OCT 1981

H. 6

Report of the Royal Commission

to Inquire into

the Circumstances of the Convictions

of

Arthur Allan Thomas

for the Murders of

David Harvey Crewe

and

Jeanette Lenore Crewe

1980

Presented to the House of Representatives by Command of His Excellency the Governor-General

BY AUTHORITY:
P. D. HASSELBERG, GOVERNMENT PRINTER, WELLINGTON, NEW ZEALAND—1980
Price $6.50

AUCKLAND PUBLIC LIBRARIES

ROYAL COMMISSION TO INQUIRE INTO AND REPORT UPON THE CIRCUMSTANCES OF THE CONVICTIONS OF ARTHUR ALLAN THOMAS FOR THE MURDERS OF DAVID HARVEY CREWE AND JEANETTE LENORE CREWE

Chairman

The Honourable R. L. Taylor, a former Justice of the Supreme Court of New South Wales.

Members

The Right Honourable J. B. Gordon,
The Most Reverend A. H. Johnston, C.M.G., LL.D.

Secretary

Mr M. G. Werner

Administrator

Mr J. H. Blackaby

TABLE OF CONTENTS

Warrants

Letter of Transmittal

Counsel Appearing

Foreword

INTRODUCTION	*Paragraph*	*Page*
1. Background	1–10	13
2. Police Investigation	11–21	14
3. Judicial and other Proceedings	22–29	16
4. Crown Case Against A. A. Thomas	30	17
TERM OF REFERENCE 1	31–32	18
1. General	33–36	18
2. Exhibit 350	37–52	18
3. Exhibit 350 Identification:		
(i) Preliminary	53	23
(ii) Fatal Bullets	54–62	23
(iii) Definitions and Background	63–84	25
(iv) Dr Sprott's Theory	85–88	30
(v) Evidence Before Commission	89–97	31
(vi) Reasons for Accepting Sprott's Theory ...	98–148	32
1964/2 and Nelson/Hutton Report ...	149–160	45
Exhibit 343	161–188	47
Conclusion	189–191	53
4. Theories Advanced by Police to Explain Presence of 350 in the Garden:		
(i) Louvre Window Theory	192–202	53
(ii) Being Thrown Out Window	203	55
(iii) Cold Shell in Rifle	204-208	55
5. Other Evidence Suggesting Thomas was on the Property:	209–211	58
(i) Motive	212–220	58
(ii) Were Bullets Fired from Thomas Rifle ...	221–237	60
(iii) The Axle	238–262	63
(iv) Wire	263–266	71
(v) Additional Material put by Police ...	267–286	72
6. The Searches	287–319	75
7. Corrosion	320–324	82
8. Summary of Findings to this Stage	325–329	83
9. Police Investigation, October 1970 and Conclusions Concerning Exhibit 350	330–351	84
10. Destruction of Exhibits	352–366	87
11. Thomas's Prior Visits to Crewe Farm ...	367–374	90
12. Roddick *re* Sighting of Woman	375–387	91
13. Timing of Murders	388–397	94
14. Collection of Rifles	398–401	95
15. Conclusions *re* Term of Reference 1	402	96

	Paragraph	Page
TERM OF REFERENCE 2	403–411	98
TERM OF REFERENCE 3		
Term of Reference 3 (a)	412–441	100
Term of Reference 3 (b)	442–447	104
TERM OF REFERENCE 4	448	106
Term of Reference 4 (a)	449–455	106
Term of Reference 4 (b)	456	107
Term of Reference 4 (c)	457–469	107
TERM OF REFERENCE 5		
Term of Reference 5 (a)	470–471	111
Term of Reference 5 (b)	472–473	112
TERM OF REFERENCE 6	474–533	113

APPENDICES

	Page
Appendix I: Identification of Exhibit 350	122
Appendix II: Affidavit by Mr David Yallop	123
Appendix III: Contractual Liabilities Mr A. A. Thomas	125
Appendix IV: Expenses Incurred by Family of Mr A. A. Thomas ...	125

Royal Commission to Inquire Into and Report Upon the Circumstances of the Convictions of Arthur Allan Thomas for the Murders of David Harvey Crewe and Jeanette Lenore Crewe

ELIZABETH THE SECOND by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To Our Trusty and Well-beloved The Honourable ROBERT LINDSAY TAYLOR, of Sydney, Australia, One of Her Majesty's Counsel Learned in the Law and retired Chief Judge at Common Law, Supreme Court of New South Wales; The Right Honourable JOHN BOWIE GORDON of Heriot, lately Minister of the Crown; and the Most Reverend ALLEN HOWARD JOHNSTON, C.M.G., of Hamilton, Archbishop of New Zealand:

GREETING:

WHEREAS, in 1971, Arthur Allan Thomas was tried and convicted, in the Supreme Court at Auckland, of the murders of David Harvey Crewe and Jeanette Lenore Crewe; And whereas, in 1973, following the making by the Court of Appeal of an order directing a new trial, Arthur Allan Thomas was again tried and convicted, in the Supreme Court at Auckland, of those murders; And whereas Arthur Allan Thomas, having been sentenced to imprisonment for life for those murders, was detained in prison under that sentence until the 17th day of December 1979 when His Excellency the Governor-General was pleased to grant to Arthur Allan Thomas a free pardon in respect of his conviction of those murders:

And whereas it is desirable that inquiry should be made into the circumstances of the two convictions:

KNOW YE that We, reposing trust and confidence in your integrity, knowledge, and ability, do hereby nominate, constitute, and appoint you, the said

The Honourable ROBERT LINDSAY TAYLOR,
The Right Honourable JOHN BOWIE GORDON, and
The Most Reverend ALLEN HOWARD JOHNSTON,

to be a Commission to inquire into and report upon—

1. Whether the investigation by the Police into the deaths of David Harvey Crewe and Jeanette Lenore Crewe was carried out in a proper manner; and, in particular,—

(a) Whether there was any impropriety on any person's part in the course of the investigation or subsequently, either in respect of the cartridge case (Exhibit 350) or in respect of any other matter?

(b) Whether any matters that should have been investigated were not investigated?

(c) Whether proper steps were taken, after the arrest of Arthur Allan Thomas, to investigate any matter or information, if any, which suggested that he was not responsible for those deaths?

2. Whether the arrest and prosecution of Arthur Allan Thomas was justified?

3. Whether the prosecution failed at any stage to perform any duty it owed to the defence in respect of—

(a) The disclosure of evidentiary material which might have assisted the defence?

(b) Any other matter?

4. Whether, in respect to the jury list for either trial,—

(a) The Crown or the Police or the defence obtained preference in respect of the time at which the list was supplied?

(b) Any persons named on the list were approached by representatives of the Crown or the Police or the defence before the jury was selected?

(c) Anything was done otherwise than in accordance with normal practice or was improper or was calculated to prejudice the fairness of the subsequent trial?

5. Whether, after each trial,—

(a) The Crown or the Police made an adequate investigation into new matters, if any, which may have related to the deaths of David Harvey Crewe and Jeanette Lenore Crewe or to the trial and which were placed before the Crown or the Police by any person or persons?

(b) Any relevant facts became known to the Crown or the Police which were not known to them at the time of the trial?

6. What sum, if any, should be paid by way of compensation to Arthur Allan Thomas following upon the grant of the free pardon?

7. Such other matters as are directly relevant to the matters mentioned in paragraphs 1 to 6 of these presents:

But nothing in paragraphs 1 to 7 of these presents shall empower you to inquire into or report upon the actual conduct of the trials, whether by the Courts or on the part of the Crown or the defence:

And We hereby appoint you, the said

The Honourable ROBERT LINDSAY TAYLOR,

to be the Chairman of the said Commission:

And for the better enabling you to carry these presents into effect you are hereby authorised and empowered to make and conduct any inquiry or investigation under these presents in such manner and at such time and place as you think expedient, with power to adjourn from time to time and place to place as you think fit, and so that these presents shall continue in force and any such inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place:

And you are hereby strictly charged and directed that you shall not at any time publish, save to His Excellency the Governor-General, in pursuance of these presents or by His Excellency's direction, the contents of any report so made or to be made by you, or any evidence or information obtained by you in the exercise of the powers hereby conferred on you, except such evidence or information as is received in the course of a sitting open to the public:

And you are hereby directed that where documents of a confidential nature, such as Police files, solicitors' files, and other confidential documents of the Crown or of any other person, are disclosed to you, you shall disclose the contents of those documents, whether in your report or to other persons (including parties to the inquiry), only to the extent that,

in your opinion, such disclosure is proper and necessary in the interest of making full inquiry into any of the matters set out in paragraphs 1 to 7 of these presents or of reporting thereon:

And it is hereby declared that the powers hereby conferred shall be exercisable notwithstanding the absence at any time of any one of the members hereby appointed so long as the Chairman or a member deputed by the Chairman to act in his stead, and one other member, are present and concur in the exercise of the powers:

And We do further ordain that you have liberty to report your proceedings and findings under this Our Commission from time to time if you shall judge it expedient to do so:

And, using all due diligence, you are required to report to His Excellency the Governor-General in writing under your hands, not later than the 31st day of January 1981, your findings and opinions on the matters aforesaid together with such recommendations as you think fit to make in respect thereof:

And, lastly, it is hereby declared that these presents are issued under the authority of the Letters Patent of His Late Majesty King George the Fifth, dated the 11th day of May 1917, and under the authority of and subject to the provisions of the Commissions of Inquiry Act 1908, and with the advice and consent of the Executive Council of New Zealand.

In witness whereof we have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this 24th day of April 1980.

Witness The Right Honourable Sir Keith Jacka Holyoake, Knight Companion of the Most Noble Order of the Garter, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Member of the Order of the Companions of Honour, Principal Companion of the Queen's Service Order, Governor-General and Commander-in-Chief in and over New Zealand.

KEITH HOLYOAKE, Governor-General.

[L.S.]

By His Excellency's Command—

R. D. MULDOON, Prime Minister.

Approved in Council—

P. G. MILLEN, Clerk of the Executive Council.

Letter of Transmittal

To His Excellency, the Honourable Sir David Beattie, G.C.M.G., Q.C., Governor-General and Commander-in-Chief in and over New Zealand:

MAY IT PLEASE YOUR EXCELLENCY,

By Warrant dated the 24th day of April 1980, We the undersigned—ROBERT LINDSAY TAYLOR, JOHN BOWIE GORDON, and ALLEN HOWARD JOHNSTON, were appointed to report under the terms of reference stated in the Warrant.

We were required to present our report by the 31st day of January 1981.

We now humbly submit our report for Your Excellency's consideration.

We have the honour to be

Your Excellency's most obedient servants.

R. L. TAYLOR, Chairman.

J. B. GORDON, Member.

A. H. JOHNSTON, Member.

Dated at Wellington this 11th day of November 1980.

Counsel Appearing

Assisting the Commission

Mr H. C. Keyte
Mr M. P. Crew

For Mr A. A. Thomas

Mr P. A. Williams
Mr K. Ryan

For the New Zealand Police

Mr J. S. Henry, Q.C.
Mr R. L. Fisher

For the Department of Scientific and Industrial Research, and the Justice Department

Mr R. P. Smellie, Q.C.
Mr D. L. Schnauer

For D. S. Morris, Esq.

Mr J. H. Wallace, Q.C.
Mr P. J. Davison

FOREWORD

On 17 December 1979 Arthur Allan Thomas, who had been twice tried and convicted in the Supreme Court at Auckland and sentenced to imprisonment for life for the murders of David Harvey Crewe and Jeanette Lenore Crewe, was released from prison pursuant to a free pardon granted in respect of his conviction for those murders by the Governor-General of New Zealand.

On 24 April 1980 the warrant for this Royal Commission was issued. Its terms of reference, the public hearings to be held, and the procedures to be followed by all wishing to make submissions, were widely publicised before the first public hearing.

On 21 May 1980 the Commission's proceedings were formally opened in Auckland. On 9 June it began hearing evidence, usually sitting in public but occasionally in private. The hearing occupied 64 days and concluded on 30 October.

During the proceedings we inspected portions of the former Crewe property, Pukekawa district, and Waikato River; test fired the Thomas rifle at the Navy range, and viewed a pantograph at the Engineering Faculty of Auckland University.

The Commission received 12 formal written submissions and heard evidence from 132 witnesses, of whom 5 were from Australia and 1 from England. The transcript of evidence of these witnesses occupies approximately 3500 pages. Two hundred and ten exhibits were received and in addition the Commission considered approximately 1800 pages of evidence given in other judicial proceedings, approximately 5000 pages of police files, and various books, letters, articles, and affidavits.

The evidence was recorded on a DEC Tabletop Data System PDT 151 machine and copies made available twice daily to the Commissioners and all Counsel appearing, a system which worked well.

The Commission expresses appreciation and gratitude to the Secretary, M. G. Werner, and his staff; the Administrator, J. H. Blackaby; Counsel Assisting, H. C. Keyte, and M. P. Crew; Research Assistants, Miss S. B. Powdrell and B. W. Morley; the Chairman's Associate, Mrs F. Brown; and the Stenographers, Miss S. Smith and Mrs L. Jackson. We also record our thanks to the Navy for the use of its firing range, to the Government Printing Office, Auckland, for their help in copying large quantities of material, and to Detective Chief Superintendent Wilkinson and his staff for their co-operation in providing the many documents and records called for. We also wish to pay tribute to all Counsel appearing for their helpful submissions.

INTRODUCTION

1. Background

1. On 22 June 1970, Constable Wyllie of the Tuakau Police received a telephone call about 2.20 p.m. It was from a Mr Owen Priest, who told what must have seemed then, and still seems today, a bizarre story of a bloodstained house, empty but for a weeping infant. That telephone call marked the start of the Police investigation into the deaths of Mr and Mrs Harvey Crewe.

2. Jeanette Lenore Crewe was born in 1940, the elder daughter of Mr and Mrs L. W. Demler. She grew up on their farm at Pukekawa and attended the local primary school, but completed her secondary education in Auckland. She trained as a teacher and taught in a number of places in the North Island after her training was completed. In 1961–62 she travelled overseas and returned to New Zealand to teach in Maramarua and then in Wanganui.

3. In 1942 her younger sister, Heather Demler, was born. In 1950, upon the accidental death of an uncle, Jeanette and Heather Demler inherited his farm in equal shares. This farm became known as the Chennell Estate and it was to be run by a series of managers until the sisters reached the age of 25.

4. David Harvey Crewe, usually known as Harvey, had a similar background to Jeanette Demler, in that he was born and raised in a farming district in the lower North Island, but attended school in Wellington. Upon leaving school he was employed on various farms in the Woodville and Wanganui districts, and also spent 2 years as a shepherd in the Kumeroa area, employed by his friend from teenage years, Graham Hewson.

5. It was while Jeanette Demler was living and teaching in Wanganui that she met Harvey Crewe. In June 1966 they were married. At this time Harvey Crewe bought Heather Demler's half share of the Chennell Estate. Thus when they moved onto the farm it was as joint owners.

6. The property itself is located on Highway 22, the house some 60 yards off that road. The Crewes set to with vigour, determined to increase the efficiency and profitability of their farm. Perhaps this may account for the fact that Mr and Mrs Crewe appear to have made few friends in Pukekawa in the ensuing 4 years. It seems that they retained a circle of friends who lived away from the area. Nevertheless, this hardworking and competent couple appeared contented and happy. On 1 December 1968 their daughter Rochelle was born.

7. In February 1970 Jeanette Crewe's mother died. Lenard Demler continued to live by himself at his farm which adjoined the Crewe farm on Highway 22. Following his wife's death Mr Demler became a regular visitor at the Crewe household for meals.

8. Arthur Allan Thomas was born in 1938, one of a family of nine children, four brothers and four sisters. He was raised on his parents' 272 acre farm at Mercer Ferry Road, some 8 miles away from the Crewe farm. He attended the local primary school and left at the age of 14, having reached standard 6.

9. On leaving school he began work on his father's dairy farm. Later he worked on an uncle's farm, then moved to Roose Shipping Company as a labourer. He also spent some time in Maramarua as a forestry worker. Later he was an employee of Barr Brothers, an aerial topdressing firm.

10. In November 1964 he married Vivien Carter who had recently arrived from England and was staying with her uncle in Wellsford. Following his marriage he worked on a number of farms until in June 1966 he entered into a 5-year lease with his father to take over the running of the family farm at Pukekawa. With his wife he farmed the property efficiently. Evidence suggests that they mixed well into the community as one would expect local persons to do, and to all appearances their marriage was a stable and happy one.

2. Police Investigation

11. Detective Inspector Hutton, who became officer in charge of the case, had arrived at the house by 4 p.m. on 22 June 1970, with a party of detectives. On that day, and in the following 7 weeks, he organised an investigation which was intense, thorough, and painstaking. It was however without result in two vital respects; neither body had been found, although it seemed likely from analysis of the many bloodstains, and from a small amount of brain tissue found on the arm of a chair, that both Mr and Mrs Crewe were dead. It had not been possible to obtain anything amounting to sufficient evidence against Mr L. W. Demler, Mrs Crewe's father, who was initially Inspector Hutton's main suspect.

12. The situation changed on 16 August 1970, when Mrs Crewe's body was found in the Waikato River. Fifteen fragments of the bullet from her head were recovered. These included one large fragment on the base of which the number 8 had been embossed. The fragments were immediately sent to Dr D. F. Nelson of the Department of Scientific and Industrial Research (DSIR) for comparison with bullets test-fired from rifles collected from relatives and associates of Mr and Mrs Crewe, and from residents within 5 miles of their farm and from other persons who had in some way become involved in the inquiry. An intense search for a ·22 cartridge case was also carried out in the house and enclosure, both of which had already been carefully searched in June.

13. Because Police inquiries had revealed some association between Jeanette Demler and Arthur Thomas in earlier years, Mr Thomas's ·22 rifle was collected by the Police on 17 August 1970. No ·22 rifle was collected from Mr Demler because he was not registered as the owner of one. Nor, despite a thorough investigation, could the Police establish that he had had access to a ·22 rifle at the time Mr and Mrs Crewe disappeared.

14. Dr Nelson told Mr Hutton on 19 August of his preliminary conclusion that neither Mr Thomas's rifle, nor another owned by the Eyre family, could be excluded as having fired the fatal bullet. The fragments of bullet from the head of Harvey Crewe, also containing the remnants of an 8 on the base, but more badly damaged and therefore of less assistance in identifying the rifle from which they were fired, were taken to Dr Nelson following the discovery of Mr Crewe's body on 16 September.

15. It was not however until later, between 13 and 16 October, that Dr Nelson confirmed his preliminary view that of the 64 examined, only the Eyre rifle and the Thomas rifle could not be excluded as having fired the fatal bullets. It is clear to us that in this conversation he made Mr Hutton aware of a distinctive scoring mark in one of the 6 lands in bullets test fired from the Thomas rifle, and that such a mark had not been found on either of the fatal bullets. Therefore a positive identification of the fatal bullets as having come from the rifle could not be made. We shall deal with this matter in detail in due course but say at this stage that Dr Nelson's notes

make it clear, and he and Mr Hutton should have realised, that it could not be stated affirmatively that the fatal bullets came from Mr Thomas's rifle.

16. With Mr Crewe's body was recovered a car axle, which had obviously been tied to the body with wire as a weight and was soon identified as coming from a 1928/9 model Nash motor car series 420; by 13 October it had been established that, until about August 1965, this had been in use on a trailer owned by Mr A. A. Thomas's father, Mr A. G. Thomas.

17. At about this time two Police officers from Christchurch, Detective Inspector Baker and Detective Senior Sergeant O'Donovan, were sent to Auckland to conduct an overview of the Crewe homicide file. It is evident that they regarded the concentration on Mr Demler as the prime suspect by Mr Hutton's team as misguided, and that they encouraged the investigating team to search for other avenues of inquiry. During 2 weeks from 13 October 1970, the Police investigating team did just this. While they had been unable during the previous 4 months to uncover a single item of hard evidence against their initial suspect, Mr Demler, they succeeded during this period in building up what amounted virtually to the whole of the case against Mr A. A. Thomas.

18. On 13 October, Detective Johnston picked up from Mr Thomas's farm a box of ·22 ammunition, uncounted, which was to become exhibit 318. He appears also to have visited a tip on the farm that day, searching for parts connected with the axle. That evening, the Police staged a reconstruction of the way in which Mr Crewe may have been shot, which involved the murderer shooting from outside the house, through the louvre windows with one foot on a brick parapet beside the steps leading to the back door, and the other foot on the windowsill.

19. On 14 October, other members of the Thomas family were interviewed concerning the axle. On 15 October, Mr Johnston was again on Mr Thomas's farm, this time looking for trailer parts and obtaining a statement which Mr Thomas had written out in his own hand. He returned on 20 October with Detective Parkes and located, after a cursory search of one of the three tips on the farm, two stub axles on which broken welds matched welding at either end of the axle itself. Wire samples, to be analysed and compared with the wire taken from the two bodies, were also taken by Mr Johnston on 13 and 20 October. On the latter date, Mr Thomas's rifle was again uplifted by the Police.

20. There is evidence from Mr and Mrs Priest, which establishes that two shots were fired by Mr Hutton and one other Police officer, probably Mr Johnston, at the Crewe house at some time between 30 September 1970 and 27 October 1970. Extensive inquiries into the financial affairs of Mr Thomas were carried out by the Police on 23 and 24 October. Finally, on 27 October 1970, Detective Sergeant Charles and Detective Sergeant Parkes were sent to the Crewe farm to search an area of garden beside the fence outside the back door of the house. It was thought that, if the murder of Mr Crewe had been carried out in the manner of the reconstruction of 13 October, a shellcase might have been ejected from the rifle into that garden. On any view of the matter, the garden had already been searched on two occasions, but the two detectives located in the course of their sieve search a shellcase, later to become exhibit 350, within 2 hours of beginning the search.

21. Mr A. A. Thomas was arrested and charged with the murders of Mr and Mrs Crewe on 11 November 1970.

3. Judicial and Other Proceedings on both Charges of Murder

22. Mr Thomas first appeared in Court on 11 November 1970. He was remanded in custody until 25 November 1970, and then again to 14 December 1970 for the taking of depositions. The Lower Court hearing lasted until 22 December 1970, on which date he was committed to the Supreme Court for trial on both charges.

23. The first trial took place between 15 February and 2 March 1971. The jury found him guilty on both counts. His appeal to the Court of Appeal was dismissed by that Court on 18 June 1971.

24. In late 1971 Mr Thomas, his father Mr A. G. Thomas, and Mr P. G. F. Vesey, submitted a petition to the Governor-General, pursuant to section 406 of the Crimes Act 1961, seeking a new trial. The material contained in that petition was considered by Sir George McGregor, a retired Judge of the Supreme Court. His report of 2 February 1972 gave as his view that no further reference to the Court should be granted; there had in his opinion been no miscarriage of justice. That recommendation notwithstanding, following a further petition of 2 June 1972, the matter was put before the Court of Appeal on what has become known as the First Referral. Evidence and submissions were heard on 4 days between 5 February and 16 February 1973. On 26 February 1973 the Court of Appeal ordered a second trial.

25. That second trial began on 26 March 1973. It lasted until 16 April 1973 on which date Mr Thomas was convicted of both murders and again sentenced to life imprisonment. An appeal against this second conviction was dismissed by the Court of Appeal on 11 July 1973.

26. Mr Thomas's case had always attracted widespread publicity and public concern. A leading forensic scientist, Dr T. J. Sprott, had given evidence on behalf of Mr Thomas at the second trial. After the trial he began, in company with Mr P. J. Booth, to pursue an inquiry into a question raised late in the second trial, namely whether the cartridge case, exhibit 350, found by Detective Sergeant Charles could have any connection with the bullets found in the heads of Mr and Mrs Crewe.

27. Their efforts led to a further petition to the Governor-General, and the case was referred to the Court of Appeal for the second time. The hearing took place between 9 December 1974 and 8 January 1975. On 29 January 1975 the five Judges of the Court of Appeal gave a unanimous judgment to the effect that Thomas had not excluded a reasonable possibility that exhibit 350 contained a pattern 8 bullet.

28. The only other proceeding of a judicial nature in Mr Thomas's case was an attempt to appeal from the judgment of the Court of Appeal at the Second Referral to the Privy Council. In 'Reasons for Judgment', dated 4 July 1978, the Privy Council advised that they had no jurisdiction to entertain such an appeal. There was no slackening of effort on the part of those concerned with Mr Thomas's case. Dr Sprott and Mr Booth particularly, continued their investigation into the cartridge case question following the judgment of the Court of Appeal on the Second Referral. Mr Booth published a book *Trial by Ambush* and Dr Sprott and Mr Booth jointly were responsible for the publication *ABC of Unjustice.*

29. In 1978 the British author, Mr D. A. Yallop, took an interest in the case. He spent a considerable time researching and writing his book *Beyond Reasonable Doubt?* This book stated his belief in Mr Thomas's innocence and his opinion that his conviction amounted to a serious miscarriage of justice. The nature and seriousness of the allegations made were such that the Prime Minister appointed Mr Adams-Smith, QC. to

report to him. Mr Adams-Smith gave two reports to the Prime Minister dated 16 January 1979 and about December 1979. It was as a consequence of the second that Mr Thomas received a free pardon pursuant to section 407 of the Crimes Act 1961. Shortly afterwards this Commission was set up to investigate the circumstances of his convictions.

4. Crown Case Against Mr A. A. Thomas

30. The evidence presented by the Crown against Mr Thomas at the Depositions hearing in the Otahuhu Magistrates Court, and at the two trials, falls into the following categories:

(i) Motive: it was said that Mr Thomas had a motive, based on jealousy, to kill Mr and Mrs Crewe.

(ii) The fact that both of the fatal bullets could have been fired in Mr Thomas's rifle.

(iii) The fact that the cartridge case, exhibit 350, found by Detective Sergeant Charles on 27 October 1970, had undoubtedly been fired in Mr Thomas's rifle.

(iv) The fact that the axle found beneath Mr Crewe's body had belonged to Mr A. G. Thomas; that a Mr Rasmussen remembered removing it from a trailer owned by Thomas about August 1965 and said that it had been sent back to the farm with the two stub axles and other material removed from the trailer; and that the two stub axles were found on 20 October 1970 by Detective Johnston in the Thomas tip.

(v) The fact that wire samples, taken by the Police from Mr Thomas's farm, were found by the DSIR to be in agreement with the wire used to bind the two bodies, and not to agree with wire taken from a number of other farms, including Mr Demler's farm.

TERM OF REFERENCE 1

31. Whether the investigation by the Police into the deaths of David Harvey Crewe and Jeanette Lenore Crewe was carried out in a proper manner; and in particular—

(a) Whether there was any impropriety on any person's part in the course of the investigation or subsequently, either in respect of the cartridge case (exhibit 350) or in respect of any other matter?

(b) Whether any matters that should have been investigated were not investigated?

(c) Whether proper steps were taken, after the arrest of Arthur Allan Thomas, to investigate any matter or information, if any, which suggested that he was not responsible for those deaths?

32. We propose to deal first with the specific questions raised by the term of reference under (a), (b), and (c); the answers to these specific questions will enable an answer to be given to the general part of this term of reference.

TERM OF REFERENCE 1(a)

1. General

33. This term deals with impropriety in the course of the investigation or subsequently, either in respect of the cartridge case, exhibit 350, or in respect of any other matter.

34. We propose to deal first with exhibit 350, and we state at the outset that the allegation of impropriety here is, and has been since 1970, that it was planted on the Crewe property by the Police to incriminate Mr Thomas. The Police deny this allegation, and say that exhibit 350 came into the garden on the Crewe property by being left there by Mr Thomas on the evening of 17 June 1970. The Police further state, and of course we accept, that it is irrelevant if evidence of this suggests that Mr Thomas committed the murders.

35. We do not wish there to be any suggestion that we have excluded from our consideration any evidence which the Police, or any other party for that matter, considered relevant to this or any other issue. We admitted, subject to relevance, the whole of the evidence given at the second trial of Mr Thomas.

36. We propose to deal with the issue whether there occurred any impropriety in relation to exhibit 350 by considering the whole of the evidence. Our consideration of exhibit 350 will take up a significant part of our report. Exhibit 350 is the most important issue in this whole inquiry.

2. Exhibit 350

37. This fired ·22 cartridge shell was found by Detective Senior Sergeant Charles on 27 October 1970 in the garden inside the fence surrounding the Crewe house. He was searching that garden with Detective Senior Sergeant Parkes on the instructions of Detective

Inspector Hutton, given the evening before at a conference held at the Otahuhu Police Station. The sequence of events which led to these instructions being given is important.

38. It is said that on 11 October, Detective Johnston had noticed in photographs taken at the scene as discovered by the Police on 22 June 1970, that the kitchen louvre windows were open. He thought that possibly the murderer had fired his first shot from outside the house, with one foot on the parapet beside the back door and his other foot on the windowsill beneath the louvre windows. A reconstruction on the evening of 13 October showed that a shot could be fired into the head of a person sitting in the large armchair known as 'Harvey's chair' by a rifleman in that position. However, the evidence establishes that a shooting in this manner is so unlikely that this possibility can safely be disregarded. (See paragraphs 200 to 202.)

39. On 26 October there occurred a discussion or conference, of which there are no notes in existence, at Otahuhu Police Station, including at the least Detective Sergeant Jefferies, Detective Inspector Hutton, Detective Sergeant Charles, and Detective Sergeant Parkes, and probably also other officers. Because of the lack of any written record of what was said, and the natural difficulty of those concerned at remembering events which occurred 10 years ago, we have not received a clear or satisfactory account of exactly what went on during that discussion. It is evident that there was a conversation between Mr Hutton and Mr Jefferies wherein Hutton asked Jefferies if the relevant flower bed had been sieve searched in August. Jefferies said it had not. As a consequence of that conversation, Mr Hutton detailed Messrs Parkes and Charles to search it the next day.

40. We find this discussion between Messrs Hutton and Jefferies on 26 October very curious.

41. Mr Hutton must have been aware which gardens had and had not been sieve searched, because he gave Mr Jefferies his instructions and received his report. If the Police evidence that the garden was not sieve searched in August is correct, Mr Hutton would have been aware of that fact on the evening of 13 October. That very evening was, therefore, the obvious time to order a search of the garden for a shellcase ejected from beside the louvre windows. We find it incomprehensible that Mr Hutton waited nearly 2 weeks to order that search.

42. By 27 October, the Police had the Thomas rifle, and cartridges with cases identical to exhibit 350, for at least a week, and thus the opportunity to fire a cartridge in that rifle and to plant the shellcase in the garden. We make no findings at this stage, but we point out that the timing and circumstances of the conversation between Mr Hutton and Mr Jefferies are so curious as to lead to a suspicion that it may have been staged for the benefit of those listening to it, namely Messrs Charles and Parkes.

43. It was clear that Mr Charles and Mr Parkes were instructed to use their discretion as experienced officers and members of the armed offenders squad to search the garden, from the back gate forward as far as they believed a shellcase might have been ejected had a shot been fired in the manner suggested by the reconstruction. We place no particular significance on a distance of five yards mentioned in a job sheet by Mr Parkes, since the evidence made it clear that the matter was left to the discretion of the two officers.

44. Mr Charles and Mr Parkes arrived at the Crewe house at about 10 a.m. on 27 October. They carefully weeded the area of flowerbed to be searched, examining the vegetation as they went. The vegetation was light

and easily removed. It is of significance that Mr Parkes did not remember their having to remove from the garden a large plant, shown in a photograph taken on 23 June as growing immediately beside the back gate. This fact suggests, although it does not on its own establish, that the August search was at the very least a thorough one, and possibly a sieve search, for the simple reason that it is clear that the photograph to which we refer was taken after the initial search in June. In other words the plant was not removed in the initial search in June and must have been removed in August. We shall return to this factor at a later stage.

45. About 10.30 a.m., the two officers began their search of the earth in the garden. They initially used a small garden fork and a sieve, but soon found that the soil was puggy and damp, and would not break up even if shaken. They therefore adopted the system of Mr Parkes moving ahead to loosen and break up the earth with the fork as far as possible, while Mr Charles moved along behind breaking the soil down with his bare hands. The soil was searched to a depth of about 6 inches.

46. After between 1–2 hours of searching, i.e. some time between 11.30 a.m. and 12.30 p.m., Detective Charles found the shellcase which was to become exhibit 350. The shellcase was buried in the garden, and we accept Detective Charles' estimate that it was buried to a depth of approximately 2–3 inches.

47. The colour of the cartridge case when found is of importance in relation to the corrosion evidence, considered below. We consider particularly relevant in this regard the evidence of Mr Charles and Mr Parkes, who after all found it. Mr Charles said that his recollection was that there was a tarnishing, discolouring effect, with the colour being a dark brown, darker than the normal colour of brass. Mr Parkes said that it was a sort of brassy coppery brown, with a darkish look about it. Neither had any recollection of seeing on the cartridge case the inky black stains which evidence established is one characteristic of corrosion. Nor, significantly, did Mr Shanahan of the DSIR, who first saw the cartridge case the next day, and who was obviously trained to notice such matters, see such a stain.

48. Despite the pugginess of the soil, the cartridge case, curiously enough, contained bone dry soil, which fell out as Mr Charles handled it.

49. Having examined the shellcase with Mr Charles, Mr Parkes went to their car to attempt to contact Inspector Hutton by radio-telephone. He was not able to do so, probably because Mr Hutton was interviewing Mr and Mrs Thomas at their farm at that stage. The two accordingly continued their search until 1 p.m., at which time Mr Parkes was able to contact him by radio-telephone and arrange a rendezvous at the home of Mr and Mrs Priest. There they showed him the cartridge case. Its importance was obviously realised by all of them; all three went back to the Crewe house; Inspector Hutton was shown the position where the shellcase had been buried, marked by a stake by Mr Charles. That position was 15 ft 10 ins from the wall of the house, a measurement which will become of importance at a later stage.

50. We have found it necessary to set out findings of exhibit 350 in some detail because it is clearly a most important issue in the case. We draw attention at this stage to the fact that Inspector Hutton, in a job sheet completed on 28 October in relation to this matter, mentioned in some detail the colour and condition of the shellcase when he first saw it at the house of Mr and Mrs Priest. He mentioned in particular an inky stain on the cartridge case, and the terms of the description are consistent with a cartridge case subject to a fair degree of corrosion.

ILLUSTRATION 1

ILLUSTRATION 2

51. Mr Hutton, however, fails to mention that he was contacted by radio-telephone and arranged to meet Mr Charles and Mr Parkes at the Priest house; his version is that he was having lunch at the Priest house when Charles and Parkes arrived and asked to see him. Mr and Mrs Priest, however, gave evidence, which we accept, that Mr Hutton arrived with Mr Charles and Mr Parkes, and that he did not have lunch at their house. In our view, these inconsistencies are significant. We do not accept Mr Hutton's evidence as to the degree of corrosion, preferring instead that of Mr Shanahan, Mr Charles, and Mr Parkes.

52. Mr Charles kept the shellcase in his pocket for the rest of that day, and in his locked desk drawer overnight, and took it to the DSIR next day. The examination by Mr Shanahan conclusively established one fact which we accept and which indeed has always been accepted by all concerned with this case—that it had been fired in Mr Thomas's ·22 pump action Browning rifle, and in no other rifle. Mr Hutton was informed that this was the case on 28 October.

3. Exhibit 350—Identification

(i) Preliminary

53. Our terms of reference preclude our inquiring into or reporting upon the conduct of the trials by the Crown. We do not propose to do so. We do, however, consider that we are entitled to make two observations:

(a) The first is that the case put by the Crown at both trials was that exhibit 350 contained one of the fatal bullets, probably that which had killed Mr Crewe. Only at the Second Referral to the Court of Appeal in 1974, when doubt was being cast on the connection of exhibit 350 with the fatal bullets, did the Crown advance the possibility that exhibit 350 was a spent shell in the breech of the murderer's weapon, which he ejected as he loaded his rifle prior to approaching the Crewe house. That it took the Crown 4 years to think of that possibility speaks eloquently of its intrinsic unlikelihood.

(b) The second observation follows from the first: The keystone of the Crown case was exhibit 350. The Crown said that this shellcase contained the projectile fired from the Thomas rifle and which killed Harvey or Jeanette Crewe.

(ii) The Fatal Bullets

54. Both leaden ·22 bullets recovered from the heads of Mr and Mrs Crewe are shown as illustrations 1 and 2. One had stamped on its base the number 8; and the other had remnants of the number 8. This indicated that the bullets had been manufactured by CAC Industries Limited, of Auckland, (which we shall call 'CAC'). The '8' signified bullets of a particular design, called 'pattern 8', manufactured in great quantities between 1948 and 1963. The last production of them is shown by the company's records to have occurred on 8 November 1963. On that date, they were loaded into gilding metal or copper cartridge cases. The last batch to be loaded into brass cartridge cases was manufactured on 10 October 1963.

55. After 8 November 1963, the records show that CAC changed to making pattern 18 or 19 bullets. These may be distinguished from pattern 8 bullets as follows:

(a) There is no number stamped on their base.

(b) The shape of the nose of the bullet is less rounded and more pointed than is the nose of a pattern 8 bullet.

(c) The bullet has two grooves, or cannelures, around its waist rather than three as is the case with pattern 8 bullets. Pattern 18 and 19 are identical save for the fact that pattern 19 is hollow nosed and pattern 18 solid nosed.

56. Evidence from CAC to this effect was advanced at the first and second trials, since a complete cartridge, exhibit 343, found by Detective Keith in a garage used by Mr Peter Thomas on 21 October 1970, was found when dissected to have a pattern 8 bullet. The inference which the Crown drew was, that a person who had on his property in 1970 one round of ammunition 7 years old, might well have had further rounds of the same age including the fatal bullets. In any event, the effect of the evidence was that the ammunition used by the murderer had been manufactured on or before 8 November 1963.

57. Mr A. M. Aitken of CAC was called to give evidence to the same effect before this Commission. By the time he gave his evidence, following the cross-examination of Dr Nelson and the evidence of Mr Cook and Mr Leighton, to which we shall refer below, it must have become clear to the DSIR that the evidence was steadily mounting to support the proposition that exhibit 350 could not have been manufactured before 1964 at the earliest, and thus could have no connection with bullets manufactured before 8 November 1963.

58. An attempt was therefore made to establish that an '8' may have been stamped on the base of pattern 18 or 19 bullets manufactured after that date, and that the fatal bullets may have been of this type, manufactured after 8 November 1963.

59. The basis of the suggestion that an '8' may have been stamped on the base of a pattern 18 or pattern 19 bullet was that the punches with '8' on the base used in the manufacture of pattern 8 bullets remained in the CAC factory after 8 November 1963. The physical measurements of the pattern 8 punches were the same as the physical measurements of the pattern 18 or 19 punches, which did not have the '8' on the base. Mr Aitken said that it was possible, but highly improbable, that the old punches would have been used in the manufacture of pattern 18 or 19 bullets. We accept his evidence in this regard.

60. One would expect, had this highly improbable possibility ever become a reality, that there would be in existence a large number of pattern 18 or 19 bullets with an 8 on the base. Not a single one has been produced to us and we are certain that an assiduous search has been carried out.

61. Dr Sprott, who has dissected many thousands of cartridges, and whose integrity we accept, said that he had looked for one in vain as a means of disproving his theory. We find that there is not the slightest evidence to support the suggestion that pattern 18 or 19 bullets might have been manufactured with an '8' stamped on the base. Even strong cross-examination failed to produce any evidence to support this possibility now advanced for the first time by the DSIR.

62. It follows that the bullets which killed Mr and Mrs Crewe were manufactured before 8 November 1963. It also follows that, if they were

connected with exhibit 350, then that cartridge case must have been manufactured before 10 October 1963, that being the last date on which CAC loaded pattern 8 bullets into brass cartridge cases.

(iii) Exhibit 350—Definitions and Background

63. Most unfortunately, exhibit 350 is no longer in existence. It was disposed of by the Police on the Whitford tip on 27 July 1973, following the Second Appeal being dismissed. There are, however, in existence the following photographs of it:

(a) A series of black and white photographs of excellent quality taken by the DSIR of the base of the cartridge case soon after its discovery, for the purpose of showing the firing pin impressions. These include one photograph showing the whole of the base, which is illustration 3, and others showing parts of it;

(b) A colour photograph of exhibit 350 and of other cartridge cases was taken by the DSIR to illustrate Mr Shanahan's corrosion evidence.

(c) A black and white photograph of exhibit 350 taken by the defence before exhibit 350 and other exhibits were sent to England on 26 June 1972, for examination by the Home Office.

Those who examined the cartridge case before its destruction were also, of course, able to give evidence about it.

64. A cartridge or round of ·22 ammunition consists of a metal cartridge case, and a bullet or projectile. The cartridge case is cylindrical in shape, and has a rim at the base wider than the body of the case. It is this rim which contains the priming substance in rimfire ammunition. The body of the cartridge case contains gunpowder. The leaden bullet fits into the open mouth of the cylindrical cartridge case so that the cannelures are visible.

65. The letters ICI stamped in the base of exhibit 350 identified it as a product of the Ammunition Division of ICI Australia Limited, which was renamed at a later stage IMI Australia Limited. We shall refer to this company as 'ICI'. It was part of the world-wide Imperial Chemical Industries Limited group of companies, which had ammunition factories in other parts of the world. The ICI trademark which they stamped on their ammunition in other countries is different from that used by ICI in Australia, at their Melbourne factory.

66. It is clear on the evidence, and all parties accept, that exhibit 350 was a dry primed brass long rifle rimfire cartridge case of ·22 calibre. A number of terms should at this stage be defined for the sake of clarity.

67. The term 'dry primed' refers to a technique of priming in the course of manufacture of the cartridge case, which Dr Sprott explained. The final stage of manufacture of the cartridge case involves priming and the formation of the rim. Up until that stage, the cartridge case consists of a blank-ended tube with an outside diameter of 0.22 inches and of a length sufficient to form the final cartridge case. At this stage, a small disc of primer material is inserted into the cartridge case and forced to the bottom against the blank end of the tube. The tube is then placed over a mandrel which is a neat fit inside the tube and which extends down until it touches the primer. Another piece of metal, known as a bumper, is then forced against the closed end of the tube.

68. The bumper carries the lettering, in reverse and embossed, which is to be incused into the cartridge case. As the bumper is forced against the

ILLUSTRATION 3

bottom of the tube it causes a considerable compression force to be exerted on the metal, which then expands sideways together with the priming material so as to form the rim of the cartridge case. Since the priming substance is in solid form during this operation, the process is called 'dry priming.'

69. Dry priming is to be distinguished from wet priming, which involves priming of the cartridge case by injecting a liquid slurry of the priming substance into the cartridge case after it has been formed by a different process. The technical details of that process are unimportant, but it results in a subtle yet distinct variation in the shape of the rim of the cartridge case which enables experts to distinguish wet primed cartridge cases from dry primed without difficulty. We are best able to express the difference by saying that wet primed cartridge cases appear to us to have a broader and more rounded rim than do dry primed cartridge cases. The difference in shape is of vital significance in relation to a cartridge case known as exhibit 1964/2, to which we shall return.

70. The term 'long rifle' refers to the length of the cartridge case. A 'long rifle' case contains more powder than an ordinary case, and is accordingly more powerful. The term is of no significance to what follows.

71. The term 'rim fire' means that the priming substance is contained in the rim of the cartridge case and that the firing pin of the rifle must therefore strike the rim of the cartridge case. When that occurs, the priming substance explodes and ignites the gunpowder contained in the body of the cartridge case. The rapid combustion of the gunpowder produces gases which force the bullet out of the mouth of the cartridge case and through the barrel of a rifle. The photograph of exhibit 350, which is illustration 4, shows the rectangular firing pin impression of Mr Thomas's rifle.

72. The letters 'ICI' on the base of exhibit 350 are of the 'Sans Serif' type, which was introduced by the company in the late 1950's. The exact date is immaterial, but Mr I. K. Cook gave as his educated guess June 1959. Since he started at ICI in 1951, took over as Superintendent of the Rimfire Section in October 1958, and was Manager of the Ammunition Division at its closure in 1979, he was an ideal witness to give evidence on what occurred in the ICI factory. We unhesitatingly accept his evidence on the various matters to do with ICI's manufacture of ammunition with which he dealt.

73. It is appropriate that we mention at this stage that the evidence of those witnesses such as Mr Cook, Dr Sprott, and Dr Nelson who had first hand contact with the records and manufacturing process of ICI was of great importance, since the factory has now closed and all records have been destroyed. Such records and other documents as were produced before the Commission had been extracted by those concerned with the matter in the years 1973 to 1975.

74. Before 1959, various motifs, including 'ICI' in serif style lettering, and 'ICI' inside a broad arrow were used to identify the ·22 ammunition manufactured by ICI. The sans serif style lettering with which we are concerned was used until 1971 when the lettering was changed to a single 'I' consequent upon the change in the name of the company to IMI Australia Limited.

75. The process of manufacture of dry primed cartridge cases has been outlined in paragraph 42 above. The bumper there mentioned is a small steel tool with raised lettering embossed on its surface which stamps the impression 'ICI' in the base of the cartridge case.

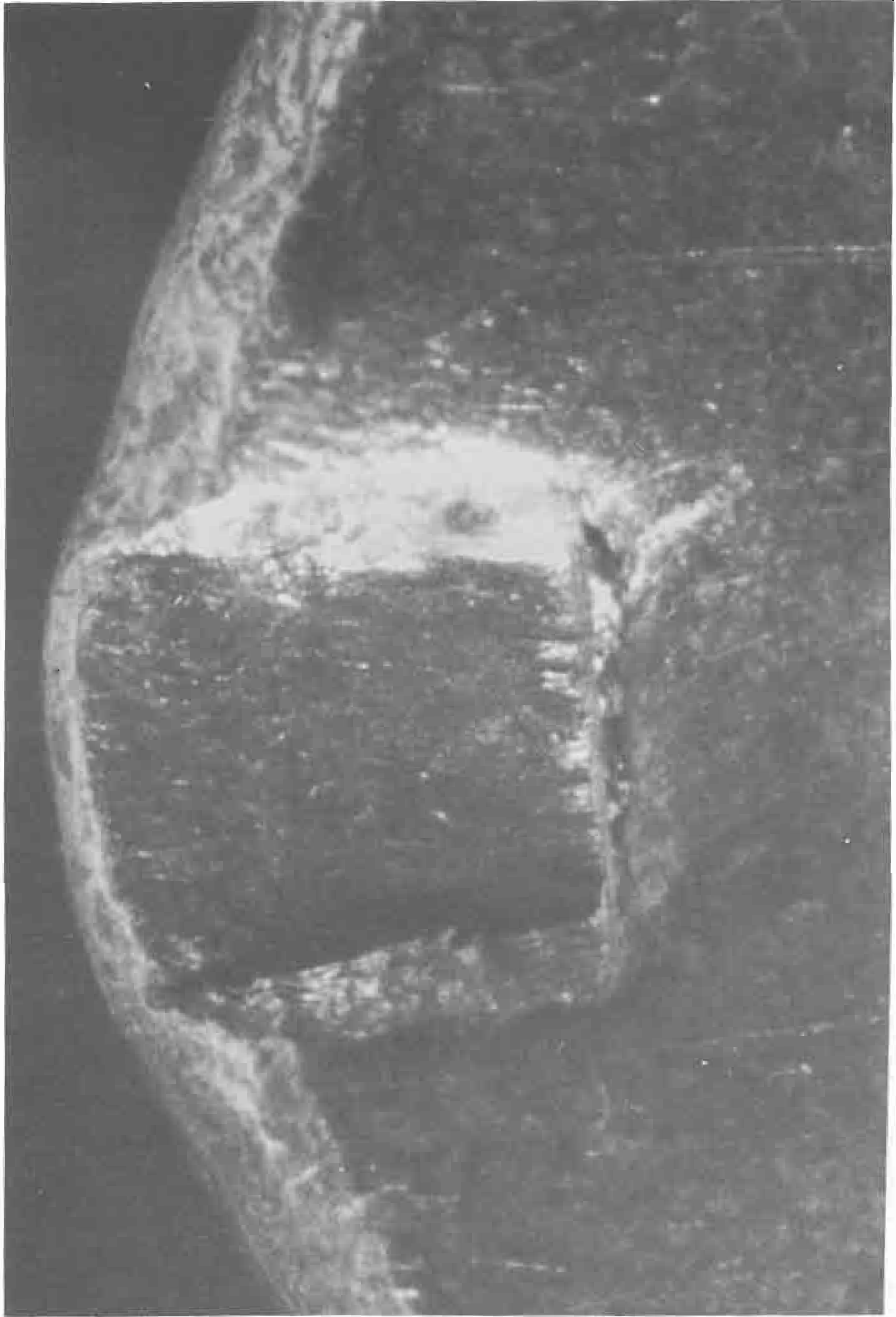


ILLUSTRATION 4

76. Bumpers were manufactured from steel tools known as hobs which had the letters 'ICI' engraved in their surface. A large number of bumpers, up to 400 at a time, were made from any particular hob. A bumper was used in one of up to 24 machines suitable for the manufacture of ·22 cartridge cases. Mr Cook estimated, and we accept, that on average 10 machines were employed in the manufacture of ·22 long rifle brass cartridge cases. Each was capable of making 100 per minute, or about 40 000 per day. It will thus be apparent that the average daily production of the cartridge cases with which we are concerned was of the order of 400 000. The significance of these enormous numbers will become apparent when we consider a suggestion put forward by the DSIR that exhibit 350 belongs to a special category of cartridge case produced before 1963, and is, it would seem, the only example of that category which can be found.

77. Prior to use, bumpers were covered with chrome plating, which wore off as they were used. Mr Cook's memory was that the average life of a bumper before replating was necessary was about a day, and that the average bumper could be replated 6–10 times before the lettering was worn to such an extent that the bumper would no longer give a distinct print. Mr Cook said that he had in 1973 checked the company's records and established that during the years 1960–1965 bumpers were ordered on the following dates:

26 May 1960	17 September 1960
6 February 1961	27 September 1961
30 August 1962	1 April 1963
30 November 1963	29 September 1964
7 July 1965.	

These dates are consistent with Mr Cook's memory of the length of time for which a bumper could be used, and the number of times it could be replated, when one bears in mind that fewer than 400 bumpers were manufactured on occasions.

78. Although there were many bumpers in use, there were few hobs. A hob is a steel tool used to manufacture bumpers in a hydraulic press, the steel bumper being pressed into the hob with such force as to cause raised lettering to appear on the head of the bumper.

79. ICI manufactured their own bumpers from hobs which they also produced but which were engraved for them by C. G. Roeszler & Son Pty. Ltd. to their specifications. Both hobs and bumpers were produced from tool drawings which specified their measurements.

80. The earliest of the relevant tool drawings in respect of bumpers is P3054. It is clear that it was originally drawn on 13 August 1953 with serif style lettering. The drawing records that, on 28 January 1959, the dimensions of the letters were changed. The specification had previously been a thickness of .012 inches and a height of .062 inches. It was changed to a thickness of .012 to .015 inches and a height of between .065 and .070 inches. On 9 February 1960, the drawing records 'Form of lettering changed to suit hob.' Since the later version of the drawing is marked 'Use hob P4773', it is a reasonable inference that P4773 is the hob drawing referred to.

81. The next drawings in time are P4643 in respect of bumpers and P4646 in respect of hobs, both drawn on 11 August 1958. The dimensions of the sans serif letters 'ICI' on the two drawings are identical, namely a height of .062 inches and a thickness of .012 inches. The obvious inference

is that they were intended to be used together. P4643 has written on it an undated note 'Not to be used—see P3054'. P4646 has written on it an undated note—'Do not use see P4773'.

82. P4773 is a hob drawing. The copy available is the second issue which was drawn on 16 March 1959. Mr Cook said that what was done on that date may merely have been a redrawing of a drawing completed only a short time earlier. The drawing has sans serif style lettering with a height of .065 to .070 inches, and a width of .012 to .015 inches, that is, the same dimensions as P3054 from 9 February 1960.

83. In our view there are clearly two pairs of drawings involved, one in each case for a bumper and the other for a hob. The pair with smaller lettering comprises P4643 for bumpers and P4646 for hobs; the pair with larger lettering comprises P3054, as redrawn, for bumpers and P4773 for hobs.

84. Mr Cook of course gave evidence that the change to sans serif style lettering occurred in June 1959. Drawings P4643 and P4646 were in existence at that time and may have been used for the changeover. This is not, however, a point on which it is necessary for us to make a definite finding.

(iv) Dr Sprott's Category Theory

85. It is appropriate at this stage to move forward in time to the development of the theory which has enabled the categorisation of the headstamps of cartridge cases manufactured by ICI. In the last week of Mr Thomas's second trial, on Tuesday, 10 April 1973, Mr Vesey, Chairman of the Arthur Allan Thomas Retrial Committee, brought to Dr Sprott a matchbox containing a number of cartridges and a letter. The letter drew attention to the fact that pattern 8 bullets seemed to be allied with certain types of lettering on the base of cartridge cases and not with others. The letter and matchbox had been forwarded by a Mr J. B. Ritchie of Dannevirke, a sports goods dealer, and apparently a former member of the New Zealand Police Force.

86. By the evening of Thursday, 12 April, Dr Sprott had established the following four categories of cartridge cases:

Category 1 'Broad arrow' enclosing letters 'ICI'.

Category 2 serif style ICI lettering.

Category 3 sans serif style ICI lettering, small letters.

In his evidence at the second trial given the next day, Dr Sprott drew attention particularly to the letter 'C' which he said had a height of approximately 1.2 mm or ·057 inches.

Category 4 sans serif style ICI lettering, larger letters.

In his evidence at the second trial, Dr Sprott said that the letter 'C' of category 4 had a height of 1.5 mm or ·064 inches.

87. The point of Dr Sprott's analysis was that categories 1, 2, and 3 always contained a pattern 8 bullet, category 4 a pattern 18 or 19 bullet. Dr Sprott had also examined exhibit 350 and exhibit 343 in circumstances to which we shall refer in some detail at a later stage. He found that exhibit 350 fell within category 4, exhibit 343 within category 3. The effect of his evidence was that exhibit 350 had no connection with the fatal bullets.

88. Evidence in rebuttal was subsequently given by the Crown. The main evidence was that of Dr D. F. Nelson of the DSIR who had been given the opportunity to examine both exhibits 343 and 350 during an

adjournment. He said that the height of the letter 'C' was identical in both cases and was 1.57 mm, which corresponds with the height which Dr Sprott had given for his category 4. The point was that there was no difference between exhibit 350 and exhibit 343, it having of course been established that the latter had contained a pattern 8 bullet.

(v) Evidence before the Commission

89. Considerably more evidence has been put before this Commission that was put before the jury at the second trial. That evidence is the fruit of years of dedicated investigation by Dr Sprott and Mr P. J. Booth, of thoughtful analysis by Professor N. A. Mowbray, and of thorough preparation for the Second Referral and for this hearing by the DSIR. We have had the opportunity of reading the material put before the Court of Appeal at the Second Referral; it is quite apparent, and we do not mean to criticise anyone concerned with the case in the Court of Appeal on either side when we make this comment, that this matter was far more extensively canvassed before us than before the Court of Appeal. It follows that we are in a better position to examine the evidence on the cartridge case issue and to draw conclusions from it than either of the other Tribunals which have examined the matter.

90. We propose to refer first of all to the whole of the evidence now adduced for and against Dr Sprott's theory, with the exception of exhibit 343. We shall then consider exhibit 343. Its importance is, of course, that if Dr Nelson's measurements are accepted, it is the example of a pattern 8 bullet combined with a category 4 cartridge case which in Dr Sprott's theory should not exist.

91. Dr Sprott's categorisation of cartridge cases has changed over the years only in two essential respects. The first is the inclusion of one additional category, the so-called 'wide I' which is similar to category 4, but has an overall width of the letters ICI about ·012 inches greater than the ·125 inches of category 3 and category 4. We shall return to the explanation of this odd discrepancy in due course. The second is a sub-category of category 3 with slightly smaller letters.

92. We heard evidence on the validity of Dr Sprott's categorisation theory from Dr Sprott himself, from Mr Booth, from Professor N. A. Mowbray, formerly Professor of Engineering at the University of Auckland, and now Professor Emeritus, and from Dr D. F. Nelson and Mr I. F. MacDonald of the DSIR. Mr MacDonald is the Dominion Analyst and Director of the Chemistry Division of the DSIR. We do not propose to traverse the whole of their evidence, which was often of a highly technical nature, is not susceptible to proper presentation without extensive use of photographs and graphs, and is in any event to be found in the transcript of our proceedings.

93. It is a fair summary of the position to say that all were agreed that differences do exist in the shape of sans serif ICI headstamps. The point at issue is whether the different headstamps can be placed into different categories and, if so, the number of these categories. Dr Sprott asserts, as he has done since 1974, with the support of Professor Mowbray, that there are only three categories, namely: Category 3 (a and b), Wide I, category 4.

94. The DSIR witnesses on the other hand contended for a larger number of categories and were initially at least disposed to argue that even their investigations had not isolated every category.

95. Dr Nelson was the first witness on this topic. He was extensively cross-examined. Dr Sprott was the next witness. Before beginning to cross-examine him, counsel for the DSIR made a concession which was important. It was that, were it not for the uniqueness of exhibit 350 and the fact that exhibit 343 had a pattern 8 bullet, the DSIR would probably be able to accept on the balance of probabilities the correctness of Dr Sprott's categorisation and accordingly that exhibit 350 would not have had a pattern 8 bullet.

96. Dr Sprott was then cross-examined. Mr MacDonald was the next witness. At the end of his prepared brief, he had stated his conclusion that exhibit 350 may have had a pattern 8 bullet. He was asked by counsel assisting us how probable that was. His answer is quoted in full:

> 'I would think that we have always said that it may have happened. I would think that the chances are it probably did not happen.'

It will be noted that this answer was not qualified by any reference to the uniqueness of exhibit 350 or by any reference to exhibit 343. No further questions were asked of Mr MacDonald save by his own counsel, and the effect of those questions was merely to expand on the reasons for his concession. The evidence of Professor Mowbray, confirming Dr Sprott's categorisation, was then heard.

97. At the conclusion of this evidence we were in a position to identify exhibit 350 and this we did in a statement dated 8 July 1980, the text of which is found in appendix 1. Counsel for the Police has submitted that we so ruled only on the balance of probabilities. That is incorrect, since we avoided expressing the ruling in terms of any standard of proof. In view of that submission, however, we now state that, although the concession of the DSIR was only on the balance of probabilities, we are satisfied beyond all reasonable doubt that exhibit 350 contained a pattern 18 or pattern 19 bullet.

(vi) The reasons for our Accepting Dr Sprott's Theory

98. We now propose in the paragraphs which follow to set out the factors, apart from the concession by the DSIR, which have brought us to this view of the matter.

99. We found Dr Sprott's evidence extremely helpful. The beauty of his theory, if we may say so, is its simplicity. The differences between a category 3, a category 4 and a wide I cartridge case can be discerned by the naked eye. Each of us has been able to appreciate the various categories in this way. We think it important that we emphasise that Dr Sprott's theory is not a matter of recondite and abstruse scientific reasoning. It is rather a matter of a difference in shape which, so Mr Booth said in evidence, even his children could readily appreciate.

100. The existence of three categories, rather than the indeterminate larger number for which the DSIR contended, is consistent with Mr Cook's evidence of ICI production techniques and practice. Our earlier description of bumpers and hobs will have made it evident that a cartridge case will bear the same imprint as a bumper (raised lettering) and as a hob (engraved lettering) from which the bumper is made. Having regard to the number of bumpers made from a hob, and the number of cartridge cases manufactured from a bumper, very many identical cartridge cases were of course manufactured from any single hob.

101. Furthermore, one category of cartridge cases, stemming from a particular hob, would remain in production for a long time, since many

bumpers were made at the same time and more could be made until the hob collapsed under the pressure of the hydraulic press or its lettering became outmoded. The comparatively small number of bumper orders to which we have already referred is consistent with few hobs, each giving rise to many bumpers and cartridge cases, all of one category, rather than many hobs and many categories.

102. In general terms, therefore, Dr Sprott's theory is consistent with the evidence which was given as to production techniques and practice in the factory where the cartridge cases were made. The DSIR theory, suggesting a larger number of categories, is not consistent with this evidence.

103. On 1 October 1963, two hobs engraved by C. G. Roeszler & Son Pty. Ltd. in accordance with drawing P4773 were delivered to ICI. Those hobs were produced to us. One has scratched on it the word 'new', the other the words 'P3054-11.11.63 current use.' Both are of Dr Sprott's category 4 and they are indistinguishable.

104. It should be explained that it was the practice of ICI to take samples from its production for testing over a period of 10 years. In 1973, there were available for examination by Dr Sprott and Mr Cook samples dating back to September 1963. Examination of the first of these samples showed wide I shellcases only, in March 1964 the first category 4 shellcases; and from 23 September 1964 exclusively category 4 shellcases. The inference is that the two hobs marked 'new' and 'P3054-11.11.63 current use' were those delivered on 1 October 1963, and put into production shortly after that date.

105. Dr Sprott said that exhibit 350 was of category 4. Dr Nelson and Mr MacDonald said that it was different from Dr Sprott's category 4 because of its unusually thick right hand letter I. Professor Mowbray and Dr Sprott explained to us that the variation in the thickness of the letters was due to wear in the bumper. We do not find it difficult to accept that a steel bumper brought down with force against brass cartridge cases resting on a steel mandrel will suffer considerable wear in the course of its working life. Such wear is the reason for the replating which Mr Cook mentioned.

106. Nor do we find it difficult to accept that the effect of wear could be to cause the raised letters to become slightly thicker and fatter, thus causing a wider impression. Professor Mowbray explained to us exactly how such wear may occur, and was able to illustrate his thesis by reference to a series of photographs of the raised letters of a worn bumper in cross-section, taken by the DSIR. Those photographs graphically demonstrate and put beyond doubt the existence of a 'swaging effect' to which Professor Mowbray referred. In our view, the DSIR demonstrated by their own evidence, which we commend them for producing, that the explanation of the thick righthand letter I of exhibit 350 lies in a worn bumper.

107. It is thus apparent that exhibit 350 must have been produced by one of the hobs which were delivered to ICI on 1 October 1963 unless another, virtually identical, hob was in existence at an earlier date. In 1975, Mr Cook had a search of ICI's toolroom records carried out for hob orders prior to and after 1 October 1963. At that time, the records extended back only to 1959. Mr Cook, however, said that they were complete and well kept and we accept his evidence in that regard in preference to that of Dr Nelson, which tended to suggest the contrary. There was no record of any hob being ordered between 1959 and 1963. It

is clear, however, that the following hobs were in existence during that period: two category 3 hobs, and one wide I hob.

108. Category 3 cartridge cases are consistent with having as their progenitor a hob produced from drawing P4646. A hob actually marked 'P4646' has been produced, and Dr Sprott and Professor Mowbray have evidence which establishes that it produced most of the category 3 cartridge cases. Wide I cartridge cases are consistent with having as their progenitor a hob produced from drawing P4773. It may be that these hobs were produced before the date in 1959 (which is not known) at which ICI's records began. Production in that period would be consistent with the dates of drawings P4646 (11 August 1958) and P4773 (redrawn on 16 March 1959).

109. The search revealed also that further hobs were delivered on 8 September 1965 and 12 September 1965. No further hobs were apparently required until the changeover to a different trademark in 1971. We have no need to resolve the matter, but it may be that a hob marked 'Expt' produced to us which is generally of a wide I type, but not the progenitor of Dr Sprott's wide I category was one of these hobs. To summarise, there is nothing in the extant hobs or in the toolroom orders, which we accept as complete, to establish that an additional category 4 type hob was ordered and used before 1963.

110. That such a hob was ordered and used becomes improbable in the highest degree in the light of evidence given to us by Mr George Leighton, Works Foreman of C. G. Roeszler & Son Pty Ltd. That company engraved lettering on hobs supplied by ICI in accordance with a drawing such as P4773; the engraving was carried out on a pantograph machine, which enables stock letters, or templates, to be reproduced on the object to be engraved at a given smaller size. We must thank Professor Meyer of the University of Auckland for giving us the opportunity to see a pantograph machine in operation.

111. The height of lettering required by ICI was very small—between ·062 inches for P4646 and ·065 to ·070 inches for P4773. The pantograph machine did not enable one reduction of this magnitude from template to hob to be achieved. It was, therefore, necessary to make an intermediate template on a piece of scrap metal. Mr Leighton said, and we accept, that such a template had little value. Although it might have been put in a 'template cupboard' which the company maintained, it would not have been the practice for an engraver fulfilling a later order to look assiduously through that cupboard to find an earlier template. He would in any event probably have been unsure whether one existed. It would have been much easier for an engraver simply to make his own fresh intermediate template.

112. Mr Leighton was firmly of the view that it was most unlikely that two engravings made from the same drawing on different occasions would be identical for the following reasons:

(i) Because tolerances existed on drawings such as P4646 and P4773 it is likely that the engravers on each occasion would achieve different final results within those tolerances;

(ii) Both drawings P4646 and P4773 allow the engraver some licence in the positioning of the letters. The engraver would so position the letters as to achieve an effect pleasing to the eye; that effect would vary on different occasions. Mr Leighton referred in particular to the positioning of the letter C relative

to the letters I. Measurements which have been taken from extant cartridge cases and from the hobs themselves reveal that the C has been positioned differently on occasions;

(iii) The specification of drawing P4773 does not specify how far apart the 'horns' of the letter C should be. Mr Leighton said that the engraver would consider in this regard the question of an effect pleasing to the eye. Even to the naked eye, it is evident that the horns of the letter C in Dr Sprott's category 4 cartridge cases are much closer together than the horns of the letter C in his category 3 cartridge cases;

(iv) Mr Leighton finally said that wear on the cutting tool could affect the shape of the letters generally. He pointed out that, if the end of the cutting tool had become worn, it would be possible to continue cutting with the same tool to the same depth by lowering the tool slightly. This would cause a slight widening in the lettering.

113. We accept Mr Leighton's evidence, to the effect that the chances of two hobs engraved on different occasions being identical are minimal. We also accept that it was unlikely that an engraver would use on a subsequent occasion an intermediate template of the type which would have been made to engrave the letters ICI. It follows from his evidence that, were two hobs ordered at the same time, the same intermediate template would in all likelihood have been used for both of them.

114. The use of the same intermediate template is in our view almost certainly the explanation of the fact that the hobs 'new' and 'P3054—current use 11.11.63' are virtually identical; it would also appear from the evidence that there existed at one time a further category 3 hob in addition to that marked 'P4646' and which was virtually identical with 'P4646'. In our view, the explanation again probably lies in the use of the same intermediate template for the two hobs.

115. Mr Leighton's evidence is graphically supported by the existence of the wide I category. The heights of the letters of the wide I cartridge cases make it clear that the hob from which they were made (which is no longer in existence) was engraved in general in accordance with P4773. That drawing called for an overall width of lettering of ·125 inches, with a width for individual letters of between ·012 and ·015 inches. Professor Mowbray explained to us that normal engineering practice requires that the engraver work from the centre lines or skeletons of the letters. Half the width of each individual letter would of course be on either side of its centre line. The actual centre to centre distance should, therefore, be ·125 inches less ·012 to ·015 which gives ·113 to ·110 inches. According to Professor Mowbray these are close to the values for categories 3 and 4, namely, ·115 and ·116 inches respectively. Wide I has, however, a distance from the left hand edge of the left hand letter I to the right hand edge of the right hand letter I of about ·125 plus ·012 to ·015 inches, or ·137 to ·140 since, as Mr Cook explained, the lettering served only to identify the product and the only requirement was that it be distinct. Illustration 5 showing a wide I cartridge case and a category 4 cartridge case clearly points out the difference.

116. In summary, then, the wide I category is a fortuitous illustration of Mr Leighton's assertion that an engraver working from a given drawing will in all probability not produce an identical engraving on two separate occasions. We should mention that Professor Mowbray outlined at least nine choices which the individual engraver would have to make, each of

which would vary from engraver to engraver and the existence of which explains from a more theoretical standpoint the reasons for the probable differences in the two engravings. We mean no disrespect to Professor Mowbray when we say that Mr Leighton himself thoroughly satisfied us on the matter by his own explanation given in wholly practical terms.

117. Reference was made in cross-examination of Dr Nelson to a draft affidavit prepared for Mr Leighton during the course of a visit made by Dr Nelson and Mr Hutton to Melbourne in October 1973, which resulted in a document known as the 'Nelson/Hutton report'. We shall refer further to this document in due course. That draft contained the following paragraphs:

> "11. That by using a 'template' on the pantograph machine a high degree of accuracy in the reproduction of similar orders to set specifications is attained. The orders reproduced at different intervals of time with the use of a 'template' would, in my opinion, be identical, provided the same reduction ratios were used."

> "20. That in my opinion if on more than one occasion between 1960 and 1963 hobs (female) were engraved by Roeszlers to identical specification drawings for 'IMI' and a retained 'template' was used, such hobs and lettering thereon would be indistinguishable."

118. Mr Leighton altered these paragraphs to read as follows:

> "11. That by using a 'template' on the pantograph machine a high degree of accuracy in the reproduction of similar orders to set specifications is attained. The orders reproduced at different intervals of time with the use of a 'template' would, in my opinion, be similar, provided the same reduction ratios and cutting tool angle and face were used."

> "20. That in my opinion if on more than one occasion between 1960 and 1963 hobs (female) were engraved by Roeszlers to identical specification drawings for 'IMI' and a retained 'template' was used, such hobs and lettering thereon would be similar if same reduction, tool angle, and face were used."

119. The reduction, cutting tool angle, and face of the cutting tool are three of the variables which cause the differences between hobs, to which we have referred.

120. The difference between the two drafts is, of course, that the possibility of differences even in two hobs made from the same template on the same day is emphasised by Mr Leighton. It is apparent that Dr Nelson pressed Mr Leighton to agree to the original wording. We propose merely to comment that this incident is indicative of a tendency on the part of Dr Nelson, manifested in other areas in far more serious ways, to shape the evidence to fit his own theories rather than to shape, and if necessary abandon his own theories in the light of the evidence.

121. We have in paragraphs 103 to 115, dealt with the evidence for and against the propositions that the hobs 'new' and 'P3054—current use—11.11.63', were the hobs delivered on 1 October 1963 to ICI, and that exhibit 350 was produced from one of them in 1964 or later. That evidence satisfies us that both propositions are correct. It was, however, powerfully reinforced by further evidence from Professor Mowbray and Dr Sprott to which we shall now refer.

122. At the Second Referral to the Court of Appeal, Mr MacDonald gave evidence on this matter for the first time. He had examined some 150 headstamps and made careful measurements of the dimensions of the letters. He had then had the idea, to which Professor Mowbray was

ILLUSTRATION 5

prepared to give his admiration, of plotting certain of the measurements on a graph so as to provide a readily understandable visual illustration of the results. He produced his evidence given to the Court of Appeal to us, and the conclusions which he drew then remained unchanged. They were that the headstamps fell into seven groups, although Mr MacDonald did very fairly concede that the groups fell into three discernible 'patterns', which could be identified as Dr Sprott's category 3, wide I, and category 4.

123. Mr MacDonald had examined exhibit 350 from photographs. Because of its unusually thick right hand letter I, he saw exhibit 350 as an outlier, not falling within any of his groups. We produce as illustration 6 Mr MacDonald's figure 3, which puts exhibit 350 fairly close to a number of cartridge cases which Dr Sprott described as category 4, but to the side of their grouping.

124. Professor Mowbray was brought into the case by Dr Sprott to give an independent opinion following Mr MacDonald's evidence at the Second Referral. Dr Sprott had appreciated that an expert engineering opinion was necessary. We unreservedly accept that Dr Sprott left Professor Mowbray to form his own view on Mr MacDonald's evidence.

125. Professor Mowbray immediately appreciated the worth of Mr MacDonald's system of transferring measurements to graphs. He also realised at once, however, that Mr MacDonald had made one serious error. An engineer, he explained to us, always works on so-called 'skeletal' measurements, from centre line to centre line, for the simple reason that such measurements are exact and absolute, and not subject to variables such as the width of a cutting tool, the amount of wear on a cutting tool, or wear on a bumper used in forming a final cartridge case.

126. To obtain the skeletal measurements of headstamps, Professor Mowbray worked from blown-up photographs. A cutting tool rotates to form the impression left in a hob, eventually reproduced in cartridge cases. At the end of each letter, therefore (i.e., in six positions in all on the letters ICI), semicircular impressions are thus made by the cutting tool. By using a simple yet ingenious device called a 'fillet template' consisting of a series of differently shaped circular lobes, each with a hole at its centre point, Professor Mowbray was able to find the centre of these semicircular impressions and thus the end points of the skeletons of each of the letters 'ICI'. It was then, of course, possible for him to make accurate measurements of these skeletons.

127. The letter C is usually drawn as a uncompleted O. Professor Mowbray had early realised the possible significance of the angle between the centre point of the O and the end points of the skeletons of the C. Since the horns of the C are closer together in category 4 than in category 3, even to the naked eye, that angle must be less for category 4 than it is for category 3. Professor Mowbray wished to measure the angle to establish it as a possible discriminate.

128. He did so by the application of what he was disposed to call simple schoolboy geometry. We reproduce as illustration 7 his figure 8. The principle of geometry to which he referred is that the angle subtended at any point drawn on the skeleton of the letter C by horn centres R and S is half the angle subtended at the centre of the C (or incomplete O) by points R and S. We shall call this the 'horn angle'. There was no difficulty in finding a point on the skeletal line of the letter C and it was thus possible to calculate the 'horn angle'.

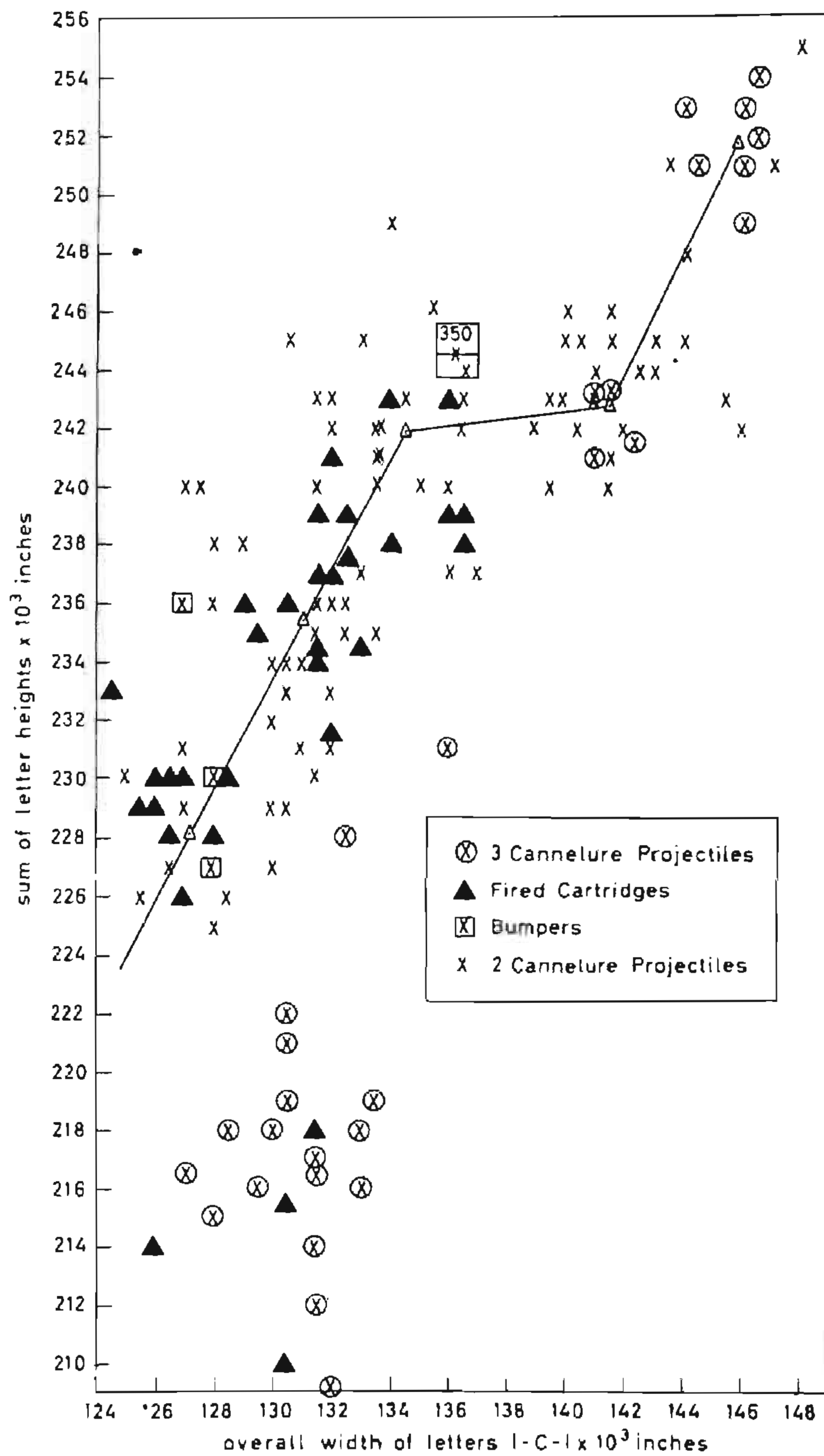


Figure 3.

ILLUSTRATION 6

129. Professor Mowbray found the most useful parameters to be the horn angle and the overall skeletal width of the letters ICI. These are as follows for the various categories:

Category 3: Horn angle—84 degrees, overall skeletal width .115;

Wide I: Horn angle—64 degrees, overall skeletal width .125;

Category 4: Horn angle—62 degrees, overall skeletal width .116.

130. When Professor Mowbray plotted those results on his graph 22, which we reproduce as illustration 8, a dramatic picture of what he described as three islands separated by vast stretches of 'wide open sea' emerged. Exhibit 350 falls, it will be seen, squarely into the centre of the category 4 island.

131. It is Professor Mowbray's view, to which we have already referred in paragraph 71, and which we accept, that the abnormally thick right hand I of exhibit 350 is a product of bumper wear.

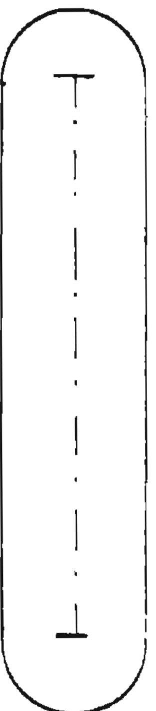
132. The point of Professor Mowbray's method of skeletal measurement, including measurement of the horn angle, is that it enables all cartridge cases from a particular hob to be grouped together in one category, irrespective of whether they were produced by a near-new or a badly worn bumper. At the conclusion of his evidence, Professor Mowbray produced a drawing showing category 3, wide I, category 4, and P4773 superimposed one upon the other. We produce this as illustration 9. It demonstrates in graphic form the differences between the various categories.

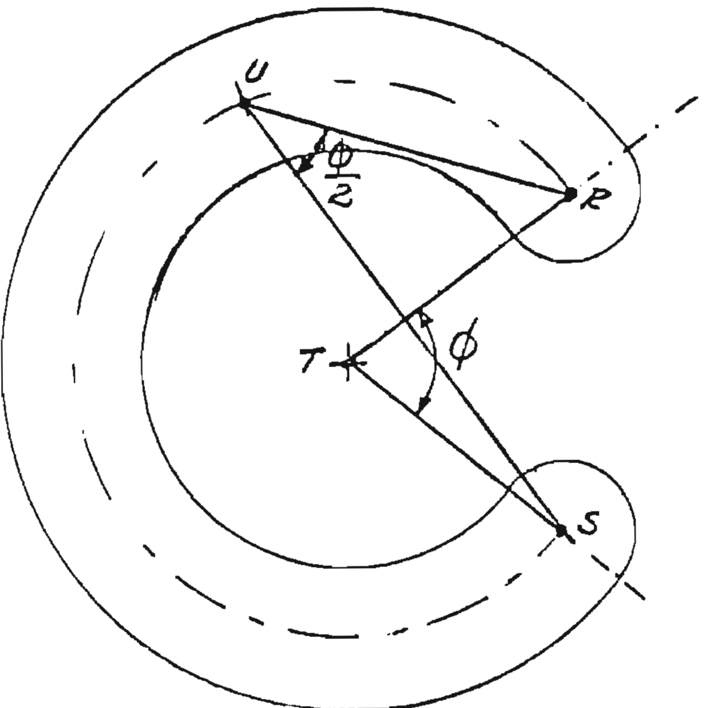
133. Professor Mowbray characterised his parameters as being in the nature of clones, which are immutable whatever the particular and superficial variations between given individuals. The fallacy of Mr MacDonald's method, in his view, which we accept, was its concentration on the particular and superficial variations at the expense of the immutable discriminates. We do not mean to criticise Mr MacDonald, whose scientific ability and integrity we recognise. But his expertise is that of a chemist. Professor Mowbray is an engineer and a most distinguished one. The most sincerely meant compliment which we can pay him is that, ultimately, he succeeded in making an exceedingly complex subject look very simple to us.

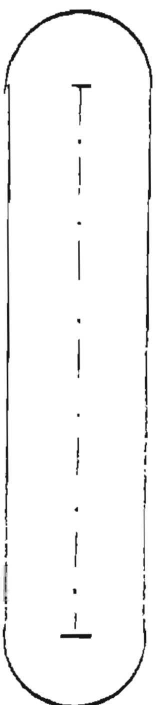
134. The other evidence which reinforced our conclusion, referred to in paragraph 99, was that of Dr Sprott. He told us that, at the time of the Second Referral, he has examined nearly 2700 cartridges. Following the Referral, he decided that the only way of proving his theory, which of course involves the negative proposition that exhibit 350 could not have contained a pattern 8 bullet, was to attempt so far as possible to disprove it.

135. At his own expense, he therefore advertised in the press and on the radio seeking from the public as many cartridge cases as possible. He eventually obtained some 26 000. He examined most of them himself, but some were examined by his assistant. All of them were placed in the various categories. The combination of category 4 and pattern 8 was not found. That fact alone speaks eloquently for Dr Sprott and his theory. Mr MacDonald, it must be remembered, examined only 150 headstamps. Dr Nelson said in evidence that he had examined only 64 cartridge cases and 5 hobs.

136. It was established that approximately 8–10 percent of ICI's production was exported to CAC in New Zealand. The evidence revealed regular shipments throughout the year, and it may be assumed that what CAC received accurately reflected changes in the shape of headstamps at







MOWBRAY 8

ILLUSTRATION 7

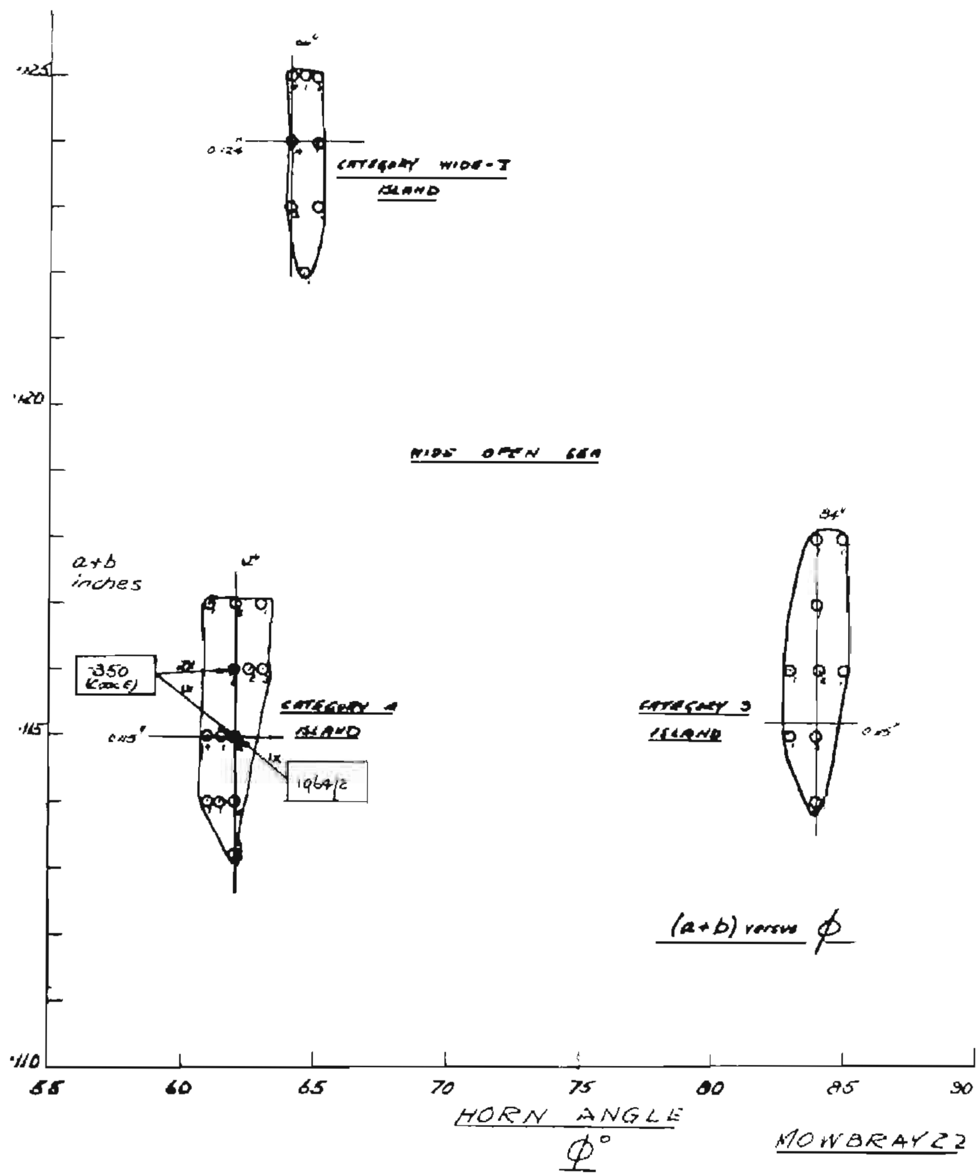


ILLUSTRATION 8

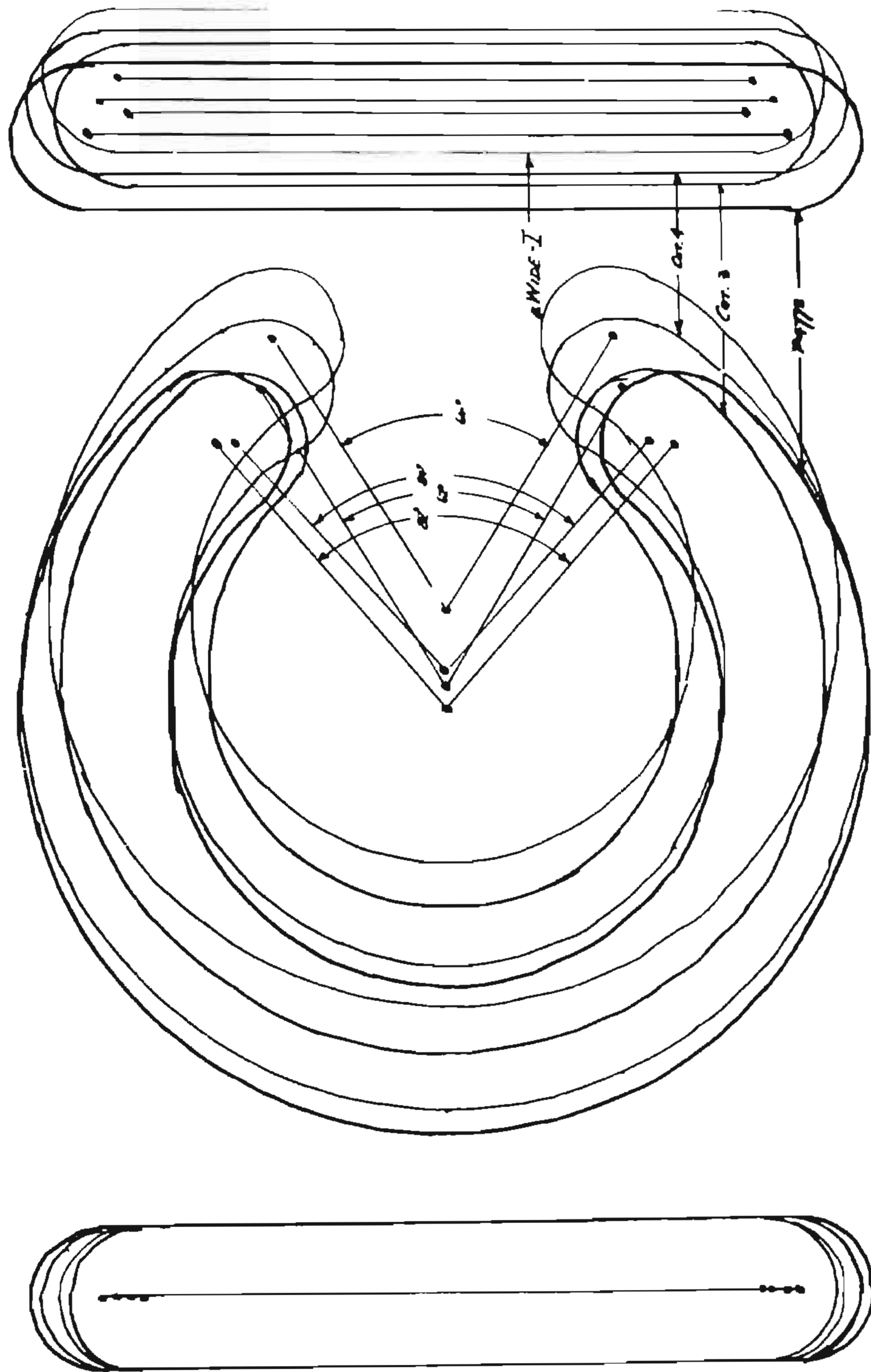


ILLUSTRATION 9

ICI. Mr MacDonald said that, if exhibit 350 was the product of an individual bumper and 8–10 percent of the total production of that bumper had been exported to New Zealand, then one might expect to find only three samples from the same bumper in the Sprott collection. He said, and we accept, that a painstaking search would be needed to find them.

137. The fallacy in Mr MacDonald's reasoning is that it fails to take account of the basic facts of production in the ICI factory. There is no evidence that only a single bumper was ever produced from a particular hob. The evidence is, to the contrary, that up to 400 bumpers were produced from any one hob. One might, therefore, expect up to 1200 brothers and sisters of exhibit 350 in Dr Sprott's collection, each with a pattern 8 bullet, if exhibit 350 had been manufactured from a hob made before 1963. The fact is, of course, that they are simply not there.

138. Many of the cartridge cases came to Dr Sprott in the packets in which CAC had packed them. It was the practice of CAC to stamp packets with their batch number, which changed daily. The date of manufacture of a particular box of ammunition could thus be established. It must of course be remembered that Dr Sprott had no guarantee that each box contained the original ammunition, since members of the public may have packed any odd rounds they could find into a packet. The results shown by the survey make it abundantly clear that this did occur on occasions, because some packets contained cartridges which on no view of the matter could have been manufactured at the date of the particular batch.

139. Overall, the collection, which was displayed to us in its entirety, demonstrates the production sequence which Dr Sprott had postulated. In particular, the changeover from category 3 to wide I to category 4, of which the last portion was seen in the ICI retained samples dating back only to 1963, is seen in the collection. Category 3 cartridge cases have, of course, exclusively pattern 8 bullets, category 4 cartridge cases exclusively pattern 18 or 19 bullets. Only the wide I category has both. The wide I category appears from the collection to have been manufactured for a shorter period than category 3 or category 4.

140. It is fortuitous in the extreme that the wide I category was being manufactured at the time the changeover to pattern 18 and 19 bullets occurred in New Zealand. Had the wide I hob never been produced, and production in Australia moved from category 3 directly to category 4, there would inevitably have occurred the combination of category 3 pattern 18 or 19, and, much more significantly, category 4 pattern 8. In view of the findings which we shall be making later in this report, the existence of the wide I category may be seen as providential.

141. We mention briefly at this stage, and only for the sake of completeness, two matters put forward by DSIR witnesses as counting against Dr Sprott's theory.

142. The first is the so-called 'deep trapezium' theory put forward by Dr Nelson. The substance of it is that Dr Nelson says that the letters on exhibit 350, as well as those on exhibit 343 and on 1964/2, had relatively sharp trapezium-or trough-shaped edges. This is, according to Dr Nelson, in contrast to the more rounded profile of the lettering of the hobs 'new' and 'P3054—current use 11.11.63', and demonstrates that these hobs did not produce those cartridge cases.

143. We do not regard it as established that exhibit 343, exhibit 350, and 1964/2 had trapezium-shaped letterings. We had the benefit of

evidence from Sergeant Bryan Thompson, Officer in Charge of the Firearms Identification Section of the Forensic Science Laboratory of the Victorian Police in Melbourne and an excellent skilled witness. He had made a cast of the outline of the letters of 1964/2 in a dental impression material. The outline is rounded, not trapezium. If 1964/2 is not trapezium-shaped, then we wonder whether exhibit 350 and exhibit 343 were so shaped. Because they are no longer in existence, no one can now tell.

144. Equally significant in this regard, however, is Dr Sprott's explanation of the dynamics of the dry priming process. He explained to us that the forming of the rim involves a stretching of the brass over the raised lettering of the bumper. As the rim is formed, the initially rounded impression of the bumper can be converted into a trapezium-shaped trough as the metal of the cartridge case is drawn over the lettering of the bumper.

145. The second matter is what the DSIR term a discrepancy between hobs 'new' and 'P3054—current use—11.11.63' and category 4 cartridge cases which Dr Sprott says were made from bumpers produced from one of those hobs. Again, we think that the dynamics of the manufacturing process provide a sufficient explanation of any such discrepancy. We do not find it difficult to suppose that a bumper might strike one cartridge case slightly more unevenly than another, and thus leave a shallower impression.

146. Further, Dr Sprott explained to us that the chromium plating of bumpers in an electroplating process would tend to put a thicker layer of chrome on the raised letters of the bumper than on its flat surface; the eventual lettering of the cartridge case could thus be deeper than the lettering on the hob from which the bumper had been produced.

147. Sergeant Thompson gave evidence of measurements of the depth of the lettering on the left hand I of 1964/2. He said that the depth was ·00287 inches at the lower end and ·00370 inches in the middle. That discrepancy within the lower half of one letter demonstrates the lack of consistency in these depths, and their relative unimportance.

148. Finally, it should be noted that no measurement of the depth of the lettering of 350 or 343 was ever made. Mr MacDonald made an effort to compare a photograph of 350 with a photograph of an extant cartridge case, the depth of the lettering on which has been measured. The photograph of exhibit 350 was, however, taken in lighting conditions designed to illuminate the firing pin impression, rather than the lettering. In addition, the photograph of the cartridge case is of course in two dimensions. These factors convince us that it would be quite unsafe, and indeed fanciful, to attempt to draw conclusions as to the depth of the lettering on exhibit 350 from any of the extant photographs of it.

1964/2 and the Nelson/Hutton Report

149. One further matter should be mentioned while we are dealing with the reasons we have for accepting Dr Sprott's theory. It relates to a cartridge case which has always been referred to as 1964/2, that being the number which Dr D. F. Nelson gave to it in his cartridge case collection. That cartridge case was at the centre of what we referred to in paragraph 117 as the Nelson/Hutton report, which in fact consisted of a report by Mr Hutton dated 24 October 1973 and an affidavit by Dr Nelson dated

25 October 1973, together with certain other material, forwarded to the Commissioner of Police.

150. This had been prepared in response to a letter and other material from Dr Sprott and Mr Booth enclosed with a letter from Dr Sprott dated 27 September 1973 to the Minister of Justice. The conclusion of the Nelson/Hutton report was that Dr Sprott and Mr Booth's material should be discounted.

151. The then Assistant Commissioner of Police, Mr R. J. Walton, made a report to the Commissioner of Police giving his recommendations on the material put forward by Dr Nelson and Mr Hutton. Mr Walton is of course now the Commissioner of Police. The recommendation was that the material not be disclosed to Dr Sprott and Mr Booth. It is fortunate that the Minister of Justice, Dr Finlay, insisted that it be disclosed, since 1964/2 would otherwise never have been investigated. It does the Police little credit that they were prepared to conduct behind closed doors a private investigation of this crucial matter, with themselves and the DSIR as judge and jury.

152. In his affidavit, Dr Nelson swore that he picked up 1964/2 from CAC between 26 January 1964 and 6 February 1964. It contained an experimental bullet, rather than the pattern 8, pattern 18, or pattern 19 bullets to which reference has so far been made. He swore that, in terms of the height of the letters ICI, their width, their spacing, their shape and their horizontal and vertical relationship to each other, there was no material difference between the lettering on exhibit 350 and on exhibit 1964/2.

153. According to Dr Sprott, exhibit 350 could not have been produced until after January 1964 in Australia and certainly could not have been in New Zealand at the time Dr Nelson said he picked up 1964/2. Dr Nelson's contention was that the existence of 1964/2, and the fact that its lettering was virtually identical to that on exhibit 350, pointed to a hob which could have produced exhibit 350, being in existence in Australia in 1963, if not earlier, and in any event in plenty of time to produce cartridge cases which could have been shipped to New Zealand and filled with pattern 8 bullets.

154. We have earlier mentioned the technique of wet priming in the manufacture of cartridge cases. Mr Cook gave evidence which establishes that, in the years relevant to this case, ICI had only one wet priming machine. The bumpers for the machine were kept in bin 707–9. The original record card for that bin shows that 5 bumpers were put into it on 4 September 1963 and 10 on 11 December 1963. Mr Cook said that those bumpers had been manufactured in England, were of a different shape from dry primed bumpers and had different lettering. We had the opportunity to inspect one of them.

155. Mr Cook also said that, as those wet primed bumpers were used up, ordinary dry primed bumpers were ordered, and delivered on 20 October 1965. At some time after that date, the wet priming machine would have been retooled to take those bumpers, which were presumably produced from either the hob marked 'new' or the hob marked 'P3054—current use—11.11.63'. The only point of importance is that, until 20 October 1965, the English bumpers were in use and in 1963 Australian experiments were in gilding metal. Since it was a wet-primed brass cartridge case, it follows that exhibit 1964/2 could not have been manufactured until after 20 October 1965, and that its similarity to exhibit 350 is entirely unremarkable.

156. How then was Dr Nelson able to say that he picked it up in Auckland in early 1964? It emerged in cross-examination of him, though not we may say in his prepared brief of evidence, that he first gave it that number in 1973. He did so because it was in a container with another cartridge of a different type which, in about 1965, he had labelled 1964/1, because of his recollection then of picking 1964/1 up during a visit he made to CAC in January or February 1964.

157. It is obvious that 1964/2 had little significance to Dr Nelson when he picked it up since he failed to label it then. It is clear that he made a number of visits to CAC over the years. We are quite unable to believe that, finding it in 1973 in a box in his laboratory, he was able to remember picking it up, along with other ammunition, 9 years before. The fact that it was wet primed, and therefore not manufactured until after 20 October 1965, shows conclusively that he could not have done so.

158. We have given considerable thought to Dr Nelson's state of mind in swearing in his affidavit, and again before this Commission, that he picked 1964/2 up in 1964. In our view, he succumbed in 1973 to the temptation to support the Crown case by putting forward a date on which he uplifted 1964/2 which was solely dependent on recollection and surmise. We do not believe that he lied in his affidavit, but we do consider that he was far too ready to put forward 1964/2 as a cartridge case which he had picked up in 1964 for the simple reason that it fitted into his theory.

159. We believed Dr Nelson when he told us that he was not aware of the difference between wet and dry priming in 1973. It must have come as a rude shock to him when Dr Sprott established that there was such a difference, that 1964/2 was wet primed, and that it could not have been produced until after 20 October 1965. At that stage, Dr Nelson had the opportunity to admit his mistake. That would also, of course, have meant admitting that his theory was probably wrong and Dr Sprott's probably right. He failed to take that opportunity.

160. Dr Nelson has for many years been an expert forensic witness for the Crown in criminal cases. It is clear that the fundamental obligation of such a witness is to tell the whole truth in the interests of justice. It is irrelevant whether his evidence helps the Crown or the defence. In our considered opinion, it is grossly improper for an expert witness for the Crown in criminal trials to allow personal vanity, and a stubborn determination to be right at all costs, to colour his evidence as Dr Nelson has done in relation to 1964/2.

Exhibit 343

161. Exhibit 343 was found by Detective Sergeant Keith during a search of a garage on Mr Thomas's farm on 21 October 1970. It was found in an applebox with rusty nails and bolts in a garage used by Mr Peter Thomas. It was dissected at the Otahuhu Police Station the same evening, and it was discovered that the bullet had an '8' embossed on its base. It was therefore of significance as being of the same type as the fatal bullets.

162. Those present when exhibit 343, along with a number of other cartridges that had been found in the scullery of Mr Thomas's house, were examined, were Mr Keith, Detective Sergeant Tootill, and Mr Hutton. All agree that some cartridge cases were fired that evening to remove the primer from them. Since the bullets had already been removed when the cartridge cases were placed in the rifle, the firing involved merely exploding the primer

163. Mr Keith says that exhibit 343 was fired in this way. Mr Hutton says that it was not. We have no hesitation in accepting Mr Keith's evidence for the following reasons:

(a) He has given the same evidence now at the Depositions hearing, two trials, and before this Commission.

(b) There is no evidence that Mr Hutton said it was unfired until he made his report to the Assistant Commissioner of Police, dated 24 October 1973. At that stage it was important to Mr Hutton to establish that Mr Keith was wrong.

(c) Mr Tootill's initial reaction in evidence before us was that exhibit 343 had been fired. His qualification of his answer at a later stage in response to questions from counsel for the Police we found unconvincing.

(d) At the depositions hearing in December 1970, Dr Nelson said that exhibit 343 was fired when he examined it on 19 November 1970. He now says that this may have been a mistake. The particular sentence in his evidence reads:

'On 19 November 1970, I received from Detective Keith exhibit 343, comprising an unfired lead bullet bearing the figure 8 on the concave base and a fired shellcase.'

164. The word 'base' was a correction, the word 'face' having been typed in initially. Dr Nelson initialled that correction. We find it extraordinary that he should now attempt to say that his use of the word 'fired' may have been mistaken.

165. Up until the end of the second trial, the only significance of exhibit 343 was that it showed that Mr Thomas had on his farm one round containing a bullet of the same type as the fatal bullets. It was regarded by Mr Hutton as an important exhibit. Evidence, which we find very significant, was given that Mr Hutton instructed Mr Keith to check on the security of exhibit 343 and exhibit 350 each morning during the course of the second trial once they had been produced.

166. We find it equally extraordinary that the Court staff allowed him to do so without demur. It is again significant that Mr Hutton should have been so concerned about exhibits 343 and 350 even before Dr Sprott had developed his theories.

167. Towards the end of the second trial Dr Sprott examined both exhibits 343 and 350 in the Supreme Court at Auckland. The dates on which these examinations took place have been the subject of considerable evidence. We accept Dr Sprott's evidence in this regard; it is that he examined exhibit 350 first on Wednesday, 12 April 1973, and then exhibit 343 the following day. We accept Dr Sprott's evidence because of his proven integrity and also because he was able to support it with a request dated 11 April 1973 addressed to Mr Kevin Ryan, asking that he be given the opportunity to examine exhibit 350 'very urgently', and with a letter dated 17 April 1973 addressed to Mr Ryan which mentioned in passing that he examined exhibit 343 on Thursday, 12 April. Those are the only contemporaneous documents dealing with the point and what they establish is in our view to be preferred to the memory of other witnesses asked to recall the sequence of dates much later. We also accept a further point made by Dr Sprott, that there was little point in his examining exhibit 343 first, since exhibit 350 was the vital exhibit around which the whole theory was being developed.

168. In his letter to the Minister of Justice of 27 September 1973, Dr Sprott said he examined exhibit 343 on Friday 13 April during the luncheon adjournment. Since the record shows he had completed his

evidence by that stage, that date and time are clearly wrong. Dr Sprott frankly acknowledged as much in his evidence. We find this willingness to admit a clear mistake indicative of Dr Sprott's honesty, rather than the reverse. We accept that his examination of exhibit 343 occurred on Thursday, 12 April after his examination of exhibit 350 the previous day.

169. Dr Sprott gave his evidence on Friday, 13 April. He said that exhibit 343 fell into his category 3. He gave an approximate measurement for the height of the letter 'C' for category 3 as 1.2 mm or ·0157 inches.

170. We observe that Professor Mowbray, whose parameters we have accepted as definitive, had defined the height of the letter 'C' in category 3 as ·0160 inches, which is in good agreement with Dr Sprott's figure. Dr Sprott did not say in evidence that he had actually measured the letter 'C' on exhibit 343, merely that it fell into category 3. He explained to us that the measurement was done on a comparison basis with a pair of dividers preset against a category 4 cartridge case, being placed against the lettering of exhibit 343. This was done under a microscope so that the lettering and the position of the dividers could be clearly seen. Dr Sprott produced a photograph showing the dividers set to the centre of the letter 'C' on a category 4 cartridge case. A further photograph showed one arm of the dividers set approximately in the centre of the letter 'C' of a category 3 cartridge case. The other arm was virtually at the edge of the letter 'C'. The difference is immediately apparent. That difference is what Dr Sprott says caused him to categorise exhibit 343 as a category 3 cartridge case.

171. If Dr Sprott's categorisation of exhibit 343 was incorrect and it was in fact a category 4 cartridge case, then he is either untruthful or inept. All of the other evidence he has given has convinced us that he is a man of integrity and a meticulous scientist. We accept his categorisation of exhibit 343 on 12 April 1973 was correct.

172. Dr Sprott says, and we accept, that the cartridge case of exhibit 343 was unfired when he examined it. His evidence in this regard is supported by that of Mr Miller, the Registrar of the Court, who had been inspecting exhibit 343 with Detective Keith each morning. Mr Miller recalled that exhibit 343 was unfired.

173. In light of our earlier conclusion that the cartridge case was fired originally, this means of course that Dr Sprott examined a different shellcase from that which Detective Keith found. We shall return to this point in due course.

174. Dr Sprott, supported by his assistant Mr Gifford (who was present throughout), by Mr Miller and by Mr Gerald Ryan, says that Mr Hutton came into the courtroom while he was examining exhibit 343 and said words to the following effect: "You have no right to touch that exhibit. It is a Crown exhibit, I intend to call further evidence on it." Such remarks were, if made, quite improper because the exhibits were in any event in the custody of the Court and not in the custody of the Police. They also offend the vital principle of our system of justice, that the defence should have full and unrestricted access to the exhibits. We accept that Mr Hutton made the remarks attributed to him, and we find his action improper.

175. Dr Sprott says that his reaction to Mr Hutton's remarks was to mark the cartridge case of exhibit 343 with the classical sign of the fish, drawn in the upper arm of the letter 'C'. He says that he did so because Mr Hutton told him not to mark the exhibit and because he had a real fear that another shell could be substituted for the one he was examining. Illustration 10 is a photograph of the headstamp of a different category 3

ILLUSTRATION 10

cartridge case, exhibit 343 now having been destroyed, showing the same mark, which has again been made for us by Dr Sprott. It should be mentioned that the mark having been made in a letter approximately ·012 of an inch wide, it is not visible to the naked eye. Dr Sprott says that he was able to make it only because he was looking at exhibit 343 under the microscope. It is to be noted that this is the man whose hands, according to Mr Miller and Detective Abbott, were at this time shaking badly. We do not accept their evidence.

176. Dr Sprott has not previously given evidence of having marked exhibit 343 in this way. It was suggested by counsel for the DSIR and the Justice Department that such reticence on his part suggests that he did not so mark it. That is no more and no less than a suggestion that Dr Sprott is a liar and contrasts oddly with counsel's fulsome praise of Dr Sprott at the end of his submissions for the DSIR.

177. Dr Sprott on the other hand points out that he mentioned marking exhibit 343 as early as 1976 in his booklet (written with Mr Booth) *The ABC of Injustice*. He said he did not specify the mark at that stage or at any time before he gave evidence to us, for fear that a category 4 cartridge case, graced with the sign of the fish in the upper part of the letter 'C' would be produced and put forward as the exhibit.

178. The material which has been put before us demonstrates most graphically the atmosphere which pervaded the second trial and which has haunted this case ever since. It is quite apparent to us that considerations of honesty, fairness to the defence, and proper practice, were of no weight whatsoever to Mr Hutton in his desire to see Mr Thomas convicted for a second time. Dr Sprott's apprehension as to what might occur, were he to make public that he had marked exhibit 343 with the sign of the fish, was in our view well justified. We accept that he marked the cartridge case with the sign of the fish on 12 April 1973.

179. Dr Nelson examined exhibit 343 on 13 April 1973, first in the Crown room at the Supreme Court, later in his laboratory at the DSIR. He also examined exhibit 350. He was unable to find any significant difference at all between the measurement of the 'C' on exhibit 343 and on exhibit 350, which was 1.572 mm for exhibit 343, 1.575 mm for exhibit 350, (i.e. about the same measurement given earlier by Dr Sprott in respect of exhibit 350). He gave those measurements in evidence later that day. When giving his evidence, he also said that exhibit 343 was an unfired cartridge case. He put forward the fact of it being unfired as a possible explanation of such minute differences as he had found between the measurement of the 'C' on exhibit 350 and the measurement of the 'C' on exhibit 343.

180. Dr Nelson's evidence of his measurements was confirmed by Mr Shanahan of the DSIR. We therefore accept that Dr Nelson measured exhibit 343 carefully and that the figures he gave in evidence were accurate.

181. Dr Nelson was questioned as to whether he saw the sign of the fish on exhibit 343 when he examined it. He said that he would probably have seen it, had it been there, during his examination with a hand lens at the Supreme Court, and certainly during his examination with a microscope in his laboratory. He said that he would have noted its existence had he seen it. He said, and we accept, that the sign of the fish was not on exhibit 343 when he examined it.

182. It is appropriate at this stage that we summarise the findings of fact which we have made in paragraphs 161–181:

(a) The emptied shellcase of exhibit 343 was fired in a rifle at the Otahuhu Police Station on 21 October 1970.

(b) When Dr Sprott examined the cartridge case of the exhibit labelled exhibit 343 on 12 April 1973, the shellcase was of category 3 and unfired. He marked it with the classical sign of the fish in the upper part of the letter 'C'.

(c) When Dr Nelson examined the shellcase of the exhibit marked 343 on 13 April 1973, the shellcase was of category 4 and unfired. The classical sign of the fish was not marked in the upper part of the letter 'C'.

(d) It would therefore appear that exhibit 343 as examined by Dr Sprott on 12 April 1973 was not the shellcase of the cartridge originally found by Detective Keith on 21 October 1970. That fact alone, of course, makes it wholly irrelevant to the Police case against Mr Thomas. We are unable to say in what circumstances the original fired shellcase of exhibit 343 was replaced by an unfired shellcase, but we consider that the circumstances point to negligence rather than deliberate substitution.

183. In this regard, it is significant that all the exhibits, including exhibit 343, were in Police custody from 24 June 1971 until they were produced at the second trial. The evidence establishes that the Police had misplaced cartridge case exhibits during the course of this matter. We refer to the 14 cartridge cases test fired by Mr Shanahan in Mr Thomas's rifle on 29 October 1970, all of which were placed in a labelled container. They were produced as an exhibit at the depositions hearing and at the first trial. They were returned to Police custody along with the other exhibits on 24 June 1971.

184. Arrangements were made for them and other exhibits to be sent to England in June 1972. It was found that only 13 cartridge cases were in the container when it was inspected by representatives of the Police, Defence, and DSIR at Auckland Central Police Station on 26 June 1972. The missing case was later located, according to a report made by Mr Hutton, in a container on its own. The incident is important only insofar as it indicates that the mere fact that exhibits are in Police custody is by no means a guarantee of their validity.

186. It would also appear that the cartridge case of exhibit 343, as examined by Dr Nelson on 13 April 1973, was neither the original cartridge case nor the cartridge case examined by Dr Sprott the previous day. In our view, the substitution must have been a deliberate one, carried out by some person aware that Dr Sprott had found a significant difference between the headstamps of exhibit 350 and the cartridge case of exhibit 343. That difference is, as we have already stated, obvious even from a careful visual examination.

185. We are not able to say when the unfired shellcase was substituted for exhibit 343. Mr Keith was asked whether he inspected the shellcase to confirm that it was in a fired condition when he produced it at the second trial on 4 April 1973. He was obviously surprised by the question. He said after a moment's consideration that he did inspect it and that the shellcase was fired at that stage. We accept that answer, which was confirmed by his subsequent evidence of noticing on that occasion that the firing pin impression was a shallow one.

187. The terms of Mr Hutton's remarks to Dr Sprott during his examination of exhibit 343 on 12 April 1973 may be taken as suggesting

that Mr Hutton was by this stage aware of the potential significance of exhibit 343. It is clear that Mr Hutton had a source of category 4 cartridge cases available to him in the form of exhibit 318. Some of those cartridges had been dissected. It would have taken only a moment to open the phial of exhibit 343, remove the cartridge case and substitute an unfired category 4 cartridge case from exhibit 318 or some other source.

188. It was suggested on behalf of the Police that such a substitution would have been precluded by the fact that the exhibits were in the custody of the Courts. Mr Miller's evidence that Mr Keith was permitted to inspect exhibit 343 and exhibit 350 every morning graphically reveals, however, that the Police were allowed a licence not permitted to the defence in their contact with the exhibits. We are quite certain that the Police would have had no difficulty in obtaining access to exhibit 343 and also exhibit 318 for the purpose of effecting a substitution. In our view, Mr Hutton must have known of the substitution although it may have been carried out by some other person.

189. We summarise our conclusions as follows:

(a) Exhibit 343 was fired in the Otahuhu Police Station on 21 October 1970; an unfired shellcase was substituted for it at some time between that date and 12 April 1973, probably as a result of carelessness on the part of the Police.

(b) An unfired category 4 shellcase was deliberately substituted by the Police to the knowledge of at least Mr Hutton, for the unfired category 3 cartridge case examined by Dr Sprott, between Dr Sprott's examination on 12 April 1973 and Dr Nelson's examination on 13 April 1973.

(c) It follows that Dr Nelson's measurements of the shellcase which he examined on 13 April 1973 do not detract from Dr Sprott's theory.

190. In paragraphs 54–189 we have stated our reasons for believing that exhibit 350 did not contain a pattern 8 bullet and that it, therefore, did not contain either of the bullets that killed Mr and Mrs Crewe. In this we are supported by the final concession of the DSIR accepting that in all probability exhibit 350 contained a pattern 18 or 19 bullet.

191. We now propose to examine the evidence and submissions as to how and when exhibit 350 came into the garden where it was found by Detective Sergeant Charles on 27 October 1970.

4. Theories Advanced by the Police to Explain the Presence of Exhibit 350 in the Garden

(i) The Louvre Window Theory

192. Mr and Mrs Crewe lived in a four bedroomed home on their Pukekawa farm. A floor plan is attached as illustration 11. Large bloodstains and other evidence indicated that they were murdered in the lounge and their bodies removed from the house via the front hallway and front door. Large bloodstains of Harvey Crewe's blood grouping and brain tissue were found on one armchair. The evidence suggested that Harvey Crewe was probably in this chair when he was shot.

193. There is room for some differences of opinion concerning the exact positioning of the chair when the deeds were carried out. The evidence of Mr Demler regarding its usual position and that of the Police concerning

the position in which it was found by them when they first entered the house, satisfies us that it was in the lounge in general proximity to a sliding door between that room and the kitchen. This door was normally kept open.

194. In the first few days of their investigation the Police searched the interior of the house thoroughly. They found no evidence indicating the use of a firearm such as spent shellcases, bullets, or bullet marks.

195. On 16 August 1970 the Police learnt that Jeanette Crewe had been shot with a ·22 bullet. A further intense search of the lounge was carried out, specifically looking for evidence of the use of a firearm. No such evidence was found.

196. At the beginning of their investigation, before moving or changing anything at the scene, the Police took a number of photographs. From these photographs it can be seen:

(a) That a flyscreen door at the back door was in a fully opened position against a brick parapet. This was as Mr Dagg saw it on the morning of 22 June.

(b) That alongside the back door there is a set of three windows to the kitchen. The middle set of windows are louvre windows, the top half and bottom half of which can be opened separately. The bottom half of the louvre windows were closed, while the top half were fully open with the panes of the glass in a horizontal position.

(c) The sliding door already referred to between the kitchen and the lounge was open.

(d) One light in the kitchen was on.

(e) An exterior light by the back door was on.

197. From the outset, the Police believed the murders to have taken place within the house. After learning on 16 August that Mrs Crewe had been shot, and, on 16 September that Harvey Crewe had also been shot, the Police continued their investigations in the belief that the shots had been fired within the house.

198. On 11 October 1970, Detective Johnston is said to have raised for the first time the possibility of the murderer having fired the first shot from outside the house by the back door, standing with one foot on the brick parapet, the other on the sill of the kitchen windows, firing his rifle through the open louvre windows and open sliding door towards Harvey Crewe seated in the chair already described.

199. On the evening of 13 October a party of Policemen and DSIR personnel returned to the scene and successfully fired shots in this manner, indicating that it was possible. There is, however, a conflict of evidence as to whether the reconstruction was carried out with the flyscreen door open.

200. The Commission concludes that the first shot was not fired in this way for the following reasons:

(a) Evidence heard by us indicates that such a shot is only possible with the upper half of the louvre windows fully open. The evening of 17 June 1970 was wet, cold, and windy. We do not believe that Harvey Crewe would be seated in the lounge chair within a few feet of such an open window. It was suggested that the window may have been almost closed, but in such a position that the murderer could open it from the outside in preparation for his shot. We consider this would have created a draught which Harvey Crewe could have noticed.

We accept the lighting conditions to have been such that it would have been difficult for the murderer to have seen his rear sight sufficiently well to aim accurately.

(c) The flyscreen door was open. Therefore, on a windy night the murderer had to clamber up and balance himself on a 4 inch wide brick parapet, take a long step of at least 33 inches across to place one foot against a wet, if not slippery windowsill, probably open the window, and set himself in a very awkward position for his shot (and all without touching the flyscreen door which on Police evidence squeaked noisily, or without knocking the rifle barrel on the glass).

(d) By comparison the rear door had the key on the outside, establishing ease of entry by this means.

201. We do not accept the louvre shooting theory to be any more than an impracticable and highly improbable theory without any evidence to support it. Nor do we accept that the first shots would have been carried out that way when the murderer could open the back door and walk straight in and obtain a much better shot. If it were really tenable, we find it inconceivable that observant Policemen would not have directed their minds to such a possibility well before 11 October 1970. Later in this report we will discuss what we see as the significance of the late date upon which this theory was first put forward, and the reason why it was deliberately put forward at the trials as necessary to implicate Arthur Allan Thomas via the finding of exhibit 350 in the garden.

202. A witness skilled in the use of firearms told us that on a wet windy night such a procedure would have been practically impossible.

(ii) Could Shellcase 350 have come into the Garden as a Result of Being Thrown Out of a Window by the Murderer?

203. This highly improbable theory requires both an open window and a murderer disposed to use it. We reject this suggestion for the following reasons:

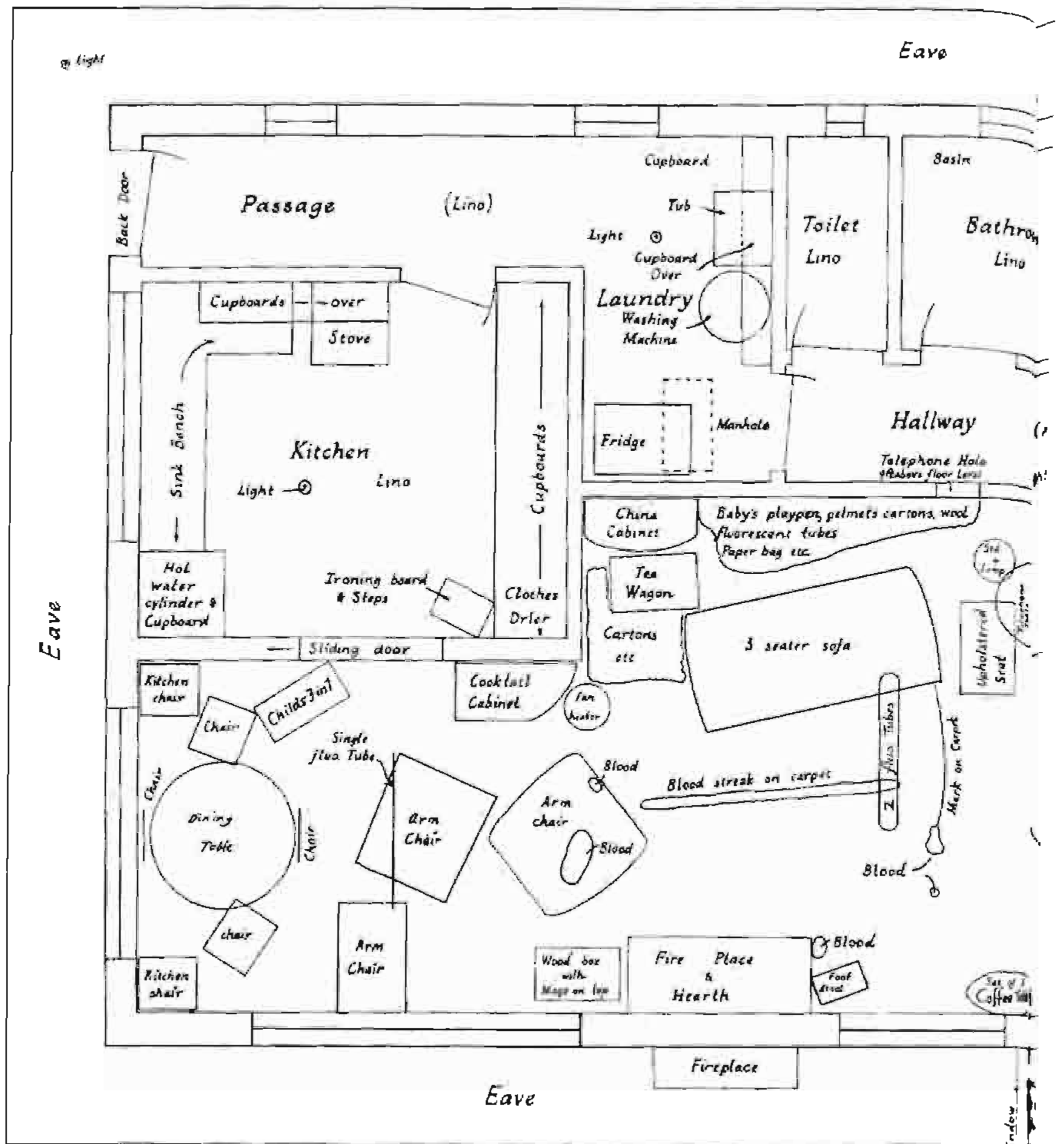
(a) The evidence does not suggest such a light article would be likely to travel the necessary distance to land in the garden.

(b) At least two shots were fired; only one shellcase was found. If the murderer were so careless as to throw one away, one would expect that the second would also be found.

(c) In many respects the murders indicate that they had been carried out with some care by a person of some intelligence. We find it remarkable that such a person would be so careless as to leave such telltale evidence at the scene by throwing it out a window.

(iii) The 'Cold Shell in the Rifle' Theory

204. We were informed that during the course of argument before the Court of Appeal at the time of the Second Referral, counsel for the Crown suggested for the first time that shellcase 350 may have been dropped in the garden in the following manner. Arthur Allan Thomas owned a Browning pump action rifle which it is suggested he carried around with a spent shell left in the breech. When a live shell is then to be loaded into the breech in preparation for firing the rifle, the one pump action both ejects the spent shell and places a fresh, live one in the breech. It is suggested that on the evening the murders were carried out, as the murderer approached the house he loaded his rifle in the above fashion with the ejected shell falling into the garden.



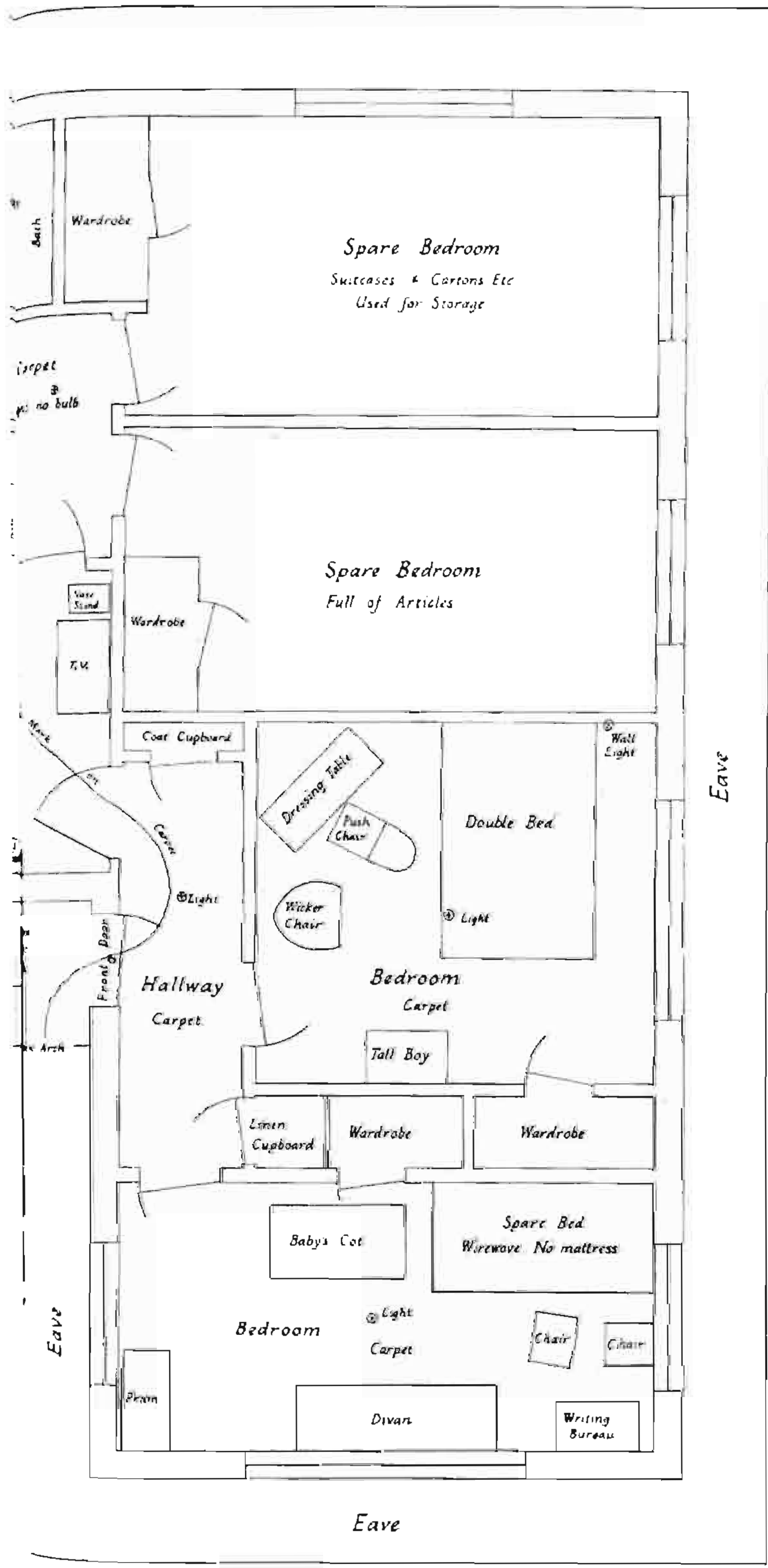
Plan of

Mr and Mrs Crewes Home at Pukekawa

Surveyed by B K Sly, Registered Surveyor on 24 June 1970

Scale: 2·5 ft = 1 inch

ILLUSTRATION 11



TC 104/80B

205. This theory, albeit unsupported by any evidence, presents the following difficulties. The first concerns the noise of the pump action of the Thomas rifle, which has been demonstrated to us. Even when carried out as quietly as possible, it still makes a very significant noise. It seems unlikely that a murderer would take such a risk of discovery, particularly when contrasted with the easy alternative of loading the rifle a substantially greater distance away and then approaching the house with the weapon rendered safe by the use of what is an almost silent safety catch.

206. The second difficulty is that as we have already set out earlier in this chapter, shellcase 350 contained a Sprott category 4 headstamp. Therefore, it not only could not have contained either of the bullets recovered from the bodies of Jeanette and Harvey Crewe, but also was manufactured at a different time. It seems to us strange and extremely unlikely that a rifle would have loaded in it adjacent to each other, two shells which were so different that they must have been acquired at different times and come from different packets.

207. From the arrest of Arthur Allan Thomas through 3 years of Judicial proceedings, the Prosecution steadfastly placed before the Courts their louvre window theory as the explanation for the finding of shellcase 350 in the garden. It is significant that this 'cold shell in the breech theory' is brought forward by the Prosecution at the hearing of the Second Referral in December 1974 for the first time. Then it was beginning to appear that shellcase 350 could not have contained either of the death bullets and therefore did not get into the garden as a result of any shooting through the louvre window.

208. We have dealt with these three impractical theories because they were raised before us. The only purpose they serve is to highlight the unlikelihood and complete lack of evidence that exhibit 350 could have arrived in the garden in any other way than being deliberately placed there.

5. Other Evidence Suggesting that Mr Arthur Allan Thomas was Present at the Crewe Property on 17 June 1970 to Deposit Exhibit 350

209. It was established in paragraphs 54–189 that exhibit 350 had nothing to do with the fatal bullets; in the light of that finding, we have now examined the theories which have been advanced by the Police as to how it may have come into the garden on the night of the murders, and have rejected them.

210. We have considered all relevant evidence presented at the second trial.

211. We shall deal with the various heads of evidence against Mr Thomas in the order in which we summarised them in paragraph 30. We shall, finally, examine fresh evidence put forward by the Police to this Commission to suggest that Mr Thomas was on the property on 17 June 1970.

(i) Motive

212. The allegation as to Mr Thomas's alleged motive for the murders involved the proposition that he was obsessively jealous of Mr and Mrs Crewe. The evidence said to support this proposition came under three heads.

213. Under the first head, it was said that Mr Thomas had, in the late 1950's at least a 'passion' for Mrs Crewe; that he had pestered her at dances and followed her to Maramarua at a slightly later stage when she went there to work as a teacher. Evidence was given at the second trial of a visit made by Mr Thomas to a fortune teller to find out what, if anything, was to develop of his relationship with Jeanette Demler. It was inferred at the trial that this passion may have endured up until 1970, despite Mr Thomas's marriage in 1964, Mrs Crewe's marriage in 1966, and the fact that there was no evidence of any but the most casual association or rare contact between the two in the intervening years.

214. Secondly, evidence was given that Mrs Crewe and her husband were comparatively wealthy and that Mr Thomas was, in company with many other farmers in the Pukekawa district, under a degree of financial pressure during the winter of 1970. The inference to be drawn from this circumstance, so said the Prosecution, was that financial pressure added to romantic frustration produced in Mr Thomas a deep resentment and smouldering jealousy of Mr and Mrs Crewe.

215. Thirdly, evidence was given of a burglary and two fires which occurred at the Crewe home in the years preceding the murders. The burglary occurred on 29 July 1967. Mrs Crewe reported a handbag, a row of pearls, a watch, an engagement ring, two brooches, and a brush and comb set as having been stolen.

216. The first fire occurred on 7 December 1968 in a spare bedroom. The second occurred in June 1969, when a haybarn on the farm went up in flames.

217. The person or persons responsible for these three incidents have never been traced and there never was any evidence that Thomas had anything to do with them. It was stressed by the Prosecution that a brush and comb set was taken in the burglary, this being connected with the fact that Mr Thomas had some years before given Jeanette Demler a brush and comb set which was in fact discovered unopened in a spare bedroom after the murders. The Prosecution sought to draw the inference that, had Mr Thomas been obsessed with Mrs Crewe and resentful of her husband, he might have committed the burglary and lit both fires as well as murdering Mr and Mrs Crewe.

218. We raised the question as to the relevance of the burglary and the fires, there being no evidence that Mr Thomas committed any of them. We received the following reply from counsel for the Police:

> "These are relevant in that taken together with the murder itself they suggest a connected and regular course of conduct in each year of the Crewe marriage by a local person with a continuing grudge against either or both Crewes, the grudge being of a personal nature in that as with the murder, there was evidently no monetary motive (nothing of value stolen except items of personal significance to Jeanette, suggesting possible sexual or romantic significance), a person with particular interest in the brush and comb set, someone not acting on an impulse, but on the basis of personal animosity of depth and longstanding, and a person other than Demler, in that he had an alibi for at least one of the nights in question."

219. That this submission should come from experienced counsel demonstrates the lack of any reasonable answer to Thomas's contention that he never was on the Crewe farm that night. Even taking all the Prosecution evidence at its face value, however we are unable to see that it suggests any more than that Mr Thomas had at one stage a romantic

interest in Jeanette Demler; that in common with many dairy farmers in a year of drought he had a degree of financial difficulty in 1970; and that a burglary and two fires occurred in the Crewe house in the early years of their marriage.

220. To link the three factors together into a motive for Mr Thomas killing Mr and Mrs Crewe is quite unjustified. We are of the view that the Prosecution evidence utterly fails to establish any motive on the part of Mr Thomas to kill Mr and Mrs Crewe. It follows that it in no way supports the proposition that he might have been on their property on 17 June 1970 to deposit exhibit 350 there.

(ii) Were the Bullets which Killed Jeanette and Harvey Crewe Fired from the Thomas Rifle?

221. The interior bore of a rifle contains helical grooves between which are raised portions of metal called 'lands'. When a bullet is forced through the barrel the lands leave corresponding marks on the bullet. The bullet recovered from Jeanette Crewe's body was incomplete and in a damaged condition. When examined by Dr Nelson of the DSIR it was found to contain four land marks and part of a fifth. From a consideration of the position of those land marks Dr Nelson was able to conclude that the bullet had been fired through a rifle containing six lands with a right hand twist.

222. The bullet recovered from the body of Harvey Crewe was in a more damaged condition. Only one complete land and portion of each of two other adjoining lands could be examined on it. The direction and size of these land markings on Harvey's bullet were the same as those on Jeanette's bullet. Dr Nelson also found on one of the lands of Harvey's bullet two marks which were not present on any of the surviving lands from Jeanette's bullet.

223. As part of their investigation, the Police collected 64 rifles of ·22 calibre. All of them were test fired by Dr Nelson and the bullets recovered for careful examination. He said that 29 of the 64 rifles were shown to have 6 lands with a right hand twist, but on only 5 of them were the dimensions of the lands closely similar to the bullet from Jeanette Crewe. After a further detailed comparative study of the widths and sizes of the land marks, Dr Nelson determined that 3 of the remaining 5 rifles had not fired Jeanette's bullet, Two rifles were left, one of which belonging to Thomas, and the other to Eyre.

224. In evidence before us Dr Nelson explained that in addition to examining the widths and sizes of the lands, attention can also be given to any individual marks on the lands and grooves which frequently occur because of microscopic defects in the barrel of the rifle. When examining the three bullets test fired from the Thomas rifle in August 1970, Dr Nelson told us he found a heavy score mark on one of the lands, and finer score marks on some of the other lands. We did not get a clear answer from him concerning whether he saw this score mark on all three test fired bullets or only on one of them. We know that it was on the one later sent to England (bullet 'F'). It is clear from his notes, and from his evidence before us, that he regarded this score mark as a rifling characteristic of the Thomas rifle.

225. Dr Nelson was not able to find any corresponding score mark on the surviving lands of Jeanette Crewe's bullet. He told us that while the damage incurred on impact can erase some score marks, he would still

have expected the heavily scored mark on the test bullet to have survived and to have been visible on any one of the five surviving lands of Jeanette's bullet. From this it would follow that Jeanette's bullet could only have been fired from the Thomas rifle if the heavy score mark had been on the missing sixth land.

226. At the time of his comparative examination of Jeanette's bullet with the bullets test fired from the Thomas rifle, Dr Nelson made notes which were produced to us. They include reference to one land on the test bullet being heavily scored: state that, 'Rifling class identical, but no match seen'; and contain the following comment, 'i.e. if have possibility that scored land mark of T (i.e. test bullet) was missing mark of fatal then cannot exclude'.

227. In the trials Dr Nelson confined his evidence to stating that on a class characteristic (i.e. the size and number of lands) he was able to exclude all but two of the 64 rifles given to him for testing; he also stated that the width and spacing of the surviving lands on Harvey's bullet were consistent with it having been fired from the same rifle as Jeanette's bullet. He failed to give evidence of the following four matters, all of which must have assisted the defence:

(a) That his notes contained the statement 'no match seen'.

(b) That one land of a bullet test fired from the Thomas rifle contained a heavy scoring mark not seen on any of the surviving lands of the Jeanette bullet.

(c) That other lands on a test fired bullet contained individual marks not seen by him on any of the surviving lands of the Jeanette bullet.

(d) That individual markings seen by him on the surviving whole land of the Harvey bullet were not seen on any of the surviving lands of the Jeanette bullet.

228. In our opinion, these four matters if true, substantially reduced the chances that either or both of the fatal bullets could have come from the Thomas rifle, but Dr Nelson gave no evidence relating to them at either trial. His evidence was so incomplete in the light of all these matters that it presented to the jury a false picture of his examination and findings and which of itself could have resulted in a miscarriage of justice.

229. In 1972 the Thomas rifle, fragments of the bullets recovered from the deceaseds' heads, the test fired bullet 'F', and certain other exhibits were sent to England for further examination by the Nottingham Forensic Science Laboratory of the Home Office. Immediately before the departure of these exhibits to England, a further four bullets were test fired through the rifle in Auckland and these bullets retained by DSIR.

230. The Nottingham Laboratory's Chief Forensic Officer, Mr Price, test fired some more bullets through the rifle. He compared the fragments of bullet recovered from Jeanette Crewe with bullet 'F' (test fired through the Thomas rifle in August 1970), and with his test fired bullets. A number of photographs were taken. Mr Price's major conclusion, as stated in a written report dated 2 August 1972 was:

> "I have microscopically examined the bullet (referring to the Jeanette Crewe fatal bullet). Although I have been unable to establish conclusively whether or not it was fired in the rifle exhibit 317, the limited individual bore characteristics it shows indicate that it could well have been fired in this rifle."

231. In late September 1980 a representative of the New Zealand Police made contact with the Nottingham Laboratory seeking to know

whether any information was still available from the investigation carried out in 1972. Mr Price having retired, the inquiry was dealt with by the Laboratory's present principal Scientific Officer in Charge of Firearms, Mr Prescott. The inquiry in due course led to Mr Prescott examining the photographs on the laboratory file, and the bullets test fired by Mr Price in 1972. Mr Prescott then made a written statement, dated 30 September 1980, which we have read, the major conclusion of which is:

"I have formed the opinion that it is highly probable that the rifle (317) fired the bullet (234) (i.e. from Jeanette Crewe)."

232. On 13 October 1980, Detective Chief Superintendent Wilkinson handed this statement to counsel assisting us, and formally requested on behalf of the Police that Mr Prescott be brought to New Zealand to give evidence before the Commission. We agreed to this request, somewhat reluctantly, because it seemed to us that Mr Prescott was really saying the same as Mr Price had said in 1972.

233. To assist Mr Prescott we requested DSIR to produce the other two bullets test fired through the Thomas rifle in 1970, and also the three bullets test fired through the Eyre rifle at the same time. We were informed that they could not be found, although those test fired through 58 of the other rifles in 1970 were still in the possession of DSIR.

234. On his arrival in New Zealand Mr Prescott test fired further bullets through both the Thomas and Eyre rifles, and examined these and all other bullets available through a comparison microscope.

235. Mr Prescott's major conclusions, as given in evidence before us were as follows:

(a) He remained of the view as expressed in his report of 30 September 1980 that it was highly probable that the Thomas rifle fired the fatal bullets recovered from Jeanette Crewe.

(b) He agreed that he was not in as good a position to form a view as was Mr Price in 1972, for he had not had the opportunity of a direct examination of the fatal bullets, having come to his conclusions only from photographs. He agreed there was no difference between his conclusions and those of Mr Price; they were simply expressed in different words.

(c) On his examination of bullet 'F' he saw the score mark referred to by Dr Nelson, but it did not appear on any of the other bullets he examined which had been test fired through the Thomas rifle in New Zealand in 1972, in Nottingham in 1972, and in New Zealand in 1980. Therefore, he concluded that the score mark was not a rifling characteristic of the Thomas rifle. That conclusion brings into question whether Dr Nelson did see the score mark on the other two bullets test fired in August 1970, and if he did not, why he proceeded as if the score mark was a rifling characteristic.

(d) That the Eyre rifle (a Remington model 12) fired a bullet with only 5 lands and grooves; and therefore could definitely not have fired the fatal bullets. This conclusion (which is now agreed with by counsel for DSIR as being correct) makes nonsense of Dr Nelson's statements and evidence that the Eyre rifle had 6 lands and grooves. In this Dr Nelson made a fundamental error of observation which was perpetuated throughout the trials.

236. In paragraphs 398–401 we consider the rather myopic criteria the Police adopted in collecting the 64 rifles test fired in 1970. In the context of there being approximately 800 000 firearms in the Auckland Police

District alone, we regard the sample as being so limited that there is no benefit derived from a conclusion that of those 64, the Thomas rifle was the only one which could have fired the fatal bullets. How many more might there have been in the Auckland Police District, or in New Zealand?

237. We conclude that it is not proved that the Thomas rifle fired the fatal bullets. Further, even if the Thomas rifle did fire them, there is no evidence putting the rifle in the hands of Arthur Allan Thomas at the time. We are satisfied there was opportunity for others to have used the Thomas rifle.

(iii) The Axle

238. In 1956, a Mr C. E. Shirtcliffe, who was the owner of a 1929 Nash sedan, acquired the front assembly of a 1928 Nash motor car, and used it to make up a trailer. He did not weld the assembly at all, fixing the steering arms so as to make the wheel assembly rigid by cutting and flattening the ends of the tie rod, drilling a half inch hole in it, and bolting it to the axle beam.

239. Mr Shirtcliffe sold his trailer to a Mr G. A. Whyte in 1957. There was no welding or other work done on the trailer while Mr Whyte owned it.

240. Mr Whyte sold his trailer to Mr A. G. Thomas in early 1959. Mr Thomas used the trailer for various work connected with his Pukekawa farm. Maintenance was carried out on it from time to time, and Mr Thomas was able to present to us a number of receipts from his obviously extensive and complete financial records dating back over many years. He was, for example, able to produce two invoices showing that new tyres for the trailer were purchased on 19 May 1964 and 23 March 1965 respectively. He was quite adamant that, apart from a job carried out in November 1963 involving the welding of studs to the left hand stub axle, no welding was carried out on the axle assembly.

241. We are prepared to accept Mr Thomas's evidence that, had any more significant welding, such as for example welding of the axle beam to the stub axles been carried out, he would have been aware of it. He said that no such welding was carried out and we accept his evidence.

242. In July 1965, Mr Thomas took his trailer to a Mr R. M. Rasmussen to have the axle assembly removed. It was to be replaced with a drop axle assembly, made from a length of boiler tube, and Zephyr wheels compatible with the vehicle which was then being used to tow the trailer, Mr Richard Thomas's Zephyr car.

243. There are two versions of why the work was done. Mr Rasmussen said, as he has consistently said in evidence, that the trailer assembly was in a bad state of repair, in that the bearings on one side were badly worn, and Mr Thomas also wished to change the assembly to a more modern one, with wheels interchangeable with the car used to tow the trailer. Mr Thomas, on the other hand, said that the purpose was simply to make the wheels interchangeable and that there was nothing which needed to be repaired. We prefer Mr A. G. Thomas's evidence in this regard because:

(a) Mr Rasmussen made a statement to the Police on 24 October 1970 in which there was no mention of any mechanical fault needing to be repaired, but merely confirmation of Mr Thomas's version of the reasons for the repairs. This statement was not produced by the Crown to the jury at either trial.

(b) On April 13 1965 a warrant of fitness had been obtained for the trailer. The issue of the warrant is inconsistent with wear in the bearings on one side to the extent which Mr Rasmussen depicts, and the use of the drawbar coupling produced at the trials and to this Commission.

244. It is common ground Mr Thomas paid Mr Rasmussen £30 for his work. Mr Thomas says that this was on the basis that Mr Rasmussen retain the parts which had been taken from the trailer, which had some value, particularly the tyres and stub axles. Mr Rasmussen said that he wanted to retain the stub axles because of the possibility of reconditioning them, but that Richard Thomas took them home. We find significant the way he put this matter in his original statement to the Police:

"Young Thomas, about 2–3 days later, called and picked up the new assembly, i.e. the reconditioned trailer . . . mention was made of the old parts unused by me on the new assembly. I would not have bought them as they were of little value in the state they were in. Therefore, Thomas took them back with him. He would have left nothing behind from the original assembly."

We note that the last two sentences appear to rely on a process of reasoning rather than on memory. It may be of significance that the stub axles had by this time been found on the Thomas farm and shown to Mr Rasmussen. It may, therefore, have appeared to him that they had gone back to the Thomas farm, rather than remaining with him. We shall return to this inconsistency in due course.

245. Soon after the trailer had been picked up from Mr Rasmussen, the new axle was bent as a result of a combination of overloading and badly positioned springs. The trailer was returned to Mr Rasmussen, who was disposed to repair the damage for the cost of materials only—£3/10s. Mr Thomas presented in evidence a book of cheque butts containing the butt of a cheque to Mr Rasmussen dated 30 August 1965 for this amount.

246. When Mr Crewe's body was recovered from the Waikato River on 16 September 1970, there was recovered also a Nash motor car axle. The axle had obviously been tied to the body with wire as a weight. It would appear that over the months during which the body had been in the river the axle had come away from the body to the extent that it was merely hanging by one last strand of wire on 16 September. It would appear that that last piece of wire was broken during the recovery of the body, and the axle itself was found on the bed of the Waikato River immediately underneath the body.

247. Although no strands of wire were actually found on the axle, we are satisfied that the axle recovered from the river had in fact been used to weight the body, and that was the axle produced at the trials, and before this Commission, as an exhibit.

248. There is in our view no truth in various allegations which have been made that the Police produced at the trials an axle different from that found in the river. The axle was almost at once identified as a front axle from a 1928–29 Nash motor car series 220, 320, or 420. Extensive inquiries were mounted by the Police with a view to tracing the axle. We accept that approximately 200 people were seen throughout the whole of New Zealand, from Kaitaia in the north to Invercargill in the south. Photographs of the axle were published in the newspapers, in particular in *The New Zealand Herald* on 19 September 1970. Mr R. C. Carlyon, a television news editor of Television New Zealand, told us that the axle was shown on television on the evening of 18 September 1970.

249. On 19 or 20 September 1970, Mr Shirtcliffe contacted the Police to advise that an axle of the type found on the body had been mounted in his motor car, which was no longer in his possession, and also on the trailer which he had sold. It was established by 4.00 p.m. on 20 September, that the car, which had been abandoned at Tuakau, still had its axle intact. Mr Shirtcliffe was initially unable to assist the Police as to what had happened to the trailer. He was, however, a little later able to locate a photograph of his own car and trailer which he made available to the Police and which was published in *The New Zealand Herald* on 10 October 1970.

250. On 13 October, Mr Shirtcliffe's stepdaughter, Miss Cowley, telephoned the Police to say that her father's trailer had eventually been sold to a Mr Thomas Senior, now known to be Mr A. G. Thomas, and that she had seen it often on his property when going to school in the school bus. By 13 October, therefore, Mr Shirtcliffe's trailer had been traced back to the Thomas family. Detective Johnston saw Mr A. A. Thomas on his farm on 13 October 1970. Mr Johnston's job sheet reveals that Mr Thomas pointed out the dump on the farm to him on that date.

251. Mr Rasmussen had first been seen by the Police on 4 October, and the job sheet completed by Detective Johnston in relation to that interview at a later stage, namely 23 October 1970, is significant. It reads:

"The axle was shown to Rasmussen who was unable to recall the axle itself—he said that the method of cutting on one end of this axle was similar to the way he used to remove the stub axles from the axle itself."

252. On 14 October 1970, Detective Johnston and Detective Sergeant Parkes travelled to Matakana to see Mr A. G. Thomas, who mentioned the repairs done by Mr Rasmussen, and gave the Police access to his financial records. Detective Johnston searched through the records and uplifted a number of documents. It is most unfortunate that Police practice was not to give a receipt, so that there could be no argument about what was and was not taken. As the matter stands, the only record of what was taken is Detective Johnston's job sheet.

253. On 15 October at 10.45 a.m., Mr Rasmussen was again seen by the Police. He said that he remembered a Mr Thomas; the job sheet completed on 23 October in relation to this interview states that his memory was that the parts discarded from the trailer had been returned to Mr A. G. Thomas. At 2.00 p.m., Detective Johnston saw Mr A. A. Thomas who, according to the job sheet, took him down to the dump 'Where a cursory search was made without trace of the wanted trailer or parts thereof.'

254. It is therefore apparent that by 15 October, on their own records, the Police knew:

(a) That Mr Rasmussen said that parts had been returned to the Thomas farm.

(b) That there was a dump on that farm where old motor vehicle parts were to be found.

255. The next visit to the Thomas farm was made by Detective Johnston and Detective Parkes on 20 October 1970. Detective Parkes said that he had earlier been instructed to pick up the Thomas rifle, and that he understood Detective Johnston was concerned to pick up wire samples.

256. Inspector Parkes gave evidence that they collected their wire samples and that Detective Johnston then borrowed a spade and began foraging around on the tip. He said that, of three tips on the farm, Detective Johnston was concerned to search only one. After only a few minutes, to use Inspector Parkes' words, 'Detective Johnston located two

stub axles. One was probably partly uncovered, but the other was buried.' Inspector Parkes said that Mr Johnston knew what they were, and seemed quite excited by his find.

257. He did not search the tip any further that day. Inspector Parkes very fairly agreed that it was an extraordinary piece of luck that the two stub axles, which were to become such significant exhibits, just fell into Detective Johnston's hands. We can only agree, particularly having regard to the fact that he had already searched the tip 5 days before. We find the circumstances in which the stub axles were located peculiar in the extreme.

258. We repeat that it is most unfortunate that Detective Johnston is dead and was not able to give evidence before the Commission. We are very conscious, that, had he been here to give evidence, he may have been able to put forward a proper and innocent explanation of matters such as the finding of the stub axles from which the most serious of inferences can on the face of it be drawn.

259. The significance of the stub axles is that they matched either end of the axle recovered with Mr Crewe's body. On the right hand end, the stub axle had been removed by cutting the stub axle eye with the kingpin still in place, the kingpin remaining attached to the axle beam. The two halves of the eye, one on the stub axle and the other on the axle beam, matched exactly. On the left hand end, a weld on the upper part of the axle beam assembly matched a weld on the stub axle.

260. It follows that both stub axles found on Mr Thomas's tip had clearly been connected at one stage with the axle found on Mr Harvey Crewe's body. The inference which the Crown invited the jury to draw at the second trial was that both stub axles and the axle itself had been placed on the Thomas tip following their return to the farm after the conversion by Mr Rasmussen, and that the murderer had used the axle only to weight Mr Harvey Crewe's body, leaving the two stub axles on the tip to be found by the Police on 20 October 1970.

261. We have had the benefit of considerably more evidence on the axle than was put before the jury at the second trial. We have been particularly fortunate in obtaining the expert evidence of Professor N. A. Mowbray. In our view, the inference which the Crown sought to draw at the second trial is not justified when one considers the whole of the evidence which is now available. We take this view because of the following factors:

(a) The circumstances in which the stub axles were found are so peculiar as to call for an explanation. This the Police are unable to provide, because of Mr Johnston's death. We expressly do not make a finding of impropriety or even suggest that one is appropriate, but we do say that an explanation is called for in the light of the following matters:

(i) Detective Johnston was first shown the tip on 13 October by Mr A. A. Thomas, who told him that motor vehicle parts were dumped there. Mr Thomas would in our view not have been so open about the matter, and so co-operative with the Police, had he been the murderer and had taken the axle from the tip a few months earlier.

(ii) Detective Johnston searched the tip for trailer parts on 15 October 1970 without finding the stub axles.

(iii) The stub axles fell into Detective Johnston's hands on 20 October 1970 with extraordinary ease.

(b) (i) The evidence establishes that the right hand stub has a badly worn bearing. Professor Mowbray gave as his opinion, which we accept, that it was wholly unserviceable. In that condition it could not have been driven out the gate and could not have obtained a warrant of fitness. The Thomas trailer had, however, obtained a new warrant of fitness on 13 April 1965, about 3 months before the trailer went to Mr Rasmussen. Furthermore, it was Mr Rasmussen's recollection that he had intended to recondition both stub axles and to resell them, had Mr Thomas been disposed to leave them with him.

(ii) Professor Mowbray's evidence, which again we accept, is that the right hand stub axle is not capable of being reconditioned. The marks of the gas cutting torch establish beyond all doubt that the right hand stub axle belongs with the axle beam. If, therefore, the axle beam does come from the Thomas trailer, it would appear likely that the axle beam and the right hand stub axle have been used after the conversion work was carried out by Mr Rasmussen.

(c) (i) Professor Mowbray examined the grease in the two stub axles. He found that the grease in the right hand stub axle was consistent with an assembly which had received no attention for a very long time while in service. Mr Thomas's receipts, of course, show regular maintenance. This discrepancy again suggests that the right hand stub axle, along with the axle beam, was used after it left Mr Thomas's possession at the time that Mr Rasmussen did his work.

(ii) So far as the left hand stub axle is concerned, Professor Mowbray told us that the grease is in a condition consistent with regular maintenance. Such maintenance would of course be consistent with Mr Thomas's records, and he was in fact prepared to accept that ⅝th inch S.A.E. bolts welded into the hub flange were the studs welded in November 1963. We regard this evidence on the part of Mr Thomas as most important so far as his credibility is concerned. Had Mr Thomas not been prepared to accept the left hand stub axle as his own, then there would have been no evidence to identify it as such. There must have been a tremendous pressure on Mr A. G. Thomas to disavow any knowledge of the axle, stub axles, or anything connected with them in an effort to clear his son's name completely of any involvement in the Crewe murders. The fact that Mr Thomas was prepared to concede that the left hand stub axle had indeed at one stage been on his trailer, in our view does him credit and leads us to accept his evidence as that of an honest witness.

(d) No witness was able to identify the axle itself as the axle which Mr Shirtcliffe put into the trailer which he built. The following matters suggest that it was perhaps not the same axle:

(i) Mr Shirtcliffe has consistently denied welding the axle. If the axle found on the Crewe body is the one on which he had worked, then the tie rod which he bolted on to it must have been welded at a later stage. Mr Whyte denies of course that any welding was done while he owned the trailer and Mr Thomas says that only the left hand studs were welded. If the axle did come from the Thomas trailer therefore, it would appear that

welding work was carried out after it was removed from the trailer. Such work implies further use of the axle after it left Mr Thomas's possession, and is consistent with the further wear on the right hand stub axle which we have already mentioned.

(ii) Furthermore, welding has also been carried out at either end of the axle beam, to affix it to the stub axles on either side. It would appear that this welding, also, was not carried out while the trailer was in the possession of Mr Shirtcliffe, Mr Whyte, or Mr Thomas. To summarise the matter, this evidence suggests either that the axle beam and the two stub axles were used by some person after they left Mr Thomas's possession, or alternatively that neither the axle nor the right stub came from the trailer which Mr Thomas owned.

(e) (i) It is clear from Mr A. G. Thomas's evidence that the trailer was in regular use up until the time it was taken to Mr Rasmussen. It was used to transport a weekly load of pigs to Auckland, returning with a load of stale bread. Professor Mowbray was good enough to devote his energy and expertise to making precise measurements of the left hand stub axle assembly in its relation to the axle beam. He established that, when the welds are matched up, neither a proper kingpin nor an appropriate thrust bearing can be inserted. Both items would be essential if the trailer were to be used on a road. If they were absent, the whole weight of the trailer on the left hand side would be supported only by what may be described as a 'tack weld'. Professor Mowbray said the trailer would be dangerous in this condition, and certainly would not obtain a warrant of fitness.

The fact that neither the kingpin nor the thrust bearing would fit, suggests that the welding was done when neither the kingpin nor the thrust bearing was in place. We note that Mr Rasmussen's recollection was that both kingpins were present when he received the trailer from Mr Thomas to carry out his conversion work. This means that the left hand stub axle was not in the condition in which it is now when he received it.

(ii) The Police called Dr Miller of the DSIR to rebut Professor Mowbray's evidence. Dr Miller operated under a considerable disadvantage in that he was first asked to consider the matter only a few days before he gave evidence. He was not able in our view convincingly to challenge Professor Mowbray's analysis, which was a product of careful work over a period of 2 months. He indeed accepted that the standard Nash thrust bearing would not fit into the stub axle/axle assembly. Dr Miller pointed out, and Professor Mowbray was prepared to accept, that the inconsistencies involved are very small. For example, the misalignment which prevents a kingpin being inserted is of the order of $\frac{1}{16}$th inch. The space left for the standard thrust bearing is of the order of ·575 inch, this being ·050 inch less than the required space for a bearing measuring ·625 inch.

(iii) We are of the view that, while the fact that these measurements are so small no doubt explains the fact that no-one noticed the inconsistencies until Professor Mowbray turned his eye to them, they are nonetheless important. We accept without

question that, in engineering terms, even a misalignment of this degree can be crucial. We are not prepared to accept the supposition that a worn kingpin may have been inserted, since the measurements of the yoke bronze bushes and the axle beam hole were compatible (axle boss ·860 inch, bushes ·862 inch), nor do we accept that a thrust bearing of a different size, not standard for this assembly, may have been used. While we accept Dr Miller's expertise and are grateful for the assistance which he endeavoured to give to the Commission, we accept Professor Mowbray's evidence on this point without qualification.

(f) (i) If Mr Rasmussen's evidence is correct, then all parts, including the axle and stub axles taken from the trailer, were returned to Mr A. G. Thomas. One would expect to find these on the tip with the stub axles. Despite a careful search of the tip by the Police on 21 October 1970 however, the following parts which should have been there were not located:

Right steering arm
left steering arm
left steering arm keys
2 steering arm nuts
2 steering arm cotter pins
3 steering arm ball studs
3 ball stud nuts
1 cotter pin
2 hub caps
2 disc wheels
2 wheel locking rungs
4 right hand wheel nuts
4 5/8 inch S.A.E. nuts
2 parts of tie rod with ends
2 tyres
2 inner tubes
1 king pin
2 king pin cotters
2 king pin cotter nuts
2 king pin cotter lock washers
2 thrust bearings
2 king pin spring washers

(ii) The Police recovered from the tip the following parts, apart from the stub axles:

a. 1 split rim
b. 1 steel wheel rim
c. 1 metal drawbar coupling
d. 2 wooden planks
e. 1 numberplate—R11052.

The evidence of Mr Shirtcliffe and the Thomas family establishes positively that c. the drawbar coupling had nothing to do with the trailer. Since Mr Rasmussen did not remove a numberplate, e. is wholly irrelevant; since he did not touch the body of the trailer, d. is equally irrelevant. a. and b. are the only parts which could on any view of the matter be regarded as having been removed by Mr Rasmussen. It must, however, be remembered that the Thomas family agreed that

the trailer was at their farm from 1959 to 1965, and maintenance was carried out and parts presumably interchanged over that period. There is nothing to establish that, if items a. and b. indeed belonged with the Thomas trailer, then they were removed by Mr Rasmussen. To the contrary, the fact that so few of the parts whose presence one would expect were in fact found on the tip suggests that Mr Thomas may be correct in his recollection and Mr Rasmussen wrong, and that the parts did remain with Mr Rasmussen. Indeed, there is some significance that the tyres which would have a good resale value were not found. Two affidavits suggest that Mr Rasmussen may later have sold them.

(g) Mr D. Eyre, Mr B. Eyre, Mr R. W. Mills, Mr T. J. Salmons, and Mr J. L. Martin gave evidence to establish that an axle similar in shape to the axle used to weight Mr Crewe's body was removed by them from the Thomas farm in the winter of 1965. It was removed from the place where Mr Thomas said it would have been dumped had it been returned by Mr Rasmussen. These five men are those referred to by Mr Yallop in his book *Beyond Reasonable Doubt?* as establishing that the axle found with Mr Crewe's body was in fact removed from the Thomas farm. That is a conclusion which it is not possible to draw, since none of them was able to identify the axle beyond saying that its shape was similar to the axle which they remembered. In fairness to them we should point out that they do not appear on any occasion ever to have gone further than that.

The significance of their evidence is that, if the Crown evidence be accepted in its entirety, including Mr Rasmussen's recollection that all parts left over from the conversion were returned to the Thomas farm, then at least there is a real possibility that the axle was removed from the property in 1965. The finding of the stub axles in the tip would have then of course been wholly without significance so far as the responsibility for putting the axle on Harvey Crewe's body was concerned. We treat their evidence as another of the factors to be weighed in reaching our ultimate conclusion, rather than a matter definitive in itself.

(h) Mr R. A. Closey, a vintage motor cycle enthusiast, gave evidence of searching the Thomas farm in company with a group of like-minded persons about 3 months prior to the time the murders occurred, namely in March 1970. Despite searching the tip area closely, they located nothing but model 'T' parts. They did not use a spade and so did not investigate what may have been under the surface of the tips. We have evidence from Mr Parkes, however, that at least one of the stub axles was partly visible in October. The Closey evidence is not conclusive, but does tend to suggest that the axles and stub axles were not on the tip in March 1970. This confirms Peter Thomas's statement.

(i) We have already mentioned that Mr Rasmussen and Mr Thomas differ in their recollection of whether the parts left over from the conversion, including particularly the stub axles and the axle beam, were returned to the Thomas farm. Mr Thomas said that Mr Rasmussen would have retained the parts, and that this resulted in a reduction in price. He said that he would have

noted this fact on the butt of the cheque with which he paid Mr Rasmussen.

(j) (i) We have already stated that the evidence as to price is on its own inconclusive. Most unfortunately, Mr Thomas's cheque butt is now missing. The book in which that butt appears is the only one which is absent from Mr Thomas's collection. The view that Mr Thomas takes of the matter is that the cheque book was removed either by Detective Johnston on 14 October, or by Detective Sergeant Parkes on 24 October, on which date Detective Parkes went through Mr Thomas's records in his absence.

(ii) Detective Sergeant Parkes took the precaution of submitting a complete job sheet listing all the books of cheque butts which he took. It is a pity that he did not take the further precaution of giving Mr Richard Thomas, who was present at the property that day, a receipt for what he had taken. Be that as it may, we have heard Mr Parkes give evidence before us on a number of occasions. We have been impressed by his honesty and his readiness to help the Commission. We unhesitatingly accept that Mr Parkes had no knowledge of the missing book of cheque butts. The bank statement produced by Mr A. G. Thomas confirms his evidence concerning the total charge for the trailer conversion.

(k) Mr Johnston's job sheet in respect of 14 October 1970, makes it clear that he was aware that a conversion of the trailer had been completed by Mr Rasmussen when he went through Mr Thomas's records on that date. The job sheet lists a number of documents which he took with him on that date. Again, it is unfortunate that he did not give Mr A. G. Thomas a receipt for all documents taken. Because Mr Johnston is not available to give evidence before us, in respect of the book of cheque butts and its absence, we must leave the matter there.

Conclusions

262. We consider that the evidence as to the two stub axles and the axle beam is a morass of inconsistencies, unexplained discrepancies, and alternative possibilities. While we consider that it seems likely that the axle beam and the right hand stub axle were used by some person or persons unknown after Mr Rasmussen carried out his conversion work, we make no findings of fact as to the axle whatsoever. Nor are we in a position to find any impropriety on the part of the Police in relation to the stub axles or in relation to Mr Thomas's book of cheque butts. We do find, however, that the one matter which has been clearly established is that it would be quite unsafe to draw any inference connecting Mr A. A. Thomas with the axle found on Harvey Crewe's body, merely because of the presence of the two stub axles on his tip.

(iv) Wire

263. When the bodies of Jeanette and Harvey Crewe were recovered from the Waikato River, lengths of wire were found tied around each body. At the trials scientific evidence was called by the Crown and by the Defence on the question of whether the wire could be compared with wire samples taken from the Thomas farm, or from nine farms in the district.

264. Both the scientists, Mr Todd for the Crown and Mr Devereaux for the Defence, are experienced scientists. They employed different methods of scientific analysis of the wire to establish, in the case of Mr Devereaux that the wires on the bodies could not be said to come from the Thomas farm, and in the case of Mr Todd, that they might be similar to wire from the Thomas farm, but not similar to wire from any of the other nine farms.

265. Our conclusions are:

(a) Samples of wire were collected from only nine farms in the area. Such a limited sample cannot be said to be helpful in establishing anything. Even if wire from the bodies were to be accepted by us as similar to wire samples from the Thomas farm, who is to say whether or not there are other farms in the vicinity with wire of similar characteristics?

(b) In the face of conflicting expert evidence and opinion as to which method is best suited to this examination and whether or not the differences in the measurements are significant, we consider that it is not possible fairly to adopt one view or the other.

(c) In any case it is not possible to draw any inference which would connect Mr Thomas with the wire on the bodies. There is no evidence putting the wire in his hands.

266. That the subject is a matter of some difficulty will be seen by the ultimate expression by Mr Todd that in comparing wire from the bodies with samples from the Thomas farm, he could not say the wires differed, but nor could he say they were the same. On that note we leave the wire.

(v) Additional Material put before the Commission by the Police

267. The Police made available to the Commission briefs of evidence for two separate categories of witnesses who had not previously given evidence. In both cases, the evidence was designed to associate Mr Thomas with the murders. It was put forward as establishing that, if it were accepted that he had committed the murders, then it was surely likely that he had dropped exhibit 350 at the same time.

268. No doubt because of what emerged as the dubious nature of the evidence, and of these persons giving it, the Police were reluctant to put forward the witnesses as witnesses they were asking to be called; they preferred to suggest that, having seen that the briefs disclosed relevant evidence, we should no doubt wish to hear it. That suggestion we regard as mere playing with words. There is no doubt but that these witnesses were put forward to us by the Police.

269. We heard both categories of witnesses in private, because it seemed to us that the evidence was on the face of it highly improbable, and unfair to Mr Thomas unless the credibility of the witnesses was first established. Mr Thomas, having now been pardoned after 9 years in jail, was entitled to have such evidence heard by us initially in private so that we could decide whether it should be made public. Having heard the evidence, we have no hesitation in deciding that it not be made public. We recommend that the evidence and exhibits received by us in private be kept confidential by the Government.

270. The first category of witnesses related to an alleged confession made by Mr Thomas to a fellow prison inmate in 1978. Mr Thomas was alleged to have confessed to the crimes in great detail. The confession was supported by a number of maps of the Pukekawa area, the Crewe house, and the Thomas house, which were in Mr Thomas's handwriting.

271. The inmate concerned had a criminal record which included a large number of convictions for offences involving fraud. He is clearly what may be called a 'confidence trickster'. Furthermore, he was in a mental institution from 1969 to 1974. He gave evidence before us for a substantial period. The nature of his evidence and his manner of giving it compelled disbelief. A psychiatrist who had treated him during the time he was in the institution, and who heard his evidence before us, then gave evidence. He said that the man represented 'a classical case of grandiose paranoid schizophrenia' and that he was 'chronically psychotic'. He said 'I would not put credence on anything (he) said with any emotional or important connotation. If he said it was 12.30, I might believe him, but for an inside knowledge of trials of this importance, I would not put any credence on it at all without an awful lot of corroboration.'

272. In May 1980 he was examined by another consultant psychiatrist who then reported of him:

> "His manner throughout suggested he believed what he was saying and that he was suffering from paranoid schizophrenia and delusions of grandeur and intrigue . . . ."

273. In the light of the doctors' evidence, we directed counsel assisting us not to lead any further evidence from the witness. We indicated to counsel for the Police that, in our view, the evidence clearly established the man's unreliability, that he was mentally ill, and to continue his examination was inhuman. We invited counsel to seek instructions that he not ask the witness any questions. We adjourned for this purpose. Counsel for the Police informed us that he was unable to obtain those instructions. He continued his examination.

274. Counsel for the Police put a number of matters forward as corroborating the man's evidence. We propose to deal specifically only with two, namely the plans to which we have referred and the evidence of a supporting witness. We think it sufficient in relation to the other matters raised as constituting corroboration to comment that there was nothing in the alleged confession which could not have been invented by a person with access to Mr Thomas and to the various books, including *The ABC of Injustice* by Dr Sprott and Mr Booth and *Trial by Ambush* by Mr Booth, which had by 1978 been written on the matter. The inmate concerned was of course in prison with Mr Thomas. Mr Thomas would have had both books, and it is clear that he was at all times willing to discuss his case with anyone who was interested.

275. We turn now to the plan. It is truly remarkable that, if Mr Thomas confessed in such detail, no incriminating remark appears on the plan. They have the appearance of plans drawn by a man anxious to explain the circumstances in which he came to be convicted. They do not corroborate the notion that he confessed to the crimes and that he was therefore rightly convicted.

276. The supporting witness was unwilling to testify before us because he feared reprisals in the prison, should it become known that the had given evidence. Such reprisals could take the form of physical violence to the extent that his life could be in danger. We were not prepared to force the man to give evidence in these circumstances. We did, however, accept in evidence all of the statements which he has made to the Police. We have also obtained from the Justice Department his personal prison file.

277. This second inmate was prepared some years ago to break the law for the purposes of personal gain. He is as a consequence serving an exceptionally long sentence. His prison file reveals him as shrewd,

cunning, devious and manipulative, and a man who would go to considerable lengths to shorten his sentence. He made efforts to use the Commission's influence to have him transferred to one of the minimum security prison farms.

278. In addition, evidence we received established that he has been a police informer on other matters.

279. This second inmate would have had every reason to lie in support of the first. He must have hoped, realistically or not, that the Police would use their influence to shorten his sentence or improve conditions for him. The only possible disadvantage which his story could bring him would be a prosecution for perjury. It may be that he refused to give evidence before us because he feared just such a prosecution.

280. We are satisfied that the 'prison confessions' never took place, and that the evidence of the two prisoners was a tissue of lies. It causes us grave concern that very senior Police officers were so obviously ready to place credence on such unreliable, self-interested, and, in the case of the first inmate, deluded evidence. It was but another instance of the Police being unwilling to accept the pardon.

281. The second category of evidence revolved around one witness. This man still lives in the South Auckland area and has a young family. We therefore, do not propose to report on his evidence in terms which could lead to his identification.

282. The substance of his evidence was that at 7 a.m. on the morning of 18 June 1970 (the morning after the murders, if the Crown case be accepted) he was driving past the Crewe farm. In a lay-by a short distance past their gate he saw, so he said, Mr Thomas's car and trailer. The trailer had in it two covered bundles.

283. This witness first came forward to the Police with this evidence only in 1980, after Mr Thomas had been pardoned and released from prison. He had, however, given a statement to the Police nearly 10 years earlier, on 24 June 1970. He had, curiously enough, omitted to mention this incident in that statement.

284. Documentary evidence which was produced to us revealed that the man could not have been in the vicinity of the Crewe farm until 9 a.m. on the morning of 18 June 1970. There is evidence which convinces us that Mr Thomas could not have been there at that time. Furthermore, his evidence revealed envy of Mr Thomas for the attention which his case has received from the news media and for the compensation which public opinion suggests that he will receive from the Government following our report. All of these factors, taken with the demeanour of the man as he gave evidence, lead us unhesitatingly to reject this man's evidence as a complete fabrication.

285. The evidence of the last witness to whom we have referred was the subject of a front page article in a newspaper called *Sunday News* on 28 September 1980, after our public hearings had concluded. That action was quite improper. The publication of the material, which is shown by the cross-examination recorded in the transcript to be wholly unreliable, seems to us to have been an act of calculated and callous cynicism on the part of the newspaper.

286. Our conclusion is that none of the additional evidence we have considered in paragraphs 267 to 285 supports the proposition that Mr Thomas may have been on the Crewe property on 17 June 1970 to deposit exhibit 350 there. There is in our view no evidence which suggests that Mr A. A. Thomas was on the Crewe property on 17 June 1970. There is

thus no evidence that he deposited exhibit 350 there, other than the mere fact that exhibit 350, bearing the firing pin mark of his rifle, was found in the garden on 27 October 1970. We now propose to examine the searches which the Police carried out of that garden prior to October, and the degree of corrosion of exhibit 350 when it was found, in an effort to establish how and when it came into the garden.

6. The Searches

287. The Police team were confronted on 22 June 1970 by a bloodstained house, and no sign of the occupants, Mr and Mrs Crewe. Mr Hutton was in his evidence disposed to argue that he treated the matter only as a 'possible homicide' until Dr F. J. Cairns, the pathologist consulted by the Police, confirmed that material found by the Police on the arm of the large armchair in the lounge and forwarded to him on 2 July 1970 was brain tissue, and that Harvey Crewe, with whose blood the armchair was stained, was accordingly almost certainly dead.

288. The evidence makes it apparent, however, that all concerned in the investigation suspected from the start that at least one, probably two murders, had occurred. We are satisfied that the matter was from the beginning treated with the thorough attention which the New Zealand Police apply to homicide investigations. We do not consider that Dr Cairns' finding that Harvey Crewe was in all probability dead caused the Police to alter in any way the approach they had taken to the matter from the beginning.

289. It was obviously necessary that the house and enclosure within the fence be searched with particular thoroughness for any item of evidence which could provide a clue as to what had occurred. Mr Hutton entrusted this task to the officer in charge of the scene, Detective Sergeant Jefferies, under whose direction it was carried out over the ensuing days. The Police file makes it clear that Mr Jefferies carried out his task with meticulous care. By way of example, he prepared an inventory of the property found in the house and car which ran to 51 pages.

290. Detective Parkes, Detective Constable Higgins, and Constable Meurant were assigned by Mr Jefferies to search the area bounded by the fence around the Crewe house, which we have called the enclosure. There was a considerable amount of evidence concerning the instructions which they received. Mr Hutton stated that the search was for a blunt instrument, or some large instrument such as a knife, tomahawk, hammer, piece of wood or other similar instrument, since the consensus of opinion, including that of Dr F. J. Cairns and Dr D. F. Nelson of the DSIR, at that stage was that the great amount of blood present indicated that a blunt instrument had been used. We accept that a blunt instrument was regarded as the most likely possibility at that stage. We reject, however, the proposition that the Police were searching solely or predominantly for a blunt instrument for the following reasons:

(a) Even Mr Hutton was careful to mention that he included in his instructions for the interior search a careful examination for bullet holes, especially in the walls of the lounge, which indicates an awareness on his part of alternative possibilities. That is no more than one would expect.

(b) All officers concerned in the search, including Mr Jefferies, emphasise that it was a search for anything which might constitute evidence, not merely a search for tomahawks and the like.

(c) The search was carried out as a pattern search, which meant that the entire garden was pegged off and divided into strips by lengths of twine. Mr Higgins and Mr Meurant searched the individual strips on their hands and knees or squatting on their haunches, with Mr Parkes following behind to supervise them and to check that no area was left unsearched. It is nonsensical to suggest that such a thorough search would have been required to find a tomahawk or other blunt instrument.

(d) We were much assisted by evidence given by Detective Inspector O'Donovan as to Police practice so far as pattern searches are concerned. Detective Inspector O'Donovan is an experienced officer who has for the last 10 years had a large hand in courses run for the training of detectives at the Police College, Trentham. He described a pattern search as one which is designed to find anything which may be evidence on the surface of the ground. His evidence was that one aspect of detective training is to bring home to potential detectives the importance of searching thoroughly, of overlooking nothing of possible significance, and of not allowing an investigation to proceed on the basis that an early reconstruction of how a crime may have occurred is probably correct. Detective Inspector O'Donovan's evidence does the Police credit. We accept that the search for which Mr Parkes and his team were responsible was carried out in accordance with the guidelines which he explained to us.

291. The area of garden in which exhibit 350 was later found by Detective Sergeant Charles was searched by Constable Meurant. He gave evidence that his search was thorough and methodical, and that evidence was confirmed by Mr Parkes and Mr Jefferies. He said that, if exhibit 350 had been on the surface of the garden, it is most likely he would have found it, although he was not prepared to say definitely that he would have done so. We understand Mr Meurant's reluctance, as an officer still serving in the force, to state categorically that he would have found exhibit 350. In our view, however, taking into account all the evidence, including that of Mr O'Donovan, Mr Meurant would almost certainly have found exhibit 350 had it been on the surface of the garden on 23 June.

292. The possibility cannot of course be excluded that exhibit 350 was buried in the garden when Mr Meurant searched it on 23 June and that he failed to find it for that reason. We find this possibility exceedingly remote. A shellcase is an exceedingly light object. Our own experiments have satisfied us that a shell case ejected from a rifle would not bury itself to any extent even in freshly tilled soil. Even had a murderer or a careless Policeman stood on the cartridge case, we doubt very much whether he would have buried it to the depth at which it was found at a later stage by Detective Charles. The simple fact of the matter is that the depth at which the cartridge case was found by Detective Charles points to the cartridge case having been deliberately buried in the ground,

293. It is appropriate that we mention at this stage two further matters which cause us grave concern. First of all, Mr Hutton said in his evidence that he told Mr Jefferies to be particularly thorough in the pattern search outside the front door and windows and in the area leading to the front gate, because drag marks and blood stains suggested that the bodies had been removed via the front door and front gate. The implication is of course that a less than thorough search was acceptable in other areas. No hint of any such instruction appears in Mr Parkes' job sheet.

294. A photograph of the scene taken by a New Zealand Herald photographer shows Mr Parkes and Mr Meurant digging at the back of the section on 23 June, which establishes that the search was thorough in an area which has never been suggested to have any significance in the case, as one would expect from Mr O'Donovan's evidence of Police practice. We do not accept that any part of the garden was searched in anything other than a careful and methodical manner.

295. Secondly, the evidence of Mr Hutton and Mr Jefferies particularly, and to a much lesser extent the evidence of Inspector Parkes, demonstrated a tendency to denigrate the thoroughness and care of the officers carrying out the search. The object of this evidence was obviously to establish that it is not very surprising that exhibit 350 was not found during the June search. We find it unacceptable that the Police should now say that their own investigation was casual and slip-shod, although we can understand that they are anxious to avoid the conclusion that exhibit 350 was planted.

296. The Commission is of the view that the tenor of the evidence of Mr Hutton and Mr Jefferies was quite unfair to their subordinates, Mr Parkes, Mr Higgins, and Mr Meurant. The explanation of exhibit 350's presence in the garden on 27 October 1970 does not lie in any failure by these officers to carry out their instructions in a proper manner. We are of the view that they conducted the June search carefully and methodically and that they would almost certainly have located exhibit 350 had it been on the garden where it was later found.

297. No further search was made of any of the gardens in the enclosure until August. On 16 August, Mrs Crewe's body was found in the Waikato River. It was quickly established that she had been shot in the head by a ·22 bullet. The fragments of that bullet which the Police recovered from her head gave them their first concrete piece of evidence which might lead to the murderer.

It was obvious that, if a ·22 shell case could be found in the Crewe house or on the Crewe property, that could also lead back to the murderer. Inspector Hutton therefore instructed Mr Jefferies that a further search was to be carried out specifically for ·22 cartridge cases and fragments of lead. Mr Jefferies carried out this search with Detectives Higgins, Gee, and Meurant on 18 and 19 August 1970.

298. The instructions which were given, and the extent of the search carried out, are matters on which we have heard a great deal of evidence. Mr Hutton said that he instructed Mr Jefferies to sieve search the garden against the walls of the house, the gardens on the side of the front path, and the garden adjacent to the fence for a short distance to the left and right of that front gate. In terms of the plan of the house and enclosure reproduced in illustration 12 gardens B, C, E, D, and part only of A and F were to be searched.

299. Mr Jefferies confirmed in his evidence that these were the instructions which Mr Hutton had given to him, and said that only those gardens mentioned were sieve searched, as indeed did Detectives Gee, Higgins, and Meurant. All four officers said that the portion of garden A which we have marked with a cross, where exhibit 350 was later found, was not sieve searched in August. All of them said, and we accept, that nothing of any significance was located in this search.

300. Evidence along these lines was put forward at Mr Thomas's first trial in 1971. Later that year, *The New Zealand Herald* published a booklet entitled, *The Crewe Murders* by one Evan Swain. On p. 34 of that booklet

there appeared a photograph taken on 29 October 1970 of the garden in which exhibit 350 was found, clearly showing its relation to the back door of the Crewe house. When he saw that photograph, a Mr Hewson, who had been a friend of Mr and Mrs Crewe and who had come to Pukekawa from Woodville to assist the Police at the start of the inquiry, contacted Mr Thomas's legal advisors to say that the garden had been sieve searched in August 1970 by the Police party, with his assistance.

301. There is a direct conflict of evidence between Mr Hewson and four Police officers on this vital point. Clearly, the jury at the second trial resolved the conflict in favour of the Police. We have had access, however, to considerable material, some of it from the Police files, which was not put before the jury at the second trial. This material corroborates what Mr Hewson says. For that reason, we are prepared to accept that the garden in which exhibit 350 was found on 27 October 1970 had been thoroughly sieve searched in August. Because of the importance of this point, we propose to set out in some detail the matters which led us to our conclusion.

302. Mr Jefferies completed on 21 August 1970 a job sheet which stated that on 18 August 1970 'All gardens were cleared and the earth sifted and examined'. Taken at face value, that job sheet supports Mr Hewson's version of the matter. It is very significant that the job sheet was written before any 'planting' allegation in respect of exhibit 350 was made. We consider that the terms of the job sheet are to be given a great deal of weight.

303. The notes of a conference held on 18 August 1970 show Mr Jefferies as saying:

> "A search was made of the lawn and the garden was completely dug up, that is all gardens, and sieved. There were several parts of the garden where we could scratch over and look visually that weren't actually sieved and I am satisfied there was not anything there. We had Graham Hewson—he helped us up there today . . . we have got to the little gate now within the confines of the immediate house."

304. The reference in this document to some gardens not being sieve searched was siezed upon by the Police as a reference to the part of garden A where exhibit 350 was found. We do not accept this proposition. Mr Jefferies specifically refers in the conference note to all gardens. The reference to parts of gardens was in our view to particular parts where, probably because of a lack of vegetation, it was possible to carry out a thorough search by 'scratching over'. The reference is certainly not specific enough to enable us to conclude that almost the whole of garden A was not searched. Furthermore, the reference to a little gate is clearly to the gate outside the back door near where exhibit 350 was eventually found, and suggests that the garden was in fact sieve searched.

305. All four officers conceded that Mr Hewson was present on 18 August, but have said that he assisted them only by searching the roof and guttering, a task that had already been completed. That task would only have taken a short time and the Police say that it was the only assistance which Mr Hewson gave them. The clear implication is that Mr Hewson was an embarrassment rather than an assistance to the Police. The conference note of 18 August 1970 to which we have already referred explicitly states, however, that Mr Hewson was helping the Police. It does not support Mr Jefferies' evidence that he humoured Mr Hewson by allowing him to climb on to the roof.

CREWE HOUSE and SECTION

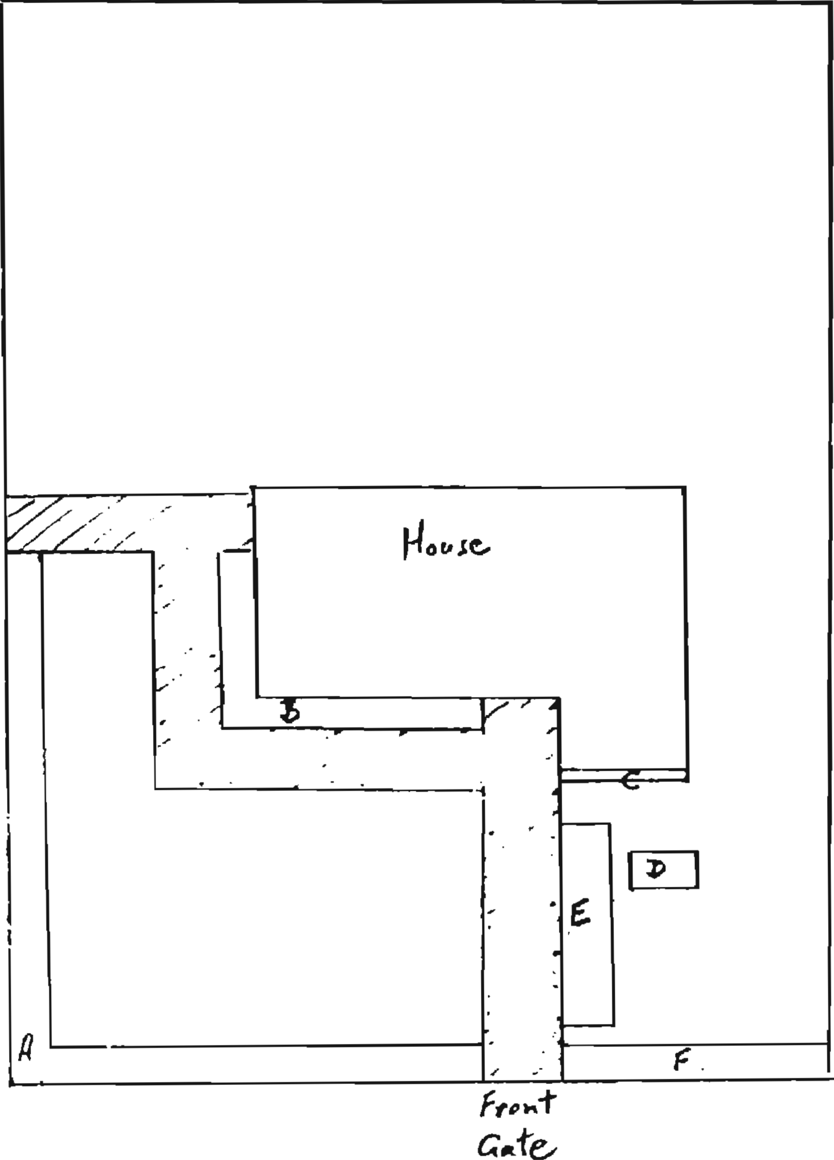


ILLUSTRATION 12

306. Detective Sergeant Tootill completed on 19 August 1970 a job sheet recording that he saw Mr Hewson on the Crewe property on 18 August 1970, 'Assisting in (the) search.' We take that job sheet at its face value.

307. There are a number of job sheets which confirm that, at an earlier stage of the inquiry, Mr Hewson did assist the Police, and that he was in fact asked to report to them any odd behaviour on the part of Mr Demler, with whom he was residing. On 8 July, he was given a letter signed by Mr Hutton authorising him to drive the Crewe car to Tuakau to register it and to obtain a new warrant of fitness. We have also heard evidence that on 20 August 1970 at Mr Hutton's request he went to Hamilton to pick up the Crewe car, and drove it back to Auckland. Detective Abbott confirmed that Mr Hewson handed a bedspread from the Crewe car to him at the Otahuhu Police Station on 20 August 1970. All of these matters suggest that Mr Hewson's relationship with the Police was as close and cordial as he says it was, and are inconsistent with the picture which Mr Jefferies would paint of a man who was a nuisance to the police and had to be humoured.

308. Mr Jefferies denied that Mr Hewson was present at the house at all on 19 August, on which date the area of paddock between the enclosure and road was mown. Mr Parkes however recalled seeing Mr Hewson there that day. Mrs Chitty and her husband, very significantly, recalled Mr Hewson borrowing and returning a lawnmower at about that time for the purposes of assisting the Police with their search. We therefore accept Mr Hewson's evidence that he was at the property on 19 August.

309. Mr Hewson has always asserted that he was driven to the Crewe house on 18 August 1970 in a Police car, with Mr Jefferies, Mr Meurant, Mr Higgins, and Mr Gee. He says that they called at one place, possibly a council yard, and then at another yard, to borrow a sieve. All four officers concerned denied that Mr Hewson travelled in the Police car with them and said that they called at only one place, Dricon Industries Limited, to borrow a sieve.

310. So far as the sieve is concerned, Mr Samonds and Mr Kelly, employees of the Tuakau Borough Council, gave evidence that some time in the winter of 1970, the Police called to borrow a sieve, which they were unable to supply. They could not be more specific, but the Police have not produced evidence that any Police officers called at the council depot about that time to borrow a sieve in connection with any other matter. So far as it goes, their evidence therefore, tends to support Mr Hewson.

311. On the issue of whether Mr Hewson travelled in the Police car at all, Mr Hewson himself said that his car was in the garage on 18 August to have the tyres changed. Mr Marr, of Howe & Weston Ltd., Pukekohe, produced a receipt dated 21 August 1970, made out to Mr Hewson. He said that he remembered that the tyres had been changed, and that the work had been done 2 or 3 days before the date of the receipt. Neither Mr Hewson's nor Mr Marr's evidence was challenged on this point, and we therefore accept that Mr Hewson, having brought Mr Crewe's mother to Pukekohe on 17 August 1970 following the discovery of Jeanette Crewe's body in the Waikato River, left his car at Howe & Weston Ltd. on the following day.

312. All concerned agree that Mr Hewson was at the property on that date, no-one has suggested that he walked there or made his way there by public transport. It seems likely that he did in fact travel in the Police vehicle.

313. Mr Handcock, who was the manager of the Crewe farm, confirmed evidence which he gave at an earlier stage to the effect that he saw Mr Hewson with the Police party inside the enclosure on 18 August, and that Mr Hewson seemed to be loosening the soil with a fork or similar implement.

314. There are no photographs showing the state of the gardens after the August search. The Police relied on photographs taken on 29 October, and showing rather more vegetation in garden A than in garden B to establish that garden A had not been sieve searched in August. We make the following comments on this evidence:

(a) Mr Parkes and Mr Charles made no mention of having to remove in October a large bush which was growing in June near the rear gate, at the point where exhibit 350 was found. Detective Meurant's evidence establishes that that bush was not removed in June. It was therefore, removed in August, which is consistent with sieve searching of that area:

(b) We agree that there is rather more growth in garden A than in garden B in the October photographs. There are nonetheless plants in garden B comparable in growth with those in garden A. In our view, the explanation of any extra vegetation in garden A may have been given by Detective Gee, who explained that the Police had put some plants back onto the garden when they had finished searching, had left others on the lawn and thrown still others over the fence. In our view, the difference between garden A and garden B lies in the fact that more plants and bulbs were put back into garden A than into garden B. Very significantly, we can see at least one plant growing on the lawn beside garden A in one of the October photographs, which suggests it was left there on the lawn, and hence supports the proposition that the garden was sieve searched in August.

(c) Overall on this issue, we are conscious that we are working from photographs taken to show things other than the gardens. We think it very dangerous to place too much weight on what is or is not shown in the photographs, and we base our finding that the garden was sieve searched on 18 August on other matters.

315. The photographs taken on 23 June show a white board along the bottom of the fence beside the back gate intact after the search of that date had been completed; the October photographs show it broken off, and lying away from the fence. Mr Charles could not remember removing it in October; it therefore seems likely that it was removed in August during the sieve search.

316. For these reasons, we accept the evidence of Mr Hewson and reject that of the four Police officers, and of Mr Handcock, then manager of the Crewe farm, to the effect that garden A was not sieve searched in August. We do so with some reluctance, since Mr Handcock is a member of the public obviously anxious to be of assistance to us, and since the four officers are men to whom a reputation for integrity is vital.

317. Mr Handcock was in our view simply mistaken in his recollection, and it is significant that he first approached the Police about the matter only in 1972, when there had already been a sustained degree of controversy about Mr Thomas's case for some considerable time.

318. Despite counsel for Mr Thomas urging that we consider a more severe approach so far as the four Police officers are concerned, we find also merely that they were mistaken.

319. We accordingly find that the garden where exhibit 350 was eventually found on 27 October had been thoroughly and carefully searched on 23 June, and sieve searched on 18 August. We are satisfied that, had exhibit 350 been deposited in the garden on 17 June, it would have been located in either the June or the August search. Since it was not so located, it follows that it did not find its way into the garden until after 18 August 1970.

7. The State of Corrosion of Exhibit 350.

320. In paragraph 47 we have already referred to the description of exhibit 350 given by Messrs Charles and Parkes when they first found it, and of Mr Shanahan when it was examined by him the next day at the DSIR. Their evidence of its condition is not consistent with that of Mr Hutton. We prefer the evidence of the other three.

321. We heard evidence from a metallurgist suggesting that the speed and extent of corrosion of brass in soils exposed to weather might be expected to vary greatly. We also heard evidence of a number of tests of corrosion carried out by exposing brass cartridge cases in soil in various localities, with the predictable result of substantial variations in the corrosion found after 18 weeks. Of more interest is the appearance of shellcases buried at the Crewe property in the garden where shellcase 350 had been found, and left there for 18 weeks between June and October 1972. When recovered both these shellcases showed a substantial amount of inky blue corrosion products present. A similar test carried out by the defence in burying shellcases nearby produced a similar result. This is to be contrasted with the appearance of shellcase 350 when found by Charles and Parkes. No inky black corrosion was seen by them.

322. Dr Sprott examined exhibit 350 under a microscope in September 1972, specifically to consider the degree of corrosion it showed. Knowing that it had already been substantially handled, and possibly cleaned, he concentrated his attention on the small radius where the cartridge body joins the rim. There the metal is folded so tightly that a hand cannot touch the metal surface and it would also be extremely difficult to clean the same area. He found no corrosion in that area; and so was unable to reconcile its condition with the shellcases, test buried by the defence at the Crewe property.

323. Exhibit 318 is a box containing some .22 cartridges which were found by the Police in the Thomas home and retained by them as an exhibit. It now contains 13 whole unfired cartridges, and another two which have been dissected. Though these cartridges have never been exposed to weather, in appearance some look to us to be similar to exhibit 350 so far as the degree of corrosion is concerned. It must be appreciated that we can only make this comparison by the use of a photograph of exhibit 350, and we are not unmindful of the evidence that the handling of exhibit 350 could have removed some of the corrosion products present when it was first found.

324. We believe all this evidence to be too inexact on its own for us to rely heavily upon it. Nevertheless, we find that the degree of corrosion apparent on exhibit 350 is not such as we would expect to find if it had been in the ground from 17 June to 27 October 1970.

8. Summary of Findings to This Point on Term 1

325. We have found that the shellcase exhibit 350 did not contain either of the bullets which killed Jeanette and Harvey Crewe respectively. (See paragraphs 63 to 189.)

326. We have rejected the three explanations as to how exhibit 350 could have arrived in the garden on the night the murders were committed—these are the louvre window theory, the suggestion that the murderer threw the shellcase out the window, and the theory that it was a cold shell ejected from the murderer's rifle. (See paragraphs 192 to 208.)

327. In examining the possibility that exhibit 350 was left in the garden by the murderer we have also examined the weight which should be given to the other evidence purporting to show Mr Thomas's presence on the Crewe property on 17 June. We have found:

(a) That the Crown evidence utterly fails to establish any motive on the part of Mr Thomas to kill Mr and Mrs Crewe. (See paragraphs 212 to 220.)

(b) That the scientific examination of the bullets recovered from the bodies of Jeanette and Harvey Crewe compared with the markings on bullets test fired from Mr Thomas's rifle, does not establish that his was the firearm used in the murders. (See paragraphs 221 to 237.)

(c) That the only evidence to connect the axle found with Harvey Crewe's body with Mr Thomas was the stub axles. We have found that it would be quite unsafe to draw any inference connecting Mr A. A. Thomas with the axle found on Harvey Crewe's body merely because of the presence of the two stub axles on his tip, particularly bearing in mind all the inconsistencies, unexplained discrepancies, and alternative possibilities concerning the history of that axle. (See paragraphs 238 to 262).

(d) The wire evidence proves nothing. (See paragraphs 263 to 266).

(e) The additional evidence put forward by the Police to incriminate Mr Thomas is wholly unreliable, and in at least one case, the delusion of a diseased mind.

(f) None of this evidence in (a) to (e) above establishes to our satisfaction that Mr Thomas was on the property that night.

(g) In addition, there was the evidence from the second trial of Mr Thomas, his wife, and his cousin Peter that he was at home on the evening of the murders. We have noted that their evidence was not shifted to any degree in cross-examination. On the contrary, as we will find later, evidence used to discredit Mr Thomas in the trials has itself been proved to be false.

(h) Therefore, in examining the possibility that exhibit 350 was left in the garden by Mr Thomas that night, we conclude that the evidence before us fails to prove that he was there.

328. We have found that the garden where exhibit 350 was eventually discovered on 27 October had been thoroughly and carefully searched on 23 June, and sieve searched on 18 August. We are satisfied that had exhibit 350 been deposited in the garden on 17 June it would have been located in either the June or the August search. Since it was not so located, it follows that it did not find its way into the garden until after 18 August 1970. This in itself indicates that it was not left there by the murderer. (See paragraphs 287 to 319.)

329. We have also found that the degree of corrosion seen on exhibit 350 when it was recovered from the garden on 27 October 1970 was not such as we would have expected if it had been there from 17 June. (See paragraphs 320 to 324.)

9. The Police Investigation During October 1970

330. In the light of those findings we turn to consider afresh the course of the Police investigation during the month of October 1970.

331. The Police had begun their investigation on 22 June 1970. Months had passed without them making an arrest, or indeed, discovering any evidence of weight pointing to the identity of the murderer. Mr Demler had been their prime suspect, but at a Police conference on 2 October 1970, the investigation team was told by the Crown Prosecutor that there was insufficient evidence to charge Demler with the murders.

332. Two detectives from further south, Mr Baker and Mr O'Donovan, were called to Auckland to review the inquiry, providing a fresh perspective or overview. This review was carried out by them between 2 October and 19 October.

333. On 13 October 1970 the Police were able, by virtue of Miss Cowley's telephone call, to trace the axle which had weighted Harvey Crewe's body back to the Thomas family. We have now found that there is no acceptable evidence to connect the axle with Mr A. A. Thomas, but to the Police officers involved in the case, its supposed identification must have been seen as giving a fresh impetus to the case. The impetus was in the direction of Mr A. A. Thomas.

334. It may be significant that on the same date, 13 October, there was carried out the reconstruction of the louvre window theory, which we have dealt with in paragraphs 192 to 202. We question what the purpose of carrying out this reconstruction was. Whether the Crewes, or either of them were shot by a person from inside or outside the house did not advance the prospect of establishing the identity of the murderer. It could not provide any new evidence. Both inside and outside had been searched in accordance with proper police practice twice, in June and in August. On the other hand, the possibility of an outside shooting through the louvre window could be seen as a reason for searching the garden again with the object of finding an ejected shellcase.

335. Some time between 13 and 16 October, Dr Nelson informed Mr Hutton of his final report, that he could not positively show that the bullets recovered from the bodies had come from the Thomas rifle.

336. The Police conference on 19 October reviewed the findings of Mr Baker and Mr O'Donovan. After reviewing once more the problems of lack of evidence against Mr Demler, the conference spent some time discussing Mr Thomas. Near the end of the discussion Mr Hutton summarised the position as follows:

Points against Thomas:

1. Possible motive—jealousy.
2. Previous relationship—infatuation.
3. Firearm (suspect rifle).
4. Proximity to scene.
5. Availability of transport.
6. Knowledge of Crewe farm through having worked there
7. Axle (yet to verify whereabouts of similar axle on trailer formerly the property of Shirtcliffe).
8. Fires and burglaries.

Points in favour of Thomas not being the offender:

1. Alibi for the evening of 17 June 1970—appears as though wife and boarder will verify that he was home on the night in question and did not go out.
2. Well thought of in the district.
3. Married man—well settled on homestead farm.
4. Time lapse since association with Jeanette.

The conference concluded that every effort must be made to 'Either confirm Thomas as a suspect or exclude him altogether.'

337. It is plain that Mr Thomas was by now the focus of the Police investigation. His family was interviewed. His financial and personal affairs were investigated. Wire samples were taken from his farm. He was asked for all ammunition he had on his property and handed over a packet of ·22 birdshot ammunition, (exhibit 345) and 14 loose cartridges from the scullery (exhibit 344). It should be noted that the Police already had a packet of ·22 cartridges uncounted (exhibit 318).

338. On 20 October the stub axles were found on his property in circumstances which we have already described. On the same date his rifle was again taken by the Police. On 21 October exhibit 343 was found, more wire samples were taken, and some other exhibits such as the number plate from the old Thomas trailer also picked up.

339. However, none of the information obtained since the conference on 19 October did much to strengthen a case against Arthur Allan Thomas. There was still no evidence putting either axle or wire into his hands. There was no positive identification of the death bullets having come from his rifle. There was no evidence putting him on the property on the evening of 17 June, and against that lack of evidence there was still his alibi to contend with. We consider that by now the Police were exhibiting a readily understandable desire to bring to a successful end a long and difficult homicide investigation by ensuring the conviction of the one suspect against whom there seemed to be any evidence at all, weak as that evidence has now been shown to be.

340. By 20 October 1970 the Police has in their possession the Thomas rifle and exhibit 318, the packet of cartridge cases containing cartridges of the same type as exhibit 350.

341. Mr Keith gave evidence that the Thomas rifle was kept in his locker, to which he alone had the key. We regard Mr Keith as an honest witness, but we do not accept that he is in a position to guarantee that no other Police officer had access to the rifle. His locker was apparently of standard government issue, and we have no doubt that it would not have been difficult for a determined person to gain access to it. Furthermore there is evidence given at the second trial by Mr Thomas that on 25 October 1970, Mr Hutton had the rifle in his office with a packet of ammunition attached to it. Mr Thomas gave this evidence under cross-examination and was not challenged on it. That evidence indicates that officers other than Mr Keith had access to the rifle between 20 October, when it was picked up from the Thomas farm, and 27 October when exhibit 350 was found.

342. A further significant piece of evidence on this point occurs in the Exhibit Register kept by the Police. Alongside the entries for the rifle and the packet of cartridge cases exhibit 318 appear two entries each with the words 'held Johnston'. Both are made in Mr Johnston's handwriting. We understand it is not possible to obtain an accurate dating of when these words were written. We can only say that they appear to be in the same

handwriting as the remainder of the two entries, and all have the appearance of having been made at the same time.

343. An attempt was made by the Police to establish that the entry in respect of the Thomas rifle cannot have been in the register in 1972, because it was not recorded by Mr R. J. Walton when he conducted a Police investigation at that time. There may be a number of reasons why the remark was not noted by Mr Walton. One may be that he did not regard it as being of significance. We are not able to accept that it was made after 1972 in the absence of evidence to establish such was the case. The plain fact is that the handwriting is the same as the handwriting of the entry itself which was made in 1970.

344. We believe the words 'held Johnston' indicate that at some stage during the Police Investigation Mr Johnston held both the Thomas rifle and the packet of ammunition in his possession.

345. In paragraphs 39–41 we have already related the curious conversation which took place at the Otahuhu Police Station on 26 October 1970 between Mr Hutton and Mr Jefferies, and which led to Mr Hutton instructing Messrs Parkes and Charles to search a particular garden of the Crewe property the next day. We repeat our misgivings. If the garden in question had not been sieve searched in August, Mr Hutton must on his own evidence have known this and did not need to ask Mr Jefferies. Furthermore, if that garden had not been properly sieve searched we cannot understand why Mr Hutton did not order it to be done immediately following the reconstruction of the louvre window theory on the evening of 13 October instead of waiting nearly 2 weeks.

346. Our curiosity is further heightened by the following extract from a report on this subject forwarded to the Commissioner of Police on 26 October 1973 by Assistant Commissioner Walton as he then was.

> "The experts conducted a physical reconstruction which confirmed the theory. A logical deduction then was that the offender, having just killed Harvey Crewe, and knowing that he must enter the house urgently and deal with Mrs Crewe has reloaded his weapon in a hasty and violent manner thereby ejecting the fired cartridge case. The ejection range of a .22 rifle was studied and as a consequence the O/C investigation ordered a sieve search of other gardens over the possible ejection radius from the back steps."

The truth of the matter is that there was no study of ejection ranges of the Thomas rifle until March 1973. Furthermore, Messrs Parkes and Charles were ordered to sieve search only one garden—i.e. the garden where the shell was found.

347. The conversation of 26 October, looked at in the light of all the above circumstances, forces us to the conclusion that it was staged for the purpose of providing the excuse for sending Parkes and Charles back to the particular garden to find the shellcase.

348. Mr and Mrs Priest told us that one afternoon after 30 September 1970 they were standing near the roadway on their property when they heard two shots from the direction of the Crewe home. They looked in that direction and saw two men near the back door. A short time later, while they were walking along the road, Mr Hutton and Mr Johnston came along in a car. A conversation followed. We accept the evidence of Mr and Mrs Priest that Mr Priest asserted the two Policemen had just fired two shots at the Crewe farm. Far from denying this, Mr Johnston said 'How do you know?' To which Mr Priest replied 'We heard you'. Giving evidence before us, Mr Hutton denied firing the shots, but we do not

believe him. We find that Mr Hutton and Mr Johnston fired two shots at the Crewe home that day.

349. After 20 October 1970, the Police then had the opportunity to plant a cartridge case in the Crewe garden. They had the cartridges from exhibit 318 in their possession as well as the Thomas rifle. They could fire one of these cartridges from exhibit 318 in the rifle and plant it in the garden.

350. We conclude that on the occasion referred to by Mr and Mrs Priest, Mr Hutton and Mr Johnston planted the shellcase, exhibit 350 in the Crewe garden, and that they did so to manufacture evidence that Mr Thomas's rifle had been used for the killings.

351. We consider that this explains why Mr Hutton described shellcase 350 as containing blue-black corrosion when in fact it did not. It also explains his odd behaviour at the Supreme Court upon discovering Dr Sprott examining one of the shellcases. Furthermore, it provides an understandable motive for the switching of exhibit 343 after it had been examined by Dr Sprott.

10. Any Impropriety in Destruction of the Exhibits at the Whitford Tip

352. Exhibits 350 and 343 were important and significant in the trial of Arthur Allan Thomas. Exhibit 350 was the cartridge case found by Charles and Parkes in the flowerbed adjacent to the back steps of the Crewe house on 27 October 1970. Since it was undoubtedly fired from the Thomas rifle and was a ·22 long rifle shell and the Prosecution said could have contained the bullets in the heads of Jeanette and Harvey Crewe, it became the cornerstone of the Crown case against Thomas.

353. Exhibit 343 which has been called the most discredited exhibit in the history of criminal trials, was a ·22 long rifle cartridge found in an applecase in a shed at the Thomas premises by Detective Sergeant Keith. It was taken to the Otahuhu Police Station, dissected by Inspector Hutton, and found to contain a ·22 long rifle projectile branded 8 on the base. This shell was subsequently fired for reasons of safety in a ·22 rifle at the Police Station. The cartridge and the projectile became exhibit 343.

354. Significantly, it showed that Thomas had on his premises ammunition of the same type which killed the Crewes. Later its significance was that since the shellcase was taken to be the same in all respects as 350, it proved that it was possible for a shellcase with the same headstamp as 350, Dr Sprott's category 4, to have contained a pattern 8 bullet, and it devastated the defence theory that the bullets in the heads of the Crewes could not have come from a category 4 cartridge case, i.e. 350.

355. At depositions in the Magistrates Court, 343 was described by Dr Nelson as a 'fired shell of a ·22 long rifle cartridge'. Later at another hearing he described it as being fired or unfired and said that he may have fired it himself by using a pin and hitting it with a ruler or some such object. When exhibit 343 was first examined by Dr Sprott towards the end of the second trial, it was an unfired shell and of category 3. At some time later, and after it had been returned from the examination by the DSIR it became a category 4, the same as exhibit 350, and it was an unfired shell. What it is today we will never know because it lies deep in the Whitford tip.

356. The appeal by Thomas against his conviction at the second trial was dismissed by the Court of Appeal on 12 July. When he heard this Mr Morris rang Mr Hutton, told him the results, and in the course of the

conversation Mr Hutton asked whether there was any reason why he should not pick up the exhibits for disposal in the normal way. Mr Morris said he could see no reason why the normal practice should not be followed. This normal practice, according to Mr Morris, was that leaving aside exhibits that had to be destroyed because of their nature, bloodstained clothing and the like, the exhibits were to be returned to their owners or at least persons entitled to them.

357. On instructions from Mr Hutton, Detective Sergeant Keith attended at the Supreme Court on 12 July 1973 and picked up all the exhibits. These he conveyed to the Otahuhu Police Station. Subsequently on 27 July he took a large number of these in the boot and the back seat of a police car to the Whitford tip near Auckland and there disposed of them. He had listed them by exhibit numbers. Included in those destroyed were exhibits 350 and 343, and exhibits 243 and 289. (Particles of bullets respectively found in the heads of Jeanette and Harvey Crewe.)

358. He disposed of them by placing the smaller exhibits into cardboard cartons still in their containers; he then emptied the contents on to the Whitford tip. He did not remove the exhibits from their containers, but some of the containers may have been broken when he was putting them into a carton. He was able to indicate to us on photographs of the tip, exhibit 112, the place where he put them as being to the left of a small group of trees shown in the foreground of that picture. He said the space covered by the contents of a carton would be about the size of a typewriter, and he indicated the word processor in Court. His method of ejecting them was 'To heave them out of the carton.'

359. A person seeking to recover exhibits 350 and 343 would therefore not be looking for an empty ·22 cartridge case, but for a complete or broken phial amongst a heap of recognisable exhibits. Mr Keith thought that as a result of the bulldozing, the rubbish he put there would be distributed over an area of 20–30 square yards.

360. The destruction of the exhibits was the subject of a statement from the Minister of Justice. Publicity had been given by Mr Pat Booth in his articles in the *Auckland Star* newspaper, and in the publication *The ABC of Injustice* that exhibits 350 and 343 had been destroyed at the tip. When he heard of this, the Minister of Justice was reported to have said he was 'desolate and deeply troubled'. Following this there were investigations by the Police:

(a) As to the circumstance under which these exhibits were destroyed; and

(b) As to the prospect of their being recovered.

The friends of Thomas were active in the matter and anxious to try and recover these two exhibits.

361. On 6 September 1973 Mr Hutton had a telephone conversation with Assistant Commissioner Walton, and on that day dispatched to him a telex. This is a lengthy document and some of its paragraphs were put to Detective Sergeant Keith in the witness box. Where he is in conflict with statements made by Hutton in the telex, we accept his evidence. Patently many of the statements in the telex are false and could only have been designed to misrepresent the position to the Assistant Commissioner.

362. For example:

(a) In paragraph 2 Inspector Hutton claims that following the first trial, despite being instructed by the regional supervisor to dispose of the exhibits, he deemed it prudent to retain all the exhibits, and following the trial of Arthur Thomas for the second

time, he again retained all Crown exhibits until after the result of an appeal by Thomas against conviction for both murders. It is curious that Mr Hutton should claim that he retained the exhibits. Quite plainly, until the appeal was disposed of, the exhibits would remain in the control and custody of the court and Inspector Hutton would not or should not have had any access to them, except by permission.

(b) In the telex he appears anxious to create the impression that his every wish at all times was to retain these exhibits. He said in paragraph 6 that he obtained the approval of Mr Morris to dispose of the exhibits in the normal manner.

(c) In paragraph 8 he said he and Mr Keith sorted out the exhibits. Mr Keith said he carried out this task and prepared a list of 137 exhibits to be taken to the tip. Mr Hutton said in the same paragraph that in the company of Detective Sergeant Keith he took those 137 exhibits to the Whitford tip. This is quite untrue. Mr Keith says, and we accept him, that he took the exhibits to the tip in a Police car in the boot and the back seat. He was unaccompanied.

(d) Mr Hutton says in paragraph 13 that of the 137 exhibits destroyed, he only really intended to retain possession of exhibit 350, since he had promised to give this to Detective Sergeant Charles as a souvenir. He goes on to say, 'In my haste in going through the many bullet and shell exhibits for destruction, I overlooked this fact due to the impression I had that this exhibit was locked away in my office.' We are prepared to accept that whatever Mr Hutton did towards the disposal of these exhibits was done in haste, and it may well be, having regard to other instances where exhibits have been retained by Police officers rather than kept in the exhibit room, his statement about it being locked in his office could be true.

(e) He describes going back to the tip with Mr Keith, and the nature and extent of the work which had gone on since they were last there. Mr Hutton says both he and Mr Keith became unsure exactly as to the precise spot where the exhibits had been thrown out. He goes on to recite facts as to the building up of the tip by layers of rubbish that would 'need a miracle to happen for us to recover the ·22 shells and cartridges disposed of.' He commented that exhibit 343 in particular had no markings on it and was therefore unidentifiable. Mr Keith knew of course where he had put the exhibits in relation to the clump of trees, and it was his evidence they would have covered an area of 20–30 square yards. The telex paints a picture of 343 and 350 being cartridge shells apart from their containers, and with no markings. 350 as we have said before, would have been in its container with cotton wool, and have a tag, as would 343, unless these phials had been broken.

363. We recall that before the appeal had been determined Mr Pat Booth had an interview with Mr Morris in his office, in which he told him that the friends of Thomas, he, and Dr Sprott, were not finished with the matter and they would continue to fight on.

364. If the exhibits 350 and 343 had been disposed of in accordance with normal practice, they would have been returned to the Thomas family or their legal representatives because even on the Police view of the

matter they belonged to Thomas. This may seem to be a somewhat trifling point, as they had as objects no real value. Their value to Thomas and his legal advisors was immense since they were the exhibits on which Thomas's fight for freedom had been based. Equally, so long as they existed, they were a threat to the prosecution case, and although Mr Morris may have said that the dimissal of the appeal was the end of the road, enough had been said, seen, and done up to this stage to make it clear that this was not so as far as Thomas and his supporters were concerned.

We draw the following conclusions:

365. Exhibit 350 and exhibit 343 were clearly the property of Arthur Allan Thomas and should have been returned to him or his solicitors. They, in company with other exhibits, were dumped on the Whitford tip on 27 July as a result of the direction by Hutton to Keith. Hutton's statement that he was present with Keith when they were taken to the dump and distributed was false. His description of the manner of their destruction was false to his knowledge. Hutton had both these exhibits destroyed because he knew exhibit 350 had been planted, and exhibit 343 was a suspect exhibit for which an unfired shell had been substituted.

366. We find the disposal of these exhibits and the reasons for it has an added significance. It strongly supports the case against Hutton of planting 350 to procure the conviction of Thomas. The destruction of exhibits 350 and 343, and the telex report from Hutton, constitute impropriety on the part of the Police. The telex sent by Hutton to Assistant Commissioner Walton was in part false, and intended to misrepresent the position so that a further search for exhibits 350 and 343 would not be undertaken by the Police.

11. Mr A. A. Thomas's Prior Visits to the Crewe Farm

367. In a typed job sheet, signed by Detective Sergeant J. R. Hughes on 3 July 1970, he recorded an interview with Arthur Allan Thomas the previous day. It includes the following statement:

"Thomas said he had been to the Crewe home while working for one of the local agricultural contractors when sowing manure. He had met Harvey then who appeared to him to be a decent type of bloke. He had had morning and afternoon teas in the home. This would have been as late as three or four years ago. He said that he had not been to the house since . . ."

368. In a job sheet dated 8 September 1970, Detective B. M. Parkes recorded an interview with Arthur Allan Thomas at the Tuakau Police Station on the previous day. This contains the following statement:

"During the 1960s, Thomas was employed by Barr Brothers as a loader driver. The firm was engaged in topdressing operations, and he would have been on the Chennell Estate property between 4–6 times. At this stage, Jack Handcock was the manager of the estate, and Thomas would have eaten meals in the house while working there. This would have been about 7 years ago, and he has not been on to the property since."

369. A written statement was signed by Arthur Allan Thomas on 15 October 1970. In it he stated:

"My next position was for Barr Brothers who worked from Ardmore. I was again a loader driver: I left them in May 1965; I worked on Crewe's property several times; Jack Handcock was the manager at

Crewe's farm then; I used to eat with the Handcocks when working there; they were then living in the Crewe house."

370. At the second trial in particular, Arthur Allan Thomas was strenuously cross-examined concerning Hughes' evidence which contradicted his own, and his credibility was attacked both then and again during the Crown Prosecutor's final address. The evidence assumed substantial importance, first as establishing whether Thomas had been in the company of Mr and Mrs Crewe in their own home, and secondly from the point of view of the credibility of Thomas in the witness box.

371. The facts of the matter are quite clear. In evidence before us Mr J. Barr, Managing Director of Barr Brothers Limited, gave evidence and produced simple records which establish:

(a) That Mr A. A. Thomas worked for his company as a loader driver for a number of years until 28 May 1965 (which is more than a year before Mr and Mrs Crewe moved onto the Chennell farm at Pukekawa).

(b) That after 28 May 1965 Mr Thomas was never employed again by Barr Brothers Limited except for one day in 1967 when he was employed by them as a loader driver for the topdressing of a specified farm which was not the Crewe farm.

(c) That the last occasion upon which his firm applied fertiliser to the Chennel Estate farm was in April 1966. His firm never topdressed the farm after it was taken over by Harvey Crewe.

372. This evidence from Mr Barr was clear. The records which he produced are simple and clear. They are available to us now and must have been available in both 1971 and 1973.

373. In evidence before us the Crown Prosecutor, Mr Morris, stated that on two separate occasions, once before the commencement of the First Trial in 1971 and again on the occasion of the Second Trial in 1973, he specifically requested the Police to check with Barr Brothers the date upon which Mr Thomas ceased to work for them. He stated that he received an answer on each occasion indicating that an inquiry had been made and that the records were inconclusive. On one of these occasions Mr Hutton was involved with the requests of Mr Morris. Though Mr Hutton denies any knowledge of this, we accept Mr Morris's evidence.

374. We are aware that some inquiries were made of Barr Brothers Limited by the Police on other matters, but we can find no evidence that the Police did properly pursue the answer to Mr Morris's requests. If they had, the Barr Brothers' records were available to establish the position so clearly. We are forced to conclude that the Police preferred instead to leave the matter in a state which allowed the Crown Prosecutor to cross-examine Mr Thomas and address the jury as he did. Undoubtedly the matter should have been investigated and was not. We find the Police failure to establish the truth of the matter was improper conduct.

12. Whether the Claim by Bruce Roddick to have seen a Woman at the Crewe Property on Friday, 19 June 1970 was adequately investigated by the Police?

375. Across the road from the Crewe property is a farm occupied by Mr Chitty. In 1970 Mr Chitty sometimes hired a young man called Bruce Roddick to assist him on a casual basis. Bruce Roddick lived in the district with his parents. Mr Chitty called on his help for feeding out to his stock on Friday morning, 19 June. It was the only day that week that Mr Roddick did help him. Mr Roddick told us in evidence that on that Friday

morning he was feeding out hay from the back of Mr Chitty's tractor in a paddock immediately opposite the Crewe home. He looked across and saw a lady standing in front of the house, and a car nearby. He described the lady and the car to us as far as he was able. At that time Mr Roddick did not know Mr and Mrs Crewe, but did understand that they occupied that farm. He assumed that the lady he saw was Mrs Crewe.

376. The following Monday evening the Roddick family learnt of the Crewes disappearance from the T.V. news; and the following morning heard further details on the radio news at breakfast time. On hearing that it was thought the Crewes had disappeared the previous Wednesday, Bruce Roddick immediately told his parents this could not be right because he had seen Mrs Crewe the Friday morning. At the suggestion of his parents he went to the Police and related what he saw. He was interrogated very thoroughly and the Police clearly concluded that the information he was giving was accurate. Two days later he saw a photograph of Jeanette Crewe and told the Police that though the face of the women he had seen was similar, her hair was the same length, but seemed to be a little lighter in colour.

377. On 30 October 1970 Mr Roddick attended an identity parade of nine women including Mrs Vivien Thomas. After the parade Mr Roddick was asked by the Police whether he saw the person whom he had seen at the Crewe farm, he replied that no one in the identity parade looked similar to the woman he saw at the Crewe farm. Vivien Thomas was known to Mr Roddick, but he did not tell the Police that at that time. He has told us that the woman he saw on the morning of 19 June 1970 was definitely not Vivien Thomas. It has been questioned as to whether the Police should have given Roddick the opportunity to specifically exclude Vivien Thomas. We do not consider that the failure by the Police to do so constitutes any impropriety on their part. He had after all indicated that none of those in the parade were similar to the person he saw on the Crewe farm.

378. In the years since, the attention of many people has been held by the questions of whether the child Rochelle was fed between 17 and 22 June 1970 and, if so, by whom. Mr Roddick's sighting of a woman at the Crewe property on 19 June does not stand alone in this respect, for one may also point to the sighting by both Mr and Mrs McConachie of a child in the front paddock of the property on Saturday, 20 June, and there are also other sightings, besides that of Mr Roddick, of a car seen in the front paddock between those dates. The controversy reaches its culmination in a claim made by Mr David Yallop in his book *Beyond Reasonable Doubt?* in which he said:

> ". . . I have discovered the identity of the woman who fed and tended Rochelle Crewe."

379. The identity of the woman named by Mr Yallop has been known to us since the start of our inquiry. We invited Mr Yallop to come to New Zealand to give evidence to us of the source of his information. He was unable to do so. By a coincidence Mr M. P. Crew, counsel assisting us, was in London in October 1980 and was able to interview Mr Yallop on our behalf. He obtained from him an Affidavit annexed as appendix II. The exhibits to that Affidavit are not attached for reasons which will become apparent. We emphasise that we are quite satisfied in relation to this matter and generally that Mr Yallop had no material information not already in the possession of the Commission.

380. The information upon which Mr Yallop was relying in identifying the woman may be summarised as follows:

At Mr Yallop's request Bruce Roddick was visited in November 1977 by four persons who showed him a number of photographs. Affidavits were later signed by three of these persons, and what they say occurred is best described by the following extract from one of the Affidavits:

"Mr Roddick examined all the photographs very carefully and thoroughly, while we watched. No conversation took place during the study of the photographs. Finally Mr Roddick selected two from the sixteen (16), namely number 11 and number 7. Annexed hereto and marked "A" is a copy of photograph 11. Photograph 11 was his first selection. Mr Roddick then stated—quote—'That's her' unquote—I asked him to elaborate and he told us—quote—'The lady on photograph number 11 is the woman I saw outside the Crewe farm with a car behind her to the left and I am positive'—unquote. Regarding photograph number 7 Mr Roddick said 'The lady in this photograph who is dressed in green is in exactly the same clothes with the correct colour and standing in the same way as the woman I saw that day, however this woman is older and my identification applied only to her clothes, the colour, the way she is standing, her height and vaguely the hairstyle'.

"I then asked Mr Roddick to sign the photographs being relevant to the Crewe case which he did, signing number 11 and number 7".

The other two persons made Affidavits to the same effect. This information was relayed to Mr Yallop and is the basis of his claim.

381. In November 1978 Mr Roddick was visited by Mr Pat Booth. On this occasion he signed an Affidavit in which he said *inter alia*:

"30. That, early in 1978, I was approached by a woman I understand to be June Donaghy from Auckland who said she was contacting me on behalf of an author David Yallop who had earlier had some discussions with my parents in Auckland.

"31. That at her insistence, after she had questioned me about the woman I had seen at the Crewe house and after she had shown me a collection of photographs, I initialled one as being of a woman who was similar to the woman I had seen on those occasions in 1970–71.

"32. That I stressed in front of witnesses that the photograph was of a woman who was similar but that I was not saying she was the one."

382. In 1979 Mr Roddick was seen by R. A. Adams-Smith. Of that interview Mr Adams-Smith had said:

"Roddick advised me that at no stage has he recognised any person in a photograph as being one and the same person as he saw on that Friday morning the 19th June. At no stage has he said other than that the women which he has indicated, are similar to the woman that he saw. I refer to "women" because Roddick advises me that at the interview in Sydney with Yallop's representatives, he in fact selected photographs of two women. One was the person a photograph of whom has been referred to the Prime Minister while the other according to remarks made by Mr Yallop's representative, was a woman in Scotland who had not ever been to New Zealand and therefore could not in any way be associated with the case. Roddick absolutely denies that he told Yallop's representative that he positively identified any woman."

383. When Mr Roddick was giving evidence before us the photograph sent by Mr Yallop to the Prime Minister was put to him. He stated that the woman in the photograph was similar to the woman he had seen at the

Crewe property but could not positively identify her. He also denied that he had ever positively identified the woman in the photograph as being the woman he had seen. Bearing in mind that he was 118 paces by his own reckoning away from the place where the woman was standing on the Crewe property, we accept that it is unlikely that Bruce Roddick could positively identify the woman, and to claim a positive identification some 8 years later from a photograph would seem to us to have little merit.

384. In our view it is clear that Roddick has retreated from an initially more positive identification than he gave before us. That having been said we are satisfied that there is insufficient evidence that the woman in the photograph named by Mr Yallop in his letter to the Prime Minister is the woman seen on the Crewe property by Mr Roddick on 19 June 1970. We say that, not only on the basis of Mr Roddick's evidence, but also on the basis of certain other investigations which were carried out to determine whether the woman concerned could have been on the property that day. It is clear that it is not now possible to establish whether the woman named by Mr Yallop was the woman seen by Mr Roddick.

385. Mr Yallop named the woman in his letter to the Prime Minister in good faith on the information available to him. There is, however, simply no means of justifying to an acceptable standard of proof his statement that the woman he named was the woman seen by Mr Roddick.

386. The members of the Commission have discussed at length whether we should publish the name of the woman in this report. The Chairman has been of the view that the purpose of our seeking to have Mr Yallop give evidence has been to dispel the doubt which has always existed as a result of his saying:

"I know who fed the child"

and that the woman should therefore be named; the other members have placed weight on the enormous prejudicial effect which publication of the name would have on the woman and her family. We are all conscious that our report will carry absolute privilege and that it would not be possible for the woman, if she were named, to put forward her side of the story through the Courts. The public pressure, criticism, and vilification of her and her family were we to name her, would be enormous. Furthermore all the members agree that there is no satisfactory evidence that she was the woman seen by Bruce Roddick. Predominantly for this reason, but also to be fair to her and her family, we have decided not to name her. To do so would only promote endless speculation and suspicion.

387. We should now deal with the question of the adequacy of the Police Investigation. We need state only that we are satisfied that the Police inquiries on the indentity of the woman seen by Mr Roddick were adequate when undertaken.

13. Timing of the Murders

388. The last recorded sighting of Jeanette and Harvey Crewe took place on 17 June 1970 when they were seen in their car driving south on the main road at Tuakau between approximately 3.30 and 4.15 p.m. At approximately 5.10 p.m. that day a neighbour saw the Crewe car parked at the south end of the Crewe farm. There is every indication that Harvey Crewe was at that time shifting some stock on his farm in that vicinity.

389. It is known that the last meal eaten by the Crewes contained peas and fish. Some remains of flounder were found on plates on the dining

table, while in the kitchen a dirty frying pan and a flour covered plate indicated the likelihood of the fish meal having recently been cooked there.

390. In paragraph 416 we refer to the evidence of Mrs Priest that she heard three shots on the evening of 17 June 1970 at a time which we fix between 8.30 p.m. and 11 p.m It cannot be said definitely whether or not those shots related to the murders.

391. In the lounge knitting was found with seven dropped stitches and a bent knitting needle found near some of the blood stains. This may indicate that Jeanette had been knitting in the lounge when the crime was committed.

392. The television set stood in the lounge, and was connected by means of a long lead which led from the lounge through the front hall into one of the bedrooms. When the Police arrived at the scene on 22 June, the television set switch was found to be on. A join in the cable in the hallway was pulled apart while in the bedroom the three-point plug was pulled out of the wall fitting and the switch there was in the off position. We draw no inferences as to timing from these facts.

393. It seems that Harvey Crewe was sitting in one of the lounge chairs when he was shot. The bed in the main bedroom was found to made up with the night attire under the pillows.

394. The rural delivery contractor left milk, bread, and a newspaper in the Crewes' letterbox at approximately 9.30 a.m. on 18 June. Those items were never collected.

395. During the afternoon of Thursday, 18 June, there were several phone calls to the Crewes, all of which went unanswered.

396. In the preceding paragraphs we have set out what seemed to us to be the available facts of importance concerning the possible timing of the murders. We see no indication that the Police failed to properly pursue any avenue of inquiry relating to this.

397. In a letter dated 8 February 1979 Commissioner Walton stated:

> "The key to the date of death, apart from other factors, is that a flounder meal purchased on 17 June was still on the table in the house when the murders were first discovered."

The Police had in their possession two statements indicating that a couple, the identity of which is subject to doubt, bought some fish and chips at a shop in Pukekohe somewhere between 6 p.m. and 7 p.m. on 17 June. Though there was a suggestion that the couple were Mr and Mrs Crewe, this cannot be reconciled with other information suggesting that the Crewes had gone home well before that time, and that the flounder on the dining room table had not been purchased in a cooked condition that evening, but was cooked in the kitchen of the Crewe home. This is supported by information that Mr and Mrs Crewe bought six flounder at Meremere a few days earlier. It is quite apparent from the Police file that they themselves considered the flounder meal to have been cooked at home. The reference in Commissioner Walton's letter of 8 February 1979 was a mistake.

14. Collection of Rifles

398. Immediately following the discovery on 16 August 1970 that Jeanette Crewe had been shot with a ·22 calibre firearm, Detective Inspector Hutton instituted the collecting of a number of firearms in accordance with the following criteria:

(a) Relatives of both Harvey and Jeanette Crewe.
(b) Friends and associates of them.
(c) Persons residing within a 5-mile radius of their farm at Pukekawa.
(d) Any other persons who became involved in the inquiry (that is, suspects.)

In accordance with the above criteria 64 rifles were collected and tested. They included some from the district in which Harvey had lived before moving to Pukekawa. They also included Thomas's rifle because, while he lived outside the 5-mile radius, the Police were aware of his past association with Jeanette Crewe.

399. If a person living 8 miles away from the Crewe farm had 'opportunity' to carry out the killings, it seems to us that anyone living 80, 280, or 580 miles away would have very little different opportunity. We consider that the person responsible could have come from anywhere to commit these murders. Within New Zealand, how many firearms could have fired the bullets? No one will ever know.

400. We find no impropriety on the part of the Police and in particular are not critical of a failure to collect firearms on any wider basis, for we accept the impossibility of attempting to identify and test every similar weapon. We were told that there are approximately 800 000 firearms registered in the Auckland district alone, which stretches from Wellsford in the north to Rangiriri in the south.

401. However, we do consider that the narrow context from within which Thomas's rifle and one other were said to be the only ones which could have fired the bullets which killed the Crewes, was prejucicial to Thomas. That the other rifle has now been excluded does not alter our view.

15. Conclusions on Term of Reference 1

402. We find that:

(a) The shellcase exhibit 350 was planted in the Crewe garden by Detective Inspector Hutton and Detective Sergeant Johnston.
(b) The shellcase of exhibit 343 was switched on two occasions, the first probably accidentally but the second deliberately.
(c) The destruction of some of the exhibits in the Whitford Tip was an improper action designed to prevent any further investigation of exhibit 350. We also find that Detective Inspector Hutton improperly misled his superiors concerning the chances of recovering the exhibits from the tip.
(d) There was impropriety on the part of the Police in failing to investigate properly the records of Thomas's employment with Barr Brothers Ltd.
(e) Detective Inspector Hutton's behaviour in the Courtroom at the time of Dr Sprott's examination of one of the shellcase exhibits was unacceptable.
(f) Dr Nelson's refusal to accept his error concerning the shell 1964/2 showed a disturbing lack of neutrality by a scientific witness. His error as to the number of lands in the 'Eyre' rifle was a fundamental error of observation.
(g) The Police failed to protect properly an important exhibit in their possession, namely material found near the wheelbarrow. (See paragraphs 428–434)

(h) We are satisfied that the Police properly investigated the sighting by Bruce Roddick of a person on the Crewe property on 19 June 1970.

(i) We are satisfied with the investigation of the Police into the question of the timing of the murders.

(j) We are not critical of the criteria adopted by the Police in the collecting of ·22 firearms.

(k) There was a number of other issues raised before us under this Term of Reference. We will not mention them all, but it does seem proper to record that we do not find any impropriety in respect of the axle, phone tapping, or questioning of witnesses.

(l) Term of Reference 1(c) asks whether proper steps were taken after the arrest of Arthur Allan Thomas to investigate any matter or information, if any, which suggested that he was not responsible for those deaths. We have already made references to the steps taken on several matters, and others we raise in our answer to Term of Reference 5. There is nothing further we wish to add here.

TERM OF REFERENCE 2

Whether the Arrest and Prosecution of Arthur Allan Thomas was Justified?

403. On 10 November 1970 a conference was held at the Central Police Station, Auckland, at which the question for discussion was whether to arrest Arthur Allan Thomas and charge him with the murder of Jeanette and Harvey Crewe. We know that those present at this conference included Assistant Commissioner Austing, Detective Inspector Hutton, and Mr D. S. Morris.

404. The evidence against Arthur Allan Thomas which was available to the Police for discussion at this conference is said to be all that which was subsequently presented in the preliminary hearing in the Magistrate's Court. Mr Morris told us that on the material discussed with him at this conference he gave his opinion to the Police that the arrest and prosecution was justified. At the conclusion of the meeting Assistant Commissioner Austing made the decision to arrest Mr Thomas and charge him with the murders.

405. The following day, 11 November 1970, Detective Inspector Hutton swore an Information alleging that he had just cause to suspect and did suspect that Arthur Allan Thomas on or about 17 June 1970 at Pukekawa murdered Jeanette Lenore Crewe. He swore a second Information similarly alleging the murder of David Harvey Crewe.

406. We have read the Depositions presented at the preliminary hearing in the Magistrate's Court at Otahuhu in December 1970. We are not critical of the decisions made and opinions expressed by Assistant Commissioner Austing and the Crown Prosecutor respectively, for the inclusion of all that evidence in the form shown to them made the case against Arthur Allan Thomas appear much more powerful than it really was. We accept that at that time neither Assistant Commissioner Austing nor the Crown Prosecutor were aware of the difficulties with this evidence which we now relate.

407. We believe, for reasons already detailed earlier in this Report:

(a) That shellcase exhibit 350 was planted by the Police, and that this was known by Detective Inspector Hutton.

(b) The chances of the bullets which killed the Crewes having come from the Thomas rifle were significantly reduced by the factors omitted from Dr Nelson's evidence. Again, Detective Inspector Hutton knew of these matters, for he referred to them at a Police conference on 19 October 1970.

(c) The evidence of Detective Hughes concerning Thomas having been on the Crewe property and had morning tea with them was wrong; and, as we have already set out in paragraph 374, if this was not known to be so by the Police on 10 November 1970, it should have been and could easily have been found to be so by them.

408. If we then leave to one side the evidence referred to in the preceding paragraph the only other evidence which the Police had then in their possession and would sustain the arrest and prosecution was as follows:

(a) **Motive**—We have already considered this in paragraphs 212–220. We reject entirely the notion that any of the evidence put forward in this respect established a motive by Arthur Allan Thomas to kill the Crewes.

(b) **Wire**—Again we have dealt with this in paragraphs 263–266. At best for the Prosecution, wire attached to the bodies was very similar to wire from the Thomas farm. No positive identification was made, and there was nothing placing the wire in Arthur Allan Thomas's hands.

(c) **The axle,** recovered from the river with Harvey Crewe's body, matched stub axles found on the Thomas farm. The Police were at that stage justified in inferring that the axle had come from the father's trailer in former years. There was no evidence that Thomas knew of its existence, let alone had it in his physical possession at any time.

(d) That Thomas owned a rifle of the appropriate calibre, and one which could not positively be excluded.

409. There was no evidence placing Thomas on the Crewe property on the evening of 17 June 1970; and even if both wire and axle did come from the Thomas farm others had equal access to them with Arthur Allan Thomas. That he owned a rifle of the correct calibre from which there was a possibility the bullets could have been fired hardly strengthens a case against him, and again others had equal access to the rifle. We believe that on this remaining evidence, even taken on its own, the arrest and prosecution of Arthur Allan Thomas was not justified.

410. We hasten to add, however, that the matters referred to in the last paragraph do not stand on their own. They should be looked at in the context of:

(a) Evidence that exhibit 350 was fabricated by the Police. Perhaps theoretically a discovery that some evidence was fabricated by certain Police should not prevent the bringing of a charge against an accused if the remaining available evidence is convincing enough. But in this instance we agree with the instinctive reaction of a person of such long experience as Detective Chief Superintendent Wilkinson. When this point was first put to him in evidence he replied without hesitation that if he had been in charge of the investigation and discovered that exhibit 350 was fabricated evidence, the charge against Arthur Allan Thomas would not have been brought. It is true that after reflecting further, Mr Wilkinson modified that view; but we consider his first reaction was the correct one.

(b) The evidence of Arthur Allan Thomas and his wife (confirmed as it was by the cousin Peter Thomas) that Arthur Allan Thomas did not leave their property on the evening of 17 June. Though we accept that credibility is for the courts to decide, we believe it is relevant to point out that there is no evidence of a direct nature which contradicts their statements in this respect.

411. Overall then we conclude that on 11 November 1970 the Police did not have just cause to suspect that Arthur Allan Thomas on or about 17 June 1970 at Pukekawa murdered Jeanette Lenore Crewe or David Harvey Crewe. His arrest and prosecution for their murders was not justified.

TERM OF REFERENCE 3 (a)

Whether the Prosecution failed at any stage to perform any duty it owed to the Defence in respect of the disclosure of Evidentiary Material which might have assisted the Defence.

412. At all relevant times Police General Instruction C143 stated:

"When Police decide not to call a person as a witness for the Prosecution, the Defence should be advised of the name and address of the person so that, if desired, the person can be called as a witness for the Defence. This Instruction, however, applies only to a person who is able to give material evidence (particularly when favourable to accused), and not a person who because he is unable to give any material evidence is not being called."

413. We note this makes no reference to assessing the credibility of a witness.

414. At the time of the first trial of Arthur Allan Thomas in 1971 we accept the following passage from 10 Halsbury's Laws of England (3rd Edition), page 418, paragraph 765, as a basic statement of the law then applicable:

"When the Prosecution have taken a statement from a person who can give material evidence, but decided not to call him, they must make him available as a witness for the Defence, but need not supply the Defence with a copy of the statement they have taken."

In New Zealand this was further clarified in 1975 in the case of *R* v. *Mason* [1975] 2 N.Z.L.R. 289 where the Decision of the Court was that where the Police have interviewed a person who can give evidence upon a material subject and the Prosecution does not intend calling that person, whether the Prosecution considers him creditworthy or not, it must make his name and address available to the Defence.

415. A number of issues on this topic were raised and we will consider each in turn.

416. On Tuesday, 16 June 1970, Mr and Mrs Priest, who live on a property at Pukekawa within sight of the Crewe home, attended a ball in Auckland. One evening later in the week Mrs Priest retired to bed early; after which she heard three shots which she thought came from the direction of the Crewe home. She cannot fix accurately the time she heard them. Her husband was watching TV; he did not hear them, but his wife mentioned them to him when he went to bed at approximately 11.00 p.m. Both fix the evening of this incident as Wednesday, 17 June, the evening following the ball.

417. The timing is uncertain. Mrs Priest told us that she usually went to bed at approximately 9.30 p.m. but on this particular evening, because she was tired, she went to bed earlier. She was reluctant to be any more definite than that. When first relating the incident to the Police, on 20 August 1970, she said that the time of her retiring to bed would not be before half past 8. In his book *Beyond Reasonable Doubt?* Mr Yallop asserts that in conversation with him Mrs Priest placed the time of hearing the shots as between 8.15 p.m. and 8.45 p.m., but giving evidence before us Mrs Priest denied saying this to Mr Yallop and denied that it was accurate. Mrs Priest's reluctance to attempt to fix the time of retiring to bed that evening at this late stage is very understandable. Accepting that her statement of 'not before half past 8' on 20 August 1970 is a reasonable starting point it seems to us that the timing of her hearing the shots cannot be fixed more accurately than sometime between 8.30 p.m. and 11.00 p.m.

418. On Monday, 22 June Mr Priest went to the Crewe house with Mr Demler. After looking at Rochelle Crewe in her cot they searched the house and the outbuildings for any sign of Mr and Mrs Crewe. From his observations of the lounge on that occasion, and no doubt assisted by some knowledge from the Police of what they also initially thought, Mr and Mrs Priest understood that blunt instruments were thought to be involved. Because no mention was made of a firearm, neither of them thought to mention to the Police the shots which Mrs Priest had heard.

419. On 16 August it was found that Mrs Crewe had been shot. Immediately the Priests heard this they went to the Police and Mrs Priest related what she had heard.

420. The Police appear to have disregarded Mrs Priest's evidence on the grounds, first that she did not relate it them until 2 months later, secondly, that there may be other explanations for the shots (e.g., oppossum shooters), thirdly, because of misgivings about the accuracy of the date, and fourthly, because as a result of a test later carried out by the Police they did not believe the sound of shots would carry from the Crewe home to the Priests' home. So far as the last matter is concerned, Mr and Mrs Priest both related to us a test which had been carried out the evening before they came to give evidence before us, in which they heard very distinctly indeed, from in the bedroom of the Priest home, some shots fired from outside the Crewe home.

421. We consider Mrs Priest's evidence was significant. It would have been open to a jury to accept or reject that what she heard related to the Crewe murders. If accepted, it affected the timing of the murders, and the fact that there were three shots leads one to speculate about the possibilities in a number of directions which, while not directly relevant to our Terms of Reference, may well have assisted the Defence. We accept that the Crown Prosecutor and his junior did not read the Police file and were not informed of this matter by the Police. Mrs Priest was not called to give evidence and it was not made known to the Defence that she may be able to give material evidence. In our view the Defence should have been informed, and the failure to do so was a breach of the duties of the Police in this respect.

422. In paragraph 348 we have already related the evidence of Mr and Mrs Priest concerning their hearing two shots from the direction of the Crewe home one afternoon, looking across and seeing two men by its back door, and subsequently having a conversation concerning the matter with Mr Hutton and Mr Johnston. In the Second Trial, the question of whether exhibit 350 was planted by the Police was raised by the Defence and was an issue before the jury. In our opinion this evidence of Mr and Mrs Priest was very relevant to that question and should have been revealed to the Defence. Again, the Crown Prosecutor did not know of it; it was the Police who failed in the duty to reveal it to the Defence.

423. On 23 February 1971, during the course of the First Trial of Arthur Allan Thomas, a Pukekohe jeweller, Mr Eggleton, approached the Police and gave them a written statement to the effect that Arthur Allan Thomas had bought a watch into him for repair shortly after the discovery of the Crewe murders. He stated that the watch had blood and mucus upon it. Mr Eggleton subsequently gave evidence of this at the First Trial.

424. Two residents of Tuakau, Mr and Mrs McGuire, told us that they read in the newspapers of Mr Eggleton's evidence. While the trial was still in progress they went to the Supreme Court at Auckland, and in the grounds approached Mr Hutton, knowing he was a policeman involved in the matter. They related to him a conversation in Mr Eggleton's shop the

previous December during which Mr Eggleton had indicated to them that he did not recognise Arthur Allan Thomas's photograph in the local newspaper. According to Mrs McGuire, Mr Hutton stated that he was not interested. Mr Hutton told us that he recalled speaking to Mrs McGuire but denied that Mr Eggleton was mentioned during the conversation.

425. Though Mr and Mrs McGuire were cross-examined concerning possible errors in the dates involved, we accept their evidence that they did have a conversation with Mr Hutton in which they related to him the incident in Mr Eggleton's shop. It is clear no action was taken by Mr Hutton to advise either the Crown Prosecutor or the Defence of this and Mrs McGuire was not called to give evidence for the Prosecution. Though Mr Hutton was in breach of his duty in this respect, it is clear that Mrs McGuire did make contact with the Defence Counsel in relation to this point, so that probably no great harm was done in the end result.

426. In November 1971, a Mr J. B. Fisher, then living at Feilding, read of Mr Eggleton's evidence. He contacted the Police and gave them a written statement stating that in 1970 (he thought in about October or November) while living in Pukekohe, he killed some pigs for a friend. The same day he took his watch to Mr Eggleton's shop for repairs. The watch had 'slime and fat and mucus' on it. He took it to Mr Eggleton only once. The Police checked marks on Mr Fisher's watch made by various repairers. One mark identifies the date of Mr Eggleton's repair work on the watch as 12 January 1971. Of course this is 6 months after the Crewe murders, is after date of the preliminary hearing of the Prosecution against Arthur Allan Thomas, and is a rather different date from the October or November given by Mr Fisher in his original statement to the Police. On these grounds, deciding it had no relevance, the Police took no action concerning Mr Fisher's statement. They did not reveal his existence to the Defence at the time of Mr Thomas's Second Trial in 1973.

427. We believe they should have. Mr Eggleton did not approach the Police until 23 February 1971—6 weeks after Mr Fisher's watch had been repaired by him. We consider it was for the court to decide whether Mr Eggleton's evidence was affected by what Mr Fisher had to say: It was wrong for the Police not to give the Defence the opportunity of putting forward Mr Fisher if they wished to. Again there is no evidence suggesting that the Crown Prosecutors were aware of the existence of Mr Fisher at the time of the Second Trial.

428. When the Police commenced their inquiries into the Crewe murders they took a substantial number of photographs of the scene as they first found it. Several of these photographs show some cloth or material with ragged edges lying on the grass alongside a wheelbarrow near the back door of the house. The Police considered the wheelbarrow was used by the murderer, for flakes of rust from it were found by the front door adjacent to some blood stains. Also, it gave the appearance of having been washed.

429. The true nature of the material on the ground is not clearly established. One Police witness said it was an oilskin coat and remembered seeing its sleeve. Another said it was not a coat, but an old canvas cow cover. Whatever it was the photographs show it to have be in a ragged condition.

430. It seems that one of the first Policemen on the scene did examine this material visually and saw nothing which obviously connected it with the murders. However, it was never subjected to any close scrutiny or

testing, and its close proximity to the wheelbarrow which seemingly was involved incurs one's attention. The material never formally became an exhibit or was tested in any way, because, according to the Police, it was burnt accidentally.

431. Extraordinary as this may seem at a murder scene under control of the Police team, at a time when the grounds were being subjected to a systematic search for any clues (which, we were told, would include cigarette butts), one Policeman related that having smoked a cigarette he flicked the butt away as he went into the house by the back door. Later, having found the material was burnt, this Policeman concluded that his cigarette must have been the cause. We are told it was completely consumed, leaving only charred grass behind it.

432. We heard a good deal about the weather at about this time. Lying outside, the material must have been damp. We do not believe that unaided a cigarette butt could have caused a fire which completely consumed the material including a long ragged tendril lying out to one side on its own. We know that at one stage the Police searchers left the scene to have a refreshment break, and that it was in their absence that the material disappeared.

433. Other evidence suggests the murderer returned to the scene—e.g., the cleaning up inside the house, and the sightings by Roddick and the McConachies. We believe that some person with an interest in the material, rather than the Police, was responsible for its destruction or removal.

434. There is no reference whatever to these events on the Police file. Mr Hutton and Mr Morris both say they were not aware of its existence. The issue for consideration is whether information concerning it should have been given to the Defence. The Defence were of course given the photographs which showed its existence, but we consider the Police had a duty to advise the Defence of its fate and the witnesses who could give evidence about it.

435. In paragraph 227 we considered the evidence relating to Dr Nelson's findings of certain characteristics on the bullets recovered from the Crewe's bodies, and others on the bullet test fired from Thomas's rifle, which he failed to cover in evidence. We identify Dr Nelson with the Prosecution in terms of the question raised in Term of Reference 3 (a), for in fact if not in form he was working as part of the Police team. Further, Mr Hutton knew of at least some of the matters which Dr Nelson failed to cover in his evidence. We repeat what we said in paragraph 228. We consider there was a duty owed to the Defence to reveal the four aspects of the scientific examination which were not covered in evidence by Dr Nelson and which indeed were not revealed until Dr Nelson produced his notebook for our perusal.

436. It is considered most likely that Mr and Mrs Crewe were murdered on the evening of 17 June 1970. The alarm was raised 5 days later, on the afternoon of 22 June 1970. The infant, Rochelle Crewe (then under 2 years of age), was found in her cot. Was she alone and unattended all that time, or was she fed and tended in the interval? That this is one of the questions which has perplexed so many people for so long is not the issue under consideration. We must examine the issue of whether the Prosecution failed in any duty to reveal to the Defence the names and addresses of any witnesses who could give evidence on the question of whether the child was fed.

437. In fact the Police received opinions from four doctors on this matter—two were of the opinion that Rochelle had been fed; two were of

the contrary opinion. At the First Trial of Arthur Allan Thomas the Prosecution called only one of the four—Dr Fox, whose opinion it was that the child had been fed. The Defence were not specifically told of the names and addresses of the other three doctors.

438. At the Second Trial, in addition to Dr Fox, the Prosecution also called Dr Caughey whose opinion was that the child had not been fed. The names and addresses of the other two doctors were not given to the Defence.

439. However, we note that an Affidavit was sworn by Mr Hutton, dated 25 January 1971, in which he said:

> "That apart from any persons whose testimony is similar to that of evidence already given by witnesses at the hearing of Depositions, such as further Police officers who took part in searches, doctors who examined and supplied opinions on the condition of Rochelle Crewe, and persons who can speak of the movements by either of the deceased or by the accused, I know of no other witnesses who can give evidence material to this case and I know of no material evidence whatsoever that has not been given."

440. This Affidavit was filed in Court and served on the Defence prior to the First Trial. It must have been available to the Defence at the time of the Second Trial. In the face of its wording we do not consider there was any significant breach of a duty owed to the Defence concerning doctors who could give evidence about the feeding of the child Rochelle.

441. Finally, under Term of Reference 3 (a), we draw attention again to the passage just quoted from the Affidavit of Mr Hutton sworn on 25 January 1971. We are unable to reconcile the statements in that passage with some of our findings under this Term of Reference.

TERM OF REFERENCE 3 (b)

442. Under Term of Reference 3 (a) we have already dealt with the question of whether the Prosecution failed at any stage to perform any duty it owed to the Defence in respect of the disclosure of evidentiary material which might have assisted the Defence. This Term of Reference asks whether the Prosecution failed at any stage to perform any duty it owed to the Defence in respect of any other matter.

443. In paragraphs 464–466 below we deal with the former association between one member of the jury in the second trial and Detective Senior Sergeant Hughes. We consider that the Prosecution owed a duty to tell the Defence of this matter, a duty which was not carried out because Detective Inspector Hutton took no action on being advised of it by Mr Hughes.

444. In paragraphs 467–468 below we deal in more detail with the circumstances in which some of the Police witnesses were eating in the same room as the jury at the Station Hotel. We consider the Prosecution failed to perform the duty it owed to the Defence to keep right away from the jury.

445. In paragraphs 449–463 below we set out our findings in relation to the investigation of the jury lists.

446. In paragraph 174 we have made a finding that Detective Inspector Hutton's behaviour in the courtroom at the time of Dr Sprott's examining one of the shellcase exhibits was unacceptable. In this respect we consider the Prosecution breached a duty it owed to the Defence to allow Defence experts, under the supervision of the Court, a fair opportunity to examine exhibits.

447. During the hearing before us, it was suggested by two witnesses that Detective Inspector Hutton had improperly observed the trial proceedings through a window of the courtroom. We make no finding about whether this did in fact occur, but in any event point out that if it did, the evidence of the complainants makes clear that this would have been after Mr Hutton had given evidence. From that point on Mr Hutton was entitled to remain in the courtroom.

TERM OF REFERENCE 4

448. Term of Reference 4 reads as follows:

"4. Whether, in respect of the jury list for either trial,—

(a) The Crown or the Police or the Defence obtained preference in respect to the time at which the list was supplied?

(b) Any persons named on the list were approached by representatives of the Crown or the Police or the Defence before the jury was selected?

(c) Anything was done otherwise than in accordance with normal practice or was improper or was calculated to prejudice the fairness of the subsequent trial?"

We propose to present under this heading the whole of our report on matters to do with the jury. Because of an obvious similarity in subject matter, we shall consider under term 4 (c) matters relating to the jury falling within term 3 (b), which reads as follows:

"3. Whether the Prosecution failed at any stage to perform any duty it owed to the Defence in respect of— . . .

(b) Any other matter?"

Term 4 (a)

449. Mr M. J. Hawkins, Registrar of the High Court at Auckland, gave evidence as to Department of Justice practice under the Juries Act 1908 over the period with which we are concerned. Section 14 of that Act provides for the preparation of master jury lists each year following the Parliamentary elections. From that list, the Sheriff, about 6 weeks before the date for which the jurors are required, draws by lot the names of a number of jurors called the common jury panel. It would appear that about 200 names were drawn at the time at which we are concerned. The names were drawn in public, and a notice of the date on which they were drawn was given on the High Court notice board. Summonses were then prepared and delivered to the persons whose names were drawn.

450. Various categories of exemptions are set out in section 6 of the Juries Act 1908. Over the 6-week period before the jurors are required, many of those on the panel contact the Court to take advantage of their right to exemption. Their names are struck off the list. In the week before the trial, a clean copy of the common jury panel, commonly called the 'jury list' is prepared. It would appear that our terms of reference use the colloquial expression 'jury list' in preference to the technical term 'jury panel'. We shall use the term 'jury panel'. It is the clean copy of the jury panel which is made available to the public pursuant to sections 98 and 99 of the Juries Act 1908, which read as follows:

> "98. A copy of every common or special jury panel shall, three days before such precept as aforesaid is returnable, be made by the Sheriff, and shall during such three days be kept in his office for inspection.
>
> "99. A copy of such panel shall be delivered by the Sheriff to any person requiring the same on payment of 2/-."

451. It may be observed that the terms of section 98 prescribe a minimum period within which the clean copy of the jury panel is to be made available. There is nothing in the Act to prevent it being made available sooner.

452. Mr Hawkins said, and Mr E. M. Comerford, Assistant Secretary for Justice, confirmed, that the Police were until 1960 responsible for serving summonses on potential jurors in terms of section 96 of the Juries

Act. The provision to that effect was removed in 1960. But the Department of Justice instruction sheets of procedures to be followed within the Court did not change. Until well after Mr Thomas's second trial, the instructions provided that copies of the jury panel were to be sent to the Police at the time they were made up, 6 weeks before the date for which the jurors were summoned.

453. There was before us no specific evidence of the date on which the Police received their copies of the jury panel in respect of either trial. We accept, however, that the Department of Justice instructions would have been followed and that the Police would have received a copy of each of the jury panels at about that time. In respect of the second trial, it is established by the evidence that the Police had a copy of the jury panel by 10 March 1973, 16 days before the start of the trial.

454. There is no evidence that the Defence received a copy of the jury panel any earlier than 4 days before the start of the trial. Mr Vesey's evidence was that he was able to obtain a copy on behalf of Mr Kevin Ryan only at about 2.40 p.m. on Thursday, 22 March, 4 days, but less than 2 working days before the start of the second trial. It may be observed that he had to go to the Court on three occassions before he was finally given it. He was also required to obtain a letter of authority from Mr Ryan. There is nothing in the Juries Act which justified the Department of Justice in imposing that last requirement.

455. The answer to term 4 (a) is accordingly that the Police obtained preference over the Defence in respect of the time at which the jury list was supplied in both trials.

456. Term 4 (b) can be dealt with in short order. A research assistant contacted 128 of the 168 persons whose names appeared on the jury panels for the weeks in which the first and second trials began. Each of them was questioned as to whether there had been any contact with representatives of the Crown, the Police or the Defence. All said that there had been no such contact. We, therefore, answer Term 4 (b) "no.".

457. Under Term 4 (c), we shall consider, as we have mentioned above, matters raised under Term 3 (b).

458. Detective Senior Sergeant Ryan and Sergeant Henderson gave evidence of checking the jury panel for the second trial, Mr Ryan said that he met the Crown Prosecutor, Mr Morris, and Mr Hutton on 10 March 1973 and received instructions to check the jury panel. We may observe at this stage that there is nothing in the Juries Act 1908 requiring or authorising the Police to carry out any such check. The only provision which is relevant is section 5, which disqualifies from jury service the following categories of persons:

(a) Anyone who is not a British subject:
(b) Anyone who has been convicted of an offence punishable by death or by imprisonment for a term of 3 years or more:
(c) Anyone who is an undischarged bankrupt:
(d) Anyone who is of bad fame or repute.

459. Sergeant Henderson was at the time of both trials officer in charge of the Information Section at Auckland Central Police Station. He could not specifically recall the jury list for either trial. The value of his evidence was the insight it gave into Police practice. He said that the names on all jury lists were checked against the Police Department alphabetical lists of criminal offenders. That list includes all but the most minor convictions. It includes, e.g., many convictions under the Police Offences Act carrying

a maximum penalty of less than 3 years imprisonment. Any name appearing was ruled out on the jury panel with a red pencil. A copy of the relevant criminal history sheet was attached to the panel. The purpose of the procedure was to prevent any person with a criminal conviction becoming a member of the jury.

460. Detective Senior Sergeant Ryan was in our view a fair, open, and honest witness. The effect of his evidence was that the panel was checked for persons who would be well disposed to the Police and persons who could be regarded as anti-Police. The check was clearly of an internal Police nature only. Sergeant Henderson's evidence revealed, however, that the Police, as might be expected, have a pool of information which goes beyond mere criminal histories. Sergeant Henderson said that Mr Ryan would have had access to this information. Furthermore, Mr Ryan's inquiry involved visiting various Police stations in the Auckland region so as to inquire whether local Policemen had knowledge of persons whose names appeared on the jury panel, and if they did, were such persons likely to be well-disposed to the Prosecution.

461. Detective Senior Sergeant Ryan worked on the inquiry full time for 4 days, and part-time for 7 days. Detective Sergeant James assisted him for a day and a half. Since there were less than 200 names on the panel, we have no doubt that a thorough and meticulous inquiry was carried out. Mr Ryan in fact said that he had never before engaged in such a thorough vetting of a jury panel.

462. We requested on a number of occasions that the Police produce to us all documentary material they held in relation to either jury. We were particularly interested to receive the documents which Mr Ryan said his investigation would have produced, including particularly copies of the jury panel with his notes on them. We should also have been interested in the criminal history sheets which Sergeant Henderson's section would have attached to the jury panel. There were produced to us a copy of the original jury panel, a copy of the so-called 'jury list' of the type given to Mr Ryan before the trial, and subsequently established to be that used by the Crown Prosecutor, and a document giving the names of those on the jury panel broken down into Police districts. The further documents which must at one stage have existed were not produced. We can only speculate as to their contents and whereabouts.

463. In our view, the thoroughness of the checking of the jury by the Police was excessive, improper and calculated to prejudice the fairness of the subsequent trial. We have reached this view for the following reasons:

(a) The check by Sergeant Henderson's section the normal routine practice, revealed criminal convictions less serious than those specified under category (c) of s. 5 of the Juries Act 1908. Its effect was to exclude from jury service persons having convictions carrying a maximum of less than 3 years imprisonment. This situation arose because of the Crown Prosecutor's unrestricted right to stand aside persons. It was Sergeant Henderson's evidence that the purpose of marking names with a red pencil was to ensure that the persons whose names were marked were stood aside. The Act provides that persons with criminal convictions, carrying a maximum of less than 3 years imprisonment have a right to be on a jury unless they fall within the other disqualifications:

(b) The check by Mr Ryan and Mr James went well beyond the disqualifications set out in s. 5. We do not think it correct to say

that, because a person is ill-disposed to the Police, he is thereby 'of bad fame and repute'. The right to trial by a jury of one's peers necessitates in our view, the possibility that a jury will include persons who are anti-Police, such persons being a minority in the community. So long as jury trials continue, that is an inconvenience which the Police must accept:

(c) There is nothing in principle or logic to justify a system that allows the Police to inform the Crown Prosecutor which potential jurors are likely to favour his case. The mere possession of that information must allow the Crown Prosector to stand aside other jurors until those favourable to the Crown case are called. The system in New Zealand whereby the Crown Prosecutor has an unlimited right to stand aside as well as the right to challenge six, and the accused six challenges only, means of course, that in theory the Crown can guarantee that 12 out of any given 18 persons from a jury panel will be members of the eventual jury. This enables a jury to be selected which is not impartial. We understand that as this report is being written there is a Bill before Parliament to make changes to this system.

464. The foreman of the jury at the second trial had served in the Navy with Detective Senior Sergeant Hughes, one of the Police witnesses. His evidence, to which we have referred in paragraphs 367–374, was significant. Detective Senior Sergeant Hughes said, and we accept, that he reported the matter to Mr Hutton at an early stage in the Trial as soon as he became aware of the identity of the foreman. Mr Morris, the Crown Prosecutor, said that he was not aware of the matter at the time of the second trial. Mr Hutton, by contrast, said that there had been a conversation between Mr Morris, himself and Mr Kevin Ryan in which Mr Ryan had been appraised of the relationship and had indicated that he had no objection to the foreman staying on the jury. Mr Ryan strenuously disputed from the bar that this conversation had ever taken place. We unreservedly accept Mr Morris's evidence in preference to that of Mr Hutton.

465. It follows that Mr Ryan was not told of the relationship between Mr Hughes and the foreman. In our view, Mr Hutton as officer in charge of the case owed a duty to the Defence to tell Mr Ryan either directly or by informing the Crown Prosecutor of any relationship between a material Police witness and a member of the jury. It was then for Mr Ryan to decide what, if any, action he should take. It is in our view wholly irrelevant, and indeed a matter quite outside our Terms of Reference, that the matter may have been reported to the Judge through the Registrar. The point is in our view, that Mr Hutton owed a duty to the Defence to tell them.

466. We do not of course mean to imply that the foreman himself was biased, or 'acted in any way improperly'. The validity of the point does not depend in our view on proof that the trial was actually affected. It is a salutary maxim that justice must not only be done but that it must also be seen to be done. In our view, the fact that the Defence was not told of the relationship between Detective Senior Sergeant Hughes and the foreman of the jury on its own justifies the description of Mr Thomas's second trial as a miscarriage of justice.

467. The jury were kept together during the second trial by order of the Judge. They were accommodated at the Station Hotel. On an evening towards the end of the trial, they were at dinner when a party of Police

Officers also had dinner at the Station Hotel in the same diningroom. We regard as irrelevant the question which party entered first. The Police Officers knew that the jury were staying at the Station Hotel. They should have been aware of the sinister inferences which could be drawn from their own presence there. They should not in our view, have been at the Station Hotel, much less in the same diningroom as the jury.

468. We are satisfied, however, that there was no contact between the Police party and the jury. It was suggested that Mr Hutton at least was on the dance floor at the same time as members of the jury. There is no satisfactory evidence to support this suggestion. In our view, the incident as a whole involved no impropriety. It does, however, demonstrate a clear lack of judgment on the part of the Police Officers involved. Furthermore, it indicates an arrogant disregard for the fundamental principle that justice should not only be done, but should also be seen to be done.

469. We are conscious that our Terms of Reference relate to a specific matter, namely the case of Mr Thomas, and not to the justice system as a whole. We are aware that the Royal Commission on the Courts has recently considered reform of the jury system and we have read with interest and care the relevant portions of their report. Mr Comerford indicated, however, that the Juries Act 1908 is under review and that the proposals of the Department of Justice in this regard would doubtless be made in the light of our findings. It seems that it may be of assistance if we indicate the areas in which change seems to us to be desirable. They are as follows:

(a) Any necessary checking of the jury panel to remove the names of disqualified persons should be carried out by the Department of Justice, not the Police;

(b) The Police should not have access to the jury panel any earlier than the Defence. Because we accept that excessive jury vetting is undesirable, it seems sensible that the period of access for both sides be strictly limited. It is noted with interest that in New South Wales neither the Crown nor the accused can become aware of the names of any jurors until a criminal trial commences;

(c) The right of the Crown Prosecutor to stand aside an unlimited number of jurors is in our view an anachronism which invites abuse; the Crown should have the same number of peremptory challenges as the Defence;

(d) Where jurors are kept together, the practice appears to have been to nominate Police officers as escorts. It seems desirable that officers of the Department of Justice take over that role.

TERM OF REFERENCE 5 (a)

470. Term of Reference 5 (a) asks whether, after each trial, the Crown or the Police made an adequate investigation into new matters, if any, which may have related to the deaths of David Harvey Crewe and Jeanette Lenore Crewe, or to the trial, and which were placed before the Crown or the Police by any person or persons.

471. New matters which the Commission have looked at are as follows:

(a) In paragraphs 53–160 we have already dealt with investigations concerning exhibit 350 carried out since the second trial. We will not repeat our findings here.

(b) There was some discussion before us concerning the drafting of the Terms of Reference of the Second Referral to the Court of Appeal under s. 460 of the Crimes Act 1961. While this matter is allied to investigations into exhibit 350, we do not believe that a consideration of the drawing of the Terms of Reference for that Referral falls within our Terms of Reference.

(c) On 10 May 1973 a paper called *Rolling Stone* published an article containing allegations concerning the jury for the second trial. These allegations were investigated by a representative of the Department of Justice in 1973, and have been investigated again by us. In paragraphs 448–469 we consider the preference given to the Crown in the issue of the jury panel, and also contact between the Police and the jury during the second trial. These are the only allegations from the *Rolling Stone* article falling within our Terms of Reference of which we have found any supporting evidence. We express no criticism of the investigation carried out by the Department of Justice in 1973. We note that it led to a change in their procedures to the handing out of the jury panel.

(d) In 1977 two television producers obtained a number of affidavits relating to various aspects of the Crewe murders. The major topics concerned were the axle, investigations into exhibit 350, Mr Roddick's sighting, and an allegation that Detective Charles had spoken of a planted bullet. We heard evidence concerning the actions taken by the Police to investigate all the above material when it first came to their notice. We are satisfied that the various allegations and suggestions were properly investigated. Most have been covered again before us during the course of our hearing.

(e) Similarly, the Police were asked to and did investigate various points raised by Mr R. A. Adams-Smith QC during the preparation of his reports. We have no criticism of the adequacy of the investigations undertaken by the Police in this regard. Particular reference should be made here to the suggestion in Mr Yallop's book *Beyond Reasonable Doubt?* that he knows who fed the child Rochelle. We have dealt with this in paragraphs 378–387.

(f) A perusal of the Police files made available to us indicates that over the years there have been a multitude of questions raised and dealt with by them. The Thomas investigation was an on-going saga throughout the 1970's. We have mentioned those new matters of substantial significance which were placed before the Crown or the Police by any person after each trial. We do not consider it necessary to mention every such matter specifically.

Suffice to say that, apart from our findings with reference to exhibit 350 dealt with earlier, we would answer question 5 (a) in the affirmative.

472. Term of Reference 5 (b) asks whether after each trial any relevant facts became known to the Crown or the Police which were not known to them at the time of the trial. In several places through this report we have made reference to new facts which became known for the first time after one or both of the trials. We regard some of them as highly relevant. Some examples are:

(a) The establishing of Dr Sprott's categories for cartridge cases, showing that exhibit 350 could not have contained a pattern 8 bullet.

(b) The establishing of the fact that exhibit 1964/2 could not have been manufactured until 1965.

(c) The fact that Thomas was not employed by Barr Brothers Limited on the Crewe farm after the Crewes commenced to live there.

(d) The existence of a number of witnesses who asserted that an axle was removed from the Thomas farm in 1965.

473. It is fair to say that we have had the benefit of the on-going investigations carried out by many people throughout the last decade.

TERM OF REFERENCE 6

"What sum, if any, should be paid by way of Compensation to Arthur Allan Thomas Following upon the Grant of the Free Pardon?"

474. Compensation is not claimable as of right. It is in the nature of an ex gratia payment, sometimes made by the Government following the granting of a free pardon, or the quashing of a conviction. Being in the nature of an ex gratia payment, there are no principles of law applicable which can be said to be binding.

475. We have obtained as much information as possible from other Commonwealth countries concerning this subject. Even in England there is no other case we can find to be at all similar to that of Arthur Allan Thomas, i.e., of a man who served 9 years in prison not because of a mistake, but because of evidence fabricated by the Police.

476. However, the Home Office in England has provided for our information the guidelines under which compensation is usually assessed there and these have been very helpful.

477. There, following a decision from the Home Secretary that compensation should be offered in a particular case, an explanatory note is sent to the claimant. We quote from its contents:

> "A decision to make an ex gratia payment from public funds does not imply any admission of legal liability; it is not, indeed, based on considerations of liability, for which there are appropriate remedies at civil law. The payment is offered in recognition of the hardship caused by a wrongful conviction or charge and notwithstanding that the circumstances may give no grounds for a claim for civil damages."
>
> "In making his assessment, the assessor will apply principles analogous to those governing the assessment of damages for civil wrongs. The assessment will take account of both pecuniary and nonpecuniary loss arising from the conviction and/or loss of liberty, and any or all of the following factors may thus be relevant according to the circumstances:
>
> Pecuniary loss.
>
> Loss of earnings as a result of the charge or conviction.
>
> Loss of future earning capacity.
>
> Legal costs incurred.
>
> Additional expense incurred in consequence of detention, including expenses incurred by the family.
>
> Nonpecuniary loss.
>
> Damage to character or reputation.
>
> Hardship, including mental suffering, injury to feelings and inconvenience."
>
> "When making his assessment, the assessor will take into account any expenses, legal or otherwise, incurred by the claimant in establishing his innocence or pursuing the claim for compensation."
>
> "In considering the circumstances leading to the wrongful conviction or charge the assessor will also have regard, where appropriate, to the extent to which the situation might be attributable to any action, or failure to act, by the Police or other public authority, or might have been contributed to by the accused person's own conduct. The amount offered will accordingly take account of this factor, but will not include any element analogous to exemplary or punitive damages."

"The claimant is not bound to accept the offer finally made; it is open to him instead to pursue the matter by way of a legal claim for damages, if he considers he has grounds for doing so. But he may not do both. While the offer is made without any admission of liability, payment is subject to the claimant's signing a form of waiver undertaking not to make any other claim whatsoever arising out of the circumstances of his prosecution or conviction, or his detention in either or both of these connections."

478. The free pardon granted to Arthur Allan Thomas on 17 December 1979 included the following words:

"And whereas it has been made to appear from a report to the Prime Minister by Robert Alexander Adams-Smith QC, that there is real doubt whether it can properly be contended that the case against the said Arthur Allan Thomas was proved beyond reasonable doubt."

479. Section 407 of The Crimes Act 1961 states:

"**Effect of free pardon**. Where any person convicted of any offence is granted a free pardon by Her Majesty, or by the Governor-General in the exercise of any powers vested in him in that behalf, that person shall be deemed never to have committed that offence: provided that the granting of a free pardon shall not affect anything lawfully done or the consequences of anything unlawfully done before it is granted."

480. We have now been given some guidance by a full Court of the High Court of New Zealand concerning the effect of this pardon. In their decision dated 29 August 1980 the full Court stated:

"In the terms of the pardon Thomas is to be considered to have been wrongly convicted, and he cannot be charged again with the murder of either Harvey or Jeanette Crewe."

"He is, by reason of the pardon, deemed to have been wrongly convicted."

"The language of section 407 does not indicate any intention to create any such radical departure from the normal effect of a prerogative pardon as would be involved in reading into the language an intention to create a statutory fiction, the obliteration by force of law of the acts of the person pardoned. It is much more sensibly read to be as, first a reaffirmation of the basic effect of the prerogative pardon, and, secondly, an attempt to minimise residual legal disabilities or attainders."

481. We approach the question of the compensation in the light of that guidance, and also in the light of our findings as set out earlier in this report.

482. The pardon alone makes it clear that Mr Thomas should never have been convicted of the crimes, since there was a real doubt as to his guilt. He should accordingly have been found not guilty by the juries. Our own findings go further. They make it clear that he should never even have been charged by the Police. He was charged and convicted because the Police manufactured evidence against him, and withheld evidence of value to his defence.

483. At our hearings there have been often repeated statements about whether Mr Thomas can be proved innocent. Such a proposition concerns us. It seems to imply that there falls on to him some onus positively to prove himself innocent. Such a proposition is wrong and contrary to the golden thread which runs right through the system of British criminal

justice, namely that the Prosecution has the duty to prove the accused guilty and until so proved he had to be regarded as innocent. Once we are satisfied the Prosecution case against Mr Thomas has not been proved (and we are so satisfied on the totality of evidence before us) then, just as a Court would acquit him and the community thereafter accept his innocence, so we believe we are entitled to proclaim him innocent and proceed accordingly. Mr Thomas has always asserted his innocence. Taking all these factors into account, along with the pardon, it is our view that Mr Thomas is entitled to have the question of compensation determined on the basis that he is innocent. To determine it on any other basis would be to do him the gravest injustice.

484. This Commission is privileged to have been given the task of righting wrongs done to Thomas, by exposing the injustice done to him by manufactured evidence. We cannot erase the wrong verdicts or allow the dismissed appeals.

485. The British system of criminal justice is an adversary system. It receives only such facts as are put before it by the parties, discovering only so much of the truth as this permits. Any such system to function properly is dependent upon fair and truthful information being put before it. Like a computer, given the wrong facts it will without doubt produce the wrong answers, and this it did in the Thomas case.

486. This Commission is not in an adversary situation. We have searched for the truth, probed, inquired, and interrogated where we thought necessary; made our displeasure apparent at prevarication and reluctance to speak the truth. We have not been content with so much of the truth as some saw fit to put before us. With the aid of scientists we were able to demolish the cornerstone of the Crown case, exhibit 350, and demonstrate that it was not put in the Crewe garden by the hand of the murderer. It was put there by the hand of one whose duty was to investigate fairly and honestly, but who in dereliction of that duty, in breach of his obligation to uphold the law, and departing from all standards of fairness fabricated this evidence to procure a conviction of murder. He swore falsely, and beyond a peradventure, was responsible for Thomas being twice convicted, his appeals thrice dismissed, and for his spending 9 years of his life in prison; to be released as a result of sustained public refusal to accept these decisions. The investigation ordered by the Government led finally to his being granted a free pardon and released by the ultimate Court of a democratic system—what Lord Denning calls 'The High Court of Parliament.' Common decency and the conscience of society at large demand that Mr Thomas be generously compensated.

487. Arthur Allan Thomas was arrested on 11 November 1970 and remained in custody until 17 December 1979. During that time he was held in three prisons—Mount Eden, Auckland (commonly known as Paremoremo), and Hautu. We heard evidence from Mr Thomas and others concerning the conditions of his imprisonment and its effects on him. Evidence was also brought of the tribulations and anguish attaching to the judicial procedures. We accept that his formerly happy marriage was destroyed by this whole affair. Quite apart from the various indignities and loss of civil rights associated with his deprivation of liberty, we consider he will for the rest of his life suffer some residual social disabilities attributable to the events of the last 10 years.

488. We now consider the amount of compensation to be awarded to him to compensate him for all the damage, suffering, and anguish he has sustained mentally and physically as a consequence of his wrongful

convictions and subsequent years in prison. His learned counsel has listed these:

(a) Loss of reputation.
(b) Humiliation.
(c) Pain and suffering.
(d) Loss of wife.
(e) Physical assaults whilst in prison, and degradation.
(f) Loss of enjoyment of life.
(g) Loss of potential family (the Thomas couple had commenced the procedures for adopting a child).
(h) Deprivation of liberty.
(i) Loss of civil rights such as voting rights.
(j) Loss of social intercourse with his friends and neighbours in particular at Pukekawa.
(k) The indignation of being imprisoned for an offence of which he was innocent.
(l) The harm and pain caused to him in the destruction of his reputation by press coverage and any other media broadcasting and disseminating false and incorrect information about his alleged involvement in the said homicides.
(m) The anguish of judicial proceedings and in particular hearing wrong verdicts being announced.
(n) The ignominy of prison visitation and all matters relating to being a prisoner, including prison dress, prison diet, maximum security conditions, and all matters relating to his life in prison. It should be borne in mind that Arthur Thomas had always been an outdoor man and his first 7 years were spent in Paremoremo where he never was outside on any occasion except to attend Court proceedings.
(o) Adverse effects on future advancement, employment, marriage, social status, and social relations generally.

489. It is clear that at the outset, Mr Thomas put his trust in the Police. That trust must have been shaken when the Police arrested him. Even then, he may have seen the arrest as an honest mistake. Such trust as remained must have been shattered when exhibit 350 was produced as an exhibit. Mr Thomas must have known from the first that it had been planted by the Police. He must then have realised that the Police were determined to convict him. It is undoubtedly a deep form of mental anguish to listen to false evidence being given against oneself.

490. At that stage, Mr Thomas put his faith in the judicial system. It is clear that he expected the charges against him to be dismissed at the preliminary hearing. They were not. He must then have relied on the commonsense and the fairness of the jury at the first trial. They convicted him. His state of mind in hearing announced a verdict he knew to be wrong, must have been one of unspeakable anguish.

491. Mr Thomas spent 9 years in prison. That a man is locked up for a day without cause has always been seen by our law as a most serious assault on his rights. That a man is wrongly imprisoned for 9 years, is a wrong that can never be put right. The fact that he is imprisoned on the basis of evidence which is false to the knowledge of Police Officers, whose duty it is to uphold the law, is an unspeakable outrage.

492. Such action is no more and no less than a shameful and cynical attack on the trust that all New Zealanders have and are entitled to have in their Police Force and system of administration of justice. Mr Thomas

suffered that outrage; he was the victim of that attack. His courage and that of a few very dedicated men and women who believed in the cause of justice has exposed the wrongs which were done. They can never be put right. In a civil claim exemplary damages may be awarded where there has been oppressive, arbitrary, or unconstitutional action by the servants of the Government. If ever there was a situation where such an award was warranted, it is this case. However, in awarding compensation this is only one of many features to which regard will be had in arriving at the final figure.

493. In assessing compensation one purpose is to put the claimant back in the financial position in which he would have been but for the wrongs which were done to him. Accordingly, we now consider Mr Thomas's pecuniary losses. In June 1966 he leased from his father, for a term of 5 years, three blocks of land at Pukekawa formerly run as one farm unit. Two of these blocks were owned by his father who leased the third block from the Maori Affairs Department. Arthur Thomas and his wife both worked on the farm. They ran dairy cows, dairy beef, and sheep. Various improvements were made during the term of the lease. There is clear evidence in documentary form establishing that, at the time some of the improvements were carried out, Arthur Thomas discussed with his father the possibility of acquiring an interest in the land at the conclusion of the lease in June 1971. Their discussion envisaged the acquiring of the freehold of the Maori Affairs land, the transferring of the titles to all three properties to a company, the stock (owned by Arthur Thomas) also to be transferred to the company, with Arthur's share in the company to be calculated in accordance with the value of the stock transferred and value of improvements carried out by him during the term of the lease. In evidence it was suggested that the company may also have proceeded to acquire other adjoining blocks of land. However, it has also been suggested that instead of using the suggested company as a vehicle, Arthur Thomas might alternatively have simply purchased the farm from his father.

494. Mr P. D. Sporle, Farm Appraiser and Valuer, gave helpful evidence in relation to the Thomas farming operation. In 1971 a fair valuation of the whole farming unit was $45,200. We also accept the financial feasibility of Arthur Thomas being able to purchase this land in June 1971 if events had so transpired.

495. At the time of his arrest in 1970 Arthur Thomas owned his own stock (milking cows, replacements, dairy beef, and sheep) and farm plant, in addition to which he had an interest in certain substantial improvements carried out by him under the terms of the lease which we have already referred to. Following his arrest, although his wife with assistance from other members of the family did manage to carry on the farming operation for some time, these assets have clearly been dissipated by the expenses incurred in the judicial procedures.

496. Since 1970, as is well known, the value of farm land has increased very substantially. Mr Sporle considered that present day values for this or a comparable farm are in the region of $380,000 to $400,000. He also set forth a realistic progression for such a farm in the intervening 9 years, particularly in terms of stock and plant. In the result we accept that by 1980 such a farming operation would be likely to have involved stock, plant, and other necessary investments such as dairy company shares all to the value of approximately $100,000. The acquisition of personal effects and chattels is also borne in mind.

497. There are various contingencies which are to be borne in mind. At the time of Arthur Thomas's arrest no decisions had in fact been made about the future of the farm. Arthur was one of nine children. While it seems clear that his father was satisfied to see Arthur acquire the farm, we do not believe this would have been done on a basis which would have disadvantaged the other eight children. We have formed a view of Arthur Thomas as being a capable farmer who, unless prevented by some unknown contingencies of life, would be likely to have proceeded to acquire the farm or an interest in it. It seems reasonable to suggest that from the value of the farm, stock, and plant, we should allow for the likelihood of there being some mortgage commitments at this stage of his life. We consider a reasonable sum to put him back in the position where he would have been, in respect of the farm, stock and plant, and personal effects, is $450,000.

498. Mr Thomas incurred liabilities relating to his arrest and prosecution, in the form of legal and other expenses. In addition, further outgoings have been incurred in preparing his claim for compensation for presentation before us. Details of these outgoings are set out in appendix III attached.

499. We have received claims for compensation from the parents of Arthur Thomas, all his brothers and sisters (including their spouses), a cousin, two members of the Arthur Allan Thomas Retrial Committee (one of whom is related by marriage to the former Mrs Thomas), and the former Mrs Vivien Thomas (now Mrs Harrison).

500. These claims raise three questions of principle:

(a) Does Term of Reference 6 envisage or allow us to consider them either directly or indirectly as part of Arthur Allan Thomas's own claim?

(b) Apart from the Terms of Reference does experience elsewhere in the Commonwealth or any principle of law by analogy suggest that such claims should be entertained?

(c) If such claims are to be considered favourably, who should be regarded as eligible to make them, and in what respect?

501. We proceed to deal with each of those questions, and it is convenient first to deal with (b).

502. Reference has already been made to the explanatory note forwarded to all claimants by the English Home Office. That note states that one of the factors which is relevant to the assessors' consideration of the claim is—'Additional expense incurred in consequence of detention, including expenses incurred by the family.' It seems to us that this specifically envisages as falling within the claim of the detained person, expenses incurred by his family in consequence of his detention.

503. We have also given consideration to a number of cases in the field of claims in tort for damages arising from personal injuries, where there are to be found successful claims by the injured person to recover damages for himself which included amounts for nursing and other services provided by relations. In these cases the loss has been regarded as the plaintiff's loss.

504. We consider that both the direction in the English explanatory note, and the personal injury cases to which we have referred, support the concept that within the claim of Arthur Allan Thomas there should be considered certain expenditure incurred and services rendered by members of his family.

505. It being accepted that the need for relatives' services about which we are speaking is to be regarded as part of the claimant's own loss, then it is within Term of Reference 6 to include such amounts in the award made.

506. The third question concerns the persons from whom such claims should be entertained and the nature of those claims. We must immediately make clear that in our view there is no question of anyone other than Arthur Allan Thomas recovering compensation for non-pecuniary losses. We sympathise with the plight of some of the family, particularly the parents, in the physical and mental injury they have suffered. But we are bidden to determine the amount of compensation to be paid to Arthur Allan Thomas; subject to the limited extent of services rendered by relatives to meet a need caused by his arrest and imprisonment, there is no other category of compensation included.

507. The expenses and services of the family which we believe should be regarded as within the claim of Arthur Allan Thomas are:

(a) Help on the farm after his arrest.

(b) Expenses incurred in visiting him in prison (which we consider to have been an assistance to his well-being).

We do not feel able to include any sum for the time spent, or out of pocket expenditure, in searching for further evidence, attending judicial hearings, or attending meetings, etc., aimed at securing his release.

508. The above statements of principle largely answer the question of whose services and expenditure should be regarded as falling under this category. It also seems reasonable to limit it to members of the immediate family.

509. On the above basis we set out in appendix IV the sums which we consider should be paid to Arthur Allan Thomas in recompense for the physical help and services rendered by members of the family.

510. Finally on this topic, we turn to consider the position of Dr T. J. Sprott, the man who in our view more than any other was responsible for the eventual release of Mr Thomas. It was well summed up by senior counsel for the DSIR in his final submission when he said 'I say without qualification that his dedication to, and development of, the categories theory, which has played such a large part in this inquiry invokes any impartial observer's admiration. . . . It is difficult to single out anyone who has been more committed or effective in advancing (Mr Thomas's) case than Dr Sprott.'

511. Dr Sprott himself acknowledges that his work was not carried out under any contractual arrangement with Mr Thomas or his legal advisors. On the other hand, the researches which he carried out over a number of years were directly related to a key issue of the question of Thomas's guilt or innocence, and were as essential to the findings of this Commission in regard to the identification of the fatal bullets as they were to the events leading to the pardon. The guidance from the Home Office states, 'When making his assessment, the assessor will take into account any expenses, legal or otherwise, incurred by the claimant in establishing his innocence, or pursuing the claim for compensation.'

512. Dr Sprott has entered a formal claim for $150,000 compensation based on the hours which he estimates were spent in this scientific work.

513. By a majority (Mr Gordon dissenting) we consider that some financial recompense for this scientific work is justified and recommend the payment of an amount of $50,000.

CONCLUSIONS

514. Money cannot right the wrongs done to Mr Thomas or remove the stain he will carry for the rest of his life. The high-handed and oppressive actions of those responsible for his convictions cannot be obliterated. Nevertheless all these elements are to be reflected in our assessment, as also are his suffering, loss of enjoyment and amenities of life, and his pecuniary loss.

515. We recommend that the following sums be paid to Arthur Allan Thomas as compensation:

	$
(a) In repayment of the expenditure set out in appendix III the sum of	49,163.35
(b) In repayment of the services of members of his family set out in appendix IV the sum of ..	38,287.00
(c) By a majority, in payment of the services rendered by Dr Sprott, the additional sum of	50,000.00
(d) To cover all those matters referred to in paragraphs 497–507 the additional sum of ...	950,000.00
Total	$1,087,450.35

516. We draw attention to the immense labour of Mr Patrick Booth in the field of investigative journalism. This was carried out as a private enterprise and at some considerable sacrifice to family life. He has formally claimed only a token $1. We are more than glad to include our recognition of the devotion of Mr Booth to this cause.

Addendum of the Right Honourable J. B. Gordon to Term of Reference 6.

517. Our report is unanimous except for one aspect in which a majority decision is recorded. I set out hereunder the reasons I could not support my fellow Commissioners in relation to a payment of compensation through Arthur Allan Thomas for recognition of a suggested debt owed by him to Dr Sprott.

518. The Term of Reference is specific:

"6. What sum if any should be paid by way of compensation to Arthur Allan Thomas following upon the grant of a free pardon?"

519. My fellow Commissioners here decided to follow the Home Office advice (which is not binding in any case):

"When making his assessment the assessor will take into account any expenses, legal or otherwise, incurred by the claimant in establishing his innocence or pursuing the claim for compensation."

520. My colleagues believe that the term 'otherwise' can be loosely interpreted as covering any expenses. My reading of the paragraph as a whole, including particularly the words 'incurred by the claimant' suggests that it in fact covers legal costs or contractual debts, and to this extent Dr Sprott's claim, in which he very fairly states there is no contractual or legal liability, cannot be accepted. In my view he was under no such obligation to Thomas, the claimant.

521. It is with some regret that I must make this decision, but find it in line with the Commission's unanimous finding that it cannot within the Terms of Reference compensate Arthur Allan Thomas's parents for their own pecuniary loss or debilitation. I find that the Home Office advice on these particular matters is quite distinct from the Commission's decision to recompense Thomas for the costs incurred to the family for care and solicitude. While I can sympathise with Dr Sprott and several other claimants, it was Dr Sprott himself who told us he saw his monumental task 'as a crusade'. My opinion is, I respectfully suggest, enhanced by Mr Booth's claim for $1.

522. We have had many 'crusaders' in New Zealand attempting to right a wrong or fight for a principle (with some success in both) at great personal sacrifice in time and money. Some have been rewarded in other ways, and this in my opinion is the only avenue open for this Commission to make a recommendation within our Terms of Reference.

523. I do so recommend.

APPENDIX I

IDENTIFICATION OF EXHIBIT 350

Before the Commission continues hearing evidence relating to Term of Reference 1(a), it is desirable to identify and define the cartridge case (exhibit 350) (8 July 1980).

1. Exhibit 350 was a dry primed brass long rifle cartridge case, manufactured by IMI Australia Ltd.

2. Such dry primed cartridge cases as exhibit 350 were made by IMI with a steel tool known as a bumper, which stamped the lettering ICI on the base of the cartridge case as it formed its rim. The bumper was in turn manufactured from a steel tool known as a hob, which had the letters ICI engraved on its surface.

3. The engravers of hobs used by IMI were C. G. Roeszler & Son Pty Ltd., and Mr Leighton of that company gave evidence that from a practical point of view, two hobs engraved on different occasions would have lettering of distinguishable shape and overall appearance. His opinion was supported on a theoretical basis by Professor Mowbray's eloquent exposition.

4. Mr Cook's evidence, confirmed by that of Dr Sprott from his examination of the IMI records, was that:

(a) Two hobs engraved by Roeszlers arrived at IMI on 1 October 1963;

(b) Retained samples of cartridge cases consistent with those hobs, and with exhibit 350, and of the type called by Dr Sprott category 4, first appeared in the retained samples of IMI in March 1964. We are satisfied that the hobs which arrived on 1 October 1963 were the source of Dr Sprott's category 4, and of exhibit 350.

5. Some of the ·22 long rifle cartridge cases manufactured by IMI were then shipped to Auckland, New Zealand where the Colonial Ammunition Co. Ltd., (CAC) then loaded them with projectiles and distributed them to the New Zealand market as full cartridges. Until 10 October 1963 ·22 brass cartridge cases were loaded by CAC with their pattern 8 projectiles, bearing 3 cannelures. After that date pattern 18 or 19 projectiles bearing 2 cannelures were used. It follows that exhibit 350 was loaded with a pattern 18 or pattern 19 projectile.

6. At the conclusion of his evidence, Mr MacDonald, the senior DSIR witness accepted that it was less than probable that exhibit 350 contained a pattern 8 bullet.

7. Therefore, the Commission identifies exhibit 350 as a dry primed, ·22 long rifle brass cartridge case, manufactured by IMI in Australia after March 1964, bearing the headstamp 'ICI', and loaded by CAC in Auckland with a 2 cannelure pattern 18 or 19 projectile. It was fired in the Thomas rifle, exhibit 317, but when and where we are unable to say at this stage.

8. This identification of exhibit 350 will enable those who are concerned with the first paragraph of the Terms of Reference to be aware of the subject matter and area of the inquiry into 'Whether there was any impropriety on any person's part in the course of the investigation or subsequently, in respect of the cartridge case, Exhibit 350.'

APPENDIX II

AFFIDAVIT BY MR DAVID YALLOP

IN THE MATTER of a Royal Commission to enquire into and report upon the convictions of Mr A. A. Thomas for the murder of Harvey and Jeanette Crewe

I, DAVID ANTHONY YALLOP of 6 Gladwell Road, London N.8, England, author and playwright, solemnly and sincerely affirm as follows:

1. I am the author of the book *Beyond Reasonable Doubt?* published in October 1978.

2. Chapter 8 of that book is an open letter to the Prime Minister of New Zealand and refers to another, private, letter which I wrote to the Prime Minister. In that private letter, a copy of which is annexed hereto and marked with the letter "A", I identified the woman who, I believed, had fed Rochelle Crewe between the 17th and 22nd June 1970 and had been seen by Mr Roddick outside the Crewe house on the morning of 19th June 1970.

3. The source of my information was a discussion which Mrs June Donaghie had with Mr. Roddick on my behalf in Sydney in November 1977. I did not go to Sydney myself because I could not afford to do so. Attached hereto and marked with the letter "B" is a copy of the photograph of the woman who, as I understand, was identified by Mr. Roddick as the woman he saw on 19th June 1970.

4. On 15th October 1980 I was shown by Mr. M. P. Crew, Counsel assisting the Royal Commission, a copy of an Affidavit sworn on 16th November 1978 by June Donaghie in relation to this matter. I had not previously seen the Affidavit. I confirm that it accurately reflects what June Donaghie told me had occurred during her discussion with Mr. Roddick. I understand that there are in existence further Affidavits sworn by witnesses confirming June Donaghie's account.

5. Attached hereto and marked with the letter "C" is an undated letter postmarked 17th November 1977 which June Donaghie wrote to me from Australia following her discussion with Mr Roddick. The terms of that letter are consistent with what June Donaghie told me had occurred and with her Affidavit dated 16th November 1978.

6. Following the publication of my book, Mr P. J. Booth visited Mr Roddick in Australia. I had previously told Mr Booth the name of the woman Mr Roddick had identified and given him the source of the photograph. I made it clear to Mr Booth that Mr Roddick should not be told the name of the woman to avoid his becoming frightened by the implications of the identification. I am aware, however, that Mr Booth did tell Mr Roddick the name of the woman.

7. I understand that Mr Roddick said in evidence before the Royal Commission that the woman in the photograph was similar only to the woman he saw. I further understand that he denied ever positively identifying the woman in the photograph as the woman he saw on 19th June 1970. It is my belief that realisation of the implications of his evidence may have caused Mr Roddick to modify his evidence, as I feared might happen. This is confirmed to some degree by paragraph 21 of the first report made to the Prime Minister by Mr Adams-Smith Q.C. I would not have been categoric regarding the identity of this woman if Roddick had not previously been as equally categoric.

8. Other than Mrs Donaghie's reports to me, I had no direct information as to the identity of the woman seen by Mr Roddick on 19th June 1970. I am, however, of the view that the identification is supported to some extent by:

(a) Mr Roddick's original description of the woman he saw in his statement to the Police dated 23rd June 1970;

(b) Mr MacLaren's comment set out in the fourth to last paragraph of my letter to the Prime Minister attached hereto and marked with the letter "A".

Affirmed at London by the said DAVID ANTHONY YALLOP this 28th day of October 1980.

"David A. Yallop".

Before me,

"G. W. Shroff", Commonwealth Representative, New Zealand High Commission, London.

APPENDIX III

EXPENSES

	$
W. J. Bridgman and Co.	2,600.00
P. D. Sporle	5,542.28
Gerald Ryan	500.00
Prof. B. J. Brown	750.00
R. L. McLaren	2,671.07
A. G. Thomas (refund legal fees paid)	16,500.00
K. Ryan (legal fees outstanding)	8,500.00
P. A. Williams (legal fees outstanding)	12,100.00
	$49,163.35

APPENDIX IV

	$
Mr and Mrs Hooton	1,350.00
Mr and Mrs Stuckey	2,100.00
Raymond Thomas	5,400.00
Lloyd Thomas	5,322.00
Desmond Thomas (including costs of preparation of claim $300.00)	5,420.00
Richard Thomas	1,800.00
Lyrice Hills (including costs of preparation of claim $150.00)	3,050.00
Rita Tyrrol	1,275.00
Allan G. Thomas	2,250.00
Vivien Harrison	10,500.00
	$38,467.00

BY AUTHORITY
P. D. HASSELBERG, GOVERNMENT PRINTER, WELLINGTON, NEW ZEALAND—1980
56087H—80PT