REPORT BY INDEPENDENT COUNSEL APPOINTED TO OVERSEE REVIEW BY NEW ZEALAND POLICE INTO THE CREWE HOMICIDES

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INTRODUCTION

In May 2012 I accepted appointment as independent counsel to oversee the NZ Police Review into the Crewe homicides. The Review was initiated by Commissioner Howard Broad in October 2010 as a result of an approach by Rochelle Crewe (the **Review**). The Review had terms of reference which are set out in the Preface to the Review document.

My role has involved working with the Review Team to assess the work being undertaken and provide advice and other input as necessary. My involvement has enabled me to:

- Meet and consult with members of the Review Team as required, discuss the substance of the Review, provide input as to methodology and structure and assist in identifying lines of enquiry to pursue, where appropriate.
- Consider the Review document and supporting materials and provide my assessment as to the efficacy and thoroughness of the Review.
- Consider the conclusions reached in the Review, comment on principal findings and provide my assessment of the legitimacy of such findings.

I initially consulted with the Review Team concerning the appropriate methodology to be adopted to achieve the highest quality investigation and analysis. In summary, the methodology was:

- Identification of core facts and events covering a period from before the murders were discovered up to and including the Royal Commission of Inquiry. This would establish a timeline to which further material could be added.
- Assessment of the available material to establish what the most reliable evidence was.
 Once an analysis of this material had been undertaken, other less reliable information
 would then be considered. This involved looking at reliable forensic evidence first and
 then other, less cogent evidence so that any analysis was as soundly based and
 accurate as possible.

The Review Team adopted this methodology. This resulted in an initial consideration of forensic and physical evidence followed by the scene examination, witness statements and other material. The purpose of this approach was to avoid the pitfalls that have been evident from numerous commentaries and materials authored by critics or advocates of a particular theory on the homicides or specific aspect of the case. There has been a plethora of books and articles written by persons who, it appears, have written with a particular theory or view in mind and have attempted to support their contentions by highlighting certain aspects of the evidence, as opposed to a consideration of the whole.

Given the importance of the work to be carried out and the outcome of the Review itself, care had to be taken to ensure that an objective, balanced inquiry into the issues raised by

the terms of reference was conducted. The process adopted was designed to best achieve this.

I have met numerous times, both collectively and individually, with members of the Review Team to discuss the Review and matters arising from it. In my view, there are literally no further enquiries that could reasonably be made by the NZ Police to further any investigation into the 1970 homicides of Harvey and Jeannette Crewe. Further forensic analysis has been carried out and expert opinion sought in relation to a number of issues and witnesses (both new and existing) have been interviewed as part of the Review.

Public requests were made at an early stage by Detective Superintendent Lovelock for any persons who may have any information in relation to the subject matter of the Review to come forward. Many people involved in the original inquiry were also approached directly by members of the Review Team. It is difficult to see how, absent a person who has been withholding information now coming forward, further investigation could unearth additional material of any significance. Accordingly, in my view, no further criminal investigation is warranted and no useful purpose would be achieved by any such investigation.

THE REVIEW DOCUMENT

I have read various drafts of the Review document as it has evolved together with the final form of the document. The Review document itself is supplemented by a number of appendices.

The principal factual document is Appendix 1, an analytical report that details the available material on most issues. I have reviewed this report which is a comprehensive work in terms of the material it covers. A vast amount of information is included in Appendix 1 and this document, together with the Review itself, comprises the core material that anyone wishing to acquaint themselves with the facts of the case would need to consult. The additional appendices are included as significant reference materials to supplement the Review document and Appendix 1.

Appendix 1 does not cover the vexed topic of the brass .22 cartridge case located in a garden at the Crewe home on 27 October 1970 (Exhibit 350). That topic is dealt with in Appendices 8-11 and Chapter 11 of the Review. For reasons that are apparent from the Review, the issue relating to Exhibit 350 is straightforward. It is clear the cartridge case could not have contained either of the bullets which killed Harvey or Jeannette Crewe. Accordingly, the question is whether the cartridge case was legitimate or fabricated evidence.

The Report of the Royal Commission of Inquiry held in 1980 is included in its entirety as Appendix 15. This Report contains a number of conclusions on matters considered in this Review. All issues have been considered afresh by the Review Team.

OVERVIEW

The Crewe homicides are probably the most notorious cold case in New Zealand history. It is quite remarkable that, notwithstanding the recovery of both bodies and the assistance of ballistics and other forensic testing, the crime has not been solved. Clearly this was not for want of trying. It is apparent from the way in which the investigation team conducted itself in 1970 (as can be ascertained for example from the Police conference notes and evidence given during the course of the trials and the Royal Commission of Inquiry), that there was a very real desire to bring the offender to justice. Regrettably, that desire by the officers concerned was inextricably linked to the (then) perception that the Police could solve the case by developing a theory (largely based on intuition or gut instinct) and then investigate against that background with a view to turning that theory into a reality.

The initial perception by Police was that the scene was possibly a murder/suicide and a blunt instrument was the favoured murder weapon. However, literally within a couple of days of the scene being discovered on 22 June 1970, the Police considered a double homicide had occurred and the prime suspect was Jeannette's father, Lenard Demler. For the succeeding months, this underlying premise dictated Police action.

A number of missed investigative opportunities have been identified in the Review which demonstrate failures by the investigation team to properly investigate this crime. Evidence which could have been obtained and assessed was clearly lost as a result. Such was the focus of the investigation on Lenard Demler being the offender, that there was little focus on anyone else.

If the offender was Mr Demler as the Police believed, he was almost certainly inside the house when the first fatal shot was fired. There was accordingly no need to look at alternative scenarios, which were either ignored or not even considered. It was not until 11 October 1970 that the Johnston theory of a shot being fired through the louvre windows of the kitchen was first considered.

A "stranger" suspect would have had to somehow gain entry to the house, either unnoticed (which would be unlikely), or have fired a shot from outside and managed to hit Harvey Crewe who was sitting in his armchair when shot. It appears that Harvey was likely the first person shot. If he had been sitting in the armchair in the approximate position in which it was located on 22 June 1970, the shot would have come from the kitchen area which would have included a line of sight back to the louvre windows.

Having concentrated on Lenard Demler as the primary suspect for close on four months, once the Johnston theory was articulated on 11 October 1970 and a reconstruction carried out on 13 October 1970, the prospect of a "stranger" offender became a more viable option. Arthur Thomas came into the frame as the prime suspect quite quickly after this, principally as a result of the stub axles located at his property on 20 October 1970 matching the axle used to weigh down Harvey Crewe's body. Arthur Thomas had been considered earlier in the inquiry but was not thought to be involved by the officers who

interviewed him on 7 September 1970. Despite his rifle not being excluded as the murder weapon (and it being put to him in the interview it was the murder weapon), it was returned to him on 8 September 1970, the day after the interview. His status as the principal suspect did not crystallise until well into October 1970.

It is against this background that the investigation has to be considered.

I can only reiterate what is said in the Review document that certain standard procedures in 1970 would be considered inadequate, inappropriate, or otherwise insufficient by today's standards. Certain forensic capabilities in 1970 were also quite primitive compared to what they are today. DNA analysis did not exist and a blood type match was the extent of identification from blood located at the scene.

However, even taking into account such limitations, it is beyond question that the Crewe scene integrity, evaluation and inspection were sub-standard as the Review concludes. Whilst lost opportunities have been identified, the Review necessarily must be conducted based on the available information.

The conclusion of the Review is that no person or persons can be identified as the offender for the murders. I agree with this finding. There is insufficient evidence in my view to prosecute any individual (alive or dead), with the murders themselves, or with being involved in any subsequent activity related to the homicides.

It is now over 44 years since the Crewe murders. A significant number of people involved in the investigation are now deceased. The material to be considered is, in the main, historic. Vital forensic evidence has been destroyed. These factors have placed limitations on the ability of the Review Team to progress certain aspects of their inquiry. However, where possible, experts have been consulted to shed further light on particular topics.

My report should be considered against the background of the Review document. I have not set out in full the factual background of the issues I have commented on because this material is contained in the Review itself and Appendix 1. I have also provided my views on matters dealt with in the opinions provided by Mr Adams-Smith QC (which led to the Pardon of Arthur Thomas) and the advice of the Solicitor-General, Paul Neazor QC (which dealt with the potential prosecution of Police officers following the Report of the Royal Commission of Inquiry in 1980). This has been necessary because the issues raised in those opinions fall within the scope of the Review Terms of Reference and are the subject of findings.

The various conclusions reached in the Review will now be addressed following the chapters set out in that document.

Chapter 1 - Context

Issues covered in this chapter have already been referred to and are not the subject of further comment.

Chapter 2 – Foreword

The foreword gives a summary of various aspects of the background and process followed. Again, it is not necessary to comment on these aspects as they are covered more fully in other chapters in the Review document.

Chapter 3 – Issues

This chapter raises a number of issues that will be dealt with individually.

Date and time of death

The date and time of death has generally been asserted to be on the evening of Wednesday 17 June 1970, some time between 7pm and 11pm. The Review has confirmed the date, but narrowed the timing to between 7pm and 9:30pm. The remains of a flounder meal for two people were found on the dining table on 22 June 1970.

In my view the evidence supports the Review finding that the homicides occurred on the evening of Wednesday 17 June 1970 between 7pm to 9:30pm. The evening timeframe was not challenged by the defence at either of the trials of Arthur Thomas as an important part of the defence was that Mr Thomas had an alibi for that date and time.

The timing of the deaths took on great significance in the two reports authored by Mr Robert Adams-Smith QC in 1979.¹ Indeed, Mr Adams-Smith concluded in his second report that the time of death could well have been some time on the morning of Thursday 18 June 1970. He considered, as a result of his findings relating to time of death, that the convictions of Arthur Thomas were unsafe. Mr Adams-Smith's second report was the basis for Mr Thomas receiving the Pardon on 17 December 1979.

Given the disparity, I have considered the Adams-Smith reports to assess the findings made. With respect, in my view the reasoning as to time of death not being the evening of 17 June 1970 was flawed. Appendix 14 contains both reports. Brief reasons for my view follow.

First report of Adams-Smith QC dated 10 January 1979

The scope of the enquiry was quite confined and is set out at the beginning of the report. It was to ascertain the validity of the alleged identification by one Bruce Roddick of a

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Appendix 14.

woman he claimed to have seen at the Crewe property on the morning of Friday 19 June 1970. No issue of time of death was involved.

The first report deals comprehensively with the issue of Mr Roddick's sighting and a finding is made that both Bruce Roddick and Queenie McConachie's observations were accurate.² Having made these findings, the time of death is then specifically addressed and a recommendation made to the (then) Prime Minister effectively for further enquiries on the issue to be conducted (among others). The "time of death" enquiry (together with other recommended enquiries), are dealt with in the second report by Mr Adams-Smith QC. It is this second report that led to the Pardon of Arthur Thomas.

Second report of Adams-Smith QC (undated)

After reviewing material as to whether the flounder meal was purchased as takeaways on the evening of 17 June 1970 or cooked in the kitchen, the conclusion was reached that the meal was cooked in the kitchen of the Crewe home. Mr Adams-Smith QC then expresses the view that the meal of flounder was more likely a breakfast rather than a dinner.³

An analysis of evidence is then undertaken which, with respect, is incomplete. The proposition is later put that the murders could have occurred on the morning of 18 June 1970.⁴

Mr Adams-Smith refers to a number of features which in his view militate against the meal being an evening meal. He goes so far as to say he does not consider it has been established it was dinner as opposed to breakfast. Regrettably, there appears to be a significant level of supposition included in the report and a failure to consider all relevant material. The options of a late lunch on 17 June 1970 or breakfast on 18 June 1970 are stated as alternatives to an evening meal.

The second report does not deal with certain fundamental factors such as what time any breakfast might have taken place on 18 June 1970, how this would impact on whether the murders occurred in daylight or not, or what time Harvey normally left the house in the morning. It also does not address factors consistent with the evening timing, such as the fire going, Harvey and Jeannette Crewe sitting in front of it when Harvey was shot and Jeannette knitting. There is a level of supposition in the report which lacks a proper evidential foundation.

Whilst Mr Adams-Smith's ultimate finding that the verdicts were unsafe must be right given other features of the case, the stated basis for his conclusion, namely the perceived uncertainty concerning the time of the deaths in my view is not justified. To be clear, it is my opinion that without Exhibit 350, the evidence against Arthur Thomas was insufficient to have been capable of establishing his guilt and the verdicts could not be sustained.

² Appendix 14, first report at pages 15 and 16.

³ Appendix 14, second report at page 8, para 15.

⁴ Appendix 14, second report at page 9, para 19.

Accordingly, the final assessment by Mr Adams-Smith that the verdicts were unsafe was undoubtedly right, albeit for a different reason to that which he relied upon.

Woman allegedly seen at the Crewe property on Friday 19 June 1970 Sighting of a child on the afternoon of Saturday 20 June 1970 Was Rochelle fed?

The alleged sighting by Bruce Roddick of a woman at the Crewe property on the morning of Friday 19 June 1970 has generated a vast amount of comment and supposition. Despite assertions to the contrary, this woman has never been positively identified by Bruce Roddick. Equally, much has been made of the alleged sightings of a child (presumably Rochelle Crewe) on the afternoon of Saturday 20 June 1970 by Queenie McConachie and her husband. Whilst these sightings increase the intrigue relating to the case, standing back, the question has to be asked what do they actually establish, if reliable?

The issue of whether Rochelle Crewe was fed in the period between the time of her parents' deaths and being discovered at approximately 1pm on Monday 22 June 1970 is related, at least potentially, to those issues.

These aspects of the case are covered in detail in both the analytical report and the Review, but raise the following considerations:

- The interior of the house to the most casual observer was a scene of violence and possibly death. The scene that greeted Lenard Demler and later both he and Mr Priest on the afternoon of 22 June 1970 would have been as apparent to any other visitor to the property. This means that anyone who went inside the house, must have identified the scene as such. Any visitor would also likely have come across Rochelle in her cot in her bedroom had they ventured past the lounge.
- If Mr Roddick's sighting is accurate, the person he saw had either not been inside the Crewe property (and therefore been unaware of the scene), or was involved but deliberately exposed herself to scrutiny. The latter option makes no sense. Equally, if someone uninvolved in the homicides or aftermath was the person seen, there is no compelling reason for them not to have come forward.
- The apparent sighting of a young child (presumably Rochelle) wandering around the front of the property on the Saturday afternoon, again, defies logic. If the sighting is accurate and the child was Rochelle, her ability to walk on the Saturday is belied by her physical condition when located on the afternoon of Monday 22 June 1970. If the Saturday sighting is reliable, her condition degenerated from that of being dressed in outdoor clothing and an active child two days earlier, to being in the extreme condition she was found in, wearing nappies and dressed for bed.
- Rochelle had to be taken out of her cot (she was unable to get out of the cot herself),
 to get outside. That person must have seen the scene inside and realised something

was horribly wrong. Why that person would not contact the authorities immediately if they were not involved in the homicides is unexplained.

• It does not make sense for a person involved in the homicides or the disposal of the bodies, to dress Rochelle and leave her to move around outside for anyone to see. A neighbour or friend could have been passing and stopped upon seeing Rochelle, to take her back inside or simply go to the house because they knew someone must be home given the child's presence. The risk of discovery in having Rochelle outside was simply too great.

Rochelle Crewe's condition when found

The state of Rochelle Crewe when she was found and examined by Dr Fox the next day has also been a matter of great discussion. However, even if Rochelle had been fed, this establishes that someone returned to the Crewe property unobserved and administered milk or other sustenance. The movements of people during the time whereby Rochelle could have been fed were not investigated to any real degree in 1970.

Professor Jenny, the paediatric expert engaged by the Review Team is of the view (primarily based on the wetness of the nappies found on Rochelle), that the child had been fed within the 4½ day period between the evening of Wednesday 17 June 1970 and the early afternoon of Monday 22 June 1970. Accepting that proposition does not advance the case. It would demonstrate that someone, likely local but unobserved, came to the property. Because the identity of that person is not known and not likely to be known, it does not help to establish who killed Harvey and Jeannette Crewe.

Rochelle's state, when found showed substantial neglect. Her physical condition and that of her clothing and bedclothes did not indicate she had been left for only a limited period of time. It may in fact be more consistent with having been left for close to 5 days. All experts are of the opinion that Rochelle would have been able to survive 5 days or longer. However, it may well be she would have been more dehydrated than she appeared and quite ill if left for almost 5 days, which would support the proposition that she was fed.

The person(s) responsible for the murders and subsequent disposal of the bodies carried out their activities unobserved. Nocturnal activity is more likely than daytime for obvious reasons. Why anyone would risk discovery by being seen in daylight at the property, or letting Rochelle out to the front of the house completely undermines the benefit of stealth. Returning to the property to feed Rochelle created the very real risk of discovery.

Putting these various issues to one side however, the question has to be asked, what in fact do any of these events establish, if they occurred? Whoever murdered Harvey and Jeannette Crewe and disposed of their bodies was not seen doing so. If someone did return to the property to feed Rochelle or take her outside, they have not come forward and they have not been identified. Whether a woman was at the property on the morning of 19 June 1970, whether Rochelle was outside on Saturday 20 June 1970 and whether she was fed do not add to the case because the people involved are unknown.

The Review findings on these issues are available on the evidence and reasonable in the circumstances.

Chapter 4 - Initial Action/Crime Scene

The comments and criticisms made in the Review on this aspect of the case are well warranted. The security of the crime scene was grossly substandard. There were instances where items were left within the crime scene by those involved in the investigation before the area had been properly examined.⁵ The failure to document and the subsequent disappearance after 4pm on 23 June 1970 of the fabric item seen in photographs 10 and 11 of Appendix 3 next to the wheelbarrow are astonishing. Given the wheelbarrow was thought to have been used to move at least Harvey Crewe's body from the crime scene, the item immediately next to it should have been seized as an exhibit and analysed.

The explanation given by Police at the time that this item may have caught fire as a result of an errant cigarette butt landing on it is rejected in the Review document and rightly so in my view. The unexplained disappearance of this item and the failure to secure it as an exhibit represents unacceptable and exceptionally shoddy practice. The apparent lack of forensic awareness by certain members of the investigation team would simply not be countenanced today and should not have occurred in 1970.

Chapter 5 - Area Canvas/General Enquiries

No comment is required.

Chapter 6 - Body Recoveries

Finding both bodies was a combination of luck and hard work. A lot of effort had been undertaken carrying out a land based search, whereas the bodies were found in the Waikato River. The finding of Harvey Crewe's body on 16 September 1970 was a breakthrough in the case in that it yielded the axle and the 16-gauge wire. This enabled forensic analysis to be undertaken and links made with other physical evidence.

Pathology

This was an important aspect of the case in that it helped define the likely sequence of events and positioning of Harvey Crewe when he was shot. The blood and brain matter on Harvey's chair and the seepage through it indicated he was shot whilst seated in the chair and remained in that position for some time afterwards. The trajectory of the bullet through his head shows he had been shot from behind and to his left side. This was

See for example photograph 10 where a coat or jacket can be seen draped over the wall of the back porch; and photograph 32 where a police officer's notebook is on the dining room table.

effectively from the direction of the kitchen which adjoined the dining/lounge area with a line of sight to the louvre windows above the kitchen sink.

The conclusion reached in the Review that in all likelihood Harvey Crewe was shot first makes sense. Harvey was a big man and the point of entry of the bullet behind his left ear and its trajectory indicates he was taken unawares. If he had been aware of an intruder or there was some physical confrontation, it is highly likely he would have faced his potential assailant. As the Review has concluded, it is likely that Harvey was killed first either as the principal target, or as the potential physical threat to the assailant, with Jeannette as the principal target.

Chapter 7 - Exhibits

The findings of the Review concerning exhibits are well founded, but in my view, understated. There was a general failure to properly record the location of exhibits, continuity of exhibits in terms of where and by whom they were held and indeed, to ensure they were kept secure. The (then) practice of securing an exhibit in a locker or desk drawer for example is completely unacceptable today.

There were a number of instances of ineptitude and negligence in relation to exhibits and their security. There was a casual approach demonstrated which was unprofessional, both in relation to exhibits and scene security.

Destruction of exhibits on 27 July 1973

The destruction of certain exhibits at the Whitford tip on 27 July 1973 was either a thoughtless act, or a very deliberate one calculated to destroy evidence of misfeasance.

Once produced at the depositions hearing and/or the High Court trial, exhibits remained in the custody of the court. After the first trial there was an appeal which was dismissed. Exhibits released to the Police subsequent to the appeal decision were not destroyed at that point, but were retained. After the successful appeal in February 1973, there was a second trial and the various exhibits were formally produced again into the custody of the court. There they remained until the appeal from the second trial verdicts had been determined in a judgment delivered on 11 July 1973.

On that day, there appears to have been a discussion between the (then) Crown Solicitor David Morris and Detective Inspector Hutton about the result of the appeal and the exhibits. This discussion is recorded in a letter dated 10 September 1973 from David Morris to Detective Inspector Hutton. The letter was clearly solicited by Detective Inspector Hutton after the adverse comments in early September 1973 by the (then) Minister of Justice, Dr Martin Findlay about the exhibits being dumped at the Whitford tip and (then) Commissioner Walton's subsequent entreaty to Detective Inspector Hutton and other officers to see if the exhibits could be retrieved from the tip.

The letter from David Morris records a conversation in which the disposal of exhibits was obviously discussed and the normal process for dealing with exhibits after an unsuccessful appeal reviewed. The advice recorded in the letter is accurate, but the decision to act on that advice was, at best, ill-advised.

The exhibits did not have to be disposed of. Once released from the custody of the court in the normal course, exhibits that could be so identified would be returned to their respective owners and other exhibits dealt with as appropriate, including either retention or destruction. However, given the nature of the case, it would have been abundantly plain to Detective Inspector Hutton that a second conviction and consequent unsuccessful appeal would be unlikely to deter Thomas supporters from seeking further redress. This was plain from the activities of supporters after the first trial and unsuccessful appeal.

In addition, there was a new dynamic as a result of the second trial which was the challenge to the authenticity of Exhibit 350. This exhibit had not been the subject of challenge at the first trial, but was called into question in the second trial.

There are a number of disquieting features about the disposal of the exhibits:

- Detective Inspector Hutton had stated that the exhibits had been retained after the
 first trial because of their significance to future Detectives and so they could be housed
 in the Police Museum. That importance must have intensified as a result of the second
 trial and subsequent unsuccessful appeal.
- Exhibit 350 and related exhibits including the bullet fragments from Harvey and Jeannette Crewe were vital forensic exhibits. If any exhibits were to be retained from the case in terms of importance, it was these.
- A claimed reason for disposal of the exhibits (lack of space in the Police Exhibits Store) does not bear scrutiny. The physical volume of significant exhibits destroyed (ie. ballistic items and wire samples) was quite minor and could have easily fitted in a cardboard carton, whereas large, bulky exhibits such as the axle were retained. The nature of the exhibits disposed of takes on a more sinister aspect when considering the authenticity of Exhibit 350.
- The decision to destroy the exhibits was not communicated to the defence. No
 opportunity was given to the Thomas factions to take the exhibits for further analysis,
 or for them to be kept secure in any other facility. They were destroyed without
 notice.

The decision by Detective Inspector Hutton to dispose of exhibits and the nature of those destroyed and those retained is relevant to later discussion concerning issues of corruption.

Royal Commission of Inquiry exhibits

The Review comments on certain conduct of Justice Taylor which occurred during the Royal Commission proceedings. During the Inquiry, Justice Taylor apparently took certain

(unknown) exhibits produced to the Commission to Australia to have them informally examined by ballistics experts in the New South Wales Police.⁶ Such action by a Commissioner is unorthodox and quite wrong. Custody of an exhibit and thereby its integrity is a key feature in any formal proceeding. The conduct of Justice Taylor is unprecedented and contradicts basic principles of exhibit handling and integrity.

It is of the greatest concern that anyone acting in a judicial capacity would conduct themselves in such a way. Whilst testing an exhibit could properly occur during the course of a hearing, there are protocols to follow, none of which were engaged in the conduct of Justice Taylor. His conduct is all the more surprising given the allegations being made during the course of the Commission of Inquiry and indeed, the findings concerning the authenticity of exhibits. The criticisms contained in the Review are well founded. However, such aberrant conduct does not advance the substantive issues which are the subject of the Review.

Chapter 8 - Firearms Ballistic Examination

The Thomas .22 Browning rifle (Exhibit 317) was the only rifle of those collected and test fired which could have fired the fatal bullets. Given the small number of weapons seized (64), this has little, if any evidential value in and of itself. The Eyre rifle had mistakenly been classified by Dr Nelson as a possible murder weapon but was subsequently discounted because it had five lands and grooves, not six as originally thought.

The various reports referred to in the Summary of Findings in the Review⁷ to different degrees support the proposition that the Thomas rifle could have been the murder weapon. The highest this is put is "highly probable" from the Peter Prescott report to the Royal Commission of Inquiry and "strong support" from Kevin Walsh, an ESR scientist. Appendix 8 contains the various reports relied on. Given the destruction of the ballistics exhibits as observed in the Review, the opportunity to conduct further forensic examination has been lost.

The Royal Commission of Inquiry found that it had not been proved that the Thomas rifle fired the fatal bullets, but even if it had fired them, there was no evidence putting the rifle in the hands of Arthur Thomas at the time.⁸

Accordingly, the classification of Exhibit 317 as being *consistent with being the murder* weapon is an accurate assessment. It cannot be asserted to have definitely been the firearm that the fatal bullets were fired from. This lack of forensic certainty has relevance when considering the authenticity of Exhibit 350.

⁶ Review document, at page 6, paragraphs 51 and 52.

⁷ Review document, page 7, paragraphs 53 et.seq.

⁸ Report of Royal Commission of Inquiry, page 63, paragraph 237.

Chapter 9 - Wire Collection and Analysis

The 16-gauge wire wrapped about the body of Harvey Crewe is of considerable significance. The metallurgical composition of the wire made it effectively unique to a particular heat, or batch of wire. The expert engaged by the Review Team (Professor Ferguson) concluded that wire from two different heats was attached to Harvey's body. Wire samples taken from the Thomas farm were identified as coming from those same two heats. In other words, two differently constituted lots of wire wrapped around Harvey's body had the same metallurgical composition as two separate lots of wire located on the Thomas farm, creating a double match.

On the basis of Professor Ferguson's conclusions, which support in the main those of the Police expert called in both trials (Harry Todd), a link is established with the Thomas farm by virtue of the wire evidence. The Review conclusions on this issue are substantiated.

Chapter 10 - The Axle (Police Exhibit 293)

This exhibit has been retained by the Police. It is clear from the available material that the axle had, at one point, been attached as a weight to Harvey Crewe's body, but had come free in the process of trying to get his body into the cradle during the body recovery phase. The findings by the Review Team in relation to the axle are supported by the available evidence.

The axle had, at some point, been attached to the two stub axles located on a tip at the Thomas property by Detective Johnston on 20 October 1970. This provides a further physical forensic link to the Thomas property.

The finding of the axle occurred on 16 September 1970, with the finding of the stub axles happening a little over a month later at the Thomas property. Given the axle had last been in the possession of the person who disposed of Harvey's body (presumably the killer, but possibly another person), the location where the axle stubs were found linked that person to that location. Whilst there have been various criticisms relating to the origin of the axle including whether it was actually on the Thomas property in 1970, the simple fact is that the axle and the stub axles match. The axle is consistent with having been removed from Allan Thomas' trailer and the stub axles and the axle being left at that property (together with other unused items from the re-built trailer) some time before 1970.

If in fact the axle had been removed from the Thomas property some time prior to 17 June 1970, it is all the more remarkable that a person unrelated to that property chose it as a weighting device for Harvey's body, when the stub axles are on the Thomas farm.

The finding of the stub axles was an important forensic link to the Thomas farm. The axle is undoubtedly authentic. That means the matching stub axles are also authentic as they were definitely attached to the axle at some point and are therefore unique. The Review findings are appropriate in my view.

Chapter 11 - Brass .22 Cartridge Case (Police Exhibit 350)

This is certainly the most controversial police exhibit in this case. However, matters have refined significantly over the years such that it is accepted in the Review that Exhibit 350 could not have contained either of the fatal bullets which had the number 8 embossed on the base. It has never been challenged (nor could it be) that the bullet fired from Exhibit 350 had been fired by the Thomas rifle (Exhibit 317), as this was categorically proved once it had been tested.

Accordingly, Exhibit 350 definitely came from the Thomas rifle, but definitely did not contain either of the bullets that killed the Crewes. This means either:

- The shell casing was ejected from the Thomas rifle on the night of 17 June 1970 at the Crewe property but was not ejected after having fired a fatal shot; or
- The cartridge case was planted in the garden.

The question is therefore: Was Exhibit 350 a legitimate exhibit or fabricated evidence?

The Review identifies the issues correctly, but a definitive finding is not made. The Review accepts Exhibit 350 may represent fabricated evidence, but does not consider fabrication has been established with the necessary degree of certainty. In this regard, the review findings effectively mirror those of the Solicitor-General, Paul Neazor QC who provided an opinion to the Police in December 1981 about whether there was sufficient evidence to prosecute Bruce Hutton⁹.

The reasons for not making a definitive finding, recorded at paragraph 79 of the Review are valid points. However, notwithstanding the points raised, in my view the available material, when evaluated, leads to a clear finding of fabrication. The proposition that Exhibit 350 is a legitimate piece of evidence needs to be considered first.

Was Exhibit 350 left at the scene by the killer?

Because neither fatal bullet was contained in Exhibit 350, its presence in the garden would either involve a shot being fired at the Crewe farm (accidentally or deliberately), in addition to the two shots which killed the Crewes, or the spent cartridge case already being in the weapon and ejected to make way for a live round as the killer walked towards the house. An additional shot fired at the Crewe farm seems highly unlikely, despite Julie Priest's evidence of hearing three gunshots on the evening of 17 June 1970 sometime after 8:30pm. These shots could have been hunters or rabbiters if her evidence is accurate concerning the date. At least one of the shots would have been from inside the Crewe house (the shot that killed Jeannette), so it may well have been less audible or at least sounded different to the others.

⁹ See pages 20-22 for a fuller discussion on the Solicitor-General's report.

There is no other evidence of a third bullet possibly being fired and certainly no finding of a third bullet anywhere on the property. If it were an accidental discharge, it could not be the first shot as this would have alerted the Crewes to something being amiss. If Harvey was killed with the first shot, there could have been a second (accidental) discharge (if the offender was outside) before the murderer entered the house and despatched Jeannette with a third shot. That seems a highly unlikely scenario at best and there is no evidence apart from that of Julie Priest to substantiate this theory.

The other scenario is that the gun had the empty cartridge (Exhibit 350) in the chamber and it was ejected when the killer racked the gun to put a live round into the barrel. This would demonstrate a lack of preparedness on behalf of the killer and also a lack of forensic awareness, something which appears to have been otherwise evident given no cartridge case which could have contained a fatal bullet has been found. Equally, no identifiable fingerprints or other forensic evidence has been located.

Whilst this scenario is possible, the killer brought the murder weapon to the property. This means there must have been time prior to arriving at the property or even in a vehicle, once there to ensure the weapon was loaded. The firearm needed to be ready to use and it does not seem logical for the killer to leave it until walking up the path in the dark to load the gun. Accordingly, this alternative option also seems unlikely.

On either scenario, Exhibit 350 had been ejected into the garden and was there to be seen. Whilst it is accepted that a .22 cartridge case could well be difficult to see, even if it is being looked for, it is hard to see how such an item deposited on the surface of the soil could have been missed by anyone who searched the garden, even without using a sieve.

It is also difficult to comprehend such a vital piece of evidence simply sitting in the garden unseen and unidentified for over 4 months. Once Jeannette's body had been recovered on 16 August 1970 it was known a .22 bullet had killed her, yet Exhibit 350 was not discovered until 27 October 1970. The case for it being an authentic but undiscovered piece of evidence is not strong, particularly against the background of how it could have gotten into the garden in the first place. Whilst it is possible it could have been overlooked, taking into account the scene and exhibit failings of the inquiry that have been identified, that is most unlikely in my view. Other factors also militate against it being overlooked.

It is of note that in both criminal trials, Exhibit 350 was put forward as the cartridge case which contained the bullet that killed Harvey Crewe. This proposition was clearly wrong.

Exhibit 350 was pivotal in the case against Arthur Thomas. Whilst the linking of the axle and the wire to the Thomas farm was significant, there was no definitive forensic evidence that the Thomas rifle fired the fatal bullets. Exhibit 350 not only linked the Thomas rifle with the fatal bullets, but also placed that rifle at the scene of the murders and inferentially, in the hands of its owner.

For Exhibit 350 to be a legitimate piece of evidence, there had to exist the coincidence of the killer racking the gun on the way up the path and the shell casing not being discovered despite searches being conducted. The proposition that these two events, each unlikely in itself, combined so that Exhibit 350 was in the garden from 17 June 1970 but not found, in my view is implausible.

Was Exhibit 350 planted?

The finding of the Royal Commission of Inquiry was that Exhibit 350 was planted evidence and that Detective Inspector Hutton and Detective Johnston (then deceased) were responsible. Notwithstanding that finding, the Review Team has considered the matter afresh, as have I.

In my view, the evidence establishes the cartridge case was fabricated evidence (ie. planted in the garden). The following factors are relevant to that assessment, considering both the physical evidence and the circumstances that prevailed:

- Len Demler had been the prime suspect virtually since the Crewes had been found to be missing on 22 June 1970. However, the link between the axle and the Thomas farm and the wire and the Thomas farm, led directly away from Mr Demler. Also, it had not been possible for the investigation team to put a .22 rifle into Len Demler's hands. Therefore, despite the intense "gut feeling" that Mr Demler was responsible, the forensic evidence was pointing away from him and no murder weapon could be associated with him.
- Having focused on Mr Demler for so long, the turnaround to the Thomas farm (and therefore Arthur Thomas) was abrupt and forensically compelling. It was no longer possible to contend that Len Demler was the offender unless it could be shown that he could have had access to the Thomas farm to obtain wire, the axle and possibly the use of the rifle. That simply could not sensibly be done.
- Arthur Thomas was a viable suspect because there was a possible motive attributable
 to him in relation to a perceived infatuation with Jeannette Crewe. Whilst this was
 described as "somewhat slender evidence" of motive by the Court of Appeal in the
 appeal judgment from the first trial, it provided a romantic link which could be
 developed into a motive (and was).
- There was evidence (incorrectly attributed) that Arthur Thomas had said, when interviewed by Detective Sergeant Hughes, that he had worked on the Crewe farm for a contractor when Harvey and Jeannette Crewe were resident there. This was not in fact the case as Arthur Thomas had only worked on the property before the Crewes moved onto it. Whilst this was clarified in a subsequent interview of Arthur Thomas by Police, the evidence of the Hughes interview was still relied on by the Crown. One of the curiosities of the trials was that Detective Sergeant Hughes was not really challenged on this issue, nor was there evidence adduced by the prosecution or defence from the contractor to confirm the dates Arthur Thomas worked on the Crewe farm.

- There was substantial pressure on Detective Inspector Hutton to make an arrest and secure a conviction. Two senior detectives had been brought in to review the investigation and it had been over four months since the discovery of the murder scene. Without something like Exhibit 350, there would have been insufficient evidence to charge Arthur Thomas and therefore insufficient evidence to have obtained a conviction.
- The Thomas rifle could not be forensically shown to definitely be the murder weapon. Exhibit 350 provided that link because Exhibit 350 definitely came from the Thomas rifle. That meant it established the presence of that rifle on the Crewe property and confirmed it as the murder weapon given it could well have fired the fatal bullets.
- Exhibit 350 could not have contained either of the fatal bullets. No cartridge case that had contained a fatal bullet was located on the property. It is unusual in the extreme that a cartridge case from the supposed murder weapon is located at the scene of the murders, but did not contain a fatal bullet.
- The decision by Detective Inspector Hutton to dispose of Exhibit 350 and other ballistics exhibits so soon after the result of the appeal from the second trial and against the background referred to earlier in this report, must be seen as suspicious. It does not appear that Detective Inspector Hutton consulted with any more senior police officers before taking this irreversible action. The surrounding circumstances involving other larger exhibits being retained and the controversial ballistics exhibits being disposed of, is disquieting. The stated reason for destroying the exhibits is disingenuous.
- The scenarios as to how the shell casing could legitimately be in the garden, lack credence. It is unlikely the killer would load the gun as he was walking up the path knowing that a cartridge case would be ejected into the garden or onto the lawn which would link the rifle to the scene. If part of the reason for disposing of the bodies was an attempt to take away any forensic link in the form of the bullets, leaving a cartridge case does not make any sense.

Failure by Police to have located cartridge case on earlier search of garden

• Whilst the Royal Commission of Inquiry came to the conclusion that the garden where Exhibit 350 was located had been sieve searched, that finding is not definitive. Four police officers and the farm manager gave evidence at the Royal Commission of Inquiry that the garden had been cleared and searched by Police twice before the third attempt on 27 October 1970, but not sieve searched. A search had been conducted on 18 August 1970 specifically for shell casings after Jeannette Crewe's body had been recovered on 16 August 1970. If that particular garden had not been sieve searched, it had been physically examined twice including having the plants removed.

- There was opportunity for the Thomas rifle to have been used to create Exhibit 350. The rifle was seized for a second time on 20 October 1970. When the Thomas rifle had been in the possession of the police on the first occasion, the test fired bullets all came from copper-plated shells. Accordingly, Exhibit 350 could not have been scavenged from those. It had to be created and there was opportunity to do this. Where Exhibit 350 may have come from is unknown but it could have come from an existing exhibit or been sourced elsewhere.
- Arthur Thomas stated that during his interview with Detective Hutton on 25 October 1970 he (Thomas) saw his rifle with a packet of ammunition attached to the trigger guard in Hutton's office. That, together with the "held Johnston" reference on the exhibit list indicates that the rifle was not kept secure and could have been taken out of the police station and fired so Exhibit 350 came into being.

These factors combine to establish a compelling case that Exhibit 350 was fabricated evidence. The Review accepts that Exhibit 350 could not be used in a prosecution for the murders because it could not survive a challenge to its admissibility under section 30 of the Evidence Act 2006. Whilst that acceptance is appropriate, in my view, an inference could be drawn that it was fabricated evidence to the criminal standard of beyond reasonable doubt. This assessment has implications which are discussed in that part of the report relating to Chapter 14 of the Review.

One qualification that must be recorded is that in the almost four months that Len Demler was the prime suspect, there is no suggestion that there was evidence fabricated in relation to him. It would have been a relatively simple thing for a Police officer, if minded to do so, to have given false evidence that Mr Demler had made a verbal admission, sufficient to implicate him in the homicides. It was apparent from Detective Inspector Hutton's conduct in having Mr Demler identify both bodies for example, that he was looking to extract an admission from him by shock tactics. However, no impropriety in the sense of any falsification of evidence has been asserted against any Police officer as far as Mr Demler is concerned, yet within a couple of weeks of Arthur Thomas becoming the prime suspect, a substantive fabrication of evidence occurred.

The difference may well be that the fabrication against Arthur Thomas was required to break an impasse that had developed as a result of the physical evidence pointing towards the Thomas farm. For almost four months, the head of the inquiry had openly pursued Lenard Demler as the culprit and now it appeared he had been wrong in his assessment of the case. Detective Inspector Hutton needed a positive outcome to the investigation. Without a definite link to Arthur Thomas' rifle (and thereby Thomas himself), that would not happen. The pressure on Detective Inspector Hutton must have been intense.

Accordingly, my assessment of Exhibit 350 is that it represents fabricated evidence and such could be proved to the criminal standard.

Chapter 12 - Persons of Interest

Arthur Thomas

The Review identifies that when the focus of the investigation became the Thomas farm, insufficient priority was given to persons other than Arthur Thomas who had access to that property and items which may have been used in the homicides which originated from it. I agree with that finding. Regrettably it appears that the attitude behind the fixation of Police interest in Lenard Demler transferred to Arthur Thomas with equal, if not greater ferocity. It does not appear that there was any real inquiry by the 1970 investigation team into any persons other than Arthur Thomas who may have had access to the farm and thereby the wire, the axle and Arthur's Browning .22 rifle (if that was in fact the murder weapon).

An earlier interest by Arthur Thomas in "courting" Jeannette Crewe, which preceded his own wedding and indeed the homicides by a number of years, was elevated into an "infatuation" motive. A comment attributed to Arthur Thomas about the brush and comb set (namely that it may still be wrapped up for all he knew), was utilised as a possible admission that he had seen the item in the spare bedroom closet when looking through the house for coverings to wrap the bodies in. Notwithstanding his alibi for the night of 17 June 1970, he was convicted of the murders in two separate trials. Those verdicts are necessarily perverse given the pivotal effect Exhibit 350 must have had in the jury deliberations.

The Review finding that the claims by inmates that Arthur Thomas made admissions whilst in Prison should be disregarded is undoubtedly right.

As the Review concludes, the investigation phase relating to access to the forensic items linked to the farm should have been undertaken. This would have eliminated certain persons and identified others who may have had access to the relevant physical exhibits.

Lenard Demler

Mr Demler was the prime suspect for much of the initial investigation period and was the subject of unrelenting attention and suspicion by the police. There have been numerous publications over the years about Mr Demler and his supposed involvement in the homicides which have much of their genesis in the way that he acted both before and after the bodies were discovered.

The apparent motive for Mr Demler was meant to be dis-affection for his daughter as a result of his late wife's Will being perceived as more beneficial to her than him, notwithstanding that he retained a life interest in the property and would have likely carried on his normal life on the farm.

The actions of Mr Demler after he found his grand-daughter on 22 June 1970 have been the subject of much debate. The fact that he found Rochelle in a distressed and

debilitated state in a scene of apparent carnage and then left her to go back to his farm to have discussions with a stock agent before returning with Owen Priest, is quite remarkable. How Mr Demler processed the scene that he came upon is only known to him. His actions may have stemmed from an inability to grasp the enormity of what may have happened. The Police obviously considered that his actions that day leaving Rochelle alone at the farmhouse and his apparent failure to go to the Crewe property between the evening of Tuesday 16 June 1970 (when he had dinner there) until the Monday afternoon, were highly suspicious and indicative of guilt.

Mr Demler's conduct after 22 June 1970 has also been seriously criticised, including his failure to take part in any searches for the bodies. The Police had made it plain to Mr Demler that they were looking at him as a suspect and this may have been an underlying factor in him not wishing to assist the Police in any search.

It also appears that Mr Demler did have some unusual personal characteristics including how he would laugh at inappropriate times, something which apparently earned him the nickname "Merry" at school. Whatever criticism there may be about Lenard Demler's conduct, the physical evidence points away from him as the culprit. There is no credible evidence that he had possession of or access to a potential murder weapon in the form of a .22 calibre rifle or that he accessed the wire or axle from the Thomas farm. There was also no apparent attempt by Mr Demler to cast suspicion on Arthur Thomas, something a person trying to shift blame off themselves might well have done.

I endorse the Review findings that neither Lenard Demler nor Norma Eastman can be implicated in the murders or subsequent body disposal. The allegations against Mr Demler appear fuelled in part by a similar approach being taken by commentators to that initially taken by the investigation team in 1970. Any allegations against Norma Eastman are baseless.

Chapter 13 – New Information and Homicide Theories

No comment is required.

Chapter 14 – Corruption Allegations

The Review Team has reached the conclusion, essentially adopting the opinion of the (then) Solicitor-General Paul Neazor QC in December 1981, that no prosecution could properly have been taken against Bruce Hutton (or Len Johnston). The Police were undoubtedly right to obtain legal advice from the Solicitor-General, but I agree with the Review findings that a full investigation should have been initiated after the Royal Commission of Inquiry findings were released.

The failure by the Police to respond to the Royal Commission of Inquiry findings of corruption by instigating a full investigation is a major deficiency in how the case was handled. It would occur now as a matter of course. The failure to investigate meant the

material available to be considered by the Solicitor-General was not as comprehensive as it could or should have been.

A finding beyond reasonable doubt that Exhibit 350 represented fabricated evidence would be essential to a potential prosecution. For the reasons already outlined, in my view this could be achieved. The Review accepts that if the exhibit was fabricated, it would have to be a police officer who was responsible. This must be so. That then places the focus on which members of the Police could be held to be accountable. The Royal Commission of Inquiry identified Detective Inspector Hutton and Detective Johnston. Both men are now deceased, Mr Johnston having passed away in 1978 and Mr Hutton in 2013.

Whoever planted Exhibit 350 attempted to pervert the course of justice and in fact succeeded. The shell casing was a key piece of evidence in both trials which resulted in the conviction of Arthur Thomas on two separate occasions. Accordingly, once the falsity of Exhibit 350 is established, the focus turns to who was responsible.

The opinion of the Solicitor-General refers to the evidence of Owen and Julie Priest that on a date after 30 September 1970 (when Mr Priest came out of hospital after an operation), they heard two gunshots from the Crewe property and saw two men around the back door area. A little time later the Priests encountered Detective Inspector Hutton driving a vehicle with another (unidentified) man (possibly Detective Johnston). The Priests spoke to Detective Inspector Hutton and had a discussion with him about firing shots. Whilst what was said was disputed, the fact of an encounter between the Priests and Mr Hutton was not disputed although the date of it was.

Going back to a crime scene to fabricate evidence and drawing attention by firing shots to generate the fabricated evidence is hardly the work of someone wanting to do something covert. There would be any number of places that a shot could be fired and the cartridge case obtained without anyone knowing. That said, the evidence of Mr and Mrs Priest gives rise to an inference that Detective Inspector Hutton and the other person with him had the opportunity to both create and plant the cartridge case.

Opinion of Solicitor-General Paul Neazor QC (Appendix 16)

The Solicitor-General's opinion was provided to the Commissioner in a letter dated 21 December 1981. It covered three issues, namely:

- Whether Exhibit 350 had been planted in the Crewe garden by Detective Inspector Hutton and Detective Johnston;
- Whether Exhibit 343 (a cartridge case) had been substituted by a member of Police to the knowledge of Detective Inspector Hutton; and
- Whether at some stage as a result, perjured evidence had been given by Police officers, including Detective Inspector Hutton.

The opinion proceeded on the following basis:

- Exhibit 350 did not contain either of the fatal bullets.
- There was a period (20-27 October 1970) where cartridges obtained from the Thomas farm (Exhibit 318) and the rifle (Exhibit 317) were in the possession of the Police at the same time.
- Attention had seriously turned to Arthur Thomas after the Police conference on 2 October 1970.

There were certain factual findings made in the opinion that militated against any prosecution being instigated. The issues raised and findings are as follows:

Can it be shown by direct evidence, with or without supporting circumstantial evidence, that the shell case was not or could not have been in the garden where it was found before, say, 20 October 1970?

The opinion concluded it could not be proved to the requisite criminal standard that the shell case could not have been in the garden on 18 August 1970 (the date of the last prior search). This undermined the ability in any prospective prosecution to establish that evidence had in fact been fabricated, ie. that Exhibit 350 had been planted. This finding was essentially based on a review of the material which related to sieve searching (or not) of the Crewe garden.¹⁰

Can it be shown that Messrs Hutton or Johnston had access to the Thomas rifle and suitable cartridges at the relevant time?

The opinion concluded that the cartridge shell and the rifle could have been in the hands of one or other of Messrs Hutton and/or Johnston after 20 October 1970.

What is the strength of the evidence that Messrs Hutton or Johnston or both planted the cartridge?

The evidence of Mr and Mrs Priest given during the Royal Commission of Inquiry hearing was referred to at length in the opinion.¹¹ The conclusion was reached that the available evidence (and in light of Detective Inspector Hutton's denials at the Commission of Inquiry), was such that the standard required for a prosecution was not met.

In terms of the three questions posed in the opinion concerning Exhibit 350, for the reasons already articulated, it is my view that on the material now available that:

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¹⁰ Appendix 16, at paragraphs 16-24.

¹¹ Appendix 16, at paragraphs 29-30.

- The evidence is sufficient to establish that Exhibit 350 was fabricated evidence. The necessary inference could be drawn by the ultimate fact-finder (whether that be a Judge or a jury), that it was in fact planted to a standard of beyond reasonable doubt.
- Access by Messrs Hutton or Johnston to the rifle and cartridges is also capable of proof to the requisite standard. This is accepted in the opinion.
- The evidence of actual planting by either Messrs Hutton (or Johnston) is less substantive and relies significantly on the evidence provided by Mr and Mrs Priest. However, it is clear that Detective Inspector Hutton had possession of the rifle and ammunition (if the statement from Arthur Thomas of 25 October 1970 is accepted). Equally, if Mr and Mrs Priest's evidence is accepted in terms of seeing Detective Inspector Hutton in a time period when he was in possession of the rifle and cartridges together, that would squarely implicate him.

The other actions of Detective Inspector Hutton referred to earlier in this report in relation to Chapter 11 issues concerning Exhibit 350 also need to be taken into account. They are not the subject of specific comment in the opinion. That Detective Inspector Hutton was under significant pressure to make an arrest is unquestionable. He had focussed on the wrong person since the beginning of the inquiry and had tunnel vision about the case. Exhibit 350 was necessary to arrest and convict Arthur Thomas. Detective Inspector Hutton had the motive, means and opportunity to plant the shell casing.

In my view, there was sufficient evidence for a prosecution to have been taken against Bruce Hutton based on the available material. As with any criminal prosecution, whether the evidence would be sufficient, once tested, to satisfy the criminal standard would be a matter for the ultimate fact finder.

The position is different in relation to Detective Johnston. The evidence against Detective Johnston is less substantive and a number of factors relating to Bruce Hutton do not apply to him. Accordingly, I consider there was insufficient evidence for a prosecution of Detective Johnston to have been taken.

The Solicitor-General's advice on these issues was sought by the Commissioner in 1981. His opinion was then relied upon by the Police. In obtaining the Solicitor-General's advice, the Police acted responsibly by seeking the opinion of the head of Crown Law. The Review Team's decision has been to adopt the Solicitor-General's opinion in its entirety as it is formal legal advice on the matters under consideration. As part of my role, I have considered the matter afresh and reached different conclusions on certain issues. My conclusions in relation to Exhibit 350 differ from those of the Solicitor-General expressed in 1981 and therefore the Review finding. Largely as a result of my conclusions on Exhibit 350, my view on the issue of whether any prosecution could have been taken against Bruce Hutton is also different.

Insofar as the balance of the Solicitor General's opinion is concerned relating to the issues surrounding Exhibit 343 raised by the Royal Commission, that opinion remains accurate in

my view. There is an inherent uncertainty about the factual basis for any possible prosecution and key witnesses are no longer alive.

Chapter 15 - Investigation Management

No comment is required.

TERMS OF REFERENCE – CONCLUSIONS ON CRIMINAL CHARGES

The Review findings comprise conclusions about the identification of persons responsible for the double murders and also potential breaches of the Crimes Act 1961 concerning crimes affecting the administration of law and justice.

Double murders

It is acknowledged that the Review has not uncovered any additional material such that any person, whether a previous suspect or not, can be identified as being responsible for the homicides. For the reasons articulated in the Review, there is no ability now to advance the matter any further. As previously stated, further investigations that could reasonably be carried out have now been conducted and there is no ability to carry out any further substantive enquiries.

Absent an admission of guilt, or as yet unknown evidence being obtained that seriously implicated someone, the murders will remain unsolved. The destruction of key exhibits in July 1973 has prevented any additional analysis of physical exhibits using advanced technology. This in turn has hindered the ability of the Review Team to make any substantive advances.

Actual/Potential breaches of Part 6

For the reasons outlined in my report, in my view there would have been sufficient evidence to have initiated a prosecution against Detective Inspector Hutton. Looked at afresh in the context of the homicide investigation, the evidence is, in my view, sufficient to establish a case to answer and to secure a conviction, if the fact finder drew the necessary inferences. That said, no prosecution can be brought given that Mr Hutton is deceased.

A final consideration is whether it would have been possible for Bruce Hutton to have received a fair trial, had a prosecution been taken in the early 1980s. The Royal Commission's findings against him were damning and widely publicised. A stay of proceedings based on him not being able to receive a fair trial (by jury) would undoubtedly have been sought. Such an application would have had substantial merit as it is difficult to see how any jury could have been objective and otherwise unaffected by the Royal Commission's findings and attendant publicity.

Conclusion

The Review was initiated as a result of Rochelle Crewe's approach to the Commissioner of Police in 2010. Rochelle is the living victim of the homicides and she is entitled to have such closure as can be achieved in relation to events that occurred over 44 years ago. Whilst the review process has had to be conducted subject to the limitations already referred to, the principal purpose of it has been to address issues raised by Rochelle. In my view, the Review Team has been committed to achieving that goal and has dedicated countless hours to the review process.

I also record that I have been given every assistance by the Review Team, each member of which has been unfailingly co-operative. I have been provided with whatever information or material I have requested which has facilitated my role significantly. The combined knowledge and experience of the personnel involved has been extremely valuable from my perspective.

Dated at Auckland this 30th day of July 2014

David PH Jones QC