ultimately agreed to it being three or four months before Mr Newman's murder. Mr T was just as vague as to the timing of the delivery of the gun to him by Mr N, although he seems to have put it as after the purchase of the .22 rifle. Mr Zervos, who gave evidence as to Mr T showing him a gun in the Club, could not put a time to the incident except to say that it was in 1994 before Mr Newman's murder.

422 Mr Selby, in his submission, contended that both Mr N and Mr T, in the Dung trial put the date of the purchase of the .32 gun as before 3 March 1994. Mr Hastings and Ms Pepper dealt with the matter in their submissions. They referred to evidence in the Dung trial where both Mr T and Mr N were adamant that the .32 gun was acquired before 3 March 1994, the date upon which the Dung offence was allegedly committed. Mr T and Mr N testified that the gun was in the room and openly displayed at the time.

423 As to the independence of the evidence of Mr T, Mr N and Mr TN, although counsel for Mr Ngo did not suggest that either Mr O'Connor or Mr Giorgiutti was untruthful, they, in effect, submitted that their method of

questioning cross-fertilized and contaminated the evidence to such an extent that thereafter Mr T and Mr N could not be regarded as independent.

424 I find myself unable to agree with this contention as a general proposition. In my view, the method of questioning adopted by Mr O'Connor and Mr Giorgiutti as related by them was perfectly legitimate and, in my experience, a commonly used means of extracting information from a witness without contamination or destruction of independence. Of course, it is a matter of degree, at one extreme the whole detail of what one witness says might be put to another for acquiescence thereby, I agree, destroying the second witnesses' independence. At the other end of the spectrum is what, as I understand it, was the procedure followed by the Commission in this case, namely, the interviewing officer did no more than tell a witness that another witness had said something upon a particular subject and invite the witness to state what he knew of the subject. I would regard this form of questioning as entirely unexceptional.

425 Accordingly, in answer to the second issue listed in paragraph 17, I would say that there is nothing before me to indicate that the evidence of Mr T and Mr N was interdependent, especially in relation to their implication of Mr Ngo in the two identified attempts to murder Mr Newman. Equally, there is no evidence that Mr TN's testimony was not independent.

426 Ms Woodburne, in her written submissions, dealt with apparent discrepancies in the evidence of Mr T and Mr N as to the timing of the purchase of the .32 gun. She submitted that from the outset the witnesses were unsure of dates and time periods and that uncertainty is demonstrated in their evidence. There was indeed evidence from Mr Lalich which suggested that the only occasion he attended a function at the Thien Hong Restaurant at which Mr Newman was also present was on 25 January 1994.

427 I agree with the submission that, in effect, although periods and dates are difficult to reconcile, that is not a particularly significant matter in the context of this case. Certainly no more significant than the many other problems which the jury faced in assessing the credibility of Mr T and Mr N.

428 Indeed, it may well be that the jury at the third trial refused to accept the evidence of Mr T and Mr N as a basis for verdicts of guilty against Mr Dao and Mr Dinh. Despite the comment by Mr Hastings and Ms Pepper that “Mr Ngo is remarkably the only person who has been convicted of the murder of Mr Newman”, I find that result unsurprising for the very reasons advanced by them in challenging the credibility of Mr T and Mr N. The case against Mr Ngo was based on very much more than the evidence of those two witnesses even though, as I suspect, it may have been Mr T who suggested a plausible path to a finding of guilt against Mr Ngo against which other evidence could be evaluated.

#### **THE COMPATIBILITY OF THE COUNCIL MOBILE AND THE CLUB MOBILE**

429 As I have indicated, it was part of the Crown case against Mr Ngo that shortly after 8.30pm on 5 September 1994 he placed the Council mobile on the charger in the manager’s office and took in its place the Club mobile, which he removed from the Club premises. He then used the Club mobile to ring the Council mobile which was answered by Mr T. It was asserted that this was part of a ruse to ensure that Mr T was in the car driven by Mr Dao at the time of the murder.

430 Mr T’s first reference to this appears to be in his statement to the Crime Commission on 27 October 1999, the relevant passages of which are:

“When I picked up the phone, I realised that it was not the phone I had been using. I assumed that this was the phone allocated to Phuong. Phuong had only just received this phone and I believe now that the phone number for this

mobile phone was 015 400, but I cannot recall the last three digits.

I answered the phone and I recognised Phuong's voice, and he said words to the effect "Can you bring the phone down for me?" I said "I'll be there in a minute." I still had to attend to some duties to finish balancing the cashier's box. After attending to those duties, I took the phone downstairs to the front of the Club, but I couldn't see him or his vehicle. I then used the phone I had to call 018246 488 as I had assumed that Phuong must have taken the Club phone by mistake. Phuong answered the call, and I said to him words to the effect "Where are you?" He said, "I am on my way home. Will you bring it to my home?" I said, "Okay". I then got in the car I was using, which belonged to my sister. It was a 1980 model white Subaru sedan. I drove directly to Phuong's house which was at 1 Wellard Place, Bonnyrigg, which is just near my house.

431 It will be noted that Mr T does not in that statement specifically assert that he took the Council mobile from the charger. However, he was led to the subject by the Crown Prosecutor in the second trial as the transcript reveals:

"Q. After those three men had left the Club, did something happen in relation to a phone?

A. Yes, sir.

Q. What happened?

A. The phone was ringing.

Q. Where?

A. I hear the phone ring in the manager's office, sir.

Q. What did you do?

A. I go and pick up the phone.

Q. Did you notice something about the phone?

A. Yes sir.

Q. What did you notice?

A. It was a different phone from what I used, sir.

Q. Did you recognise the phone?

A. Yes, sir.

Q. Which phone was it?

A. It was a, it is a new phone that Mr Phuong just have from the Council.

Q. From the Council?

A. Yes, sir.

Q. Was it in the same charger or different charger to the one that you have already told us about?

A. It is in the same charger, sir.

Q. In what way did the Fairfield Council mobile look different to the Mekong Club mobile that you had that day?

A. Both of them are of the same model, except the Council phone is brand new, sir and the old one we have is, it drop and it got chipped lot. It's old.

Q. It is the Mekong Club one that was chipped?

A. Yeah.

Q. When the phone was ringing in the manager's office did you answer it?

A. Yes, sir.

Q. Who was it?

A. It was Mr Ngo.

Q. What did he say to you?

A. He asked me if I could bring the phone down to him.

Q. What did you say?

A. Yes. I told him that I'm, it would take a few minutes or so, because I am still busy at the cashier and I bring it down as soon as I can.

Q. At that time what was your belief as to what had happened with the phones?

A. He must have got a wrong phone.

Q. Could you explain that?

A. He must have grabbed the Club phone instead of his phone, so I probably just need to run down and swap for him.

Q. Did you go downstairs with the phone?

A. Yes, sir, I did.”

432 His evidence to Mr Tedeschi was virtually identical in the third trial:

Q. What did you notice when you went into the office to pick up the phone?

A. When I pick up the phone, it was not the phone, it wasn't the Club phone, the Club mobile phone.

Q. Which one was it?

A. This was Mr Ngo little phone, little mobile phone.

Q. The Fairfield Council?

A. Yes.

Q. Was it in a charger?

A. It was in the charger, sir.

Q. Was it in the same charger that you had put your phone into, the Mekong Club mobile?

A. That's right, sir.

Q. Are you able to say anything about whether they looked the same or different?

A. They are of the same model, the phones, they are of the same models, except that for Mr Ngo, the mobile phone is very new, where the Club phone is been older, been dropped, it got chipped.

Q. So when you went into the office to answer the phone and you realized it was the Fairfield Council mobile, what did you do?

A. I answered the phone.

Q. Who was at the other end?

A. It was Mr Ngo on the other end.

Q. What did he say?

A. He asked me to bring the phone down for him, if I could.

Q. What did you say?

A. I said I be right down.”

433 Mr Breen's letter of 16 March 2009 included the statement “Mr Ngo says he recalls Council could not get him a Motorola phone in 1994 because the phone was exclusively available through Telstra. He says he was obliged to take the Ericsson phone because it was the preferred phone through Optus with whom Council had a bulk purchase plan. Furthermore,

he says he reverted to the Motorola after a short period with the Council's Ericsson phone".

434 In its investigations the Inquiry ascertained:

- The Council now has no accurate records of the type of mobile phone it provided to Councillors prior to 5 September 1994.
- Optus has no relevant material because of the length of time which has elapsed.

435 However, the Inquiry found itself able to illuminate the matter rather significantly through Mr Stuart Wilson. He swore an affidavit on 23 March 2009 containing these paragraphs:

"The Analogue Mobile Phone System (AMPS) was in operation in Australia in 1994. As part of that system, a unique Electronic Serial Number (ESN) was given to each mobile phone device by its manufacturer. The ESN can be expressed in either a decimal or hexadecimal form and contains two parts, the first part being known as the Equipment Manufacturer's Code, a code that is assigned for use by a single manufacturer. In the decimal form of the ESN, the Equipment Manufacturer's code is contained in the first three decimal characters, as a decimal number between 000 and 255. In the hexadecimal form of the ESN, the Equipment Manufacturer's code is contained in the first two hexadecimal characters, as a hexadecimal number between 00 and FF. The hexadecimal counting system is to the "base 16" and contains the "numbers" 0,1, 2, 3, 4, 5, 6, 7, 8, 9, A, B, C, D, E and F.

I produce, as Annexure A to this affidavit, a copy of six pages of the "Fraud 101 Training Manual", issued by the United States Cellular Telecommunications Industry Association (CTIA) dated 14 October 1996. The pages consist of the cover page, the table of contents, introduction and Appendix A. Appendix A of the CTIA document contains a three page list titled "Equipment Manufacturer's Code". The note on page 3 of Appendix A indicates that the information contained in it was current as of August 1994. it will also be

observed from page 2 of Appendix A that the Equipment Manufacturer's Code "**C3**" was assigned to "**Motorola**".

Whenever an AMPS mobile telephone accessed the system to make or receive a call it would send its subscriber number in the form of a Mobile Identity Number (MIN) together with its ESN. This information was used by the system to identify the specific mobile telephone.

At the completion of a call the Mobile Switching Centre (MSCs) "electronically" wrote one or more Call Charge Records (CCRs). The CCRs contained amongst other information, the date, time, calling number, called number and the ESNs associated with the mobile telephones. These CCRs are often referred to as Raw Call Records and formed the basis on which customers' accounts were written.

.....

The subscriber number 015 400 521 is the number associated with the mobile phone provided to Mr Ngo by Fairfield City Council in September 1994. The raw call charge record contained in "NEWMAN.LEA" of calls made from the subscriber number 015 400 521 show that the calls were made from a mobile device with the ESN of "C3A79C5F". The hexadecimal form of the Equipment Manufacturer's Code part of this ESN is "**C3**".

436 Mr Wilson's affidavit was not available in time for reference to it to be included in written submissions, although Mr Wilson was available to be recalled to the witness box. Mr Hastings addressed the subject in his final oral submissions.

437 As I understand it, Mr Hastings accepted Mr Wilson's testimony that the Council mobile was a Motorola. He did not accept however, that it would necessarily be compatible with the charger for the Club mobile. He pointed to Mr T in evidence at the third trial, referring to Mr Ngo's "little phone, little mobile phone". Mr Hastings submitted that the reference to "little" distinguished its size from the Club mobile thereby rendering it less likely to be compatible with the charger for the Club mobile. With respect, I think Mr Hastings may have given an unwarranted significance to Mr T's

use of the word “little” given his evidence a few questions later, which I have earlier quoted.

438 Unfortunately, there is simply no further evidence on the subject before the Inquiry (a subject that was not pursued at the inquest, the committal hearing, or any of the trials). However, even if the Council phone were not compatible with the charger in the manager’s office, it could easily have been close by and Mr T’s recollection of the incident imperfect, bearing in mind that it occurred some years before he was called upon to recall it, and the fact that in his first statement to the Commission he did not mention the charger.

439 Of course the whole of Mr T’s evidence was challenged by the defendants. I do not regard the matter raised by Mr Breen as adding anything worthy of note to this challenge. It does not create a doubt in my mind as to the guilt of Mr Ngo.

#### **THE WHEREABOUTS OF MR NGO ON THE NIGHT OF 3 SEPTEMBER 1994**

440 I have decided, with considerable hesitation, to deal with this subject notwithstanding the powerful arguments of Mr Colefax to the effect that it is outside the proper scope of the Inquiry. I have taken that decision in light of the fact that considerable evidence was adduced, principally by Ms Woodburne, from Mr Ngo on the subject and counsel for Mr Ngo made submissions upon it.

441 Having said that, I accept that it is somewhat an affront to the administration of justice that Mr Ngo, who elected not to give evidence at the trial where he was convicted, should now be permitted to provide the explanation he could have given then and to tender evidence of telephone calls, the admission of which was actively opposed by his counsel.

442 As I have indicated, Mr Ngo’s evidence was to the effect that on the night of 3 September 1994, he attended a screening of the film The Lion King at

the 9pm session at Hoyt's Cinema Bankstown and thus could not have been correctly identified as the person standing beside a white four door car, by Mr and Mrs L in Judith Avenue Cabramatta at about 9.50pm. As I have already indicated in support of this explanation Mr Ngo asserted that during the day he exchanged the Council mobile for the Club mobile. At the second trial, he said he did so because people were accustomed to telephone him on the Club mobile and in evidence at the Inquiry, he said it was in order that Mr T might enter into the new phone some names and telephone numbers from a book, which Mr Ngo gave him.

- 443 Apart from Mr Ngo's evidence on the subject given at the second trial and before me, there was evidence at the third trial from an employee of Hoyt's Cinema that The Lion King was indeed shown at Hoyt's Cinema Bankstown at 9pm on 3 September 1994. The witness said that the film ran for 87 minutes; that the session would have started promptly at 9pm; and that there were advertisements and "trailers" which occupied about 15 minutes before the main feature commenced.
- 444 At the Inquiry, Mr Hastings tendered as exhibit 165, Optus accounts covering the relevant period for the Council mobile, which supplemented Telstra records already before the Inquiry. The records seem to me to reveal several calls of particular significance, namely, a call from the Council mobile at 8.07pm on 3 September to the telephone allotted to Mr Ted Grace; a call at 1.55am on 4 September from the Council mobile to Ms P's landline; a call at 12.45am on 5 September from the Council mobile again to Ms P's landline; and a call at 10.36pm on 3 September from the car phone to the Club mobile.
- 445 On the evidence, in my opinion, it was unlikely but nevertheless possible that the call to the phone allotted to Mr Grace was made by someone other than Mr Ngo. On the other hand, I have no doubt that the two calls to Ms P were made by Mr T and not Mr Ngo. Those calls were made on the Council mobile and indicate that Mr T had use of it when they were made. However, given that Mr Ngo, on his own evidence, had no

compunction in letting others use the Council mobile and his close involvement with both the Club and Mr T, it seems to me by no means unlikely that he was with Mr T at the time and simply lent him the Council mobile. I do not regard the two calls to Ms P as constituting more than a neutral factor in assessing Mr Ngo's version of the events of 3 September 1994. The call at 10.36pm from the car phone to the Club mobile suggests to me that Mr Ngo was in the white Camry at the time and not at the cinema where The Lion King would have still been running.

446 Presenting greater difficulty to Mr Ngo is the fact that I simply do not believe his evidence which, in relation to his movements on the night of 3 September 1994, seemed to me to be full of inconsistencies and discrepancies, most of which were highlighted by Ms Woodburne's cross-examination. I find it inconceivable that Mr Ngo, having been asked by police on 14 September about his movements on the night of 3 September, would not, if it were the truth, recall and state that he was at the cinema. Even if he did not immediately make the fact known, the recollection would likely have remained and been given in answer to very specific questions on 14 December. I reject his explanation that he did not recall the cinema visit until 4 years later.

447 It follows that I do not accept the submission of Mr Hastings and Ms Pepper as to the movements of Mr Ngo on the night of 3 September 1994. Incidentally, I point out that the submission was erroneous in so far as it stated that there was no evidence as to the length of the advertisements and trailers, which preceded the showing of the film The Lion King.

448 Having seen and heard Mr Ngo, I do not regard his evidence as providing a plausible explanation for his whereabouts on the night of 3 September. On the other hand I did not see the witnesses, Mr and Mrs L and the assessment of their evidence was a matter for the jury.

449 Nothing discussed in this section of the report, in my opinion, raises any doubt as to the guilt of Mr Ngo.

## OTHER INQUIRY WITNESSES

450 Apart from the witnesses whose evidence has already been referred to, a number of persons gave evidence on matters which appeared to be relevant to the Inquiry's purpose. I will commence with the police officers.

451 Evidence that Mr McNab gave in relation to the search for the murder weapon has already been mentioned. He also gave some evidence of a general nature regarding the murder investigation of which he was a part from its earliest stages. He described the investigation of Mr Newman's murder as "very complex".

452 Mr McNab said that he interviewed Mr T in December 1994 and was aware of an interview conducted the previous September. On neither occasion did Mr T implicate Mr Ngo in illegal activity.

453 He told Mr Hamill that he had never been part of Major Crime Squad North, the relevance of which will appear when I come to deal with the evidence of Mr Breen.

454 Given the opportunity to comment on suggestions that the Task Force investigating Mr Newman's murder single-mindedly pursued Mr Ngo and did not properly investigate other suspects, he replied:

"A. They are incorrect. This was a Task Force and especially the final group of officers that were involved in it were dedicated and followed every line of inquiry. "

455 As to the quality of the investigation generally, there was this exchange with Mr Hamill:

"Q. Now based on the experience you have acquired over the years, how would you describe the quality of the investigation in that early stage, that is to say, on the night of the shooting until January of 1995?

A. The quality was very high.

Q. And involved the police force throwing a great deal of resource at the problem?

A. In the early stages yes, resources were from the AFP, I was in Task Force Oak, Major Crime Squad Northwest, Cabramatta Detectives, Special Branch, Organised Crime Unit were involved as well. Quite a large amount of our officers were put on the investigation.

Q. And indeed it is the case I think that in January, the 31st of January and the 1st of February 1985 that there was in fact a review of the investigation conducted by various senior police officers?

A. Yes.

Q. And I think the result of that investigation was recorded in a running sheet?

A. Yes. "

456 The running sheet admitted as Exhibit 37 recorded:

"SUBJECT: REVIEW OF INVESTIGATION INTO MURDER  
OF JOHN Newman.  
CASE  
INVEST: NEWMAN

Running Sheet Status: Vetted by Co-Ordinator

On 31 January, 1 February, 1995, Det Insp. Mathew, Carroll, Collins, Laney and Smith carried out a review of the investigation into the murder of Newman. The review panel evaluated the following areas:

- (1) Command structure and reporting
- (2) Resources
- (3) Records Management
- (4) Cost effectiveness
- (5) Public image
- (6) Management and methodology of the investigation.

The panel found no flaws in any of the areas under review and considered that avenues of investigation undertaken by the Task Force were comprehensive and carried out in a professional

manner. The panel however made a number of suggestions regarding existing avenues of inquiries, which have been noted and will be attended to with other further inquiries.

The review process was considered most successful and recommendations were made in the sitrep No. 29 for all future major investigations to be reviewed in similar manner.”

457 In relation to the officers who conducted the review, Mr McNab said that they were all very senior, experienced in murder investigations, and independent of the Newman investigation.

458 The now Detective Superintendent, Greig Newbery was also involved in the investigation of Mr Newman’s murder from a very early stage. He and Mr Kaldas were assigned as “readers”, as a consequence of which all witness statements were made available to them. Mr Newbery had no role in actually taking statements from either Mr T or Mr N.

459 He became aware however that in the period August to December 1999, both Mr T and Mr N made statements to the Commission and he was given access to those statements. He denied that he ever informed Mr T or Mr N of the contents of a statement made by the other.

460 He also denied, in effect, that Mr Ngo was investigated as a suspect to the exclusion of other possible suspects. As an example, Mr Bodor asked questions about the registration number GHQ 456 provided by Mr Lade, which I referred to earlier:

“Q. Just following on from what counsel assisting asked you, for example, in the elimination of suspects or the inclusion of suspects was there a witness by the name of Heiko Lade H-E-I-K-O-L-A-D-E who provided police with a number plate of a car that was strongly suspected of being involved in connection with murder?

A. Yes Heiko Lade was one of the witnesses at the scene on the night of the murder.

Q. And did that person provide a number plate, which contains six, sorry three correct details, that is one correct letter and two correct numbers of the car, as you eventually determined?

A. Yes.

Q. In fact the number that was supplied was GHQ456?

A. That is correct.

Q. Police checked the permutations of that number and identified that there was something like 23 or 24 Camrys in existence that had permutations of that number plate, is that right?

A. Yes that is correct.

Q. And other letters which may or may not be relevant?

A. Yes.

Q. Of those 23 or 24 cars some 13 or so were eliminated immediately as having been registered far from the murder?

A. I believe that is the case.

Q. It came down to ten. All those were questioned and investigated?

A. Yes, we made extensive inquiries in relation to that vehicle.

Q. I think it came down to a car associated with Mr Ngo carrying number plate STQ956 was the only one that was not able to be accounted for, so to speak?

A. I believe so.

Q. So that even things such as that were investigated and all other suspect - not all suspects - all other possibilities were investigated and eliminated?

A. Certainly. “

461 Mr Hamill followed up Mr Bodor's questions:

“Q. There has been a suggestion in the documents if you just accept from me that the police or prosecution tried to hide the existence of Mr Heiko Lade's evidence from Mr Ngo's legal team. If you just accept that from me. Is it your understanding that Mr Heiko Lade's statement containing that number plate was read to the Coronial inquest in 1988?

A. Yes.

Q. Sorry 1998. Whereas Mr Heiko Lade was in New Zealand I think at the time of the trials?

A. I don't have a memory of where he was, but certainly his statement was tendered or produced. "

462 So much for Professor Greig's claim, "Like much of the Prosecution's case, the allegation that this was Ngo in the Club Camry involved the concealment of discordant evidence!"

463 I interpolate the comment that I regard Mr Lade's statement of 6 September 1994 as a significant piece of evidence against Mr Ngo and I put that view to Mr Hastings during the course of his oral submissions. While he certainly did not embrace Professor Greig's view of it, he did correctly point out that the defence had no opportunity to cross-examine Mr Lade upon it.

464 Mr Hastings also submitted that I should not draw any inference from the fact that the statement of 6 September 1994 was not read at the trials. I remain unpersuaded by that submission. In my view, the inference is open, and I draw it, that the statement was not read because it was objected to by counsel for the defence.

465 The next police witness to whom I will refer is the now Chief Superintendent, Jenkins, a member of the Task Force investigating Mr Newman's murder, who in that capacity was present at the Commission on 17 July 1996 and there conducted a record of interview with Mr N in which he implicated Mr Ngo in the murder. Asked whether he had any recollection of telling Mr T anything about what was said by Mr N, he replied, "No, I don't and I wouldn't have".

466 Mr Kaldas, to whose evidence I have already referred in another context, testified that none of the four or five detectives who became permanently involved in the investigation of Mr Newman's murder was ever part of Major Crime Squad North. Initially, he said that the Task Force contained, perhaps, sixty investigators, some for a few days, some for a few months.

Gradually the number was pared down to about ten and then to four or five. He said that apart from officers involved in the initial burst of activity, none of them, to his knowledge, was involved with Major Crime Squad North. Mr Hastings did not challenge this evidence.

467 Mr Breen, as I have already stated, made a written submission soon after the Inquiry was instituted, he subsequently made a further written submission, and quite recently he wrote a letter concerning mobile phones, which the Inquiry investigated.

468 Although, as indicated above, I do not propose to deal in detail with legal and factual submissions made by persons other than those given leave to appear at the Inquiry, I feel I should comment upon Mr Breen's unreferenced statement :

“For the ordinary reasonable citizen, the idea that a person can be convicted of a crime for which there is no known perpetrator is contradictory and irreconcilable. Given that Mr Ngo was not present at the crime scene, the prosecution's failure to identify the perpetrator indicates an absence of any causative link between Mr Ngo and the crime”.

469 I respectfully very much doubt the validity of this proposition, which seems not only an affront to common sense but also to contradict what was said by a majority of the High Court in **King v The Queen (1986) 161 CLR 423** at pages 433 to 434, where Dawson J (with whom Gibbs CJ, Wilson J and Brennan J agreed) said (omitting references):

“Even where two persons are tried jointly upon the one charge as participants in the same degree, it does not inevitably follow that both must be convicted or both must be acquitted: An indictment charging two persons on the one count is both joint and several: The evidence may be sufficient to prove the case against one accused beyond reasonable doubt, but be insufficient to prove the case against the other. In that event, the conviction of the one and the acquittal of the other involves no inconsistency. Of course, where there is no material distinction in the evidence admissible against each accused to establish an element to be proved against both, different verdicts may be inconsistent. Inconsistency appears only if the acquittal of

one and the conviction of the other is to be accounted for by the making of different findings as to the common element.”

470 In the case of Mr Ngo, the evidence against him, in my opinion, was very different from the evidence against both Mr Dinh and Mr Dao. But in any event, the effect of the acquittal of Mr Dao and Mr Dinh on the conviction of Mr Ngo was expressly dealt with by the Court of Criminal Appeal. There is no new or fresh evidence upon that subject and it is not open to be considered by the Inquiry.

471 In the earlier of his submissions, in the context of referring to the evidence of the finding of a Beretta pistol in the Georges River, Mr Breen said that the gun may have originated in the “future exhibits locker” or come from “a cache of weapons dumped in the Hawkesbury River”, suggestions which emanated from an inquiry by the Police Integrity Commission (PIC), codenamed “Operation Florida”. After referring to findings of the PIC which implicated corrupt police officers at Major Crime Squad North (MCSN), Mr Breen wrote:

“Without wishing to cast aspersions on the police involved in Taskforce Gap, (the John Newman murder investigation) at least three officers were formerly based at the MCSN, and on that basis had access to a weapons cache that might have included the 1935 Beretta found in the Georges River.”

472 This statement caused him to be called before the Inquiry in order that he might be questioned upon the basis for it. He identified the officers as being among the four named in a question by him in the Legislative Council to the responsible Minister, viz. Officers Wayne Walpole, Mark Jenkins, Ian McNab and Nick Kaldas and two others, not there named, viz. Detective Bostock and Detective Hilder.

473 He asserted, however, that his question in Parliament asked the Minister whether the four named officers had been attached to Major Crime Squad North, Major Crime Squad South, or Major Crime Squad Northwest. He said that it was due to a “transcription error” that his submission to the

Inquiry claimed only that they had been formerly based at Major Crime Squad North.

- 474 Mr Breen denied to Mr Colefax that the section of the PIC report dealing with guns was exclusively devoted to Major Crime Squad North. Given an opportunity over some days to read the report and provide the reference to any part of it which supported this denial, he referred to paragraph 3.191. It is true that the paragraph refers to a police officer attached to the Armed Hold-Up Unit, part of Major Crime Squad South and it is true that the police officer was found guilty by the PIC of having engaged in police misconduct that was incidental to its focus on Major Crime Squad North. However, no adverse finding was made against Major Crime Squads South, or Northwest, or any other officer of those squads. Paragraph 3.191 of the PIC report does not form a proper basis for Mr Breen's allegation. He ultimately agreed with Mr Colefax that if no member of the Task Force investigating the murder of Mr Newman was associated with Major Crime Squad North, the suggestion at page 14 of his submission would fall to the ground.
- 475 The Honourable Reba Meagher was called to give evidence as a consequence of evidence given by Mr Breen wherein he suggested that she was aware before Mr Newman's murder that there were moves in the ALP to revoke his preselection for the seat of Cabramatta at the forthcoming state election.
- 476 She testified that on 5 September 1994, Mr Della Bosca, as General Secretary of the ALP in NSW, telephoned her about noon and asked her to come to his office later in the afternoon. She was then President of the Youth Wing of the ALP in NSW.
- 477 She said that at their meeting, which occurred at about 4pm, and was also attended by Mr Joe Tripodi (subsequently to become member for Fairfield and like Mr Della Bosca a minister in the NSW State Government). Mr Della Bosca told her there were problems with two state ALP members of

parliament, namely Mr Newman and the member for St Marys and that neither would probably be contesting the next election. She was invited to name the seat for which she would like to be a candidate and to go away and think about the proposal. He did not tell her of any reason for the two members to step down.

478 During the evening she learned through news reports of the murder of Mr Newman. At about 11pm Mr Della Bosca telephoned her and told her that she needed to make up her mind overnight whether she wished to be a candidate for Cabramatta. He invited her to come to his office at 9am.

479 She presented herself at Mr Della Bosca's office the following day and told him that she had decided to offer herself as an ALP candidate for the seat. Several weeks later she was preselected and in due course won the seat at a by-election.

480 In connection with the preselection she met Mr Ngo in Mr Della Bosca's presence and enlisted his support in the Vietnamese community. Afterwards she worked closely with Mr Ngo who, she said, was very active locally in the ALP and was on her State Electorate Council. She said that in conversation with her, he made known that his interest was a seat in the Legislative Council, not in the lower house.

481 Ms Meagher told Mr Colefax that at her meeting with Mr Della Bosca during the afternoon of 5 September 1994 he did not tell her that he had discussed with Mr Ngo the possibility of the seat of Cabramatta becoming vacant.

482 There was an apparent conflict between the evidence of Ms Meagher given to the Inquiry and the evidence of Mr Della Bosca given at the trial of Mr Ngo, in that he had there denied an awareness, before Mr Newman's murder, of any attempt to withdraw his preselection. Counsel Assisting the Inquiry interviewed Mr Della Bosca and the decision was taken that little purpose would be served by calling upon him to give evidence.

483 Given that the conversation with Mr Della Bosca directly affected her personal interests in an important way, it seems unlikely to me that Ms Meagher's evidence was unreliable. That is not to imply any criticism of Mr Della Bosca. He had no particular reason to remember the extent of his knowledge of Mr Newman's situation on 5 September 1994 and it seems likely that he was not asked to cast his mind back to it for several years.

484 Of course, if Mr Ngo's evidence is believed, that Mr Della Bosca told him at lunch on 5 September 1994, in effect, that Mr Newman was likely to be disendorsed, this circumstance could impact upon the political motive relied upon by the Crown. I will deal later with the submission by counsel for Mr Ngo upon this subject.

485 As I have already mentioned, Mr T, from where he was working in the change box in the poker machine section of the Club, claimed in evidence that he heard the Council mobile ringing at 8.40pm on 5 September 1994 in the manager's office some eight metres away. That the sound of a phone ringing could be heard, in the circumstances, from the change box was a matter of controversy at the third trial and evidence was called on the subject by the Defence, from an acoustic expert, Mr David Eden.

486 The evidence upon the matter, which was not unequivocal, was squarely before the jury and was not raised in Mr Selby's submission. Nor did it find a place in the issues upon which the Inquiry is primarily focused. However, at Mr Hastings' request, some evidence was adduced, principally from a former Manager/Chief Executive of the Club, Mr Bertram Badham, and from Mr Leo Sommerich, formerly an employee of Leighton Contractors.

487 Mr Badham, who was with the Club from 1998 to 2007, said that in 2005 some building work was carried out which included the demolition of the manager's office on the first floor. Shown a plan of the Club in 1992, he

said that the change box as depicted in the poker machine area had been removed before he joined the Club in 1998.

488 Mr Sommerich, as an employee of Leighton Contractors, was involved in the marketing and in the project management of the fit-out of the Club in about 1993. He said that Mr Ngo was the Club's principal representative in the dealings he had. He identified on a plan an executive office constructed on the first floor in the poker machine room and said that it would have been normal practice in 1994 to sound-proof such an office by installing insulation bats in the wall panels and a solid core door.

489 To Mr Hastings, in cross-examination, Mr Sommerich said that the lower half of the change box was a stud wall, and that it was surmounted by glass panels, which may have reached the ceiling. There were small gaps in the glass for the passage of money and communications.

490 Counsel for Mr Ngo did not make any closing submission in relation to Mr T's claim that he heard the Council mobile ringing in the manager's office. It is not a matter which gives rise to a doubt as to Mr Ngo's guilt.

## **SUBMISSIONS OF COUNSEL**

491 Mr Colefax submitted that the Inquiry ordered by the Chief Justice should be regarded as limited to the matters raised in Mr Selby's submission and new or fresh matters incidental thereto. In general terms I accept the correctness of that submission although in several instances I have departed from it to deal with matters which seemed to me appropriate for the Inquiry to consider.

492 The thrust of Mr Colefax's closing submissions was that nothing during the course of the Inquiry cast doubt upon Mr Ngo's guilt and that, to the contrary, several matters have reinforced the jury's verdict.

493 The submissions on behalf of Mr Ngo went beyond both the issues identified early in the Inquiry and the matters expressly raised during the course of it. It is convenient to deal immediately with some of them.

- “Motive Evidence Failed

Of course, in law it was no essential part of the Crown case that it prove motive. In opening the case to the jury, however, Mr Tedeschi said that the motive for the murder on Mr Ngo’s part was “greed for political power and influence”. The Crown alleged that his aim “was to remove the one and only person who stood solidly in his way to amassing greater political power and ultimately a seat in the NSW Parliament”.

In his closing submissions, Mr Tedeschi, in effect, repeated the Crown case that Mr Ngo’s motive was political in that Mr Newman was the barrier to him obtaining ALP pre-selection for the seat of Cabramatta.

In sentencing Mr Ngo, Justice Dunford expressed himself satisfied that the motive was “naked political ambition and impatience”.

Mr Hastings and Ms Pepper submitted that the proposition that Mr Newman’s murder was a political assassination can no longer be reasonably sustained in light of the evidence of Ms Meagher.

That submission assumes that Mr Della Bosca shared, at lunch with Mr Ngo, the information he subsequently conveyed to Ms Meagher on 5 September 1994. The only material on that subject before the jury at the third trial was Mr Della Bosca’s evidence who, in answer to a question by Mr Nicholson, “Did you consider in 1994 that there was a possibility that Mr Newman mightn’t be a candidate in the next election?”, replied “In September 1994, no I don’t believe so”.

The only additional material before me is Mr Ngo's evidence at the second trial where he had this exchange with Mr Walker:

"Q. During the lunch, was there any reference to Mr Newman?

A. Yes.

Q. Did you express during that lunch any hostility or personal hatred of Mr Newman?

A. No, I did not.

Q. Was anything said about Mr Newman and the seat of Cabramatta?

A. At that lunch I recall Mr Della Bosca has told us that either he just come back from a meeting with the then Leader of the Opposition, Mr Bob Carr, or he just had a conversation with Mr Bob Carr that there had been a lot of complaints about Mr Newman and that Mr Newman would not be re-endorsed for the following election.

Q. At that time Mr Newman was the endorsed candidate of the Labor Party, is that correct?

A. That's correct.

Q. Did hearing that at the lunch change your ambition at all for the Upper House, rather than the Lower House?

A. No.

Q. Was there any discussion at the lunch about any person or persons who might be endorsed in place of Mr Newman?

A. No, there was not.

Q. Were there any details given of what election or elections it was proposed Mr Newman would not be the candidate at?

A. Can you repeat the question, please?

Q. Did anyone say what election it was suggested Mr Newman would not be the Labor Party candidate?

A. The forthcoming state election.

Q. Was there any explanation of how that might be, if he were already endorsed for that election?

A. There was no discussion about that, but the party can disendorse any endorsed candidates at any time, if the administrative committee see fit."

There is thus only Mr Ngo's say so that before Mr Newman's murder he was aware that Mr Newman may not have been the ALP

candidate for Cabramatta at the next state election. Mr John Matour, the other person present at the lunch, did not give evidence at any trial and I repeat my earlier statement that I am unwilling to accept the unsupported evidence of Mr Ngo.

Whether or not Mr Ngo was interested in becoming the member for Cabramatta may, however, be a matter for debate. If, as the Crown asserts, by 5 September 1994 he had formed an intention to kill Mr Newman that night, one would expect him to be coy, as Mr Hamill pointed out, when discussing his political ambitions that very day with Mr Della Bosca. Mr Ngo's public statements after the death of Mr Newman suggest to me that he had not entirely forsaken a desire to become the member for Cabramatta where he had assiduously established an ALP branch power base. Presumably that desire was with him when he previously stood for the seat as an independent. On the other hand, Ms Meagher's evidence was to the effect that his real interest lay in becoming a member of the Legislative Council (but this evidence needs to be understood on the basis that her conversations with Mr Ngo occurred after her pre-selection).

The submission on behalf of Mr Ngo was critical of the Crown being permitted "to change its position in respect of motive", and referred to the cross-examination of Mr Ngo at the Inquiry based upon newspaper articles which portrayed, on their face, a high degree of antagonism between Mr Ngo and Mr Newman. This criticism was perhaps slightly unfair given that Mr Ngo, at the third trial, elected not to give the jury evidence of his lunchtime conversation with Mr Della Bosca.

However, in any event, in my opinion, it would be quite wrong for the Inquiry to reach its own conclusion on the subject of motive. There were, as I indicated earlier several reasons, each of which I regard as plausible, for Mr Ngo to want Mr Newman dead. There

was abundant evidence before the jury on the subject and it was not a matter upon which the jury needed to reach a conclusion.

Even if Justice Dunford were wrong in his finding, it would not, in my opinion, cast doubt upon the conviction.

- The gun located has not been proven to be the murder weapon.

The only new or fresh evidence on this subject was the evidence of Professor Young and Dr MacLeod, to which reference has been made and which, if anything, eliminated a doubt raised in the testimony given at the third trial

The issue was, I think, really a matter for the jury and not for me. There was certainly, in my opinion, material from which the jury could have concluded that the gun found was indeed the murder weapon.

However, Mr Hastings and Ms Pepper raised one discreet aspect which, I think, has more to do with establishing a link between the gun found and the weapon purchased by Mr N from Mr TN. They contended that neither Mr T nor Mr N, when they participated in a “gun array”, positively identified a Beretta. At the array, Mr T identified both a Lama and a Beretta and Mr N identified only a Lama. All that can be said about this submission is that my assessment from looking at photographs of the guns admitted as exhibits in the third trial is that both the Beretta .32 and the Lama appear quite similar in size and shape.

It was also asserted on behalf of Mr Ngo in support of the submission regarding the gun found in the river that “no link exists between the gunpowder residue located on the jacket liner found by (Mr McNab) at Mr T’s house and the weapon purportedly used to kill Mr Newman”.

I remain unclear as to the precise import of this submission but the position is that gunpowder residue of the same make (Winchester) as identified in respect of Mr Newman's murder was found on a jacket in Mr T's home. There was an explanation for this, namely, that on another occasion altogether, Mr T, while wearing the jacket, accidentally discharged a gun while sitting in a car. That piece of evidence seems to have little or nothing to do with this Inquiry. It certainly does not raise a doubt as to Mr Ngo's guilt.

- "Mr L and Mrs L Identification Evidence is of No Weight".

It was submitted on behalf of Mr Ngo that the evidence Mr and Mrs L was evidence "the unreliability of which renders its prejudice to Mr Ngo far in excess of its probative value".

The submission referred to Mrs L being, admittedly, influenced by her husband and by the short period of observation. It also referred to the circumstances in which they gave evidence and to telephone evidence supporting Mr Ngo's testimony that at the relevant time he was watching The Lion King at Bankstown.

As I have already indicated, I am not satisfied that telephone records necessarily support Mr Ngo's evidence as to his whereabouts on the night of 3 September and I would be reluctant to accept his unsupported evidence. The circumstances in which Mr and Mrs L gave evidence was a ground of appeal to the Court of Criminal Appeal and I am obviously bound by its decision.

As to their testimony, I did not see them give it and I do not regard an assessment of its reliability as part of my function. However, I comment that it appeared quite powerful on a reading of the transcript.

- Procedural Unfairness

Under this head, the submission relies on three matters in addition to the assertion that the way Mr and Mrs L were permitted to give their evidence was procedurally unfair.

The first concerned the alleged failure to disclose results of tests carried out by Mr Wilson on 16 August 1999 “which was likely to have prompted a more comprehensive review of the totality of the results, and manifest lack of reliability thereby disclosed”.

On the face of it this seems entirely speculative. But, in any event, I do not regard the evidence of Mr Wilson as of any real significance upon this aspect of the case, in the light of Mr Ngo’s own evidence.

The second matter raised concerned the asserted failure of the Crown to provide the defence with a copy of the police interview with Mr Ranse dated 28 May 1999.

I have dealt with this matter earlier. In my opinion, the failure to serve a copy of the 28 May interview could not have affected the course of the trial. In any event, however, that is not the issue before me. My role, as the submissions themselves contend, is to consider whether on all the material available to the Inquiry, there is now a reasonable doubt as to the guilt of Mr Ngo. An error by the Crown, which arguably deprived the defence of a minor tactical advantage, is unlikely to and did not, in this case, of itself raise a doubt as to a defendant’s guilt.

The third point raised was that Mr Ngo was not permitted to attend Voyager Point during the trials and that this constituted procedural unfairness by denying him “the opportunity of providing further explanation as to why he could not have disposed of the gun in the manner alleged.”

There is no evidence before me that he requested, let alone was denied, the opportunity to attend Voyager Point during the trials. No such application was made to me.

If he was refused permission to attend Voyager Point during the trials, that was a matter which could, and should, have been raised with the Court of Criminal Appeal. It is not a matter for this Inquiry.

The submissions do not elaborate upon the nature of the “further explanation” Mr Ngo might have been able to offer which would not have been apparent to those of his lawyers who did visit Voyager Point.

494 As I earlier indicated, lengthy submissions were made on behalf of Mr Ngo regarding the evidence of Mr T and Mr N, which went beyond the question of their alleged interdependence. The submissions appropriately highlighted the particular significance of Mr T who, as Mr Tedeschi said in his closing address at the third trial, “was present in one form or another during almost the entire course of this enterprise to kill John Newman”.

495 It was submitted that there were seven cases based on the evidence of Mr T and Mr N upon which the only conviction secured was that of Mr Ngo. The submission brings into account the charges against Mr Dao and Mr Dinh for the murder of Mr Newman; Mr Ngo and Mr Dao for alleged offences which gave rise to the Dung matter; and proceedings against Mr Ngo and Mr Dinh for conspiring to murder a Mr Ming. The weight to be given to that submission is, in my view, somewhat diminished by the fact that in relation to the murder of Mr Newman, there was a wealth of other evidence against Mr Ngo. As I understand the position in relation to both the Dung matter and the Ming matter, the Crown was obliged to rely almost exclusively on the acceptance of the evidence of Mr T and Mr N, notwithstanding that they themselves may have been involved in criminal activity. The Ming matter, incidentally, was not pursued to trial.

496 Although it was a matter for the jury at the third trial and not for me, there were undoubtedly inconsistencies and discrepancies in the testimony of Mr T and Mr N, which may have led to them being regarded as unreliable. I have earlier commented about this and, in light of my earlier stated conclusion that for relevant purposes the evidence of Mr T and Mr N should be regarded as “independent”, I do not think it appropriate that I make any further attempt to assess the credibility of either of them.

497 In their closing submissions, Mr Bodor and Mr Spartalis contended that there was “not one scintilla of evidence (which) points to any wrongdoing or improper activity by Mr Kaldas”. I agree. I also agree with the submissions of Mr Hamill and Mr Jordan that despite a number of allegations by various supporters of Mr Ngo there is no evidence that the investigation of Mr Newman’s murder was conducted otherwise than professionally and competently.

### **GENERAL CONCLUSION**

498 The Crown in a criminal trial has very limited opportunity to “choose” its witnesses. So it was in this case that it became obliged to call witnesses who had themselves engaged in criminal activity. It was likely that the honesty and reliability of such witnesses would be severely tested in cross-examination and indeed it was.

499 Inconsistencies and discrepancies were uncovered which the jury, properly instructed, was required to resolve. My own assessment of the evidence however, is that overall at trial it constituted a strong Crown case against Mr Ngo. The factors which lead me to that conclusion include the probability, as it seems to me for reasons given above, that the evidence of Mr T and Mr N was substantially true; the lies and half truths which Mr Ngo told investigating police officers on 14 September 1994 and 14 December 1994 as to his movements on the night of 5 September 1994; his admission, ultimately, that he left the Club earlier than 9.30pm and was

in the area of the murder when it occurred, despite earlier claiming that he did not leave the Club before 9.30pm; his admission that within 20 minutes of the murder, he had travelled in the direction of Voyager Point and into the area from which the south-east facing cell of Mobile Phone Tower 7 was designed to receive phone calls; the strong probability, in my view, that the gun found in the Georges River was indeed the murder weapon; the extent of his control and influence over the affairs and finances of the Club and its employees, including Mr T and Mr N; the establishment of motive; the evidence that he was seen standing near Woods Avenue Cabramatta on the night of 3 September 1994; evidence probative of the fact that his car was seen in Woods Avenue about the time of the murder; and the Telstra records which in some, albeit limited, respects provided support for the Crown case.

500 I agree with the submissions of Mr Colefax and other counsel that material put before the Inquiry increased rather than diminished the strength of the Crown's case at trial. Such material included the second statement of Mr Lade; Mr Ngo's admission of some familiarity with the footbridge at Voyager Point; and Dr MacLeod's abandonment of his opinion that the gun found in the Georges River was likely to have been there for a longer period than since the murder. Moreover, Mr Ngo's own evidence, which was not before the jury at the trial where he was convicted, was, I believe, very destructive of his claim of innocence. There was much strength in his counsel's and solicitor's advice at the third trial that the risk of exposing himself to cross-examination outweighed the likely probative value of his evidence.

501 Regrettably, the strength of the evidence available against Mr Ngo was virtually ignored by his supporters in their submissions to the Inquiry. Unsupported allegations of gross impropriety were substituted for analysis of the facts. While Mr Selby's submission to the Chief Justice, on its face, raised matters calling for investigation, they lost all significance, in my opinion, when scrutinized at an open hearing and in the light of cross-examination and submissions by senior and experienced counsel.

502 Although in this report I have focused on the matters referred to in paragraph 17, which themselves were derived from Mr Selby's submission to the Chief Justice, I have necessarily reviewed all the available material, both supportive of the case against Mr Ngo, and supportive of his innocence. Although I have not seen many of the witnesses, I have had the considerable benefit of detailed analysis by counsel appearing at the Inquiry.

503 In the result, I find that nothing in the matters raised by Mr Selby, or otherwise now available, casts doubt upon, or raises, a sense of unease or disquiet in respect of the conviction of Mr Ngo.

504 It is appropriate that I repeat that nothing which has come before me suggests that the very difficult and complex investigation into Mr Newman's murder was conducted otherwise than thoroughly and competently by police officers dedicated to the task. Equally, there is no evidence that Mr Kaldas, at any stage of the investigation, acted improperly or without competence and diligence, apart from the minor error he made in giving evidence earlier referred to.

## **ACKNOWLEDGEMENTS**

505 The Inquiry had no investigative facility. On occasions, I communicated directly with the Commissioner of Police, Mr Andrew Scipione, and asked him to have inquiries undertaken by police officers, not concerned with the Newman murder. I express my appreciation for his invariably prompt and comprehensive response. I also express my thanks to the NSW Police Force for providing transport and the services of Mr McNab in connection with a view of various relevant locations by counsel and myself.

506 Mr Colefax proved time and time again the fallacy of my original view that the Inquiry could be conducted without Counsel Assisting. That was certainly not the case and I acknowledge with gratitude his very considerable contribution. He was in turn assisted by the Prothonotary of the Supreme Court, Ms Jennifer Atkinson who took time from her demanding office to be his instructing solicitor and by Mr Anthony Pyne. I received great personal assistance from my Associate Ms Denyse Moxham and Tipstaff, Mr Dario d'Argent. Both performed with considerable skill services well beyond those normally expected of them. Finally, I thank Ms Gabrielle Drennan, Registrar of the Court of Criminal appeal for her assistance in the early stages of the Inquiry.

## **TRANSCRIPT**

507 In accordance with section 82 of the Crimes (Appeal and Review) Act a transcript of the depositions given in the course of the Inquiry is incorporated in this report.

**Dated: 14 April 2009**

**David Patten**

**Judicial Officer Conducting Inquiry**