Review into Operation Abelard II by the Crown Prosecution Service and the Metropolitan Police Service

May 2012

1. Introduction

1.1 In March, 2011, three men were acquitted on a charge of murder, following a decision by the Crown to offer no evidence against them. This decision was reached following many months of pre trial hearings. In the year preceding the final acquittals, the Crown had already offered no evidence in respect of 2 other defendants, one of whom had been charged with murder and the second with perverting the course of justice.

1.2 The murder trial related to that of Daniel Morgan, a man who had been killed twenty-four years earlier, in March, 1987. The factors and circumstances which gave rise to the decision to withdraw the prosecution have their origins in a multiplicity and complexity of criminal investigations which have spanned over two decades.

1.3 Six criminal investigations have focused on Daniel Morgan's murder. Operation Abelard II was the name given to the most recent investigation into the murder of Daniel Morgan, and which led to the charges in this case being brought. Additionally a number of separate police enquiries developed which were linked to his death. These lengthy police enquiries involved Hampshire Constabulary, the Police Complaints Authority and the MPS Directorate of Professional Standards (DPS).

1.4 In the last twenty years over sixty people have been arrested, (some individuals more than once), twelve were for murder. Three of these people were charged in 1989 before their case was also withdrawn. A chronology of the relevant investigations, reviews and arrests are shown at Appendix A.

1.5 It is against this background and following the unsuccessful prosecution that this Review was commissioned in order to allow police and prosecutors to identify the precise reasons which culminated in the prosecution offering no evidence in this case. The Terms of Reference apply only in relation to Operation Abelard II and are set out in paragraph 1.11 below.

1.6 Having identified the issues that led to the Crown offering no evidence in this case, the additional purpose of this Review was to identify any good practice and learning points that police officers and prosecutors could benefit from in the future. The process of a post case evaluation is recognised as good practice, particularly in complex prosecutions.

1.7 As will be clear from the Terms of Reference below, the purpose of commissioning this Review was not to investigate allegations of corruption, nor

was it intended to serve the purpose of an investigation for police disciplinary purposes.

1.8 The joint Review was commissioned by the Crown Prosecution Service (CPS) and Metropolitan Police Service (MPS). Two factors directly contributed to the Crown's difficulties in prosecuting the case. These related to the unreliability of critical witnesses, (particularly non-adherence to the handling protocols of one of those witnesses), together with difficulties in meeting the demands of disclosure. Whilst both these factors were recognised by police and prosecutors as the pre-trial hearings progressed, there are, nevertheless, important lessons to be drawn from the proceedings and which are considered pertinent for any future investigations and prosecutions.

1.9 This Review has thus examined the two central matters, namely; the management and use of witnesses under the Serious Organised Crime and Police Act, 2005 (SOCPA) and the Disclosure of Unused Material. During the review two further areas for improvement were identified; namely the archiving of police material and the control and direction of the investigation and prosecution.

1.10 Terms of Reference were established by Chief Crown Prosecutor, CPS London, Alison Saunders and Assistant Commissioner Cressida Dick, MPS.

1.11 **Terms of Reference:**

- Examine the methodology, decisions and tactics used by the prosecution team (police and prosecutors) to deal with the witnesses who were given agreements pursuant to the SOCPA legislation.

- Examine the methodology, decisions and tactics adopted by the prosecution team (police and prosecutors) in order to discharge their disclosure obligations, (to include any omissions).

- Consider any other significant key areas which may emerge during the course of the review

- To make recommendations in relation to any lessons learnt or good practice which emerge from the review.

2. Methodology

2.1 A range of opinions and concerns were expressed during the Review and those matters, together with the significant number of decisions and Judge's Rulings made during the course of the prosecution have been noted.

2.2 Commander Simon Foy (MPS) and Deputy Chief Crown Prosecutor Jenny Hopkins (CPS) interviewed the following key members of the Abelard II prosecution team:

2.3 **Lawyers**

	Interview date
Stuart Sampson - Reviewing Lawyer - CPS	14.06.2011
Nicholas Hilliard QC - Lead Counsel	22.06.2011
Jonathan Rees QC - Junior Counsel	12.10.2011
Heather Stangoe - Disclosure Counsel	26.07.2011

2.4 **MPS /SOCA**

David Cook - Senior Investigating Officer (SIO)	11.07.2011
DCI Noel Beswick - Deputy SIO	07.07.2011
DI Doug Clark - SOCPA liaison officer for investigation team	10.10.2011
DS Gary Dalby - Case Officer	05.07.2011
DI Tony Moore - De-brief Manager	14.07.2011
DI Bernard Greaney – Directorate of Professional Standards	03.08.2011
Former Assistant Commissioner John Yates	22.12.2011

3. Background

3.1 Daniel Morgan, a private investigator, was murdered on the 10th March 1987. He had been struck several times with an axe whilst in the car park of the Golden Lion public house, Sydenham Road, Lewisham. The motivation for the murder was never sufficiently established, thus theory and speculation developed. Nevertheless, what is clear is that Daniel Morgan was a business partner with William Jonathan Rees and both worked within their company named Southern Investigations.

3.2 Operation Abelard II commenced in March 2006. It brought together all the material from the previous investigations and sought to secure evidence which could identify and successfully prosecute any person. The volume of material that had already been gathered was extensive and the following years would create even more. All of the material was subsequently required to be considered for disclosure.

3.3 By 2008 a sufficiency of evidence existed to charge five men, namely; William Jonathan Rees, James 'Jimmy' Cook, and brothers Garry and Glenn Vian with the murder of Daniel Morgan. The fifth, Sidney Fillery, (a serving police officer in 1987 and an associate of William Jonathan Rees) was charged with perverting the course of justice, viz interfering with the investigation into the murder of Daniel Morgan.

3.4 The CPS decision to charge followed careful consideration of all the evidence. It is pertinent to note the observation of the Judge, Mr Justice Maddison, in March 2011 when he stated:-

"…there is no doubt, it seems to me, that given the evidence available to the police before these proceedings were instituted the police did have ample grounds to justify the arrest and the prosecution of the defendants…"

3.5 The prosecution relied on many witnesses but a number were crucial to the prosecution. The Crown's case was clear with regard to the alleged individual culpability of the five defendants, and whilst the names cannot be fairly ascribed here, in light of the subsequent acquittals, evidence was to be produced which the Crown considered demonstrated;

- who actually killed Daniel Morgan,
- who drove the get-away car,
- who provided assistance on the night of and subsequently after the murder,
- who paid and arranged for the murder

3.6 Among the witnesses, the Abelard II investigation team secured three who were debriefed under the provisions of SOCPA. It is a fundamental requirement when using assisting offenders that the prosecuting authorities are satisfied with the integrity of those witnesses.

3.7 It was within this domain, together with that of disclosure issues, that the Crown's case became undermined.

3.8 The main reason for the withdrawal of the prosecution was the Crown's inability to fully satisfy their disclosure obligations. However at this time there were also issues with the reliability of key prosecution witnesses. The disclosure difficulties were the dominant factor and were the more impactive. These two issues are reported on in more detail below.

4. Disclosure

4.1 The Criminal Procedure and Investigations Act 1996 (CPIA), as amended by the Criminal Justice Act 2003, requires the prosecution to disclose all material that might reasonably be considered capable of undermining the prosecution case against the accused or of assisting the case for the accused.

4.2 Under the Code of Practice, that accompanies the CPIA, material is defined as 'relevant' if it appears to the investigator, officer in charge of an investigation or the disclosure officer to have *'…some bearing on any offence under investigation, or any person being investigated, or on the surrounding circumstances unless it is incapable of having any impact on the case'*

4.3 The CPIA imposes statutory duties on the police and prosecutors in relation to the handling of unused material and in particular the obtaining and retaining of material, its inspection and disclosure. Although this case pre-dated the implementation of the CPIA, the view was taken that the common law rules (which preceded the CPIA) were, for all practical purposes, in line with the CPIA. This view was endorsed by Mr. Justice Maddison at a hearing on 17th July 2009. It should be noted that under the common law there was no requirement for the defendants to provide the Prosecution with Defence Case Statements.

4.4 A pertinent paragraph within the Code for Crown Prosecutors states:

"*Prosecutors must make sure that they do not allow a prosecution to start or continue where to do so would be seen by the court as oppressive or unfair so as to amount to an abuse of the process of the court.*" (Paragraph 3.5)

4.5 A trial will only be a fair one if the prosecution are able to discharge their disclosure obligations in relation to the retention, recording and revelation of material. It is within this legal framework that the police team faced a considerable challenge.

4.6 From the outset it was recognised that not only had a vast amount of material accumulated over 23 years, (estimated at 750,000 pages) but it was material that had been gathered by different investigation teams within the Metropolitan Police, other agencies such as the Forensic Laboratories, Crown Prosecution Service and Police Complaints Commission and police forces, national enforcement and intelligence agencies (Hampshire Constabulary, Regional Crime Squad, National Criminal Intelligence Service). Some of the material was only available in physical documents - having been collated before the capability to store such material electronically and was retained at a variety of locations.

4.7 An appreciation of the scale and complexity of the disclosure issues in this case is essential to understanding why the prosecution offered no evidence. At Appendices C, D and E are three key rulings of Mr Justice Maddison, in which the issues of disclosure are addressed in considerable detail. The dates of the rulings are; December 2009, March 2010 and March 2011. The first two rulings (Appendices C and D) relate to applications to extend the custody time limits (CTLs) of the defendants. The first ruling (C) being made during the course of an extensive voire dire. It was alleged by the defence that the prosecution had failed in their disclosure obligations, and therefore they had not acted with due diligence and expedition and thus the defendants should be released on bail. The nature of this case, and in particular the involvement of SOCPA witnesses, led to a requirement for specific and detailed disclosure relating to those witnesses. In seeking to meet those obligations further and more detailed material was necessary to be discovered and disclosed.

4.8 It should be noted that Appendix C is an edited extract of Mr Justice Maddison's ruling of 18th December, 2009. In addition to explaining the background and complexity of the case the ruling sets out fifteen separate matters in which the Crown had, so claimed the Defence, failed in their disclosure obligations. The ruling articulates the Judge's findings in respect of each of those matters.

4.9 Whilst the reader is directed to Appendix C to fully appreciate the extent and scale of the disclosure arguments, the summary below sets out the fifteen disclosure issues as raised by the defence and the Judge's decision in respect of each of them.

4.10 The referencing relates, firstly, to the page & initial line number of each disclosure argument, followed by the page and initial line reference for the Judges' decision. The reader can go directly to that passage in Appendix C to see fuller detail.

4.11 **Summary of alleged disclosure failings. Ruling of 18th December, 2009. See Appendix C.**

1. Failure to fully disclose a 2006 Metropolitan Police Authority report relating to the Morgan murder. p78, line 24.

1a. *Upheld. Document should have been disclosed. There was no answer for the failure. p91, line 21.*

2. Inappropriate redactions to some transcripts of debriefed SOCPA witnesses. p81, line 18.

2a. *Upheld. The documents were inappropriately redacted. p92 line 11. However by date of this ruling the defence did have the unredacted versions.*

3. Complaint relating to Dr Chesterman's psychiatric report relating to Witness B. Insufficient attention given to contents of the Witness Protection Unit comments. p82, line 3.

3a. *Complaint has little merit, if any at all. Not a complaint about lack of disclosure. p92, line 16.*

4. Complaint relating to the late disclosure of variety of police documents – e.g. reports, notebooks, messages, etc. p82, line 22.

4a. *Full significance of these documents would not have been apparent, until detailed written defence submissions received. Not regarded as a failure to disclose. p93, line 8.*

5. Late disclosure relating to Witness L, specifically that regarding the witnesses' integrity and credibility. p86, line 7.

5a. *Upheld. The defence had a perfectly legitimate point - the material should and could have been disclosed before 5.10.2009. p94, line 6.*

6. Prosecution disclosure counsel informed defence that police were unaware of any psychiatric issues relating to Witness B, between 26th July and 6th September 2006. p86, line 22.

6a. *Upheld. There is no answer to the Defence point made. p94, line 14.*

7. Late and unduly late disclosure of general practitioner records relating to Witness B. p87, line 19.

7a. *Upheld. Judge considered they could and should have been disclosed. p94, line 24.*

8. Failure to provide information of medical records of Witness B, in relation of stroke he had suffered. p88, line 1.

8a. *The point viewed as having no real merit. The request came "late in the day" and was responded to relatively quickly. p95, line 11.*

9. Late discovery and disclosure by police of papers relating to the prosecution of Witness W. p88, line 7.

9a. *Judge concluded that 'first appearances' were deceptive in this matter. Whilst there seemed to have been a clear breakdown in disclosure process, that was not the position. Despite initial extensive searches failing to retrieve the documents they were discovered and disclosed. p95, line 22.*

10. Witnesses present at the Golden Lion public house on night of murder. Defence claim that prosecution failed to supply the relevant details and defence had to instruct private investigators to ascertain details. p89, line 4.

10a. *Judge did not detect any lack of due diligence or expedition. The police made enquiries, traced witnesses and disclosed details to the defence. Not a case where disclosure was held back. p96, line 16.*

11. Non-disclosure of a statement relating to Mr Haslam. p89, line 18.

11a. *Upheld. The circumstances in which the document was discovered indicated a failure in the disclosure process. P97, line 1.*

12. A failure to provide prison records, record of visits and phone call of the defendant Mr Rees. p90, line 8

12a. *Judge's view that there were no material documents of the kind sought, that should be disclosed. p97, line 5.*

13. Defence requests made in October 2009 regarding matters within the statement of Mr Haslam. p90, line 15.

13a. *Whilst acknowledging there was confusion over reference numbers, the Judge upheld the view that there was some failure in the disclosure process. p97, line 14.*

14. Defence complaint concerning method of disclosure of telephone records, between defendant Mr Rees, the deceased and a Paul Goodridge, in which the subscriber details were obscured. p90, line 24.

14a. *The Judge considered that there had been no lack of due diligence of expedition. The defence had detected the problem, informed the prosecution and the remedy was immediately provided to ensure the details were revealed. p98, line 6.*

15. Defence complaint that following service of all graphics on 25th February 2009, they were served with other graphics in December 2009, relating to photographs taken in 2007. p91, line 10.

15a. *These photographs were taken twenty years after the murder. Could neither assist the defence or undermine the prosecution. Considered need not have been disclosed at all. p98, line 15.*

4.12 The above matters illustrate the immense detail that was continually being undertaken during the pre-trial process to address the disclosure issues. It should be noted that the December 2009 ruling followed from an earlier one, heard in April 2009, in which the Common Serjeant of London had concluded that;

"….the prosecution had in fact conducted themselves with due diligence and expedition despite certain failings on their part in relation to disclosure, having regard to the size and complexity of the case".

4.13 Mr Justice Maddison equally concluded that the Crown had acted with due diligence and expedition and ruled that the custody time limits would be extended. The Judge's comments on this matter are shown in full at pages 99 - 107 of Appendix C. In his view the "scale and the complexity" of the case were critical factors in reaching his decision. It is pertinent to set out one part of his observations;

"*on any fair view it seems to me that disclosure has been and continues to be a formidable, daunting exercise. …… The extraordinary nature of the case has required the prosecution to undertake an exercise in disclosure of exceptional if not unprecedented proportions. They have had to consider what documents to disclose relating not only to the most recent investigation, itself of great length and complexity, but relating to all four earlier investigations. They have had to examine documents covering a period of*

more than 20 years. I am told that more than 500,000 pages of material have been examined in this connection". (p102-103).

4.14 Thus, by December 2009, the Crown had twice demonstrated that they were acting with due diligence and expedition and were meeting their disclosure obligations correctly, albeit with some individual failings, but none so great as to affect the case.

4.15 However, at the time of the December 2009 ruling, a further disclosure issue had already arisen but which had not formed part of the submissions relied upon by the Defence in their attempt to secure their clients' release from custody. This was because they had not been informed of the development.

4.16 This new issue related to additional crates of material being discovered which subsequently proved to have a bearing and relevancy to the defendants' case. As will be noted above, Points 5, 6, 7 and 9 also related to the 'late discovery' of material and thus this new matter greatly concerned Mr Justice Maddison.

4.17 In a further ruling by Mr. Justice Maddison, on 3rd March 2010, the Judge sets out what he described as *"a highly complex sequence of events in a case in which frankly nothing seems to be straightforward"*. Whilst the Judge's succinctness and summation of the issues cannot be bettered here and only a reading of his ruling will inform the reader of the full facts, it is necessary to explain some of the detail below. (Appendix D shows the full ruling.)

4.18 In 2007, during the earliest stage of Abelard II, the investigation team learned of possibly relevant material that was located in crates at the offices of the Directorate of Professional Standards (DPS), in Putney. Operation Abelard II officers examined the boxes (believed some 15 or 17 crates) and established that the papers related to a money laundering investigation undertaken by DPS, from 1999, in which two of the current defendants, one of the SOCPA witnesses and three other people were investigated. However, since the 1999 investigation had not proved the money to be illicit proceeds under the Drug Trafficking Act no prosecution was possible.

4.19 The money laundering investigation was already known to the Abelard II investigation team and a full CPS advice file was in their possession. It is clear that at this stage the investigation team had not fully appreciated the significance of this material and a decision was made by the SIO that the material was not relevant. Thus the crates, which in fact never came to the enquiry team's office, were returned by the DPS for storage. With hindsight, this decision has been recognised as incorrect, since the crates contained some material which failed to

be disclosed. Following their return to storage, the crates were not seen again until November 2009.

4.20 By early 2009 it became necessary for further enquiry to be made of Witness W, who had become a significant witness in the case. His evidence was regarded as critical but was strongly disputed by the defence, who claimed Witness W was wholly unreliable. Hence the need to locate any case papers which related to Witness W became pressing.

4.21 In addition to seeking material in respect of Witness W, the investigation team also sought further material relating to Witness A. In an attempt to discover such material a further visit by Abelard II officers was planned of the DPS offices. As a result of this proposed visit the DPS identified eighteen crates which they believed might contain relevant material. This late discovery was on 16th November, 2009, a month prior to the custody time limit argument of 18th December, 2009.

4.22 These newly discovered crates were in fact the very same crates that had been placed in storage in 2007, having been regarded as irrelevant at that time. However, this fact was not immediately appreciated by the investigating officers. Only upon detailed examination of the crates' contents was it appreciated that there was material pertinent to both Witness A and W.

4.23 The significance of this new material was not lost upon the Deputy Senior Investigating officer. He immediately reported the discovery to prosecution disclosure counsel and informed prosecution counsel by email. He wrote a further email to the DPS, seeking an explanation for the late discovery - still unaware that the crates were the ones already 'viewed' some two years earlier.

4.24 Neither the Judge nor defence counsel were made aware of the finding of the 18 crates prior to the custody time limit argument of 18th December, 2009. Whilst the content of the crates had been initially assessed, the significance of the material (namely that some of it met the disclosure test) was not appreciated until March 2010.

4.25 Mr Justice Maddison ruled in March 2010 that these latest revelations were, in his view, "*a sorry tale*". He commented that "*…in essence, and this is the heart of the matter,… the prosecution are only now in the process of disclosing material which is properly disclosable which has been discovered in crates of which they were aware but which they decided not to inspect in the middle of 2007*".

4.26 Aligned to the above discovery was the fact that, coincidentally, additional and relevant disclosable material, relating to Witness W was also recovered from

another DPS premises in Ilford. The defence were informed of the fact of the Ilford discovery and appropriate disclosure was made to them prior to the 18th December 2009 CTL hearing.

4.27 Mr Justice Maddison ruled that the prosecution had demonstrated a lack of due diligence and expedition and accordingly he declined to extend the custody time limits. All the defendants were released on bail. He did however state "*I should like to make it clear that I have no reason to believe that I or the defence counsel were deliberately misled*".

4.28 Two further matters then arose. During January 2011, upon clearing office premises that previously belonged to the DPS in Penrhyn Road, Kingston, papers were recovered that related to Witness A. These papers dealt with Witness A's role as an informant but in another pseudonym. Not only did they show that Witness A had been providing contradictory evidence to that contained within his formal SOCPA debriefing (and thus his credibility was damaged) but until the discovery the investigation team knew nothing of the matter.

4.29 The second matter arose during a voire dire in February 2011. The defence had been provided with copies of relevant emails of the then Assistant Commissioner John Yates. Additionally they had been provided with a copy of the internal DPS report which explained the movement of the eighteen crates. As part of their continuing request for material, the defence sought access to particular documents stored within the eighteen crates and made specific reference to Box numbers. The police team were unable, in respect of four of the boxes, to locate them.

4.30 Whilst one of the four crates contained material which bore no relevance to the trial proceedings, the other three did. They related to the money laundering case previously referred to. It became apparent that there had been a clear oversight in respect of these three crates. Whilst they were already within the police Exhibit's room, they had not been entered in to the police records, nor ever assessed. This was clearly an error. These three crates had gone unnoticed and were overlooked, whilst stored amongst many other crates.

4.31 The third court transcript, that of 11th March, 2011, (see Appendix E) sets out the Crown's final position and explains briefly the 'four crate issue' and the discovery of material at Penrhyn Road.

4.32 These latest developments proved to be the final undoing and the cumulative weight against the Crown's position became untenable. The police determined that it was no longer possible to be sure that they were able to account for all the relevant unused material that had been generated both in the course of

Operation Abelard II and the preceding operations. The effect of this conclusion was that the Crown were no longer able to be confident they could discharge their disclosure obligations and they would have to offer no evidence against the defendants.

4.33 Leading counsel for the Crown, Mr Hilliard QC, explained to the Court, that;

"*the task of investigating and preparing this case has been immense and unrelenting*". Further, he acknowledged, "*..the prosecution accept that we cannot be confident that the defence in this particular case necessarily have all the material to which they are entitled*".

4.34 Mr. Justice Maddison, in recognising the position, made the following observations:

"*I endorse the view that you have expressed, that the recent enquiry in relation to the 18 crates and the recent discovery of the four further crates do give rise to a general sense of uncertainty as to whether the disclosure process in this highly unusual case can in truth ever properly be carried out*".

4.35 He went on to say; "*I think it correct to add that in my view the decision that you have taken is not only principled but it is right*". He said "*In all the years that I have been a judge, and there are many, many of them, I have never come across a case in which there have been so many issues or such complex issues to be resolved before a trial could even get underway*".

4.36 By the time the final disclosure difficulties were revealed, the case had already been significantly weakened by the fact that the three SOCPA prosecution witnesses had been withdrawn from the prosecution case. Those issues are now explained.

5. Management and use of SOCPA witnesses

5.1 There were three witnesses who were the subject of the SOCPA regime, in this case, who were regarded as significant to a successful prosecution. Each had a considerable bearing on the investigation and prosecution. These three witnesses are referred to here by their pseudonyms and are dealt with in the order with which they entered the investigation:

- Witness A
- Witness B

- Witness C

5.2 Each witness raised different issues but for different reasons, all came to be regarded as unreliable witnesses and for whom the prosecution could no longer depend for their veracity in this prosecution. With regard to Witness A their unreliability emerged through the late discovery of material as described at paragraphs 4.21 - 4.35. Further, with Witness B, there were handling irregularities and issues which affected his credibility. Witness C was not subject to any late disclosure issues and in fact Witness C's unreliability arose solely because of the correct approach and detailed enquiry made by Abelard II officers during the pre-trial period. It should be noted two of the SOCPA witnesses were not in custody for the duration of the de-brief process. (Witnesses B and C). The Court transcripts (Appendices C,D,E) provide further detail as to the role and importance of these witnesses.

5.3 **Witness A**

5.4 Witness A entered the SOCPA de-brief process in May 2006. He had known one of the defendants for many years and both had dealt in drugs together since 1989. Witness A was subsequently introduced to two of the other defendants.

5.5 Witness A was told that one of the defendants would do favours, such as gaining information from the police. Witness A learned through his conversations who, allegedly, had committed the murder and who drove the car away. He also learned, allegedly, who had been participatory to the crime and who had, allegedly, 'ordered' the murder.

5.6 Witness A was in prison at the time he volunteered his evidence. He was given an agreement pursuant to s.73 SOCPA and de-briefed between May and December 2006. His criminal background was checked, including his status as an informant.

5.7 However not all of the informant files relating to this witness had been correctly archived. He had been registered with different law enforcement agencies, on several different occasions and in different names. Whilst all possible checks were completed by the investigation team there was no way of them knowing about an un-archived extract from an informant file which was subsequently found under a different pseudonym. (see paragraph 4.29).

5.8 **Witness B**

5.9 Witness B entered the enquiry in July 2006, following a newspaper appeal about the murder. Witness B was an associate of those who worked at Southern

Investigations. Witness B and allegedly one of the defendants were involved in various criminal enterprises including drug trafficking. Witness B reported that in 1987 he had been asked to kill Daniel Morgan but he had refused.

5.10 Witness B claimed that he was a witness to the crime and had been invited to the Golden Lion public house on the evening of the murder. Witness B identified two of the defendants at the pubic house and he said that he saw Daniel Morgan. Witness B states he spoke to a number of the defendants at the public house on the night of the murder.

5.11 Witness B stated he saw two of the defendants in a car in the car park of the pub. He claims he saw Daniel Morgan's body lying in the car park. He was the prosecution's only eye witness to the murder.

5.12 Witness B claimed that his motive in coming forward was not financial but because he was worried about the safety of his family and he wanted to clear his conscience. He was de-briefed over many months between August 2006 and December 2007, during which time he admitted to many very serious crimes. These offences were dealt with separately and he pleaded guilty to twenty serious offences and asked for a further thirty one other offences to be taken into consideration for the purposes of sentence. He received an initial custodial sentence of twenty eight years imprisonment but this was reduced to three and a half years imprisonment.

5.13 During the de-brief Witness B was not in custody and this factor made it extremely difficult for the Witness Protection Unit (WPU), the de-briefers and the investigation team to manage him. He frequently disregarded the rules of the de-brief process and breached the requirement that the witness only deal with the debriefing team. He regularly contacted the Senior Investigating Officer directly.

5.14 Witness B was a difficult individual who had previous mental health issues. During the de-briefing process he was offered an appropriate adult but was adamant he did not want anyone else knowing about this process and refused their assistance.

5.15 Following the decision of the prosecution to offer no evidence in this case Mr Justice Maddison provided a careful and detailed ruling as to why Witness B's evidence would have been excluded. He provided this ruling due to a forthcoming trial where Witness B was a witness. There are a number of reasons given in the ruling but in summary they are:

- Breaches of the sterile corridor, i.e. the requirement for the witness to only have contact with the de-briefing team and not the investigative team;
- The witness's mental health and the absence of an appropriate adult;
- Witness B was (Mr Justice Maddison found) probably prompted by a senior police officer to implicate Glenn and Gary Vian;
- Witness B had been tipped off that he had been caught lying about his father's death and given the chance to think of an explanation;
- The unreliability of Witness B as a witness including his significant criminal record;
- His personality disorder which renders him prone to tell lies;
- His differing and various accounts;
- His demonstrative lies and his behaviour during the de-brief process.

5.16 **Witness C**

5.17 Witness C entered the enquiry as a witness at a much later stage and after the defendants had been charged. The witness was a close associate of one of the defendants and claimed to have been instructed not to speak to police.

5.18 In July 2009 Witness C made a statement detailing knowledge of the murder. The witness provided evidence about one of the defendant's alleged admissions regarding detail of the murder and other serious crimes. During Witness C's account there was further disclosure of being involved in serious criminality with the same defendant. The witness received a restricted use undertaking in October 2009 and was subsequently de-briefed.

5.19 Witness C had previously reported an assault case, whereby they were themselves the victim. The case against the attackers was subsequently dropped due to concerns about Witness C's evidence in relation to identification, location and timing. These concerns were confirmed by examination of mobile phone data which revealed an unsent draft of a text message, intended for the Witness Protection officer, relating to the assault, but timed some 8-10 hours before the alleged assault occurred.

5.20 It also transpired that Witness C was vulnerable and suffering from a post traumatic stress disorder due to issues from childhood. Although initially

Witness C provided extremely credible evidence, as the de-brief continued evidence began to be exaggerated and the account kept changing. Extensive enquiries into the account provided gave considerable cause for concern.

5.21 Witness C went on to provide details in the de-brief regarding some thirty other murders. It was alleged these had been carried out by one of the defendants and his associates. Witness C gave an indication of burial sites in Epping Forest. Following detailed and extensive police searches at some of the sites indicated the Abelard II team then discovered that some of the information had been obtained by Witness C from a web-site on missing persons.

5.22 Subsequently the prosecution decided that they could no longer rely upon the evidence of Witness C. This decision was taken following concerns about the veracity of this witness, which were highlighted when police investigated further unrelated allegations made by the witness and which were found not to be credible.

6. Conclusion

6.1 By March 2011 the Crown no longer had the use of three critical witnesses. It was apparent that the case was, as Counsel described, "very finely balanced". The additional factor, that of the continuing disclosure problems, relating as it did to past investigations and witnesses, contributed to undermining the prosecution ability to guarantee full disclosure and fairness to the defendants.

6.2 However it was as a result of the disclosure difficulties that led, on 11th March 2011, Mr Hilliard QC to explain to the court that; "*the time has come when the prosecution no longer feel that we are able to satisfy the terms of paragraph 3.5 of the Code for Crown Prosecutors….it seems to us that that is now the inevitable conclusion to be drawn from the combination of matters outlined.*"

6.3 Recognition of this position was summed up by Mr Justice Maddison as follows;

"But the prosecution's case that remained in due course, after witnesses had fallen away, was dependent substantially, although not entirely, on witnesses of bad character and I am aware of the fact that the prosecution will have had to keep under constant review the strength of its own case and the likelihood ultimately of convictions".

7. Good Practice

7.1 This was a truly exceptional case in terms of a combination of factors namely its age; the size and the number of linked operations; the enormous volume of material generated, particularly unused, and the fact that all three of the SOCPA

witnesses were undermined, post charge, by factors that adversely affected their credibility. In addition there was a lack of scientific evidence.

7.2 Further, it is important to note that whilst the murder of Daniel Morgan took place in March 1987, the Abelard II investigation was a continually developing one, with a new SOCPA witness coming forward post charge and new material being generated. This case presented challenges because the evidence in the case changed even between the decision to charge and the decision to offer no evidence.

7.3 The combination of all of these factors in one prosecution is a combination rarely likely to be encountered in prosecutions in the future.

7.4 The Review recognises that the handling of the SOCPA witnesses in this case is, to a limited extent, historic. In the intervening years since these SOCPA agreements were established, procedures and guidelines have evolved and reflect some of the good practice points below.

7.5 It is against this background that the following good practice is identified. Police and prosecutors in the future may benefit from following the Good Practice points that have applicability to their case. This Review makes a single over arching recommendation:

Recommendation

That steps are taken to disseminate this Review within the Police and CPS, so that Police and CPS can consider the following Good Practice points in future cases:

SOCPA witness issues

There is now a detailed ACPO guidance on the handling of SOCPA witnesses. It is recognised that certain aspects addressed in that document are equally dealt with here.

Good Practice Point 1

As a necessary pre condition to any future SOCPA agreement, the requirement for a thorough investigation addressing the credibility of the witness is paramount.

The following considerations would assist the police and prosecutors in respect of any potential SOCPA witness:

- Obtain and review all medical records
- Obtain and review, (if any) all psychiatric records
- Obtain and review all case papers regarding any previous convictions
- Obtain and review all case papers regarding any previous investigations which did not lead to conviction
- Obtain and review all intelligence held by various investigative agencies regarding past and present criminality
- Obtain and review all material regarding any past history as a 'CHIS'.

The timing of the review of this material will need to be carefully considered in each case. However we would recommend that there is a presumption in favour of reviewing this material prior to the entering into of a SOCPA agreement.

Good Practice Point 2

To maintain a full and auditable record of all police contact regarding the management of any SOCPA witness.

During any investigation it is important to maintain a full 'record of contact log'. This will detail each and every single contact with the assisting offender, who instigated the contact and the reason for it.

This is particularly important to rebut allegations of inducing or coaching a witness, which may be made in court some considerable time after the contact in question. This will facilitate documentary accountability and demonstrate what contact or conversations did or did not occur between the investigations team, de-brief team and the witnesses, thereby obviating the necessity for lengthy voire dires.

Good Practice Point 3

Adherence to the following factors should be considered as 'best practice' when dealing with SOCPA witnesses.

- A process to ensure effective control and regulation of the witness in terms of contact, allowances, privileges.

- A system to control the extent and duration of the de-brief. The parameters should be clearly set by a Gold group in conjunction with the SIO. There should be clear objectives to the process.

- Any Investigation team should be provided, (where possible) with regular and immediate transcripts of the de-brief (redacted if necessary), so that the investigation team can effectively challenge and corroborate what is being said in the de-brief.

- De-brief material should be edited for disclosure purposes on a continual basis, rather then edited at the end of the process.

- A process for the investigation team to be able to provide questions to the de-brief team without breaching the 'Sterile Corridor' should be developed.

- A dedicated and separate de-briefing manager should be appointed to manage and supervise de-briefers.

- The De-brief team should be represented at the Gold Group.

- There is a need for parity of rank between investigative team's SIO and the leader of the de-briefing team. This will aid effective communication. At the very least this should be a relationship that is clearly defined, recorded and subject to inclusion within the terms of reference of the Group.

- The whole prosecution team (police, CPS, Trial Counsel) should take a pro-active role in the development and function of such witnesses. As it is the CPS who enter into the SOCPA agreement with the Assisting Offender, it is essential that the CPS are kept informed of developments with that witness.

- Consideration should be given of the benefits of the CPS lawyer dealing directly with the solicitors for a SOCPA witness.

- Consideration should be given to the use of an appropriate adult for a SOCPA witness who may be vulnerable due to mental health issues.

Management of Disclosure

As already described, the issues surrounding disclosure were ultimately responsible for the withdrawal of the prosecution of Operation Abelard II. The following good practice points are set against this background and with an overriding consideration that historic cases, such as these, do not progress to charge stage unless and until the police and prosecutors are content that all relevant unused material has been identified and located and the initial disclosure exercise is complete.

Good Practice Point 4

Consideration needs to be given at the outset to the types of unused material that could reasonably expected to be encountered in a particular prosecution, and its anticipated location.

The parameters of the search for potentially relevant material need to be clearly documented.

This will enable the disclosure officer, senior investigating officer and lawyers to critically assess the material in their possession and assist in identifying any categories of material that they would expect to be generated in a particular investigation and which they are not in possession of. For example, Medical records, Informant files, DPS material, Microfiche records, General Registry files. The need for corporate memory cannot be underestimated and consideration should be given to locations and buildings previously occupied by law enforcement.

Good Practice Point 5

There is a requirement for accurate record keeping of all material which has been reviewed by the investigation during the enquiry and evaluated as not relevant together with detailed reasoning.

This should not be a schedule comprising the level of detail required in an unused disclosure schedule, but instead should be a record of what material was looked at in the course of the investigation and the decisions made in relation to it. This will mean that there is a record of the fact that the material exists, has been reviewed, the outcome of the review and its current location. What is required is an audit trail of what and when the material has passed through the hands of the enquiry team as well as CPS and counsel.

Good Practice Point 6

Consideration must be given to the size and complexity of the disclosure task from the outset. Consideration should be given to the level of experience required when appointing a disclosure junior.

Mr Justice Maddison made reference to the fact that the disclosure aspect of this case was far more challenging for the prosecution team than the evidential aspects of the case. This was a view shared by the prosecution team (police and prosecutors).

Traditionally the role of disclosure counsel is allocated to the most junior member of the counsel team. In the vast majority of cases this decision is entirely appropriate. However in exceptional cases such as this one, consideration should be given to the experience which disclosure counsel will need to possess and whether exceptionally a more experienced counsel is required.

Good Practice Point 7

The prosecution team (police and prosecutors) should frequently review the position and progress of the disclosure strategy.

The allocation of distinct roles and responsibilities to the reviewing lawyer and counsel in the prosecution team are essential to the effective progression of a case of this nature. Individuals will be frequently be under time constraints to deliver on their allocated task. It is therefore essential that effective and regular communication takes place between the individuals performing distinct roles. Communication between disclosure counsel and the rest of the prosecution team is vital. This is particularly important in cases such as this where the voire dires raised difficult and complex disclosure issues requiring the direct involvement of leading and junior counsel.

We suggest that it is good practice to arrange regular meetings, when updates can be provided by disclosure counsel to the team and when disclosure counsel's queries can be addressed.

Good Practice Point 8

Use of a Disclosure Strategy Document and clarity as to which disclosure regime applies.

The prosecution team in this case drafted a document entitled "Prosecution note on Disclosure" dated 29 July 2009. This note highlighted the fact this was a pre CPIA case and set out how the prosecution were approaching disclosure, particularly in relation to the management of a huge volume of material and the tests to be applied to that material. This is to be viewed as good practice.

Prosecutors should draft a Disclosure Strategy Document for service on the court and defence. This document will set out the prosecution's approach from an early stage in relation to a number of matters, e.g. the application of the relevance test, the disclosure regime which applies, any key word searches being applied to bulk material and the handling of bulk material or digital material. This will encourage the court and

defence to engage in the disclosure process and highlight at an early stage any areas of disagreement, so that they can be resolved at an early stage.

In pre CPIA cases, identification of which disclosure regime will be applied, must be resolved as a priority post charge. An agreement must be reached with the defence, failing which an early ruling must be sought from the court. However it is recognised that such cases are becoming increasingly fewer.

Good Practice Point 9

Use should be made of the Criminal Procedure Rules to identify the issues in the case.

The requirement for the defence to provide a Defence Case Statement (DCS) only applies to cases governed by the CPIA. As this was a pre CPIA case DCSs were not required. The lack of DCSs created difficulties for prosecutors and the police in identifying the issues at an early stage. In cases which pre date the CPIA, prosecutors should utilise the Criminal Procedure Rules as a mechanism to encourage the defence to highlight the issues in the case.

Good Practice Point 10

Disclosure schedules need to be available electronically at court.

To assist the court and the smooth running of the case we recommend that it is good practice to scan all the disclosure schedules onto a laptop computer for use at court. This enables them to be easily searchable at court as issues arise.

Archiving Police documents

Good Practice Point 11

Ensure systems are in place to permit the identification and retrieval of all relevant material from historical operations. (e.**g. informant files, microfiche, GR, DPS files, CPS case files).**

A significant challenge in such historical cases is in ensuring that all relevant material has been found and reviewed. This task is made more complex by the use of different

operational names when archiving, particularly when there are inter-linked investigations.

Considerable progress has been made within MPS archiving procedures to ensure that case papers and materials are archived correctly and where possible secured and recorded digitally.

When faced with a case of this nature it is recommended that a careful and considered judgment about the viability of being able to retrieve all material is made before a decision to proceed to charge is taken. This decision must be scrutinised, documented and recorded.

Control and Direction of Investigation/Prosecution

Good Practice Point 12

Historical and complex cases such as these should be structured within the governance arrangements and systems already in place within the MPS – primarily within the MPS Homicide & Serious Crime command.

Circumstances and events resulted in this case being managed outside the `mainstream` governance systems already in place for the investigation of murder within the MPS. Whilst that may have had some merit and maintained confidentiality (considering the background to the case) it resulted in a complex management arrangement.

It is recommended that the governance arrangements (the MPS Gold Group structure) could and should have been able to consider matters of detail as appropriate e.g. the resolution of issues occurring during the management of the SOCPA witnesses above.
It is recommended therefore that any future investigation of this type should pay particular and detailed attention to the direction of the strategy - utilising the mechanisms already in place and in use within the MPS and as guided by MIRSAP and the MPS Murder Manuals.

Good Practice Point 13

The SIO should be employed by the police force that holds primacy for the enquiry. They are then directly accountable to the GOLD group and associated governance arrangements.

The SIO of the case retired from the MPS during the course of the investigation and was immediately re-employed by SOCA. Whilst he was still within the law enforcement arena and had a detailed knowledge of the case a full handover to a SIO who remained at the MPS would have been more appropriate. However it is recognised that this decision was made for sound reasons, particularly the SIO's detailed knowledge of this case and the strong relationship of trust he had developed with the family of Daniel Morgan.

Good Practice Point 14

Cases of this significance and complexity should be the subject of a CPS Case Management Panel

Case Management Panels were held in this case. The use of Case Management Panels is essential in a case of this type and is now a very well established practice. The panel is chaired by a senior lawyer, including the Director of Public Prosecutions or Chief Crown Prosecutor and their function is to oversee the effective progression of the prosecution, ensuring sound decision making and offering advice and guidance.

Good Practice Point 15

In protracted cases prosecution team succession planning should be considered.

Further to Recommendation 13, we recommend that the police and CPS consider succession planning for all members of the prosecution team. Such cases can take several years to reach court. It may be appropriate to appoint deputies for key members of the prosecution team, who will be able to assist both in busy periods and take over in the event that the relevant police officer or lawyer is absent or leaves the team.

Good Practice Point 16

Ensure there is a strategy in place to assist effective judicial case management.

A strategy is required to assist effective judicial case management throughout the duration of the case and adherence to the Criminal Procedure Rules. Case management hearings should utilise clear agendas, as identified in this case, as good practice.

In multiple defendant prosecutions there are likely to be extensive and repetitive oral legal arguments as between defendants. We recommend that the trial Judge is

encouraged to rely on written advocacy, supplemented only where necessary by oral submissions. This will ensure hearings are focussed and court time is used efficiently. The prosecution should also encourage the management of the case through adherence to the Criminal Procedure Rules.

Good Practice Point 17

Appointment of a trial Judge.

Due to the category of charge in this case, namely murder, under the case release provisions, consideration had to be given to the appropriateness of releasing the proceedings from a High Court Judge to an authorised Senior Circuit or Circuit Judge. Owing to the complexities in this case it was retained by a High Court Judge. It will be important for the CPS to inform the court of all the complexities in a case, in order to ensure a Judge with the necessary experience is appointed.

Appendix A

Operation Abelard II - Time Line of events and linked investigations

10 March 1987 - Murder of Daniel Morgan
Daniel Morgan murdered. Death caused from multiple head injuries following assault with an axe, in the car park of the Golden Lion public house, Sydenham.

10 March 1987 - Operation Morgan
Murder investigation commenced by the Metropolitan Police (MPS). Led by Detective Superintendent Douglas Campbell.

3 April 1987 - First arrests
Six men arrested in connection with the murder. Insufficient evidence to charge any person.

11 April 1988 - 25 April 1988 – Inquest held
Inquest at Southwark Coroner's Court. Coroner Sir Montague Levine. Verdict of 'unlawful killing' delivered. Following the inquest papers were re-submitted to the CPS. No charges were brought.

24 June 1988 - Concerns received from Daniel Morgan's family
Following concerns expressed by the victim's family, the investigation was voluntarily referred by the MPS to the Police Complaints Authority (PCA). A review commenced by Hampshire Constabulary. Terms of reference were: To investigate allegations that police were involved in the murder of Daniel Morgan and any other matters arising.

25 July 1988 - Operation Drake
Hampshire Constabulary commence enquiry in to the murder of Daniel Morgan, led by Detective Chief Superintendent Wheeler.

July 1988 - Operation Chagford
Secondary investigation by Hampshire Constabulary concentrating on the alibis of Paul Goodridge, William Jonathan Rees and Jean Wisden.

31 January 1989 - Arrests
Three people were arrested and charged by Hampshire Constabulary; - two for murder and one for perverting the course of justice.

11 May 1989
The Director of Public Prosecution discontinued proceedings, due to lack of evidence.

June 1989 - Operation Plymouth
Hampshire Constabulary enquiry overseen by the PCA. To investigate the allegation that police were involved in the murder of Daniel Morgan and any matters arising. The inquiry concluded there was no evidence to support any allegation of criminal misconduct by officers from the MPS.

1997 – January 1999 - Operations Landmark, Hallmark & Nigeria
MPS assessment and commencement of covert police investigations.

January 1999 - Operation Two Bridges
Additional MPS covert investigation examining police corruption and the murder of Daniel Morgan. Enquiry revealed information pertinent to the murder investigation. Charges brought in connection with an unrelated matter.

October 2001 - Murder Review Group (MRG)
MPS Murder Review Group examine Daniel Moran murder papers. New investigative opportunities identified and recommendation made that the case be re-investigated.

May 2002 - Operation Abelard
The MPS launched a fresh covert investigation into the murder of Daniel Morgan. Led by the Directorate of Professional Standards.

June 2002 - Operation Morgan II
MPS commence overt investigation of Daniel Morgan murder, in conjunction with Op Abelard. Includes CrimeWatch appeal, seeking new witnesses. Led by Detective Chief Superintendent Cook.

October 2002 - Jan 2003 - Further arrests
Eight arrests made in connection with the investigation. All persons released on bail.

March 2003 - CPS Advice
File submitted to the CPS for consideration of prosecution.

2 September 2003 - CPS decision
CPS determine that insufficient evidence for a prosecution. All eight suspects released from bail obligations.

September 2003 - Murder Review Group (MRG)
The MRG assessment concluded that all avenues of inquiry had been exhausted.

March 2006 - Operation Abelard II
MPS commence further murder investigation of Daniel Morgan's murder.

August - September 2006 - Arrests
Three men were arrested in connection with the murder. All bailed.

April 2008 - Charges laid.
- The three returned on bail and were charged with murder; James Cook, Glenn Vian, Garry Vian.
- Two further men arrested in connection with the investigation. William Jonathan Rees subsequently charged with murder. Sid Fillery charged with perverting the course of justice.
- A serving police constable arrested on suspicion of misconduct in a public office. Officer bailed pending inquiries.

July 2008 - Plea & Case Management Hearing
Trial date set for April 2009. This date subsequently vacated.

September 2008 – No Further Action to be taken re a Police Officer
Serving police officer's bail cancelled. Decision for 'no further action'.
Officer suspended and subsequently resigned from the MPS.

December 2008 – Further arrest
A seventh man arrested on suspicion of attempting to pervert the course of justice.

March 2009
New trial date set for October 2009.

June 2009 - Further arrest
A woman was arrested on suspicion of conspiracy to murder. Person bailed.

October - December 2009 - Court proceedings
Pre-trial hearings - 'Abuse of Process' argument. Trial date vacated and provisionally fixed for 24 January 2011.

November 2009 – No Further Action of woman
The woman was released no further action.

March 2010 - Defendants Bailed
The defendants; William John Rees, James Cook, Glenn and Garry Vian all granted conditional bail. New trial date listed for November 2010.

Reporting restrictions were invoked by the judge.

2010 - Defendant discharged from trial
Case against James Cook withdrawn. Formally acquitted as Not Guilty.

October 2010
November trial date vacated. New date of 24 January 2011.

January - February 2011
Further pre-trial hearing and legal argument. Disclosure issues addressed.

March 2011
Additional disclosable material recovered by the MPS.

11 March 2011 - Defendant's discharged
Crown offer of evidence. Remaining three defendants formally acquitted.
William Jonathan Rees, Glenn Vian, Garry Vian.

Appendix B

SCHEDULE OF GOOD PRACTICE POINTS

Good practice point 1
As a necessary pre condition to any future SOCPA agreement, the requirement for a thorough investigation addressing the credibility of the witness is paramount.

Good practice point 2
To maintain a full and auditable record of all police contact regarding the management of any SOCPA witness.

Good practice point 3
Adherence to the following factors should be considered as 'best practice' when dealing with SOCPA witnesses.

Good practice point 4
Consideration needs to be given at the outset to the types of unused material that could reasonably expected to be encountered in a particular prosecution, and its anticipated location.
The parameters of the search for potentially relevant material need to be clearly documented.

Good practice point 5
There is a requirement for accurate record keeping of all material which has been reviewed by the investigation during the enquiry and evaluated as not relevant together with detailed reasoning.

Good practice point 6
Consideration must be given to the size and complexity of the disclosure task from the outset. Consideration should be given to the level of experience required when appointing a disclosure junior.

Good practice point 7
The prosecution team (police and prosecutors) should frequently review the position and progress of the disclosure strategy.

Good practice point 8
Use of a Disclosure Strategy Document and clarity as to which disclosure regime applies.

Good practice point 9

Use should be made of the Criminal Procedure Rules to identify the issues in the case.

Good practice point 10
Disclosure schedules need to be available electronically at Court.

Good practice point 11
Ensure systems in place to permit the identification and retrieval of all relevant material from historical operations. (e.g. informant files, microfiche, GR, DPS files, CPS case files).

Good practice point 12
Historical and complex cases such as these should be structured within the governance arrangements and systems already in place within the MPS – primarily within the MPS Homicide & Serious Crime command.

Good practice point 13
The SIO should be employed by the police force that holds primacy for the enquiry. They are then directly accountable to the GOLD group and associated governance arrangements.

Good practice point 14
Cases of this significance and complexity should be the subject of a CPS Case Management Panel

Good practice point 15
In protracted cases prosecution team succession planning should be considered.

Good practice point 16
Ensure there is a strategy in place to assist effective judicial case management.

Good practice point 17
Appointment of a trial Judge.

Appendix C

Edited extracts from Custody Time Limit ruling – 18th December, 2009

I turn now to matters of detail. So many complaints of late or non disclosure have been made at different times that it would simply be impossible to review them all in this judgment, though it is my intention to deal with a number of detailed complaints.

In presenting their oral arguments, the parties sensibly and realistically focussed on particular examples, though there were in truth many of them, and I will endeavour to do the same. For the avoidance of

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doubt, however, may I make it clear that I have taken into account all of the oral submissions made to me two days ago and all of the documentary material then handed up, including a helpful summary of the relevant legal principles by Mr Christie, Queen's Counsel, on behalf of the defendant, Mr Rees, and documents relating to a Metropolitan Police Authority report dated 31 January 2006, to which I will return.

I have also reread all of the points relating to disclosure made in the parties' 460-odd pages of written submissions, as developed in oral submissions earlier during the abuse of process hearing, insofar as they deal with the period since 23 April 2009.

I have also studied the Crown Prosecution Service Schedule of Material Served, number 14, which lists in chronological order the dates on which material in 23 different categories are listed, and a further schedule in similar form received by me yesterday which lists only the material served since 27 April 2009.

I have also reviewed two lengthy schedules of requests for disclosure made on behalf of Mr Rees,

running, in truth, to more than 352 items. The numbered items run up in the documents which I was given to number 352, but a number are subdivided.

The schedules were handed up to me by Mr Christie QC

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during the course of oral submissions.

Yesterday, I received from the prosecution responses to all the items in that schedule, together with further requests, running up to number 360, which I have taken relate to requests for further disclosure after Mr Christie handed me his schedules.

Those responses were helpful but they did come at such a stage that it was, for all practical purposes, impossible in truth either for me or for Mr Christie QC, who has taken the lead in relation to this matter on behalf of the defendants, to study in great detail. Nevertheless, a number of items of response made by the prosecution in that document have been dealt with in the course of further oral argument this morning.

Similarly helpful and produced with similarly impressive speed by Mr Harris, junior counsel for Garry Vian, is a list of material served on the defence from 12 October 2009, and thus, during the course of the abuse of process argument I have noted that the material concerned runs to no less than 3,403 pages.

I now turn to particular complaints raised by counsel in the course of argument, both two days ago and during the course of this morning.

[1] One of the main arguments centered on a report for the Metropolitan Police Authority by Deputy Assistant

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Commissioner John Yates of the Metropolitan Police, dated 31 January 2006. Before turning to the complaint made in respect of disclosure, I note that I am not the only person to have made comments about the remarkable complexity of this case. The report makes similar remarks. And I note from the report that even before Operation Abelard II began the case files were contained in some 160 large storage crates containing tens of thousands of documents and many thousands of hours of video and audio tapes.

The MPA report, as it has been called, went on, amongst other things, to make numerous criticisms of the first investigation into the murder, to refer to the loss of exhibits and exhibit books since that investigation and to point to deficiencies in the evidence obtained.

The report runs to 53 pages and 316 paragraphs. It is not practicable to relate all its contents in this judgment, though many of its main points are helpfully summarised in a document handed up by Mr Whitehouse QC,

leading counsel for Glenn Vian. Indeed, it is a document to which I have already referred.

On behalf of Mr Rees, Mr Christie submits that the disclosure of that MPA report has been seriously defective. He observes that the prosecution have had

the report in their possession since 2007, and I accept that that is so. The prosecution did not give any disclosure relating to that report until 15 January 2009, and then only in a redacted or summarised form as follows, and at this stage I quote from a document entitled "Prosecution response to disclosure requests 15.01.09":

[Lines 8-25 redacted]

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[Lines 1 – 8 redacted]

"There is no other material contained within this report which undermines/assists the defence. The defence are invited to particularise the information which they seek disclosure of and to state its relevance."

Ultimately, but only during the abuse of process hearing itself, the full report was served on the defendants, giving rise to an adjournment so that its contents could be considered.

[2] I turn from the matter of the late disclosure of the MPA report to **another matter** raised in the course of early argument before me. On the subject, again, of inappropriate redactions, it appears that some transcripts of debriefing interviews were served on the defence in redacted form when at least some of the redactions should never have been made and when, unusually, the redacted transcripts were later followed

up by audio recordings of the same interviews, which had not been edited or redacted in the same ways or at all.

[3] **Another complaint** made by Mr Christie relates to Dr Chesterman's psychiatric report and evidence. It is accepted that this report was served promptly after that of Professor Eastman, the consultant psychiatrist who was called on behalf of the defendants.

Professor Eastman's report is dated 18 October 2009, and Dr Chesterman's 3 November 2009.

What is said, however, is that proper attention cannot have been paid to an entry in a Police Witness Protection Unit weekly report dated 14 May 2008. That report records that the defence were maintaining that [Witness B]was mad and the police investigation squad, or ops team, as they are referred to, had requested that an opinion as to [Witness B's] state of mind be obtained.

Mr Christie makes the point that had that request been acted upon at that stage or at least shortly afterwards, and had a psychiatric report then been obtained, time could have been saved and would have been

saved during the abuse of process hearing.

[4] **Another specific complaint** relates to the late disclosure of a variety of police documents, including records, reports, notes, messages, emails and, specifically, Witness Protection Unit records covering

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the dealings of different police officers with [Witness B] over the period from October 2006 to October 2008.

If I understand the submission correctly, this material available to the prosecution since the autumn of 2008 was not disclosed until June 2009 at the earliest, and some of the material, for example a bundle referred to as disclosure bundle 4, not until during the abuse of process hearing in relation to bundle 4 on 16 November 2009.

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[5] **Another complaint** of late disclosure is, and I refer here to matters raised in the course of written submissions, amongst the 460-odd pages to which I referred earlier. It relates to the credibility of a prosecution witness, [Witness L].

This material, dating back to 1988 and 1989, which contains material damaging to [Witness L's] credibility, was not disclosed to the defence until 5 October 2009. The material is collected in the prosecution tabs 27 and 28. It includes references to [Witness L's] propensity for fraud, to his integrity and credibility as a witness diminishing and to a detective inspector's forming the impression that [Witness L] was an alcoholic who could not be trusted. This material, submitted Mr Christie, was disclosed far too late.

[6] **Another complaint** made is that, by an email dated 14 October 2009, Ms Stangoe, junior counsel instructed by the prosecution some two and a half years ago specifically to deal with questions of disclosure in

this case, informed the solicitors for [Witness B] that the police were not aware of any psychiatric issues relating to the [Witness B]between two specified dates, namely 26 July 2006 and 6 September 2006.

In truth, [Witness B] had himself referred to his previous psychiatric problems in an introductory discussion, if I may thus describe it, that he had had on 26 July 2006 with Detective Chief Superintendent Cook, the senior investigating officer.

Moreover, Detective Chief Superintendent Cook was to say during his evidence in the abuse of process hearing that he had informed the Witness Protection Unit during the period concerned that [Witness B's] intelligence file contained a reference to his [Witness B]having a psychiatric history.

Here again Mr Christie submits, in effect on behalf of all the defendants, that the disclosure process has broken down.

[7] **Next** Mr Christie submits there has been late disclosure and unduly late disclosure of the general

practitioner records relating to [Witness B]. Both Professor Eastman and Dr Chesterman commented during their evidence that they had not seen these records. The prosecution in fact had them all the time but did not disclose them until the 1st or 2nd December.

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[8] I move on. **Another point** made by Mr Christie is that having asked on 21 October 2009 for medical records in relation to a stroke that [Witness B] had suffered, the information concerned was not provided to him until the second day on which Professor Eastman was giving evidence.

[9] **The next** specific disclosure point raised by Mr Christie related to the prosecution witness [Witness W]. If there is a trial in this case and if Witness W comes up to proof he will be giving evidence against Mr Cook against others. I say "if [Witness W] comes up to proof", because as long ago as 2000 he claimed that his earlier witness statement on which the prosecution will seek to rely had been extracted from him by the police under duress, and what he would say, were he to give evidence, seems to me to be unpredictable.

In any event, one of the many remarkable features of this case is that in 1999 [Witness W] was sent to

prison for seven years for soliciting the murder of the present defendant Mr Cook. Not surprisingly, the defence were interested to obtain the papers relating to the prosecution of [Witness W] on that occasion.

Requests made over several months were met with the answer that no such papers could be found. Only last

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night, the 17 December 2009, were the defence informed that there were in existence, after all, documents relating to the case against [Witness W] in 1999.

[10] Next I turn to the question of witnesses who were present at the Golden Lion Public House on the evening of 10 March 1987, the time of the murder.

The defence have sought the contact details of those present in the pub. As recently as August 2009 the defence were informed by the prosecution that no such contact details were available. As a result, the defence have had to instruct private investigators to try to trace the people concerned, but without success.

However, in mid November the defence were provided with the contact details of all of the pub customers except those who had died in the meantime. Another clear example, submits Mr Christie, of failures in relation to disclosure on the part of the prosecution.

[11] A further individual **point** made relates to a statement dated 12 October 1995 which says at its beginning that it is the statement of Derek Gordon

Haslam but, curiously, has the name "David Haslam" at the end of it. It is a statement which, for reasons which I do not think it necessary to go into, is favourable to the defendant Mr Rees.

It was discovered in August 2009 quite by accident

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by Mr Shepherd, Mr Rees's solicitor, when he was examining a folder entitled "Envelope Morgan mortuary photographs". There were in fact no photographs in the folder but the Haslam statement was, for reasons for which there can, it seems to me, be no sensible explanation. But for Mr Shepherd's chance discovery, this document would probably never have come to light.

[12] Next, complaint is made that, having asked on 21 October 2009 for a list of all prison records and recordings of visits and telephone calls made by the defendant Mr Rees from HM Prison Ford and/or HM Prison High Down during the period from 2000 to 2005, a reply was received only yesterday, 17 December, and the reply simply asked for the relevance of the request.

[13] I deal next with requests 309.5 and 6 in the schedule of requests for disclosure prepared on behalf of Mr Rees. These requests are for information arising out of matters referred to in the statement of Mr Haslam which I mentioned a few moments ago.

The requests were made on 21 October 2009. They

were responded to only yesterday and then only in the form of requests for an explanation of what it was in effect that the defence were after.

[14] **One of the complaints**, and I have considered them all, relating to the disclosure of telephone records

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relates to requests made of the prosecution for records of telephone contact between the defendant Mr Rees, the deceased Daniel Morgan and Paul Goodridge, to whom I referred earlier, at and around the time of the murder.

These records were disclosed electronically but complaint is rightly made of the fact that they were disclosed in such a way that the subscriber details were obscured.

[15] **I turn** to yet another matter that has been raised. Complaint is made that, having been informed on 25 February 2009 that all relevant graphics had been served by the prosecution, shortly before 2 December 2009 the defence were served with 32 photographs taken by a computer graphic designer as long ago as 26 October 2007.

Is there an answer to the points made, and, I should say, **the individual points to which I have referred**, made on behalf of the defendants? In my judgment, there is an answer to some and not to others.

21 **[1a p78]** There is no answer, in my view, to the complaint
22 concerning the Metropolitan Police Authority report.
23 Ms Stangoe of counsel took the view that the limited
24 disclosure given on 15 January 2009, to which I have
25 referred, was appropriate and sufficient. Mr Hilliard

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Queen's Counsel and Mr Rees, who together are conducting the proceedings in court, reviewed the situation and decided that the full report should be disclosed.

In my judgment, they were clearly right and Ms Stangoe was wrong, but I make it clear that nobody has suggested that Ms Stangoe was acting in bad faith. The fact is that the report has been disclosed, counsel were given time to consider it and have been able to refer to it in support of their abuse of process argument.

[2a p81] Similarly, in my view there is no answer to the point made that inappropriate redactions were made in the first instance to the debriefing transcripts to which I referred earlier, though the defence do now have the unexpurgated versions.

[3a p82] The point relating to the psychiatric evidence in my view has less merit if indeed it has any merit at all. It seems to me to amount more to a complaint of inaction on the part of the prosecution in failing to obtain a psychiatric report than a complaint of lack of

disclosure.

What is more, when the matter arose in May 2008 the debriefing process of [Witness B] had, for all practical purposes, at least at that stage, been completed and the suggestion of a psychiatric report was not one that was

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raised by the defence in this case but raised by the police themselves.

In any event, I have been unable to detect any loss of time connected with the obtaining and presentation of the psychiatric evidence in the abuse of process hearing which can be connected with the failure to obtain a psychiatric report in May 2008.

[4a p82/3] I turn to the police records, reports, notes, messages and emails to which I referred earlier, including those bearing on the issue as to whether it was Nick or Anita who contacted [Witness B] on 8 July 2009.

In my judgment, the full significance of these documents simply would not have been apparent until the detailed written submissions in relation to abuse of process were received during the course of September. I do not think that it can fairly be said that the complex issues that have arisen and evolved indeed during the course of the abuse of process proceedings with its 13 police witnesses and weeks of evidence could

have been anticipated by those responsible for disclosure.

All relevant documents, so far as can be seen, were in the event disclosed even if later than would have been desirable in a perfect world, in sufficient time to

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enable counsel to utilise them when drafting their written submissions or when cross-examining the police witnesses concerned or both. They are also available for the purposes of drafting closing written submissions.

[5a p86] Turning to the material affecting [Witness L's] credibility, in my view the defence have a perfectly legitimate point that that material could and should have been disclosed before 5 October 2009.

Again, however, the fact remains that, late though it was disclosed, it was disclosed in time to enable the defence to rely on it and its late disclosure in the abuse of process argument.

[6a p86/7] I turn to another separate matter raised. In my judgment, there is no answer to the point made in relation to the awareness of the police of [Witness B's] psychiatric issues. The verdict, if I may put it this way, is guilty, but, I think, with the mitigation that it had in fact long been clear to all of the defendants from the disclosure of the transcript of the discussion

on 26 July 2006, to which I have referred, that[Witness B] did in fact have psychiatric issues and that the police knew it.

[7a p94/5] Similarly, I think that [Witness B's] general practitioner records could and should have been

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disclosed before they were, and really before, or at the latest during the evidence of Professor Eastman and Dr Chesterman.

In truth, however, though this would have removed the apparent mystery concerning their absence, it would not have illuminated the issues on which the psychiatrists were giving evidence, namely whether [Witness B] had a personality disorder of a kind and/or a severity that an appropriate adult should have been present at his debriefing interviews.

[8a p88] I regard the point about the records as to [Witness B's] stroke as having no real merit. The request for the documents came quite late in the day and was responded to relatively quickly. Significantly, the material was provided in sufficient time for Professor Eastman and Dr Chesterman to examine and comment on it.

In fact, in the end the information turned out to have no bearing on the issues that the psychiatrists were considering, though I do accept Mr Christie's submission that this does not go to the question of due diligence and expedition.

[9a p88]I turn next to the[Witness W] papers. There would, at first blush, seem to have been a clear breakdown in the disclosure process in relation to the [Witness W] papers. But having heard the explanation offered by Mr Rees,

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counsel for the prosecution, which has not been gainsaid, I conclude that first appearances are deceptive in this instance. Searches had in fact been made in what were referred to by Mr Rees as, and I quote, "all the usual places", for these documents but without any success.

Recently, however, police officers, perhaps more in hope than in expectation, decided to search through papers relating to a police operation codenamed Windermere, which was directed against a man called Hanrahan who was an associate of [Witness W], and there they did in fact find some documents relating to [Witness W's] earlier case, though not what one would describe as a conventional set of case papers. Such papers as were discovered in that way will be disclosed imminently.

[10a p89] I deal next with the question of the contact details of the Golden Lion witnesses. I do not detect any lack of due diligence and expedition in this regard. I am told by Mr Rees, counsel for the prosecution, that in response to defence requests for the contact details the

police did make enquiries and were eventually able to trace the persons concerned whose contact details were then disclosed to the defence. It was not a case in which the police had at an early stage contact details, the disclosure of which was held back.

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[11a p89] Turning to the Haslam statement, the circumstances in which it was discovered clearly indicate a failure in the disclosure process, and I need say no more about that.

[12a p90] I turn now to the list of Mr Rees's prison records and the like from 2000 to 2005. Having heard from Mr Rees, of counsel, it is clear that in fact there are no material documents of the kind sought to be disclosed. It would take quite a long time examining what it had been thought might be available for disclosure but no useful purpose would be served by doing so, and I am conscious that I have taken up quite a long time already.

[13a p90] Next, requests 309.5 and 6. Quite simply Detective Sergeant Dalby, the officer considering these requests, was misled by the reference in request 309.5 to numbers 19 and 20. He took these to be references to requests numbers 19 and 20 in the schedule of requests and could not make sense of it at all. Neither could he make sense of request 309.6. Now that it is known that the

paragraph numbers referred to in request 309.5 refer to the statement of Mr Haslam the requests made in 309.5 and 6 will be responded to as soon as possible.

I have to say, however, that it is my view that Detective Sergeant Dalby should have been able to work

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out without any real difficulty what 309.5 and 6 referred to by looking at them in the context of requests 309.1 to 4 which clearly relate to the Haslam statement. To that extent there has been a failure in the disclosure process.

[14a p90] Next, the obscured telephone subscriber details. The reality is that Mr Rees's solicitors correctly assumed that this obscuring was accidental. The error having been drawn to their attention by the solicitor's letter dated 29 October 2009, the prosecution informed the defence of how to remove the obstruction or, as it was put, how to "unhide" the subscriber details on or about the 3 November 2009. I do not detect any lack of due diligence or expedition here.

[15a p91] Finally, in respect of individual submissions made I deal with the graphics. Though they have now been disclosed they were images taken of the Golden Lion Pub 20 years after the murder and I find it difficult to see how they could in fact assist the defence case or undermine that for the prosecution. If they need not

have been disclosed at all, I cannot see that their disclosure supports an argument that the prosecution have not acted with due diligence and expedition.

In any event, taking what I hope is a realistic view of this case, that particular item taken on its own

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could not begin to affect the outcome or the decision in relation to the applications which I am now considering.

It will be apparent from what I have said, and I have done my best carefully to consider the individual submissions that of the complaints made I find that some are valid and that others are not. I hope that by now it will be clear that were I to deal separately with all the individual points that have arisen at different times in relation to disclosure since April 2009 my judgment would probably run into several hundred pages and take some days to deliver.

I have I have to face the reality of the situation. As I said earlier, I have taken into account the vast array of written materials and oral submissions that have been presented to me. For the avoidance of any further doubt, may I say that these include the submissions made in respect of the late service of DNA, telephone and probe materials.

The specific complaints of late disclosure are bolstered by general complaints of a statistical nature. It is observed that about 20,000 pages of unused

material have been served since April 2009. 8,214 pages of unused material has been served since as recently as the 31 July 2009, of which 3,403 pages have been served during the abuse of process hearing.

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Although some of this material takes the form of transcripts of [Witness C's] debriefing interviews, which, as I have said, are continuing, this accounts for only about one quarter of the whole, that is one quarter of the 8,214 pages, and all of these general submissions too I have taken into account.

In considering whether the prosecution have acted with all due diligence and expedition I have had in mind and have endeavoured to apply the clear and helpful and now familiar guidance to be found in the judgment of Lord Bingham, Lord Chief Justice as he then was, in the case of R v Manchester Crown Court ex parte McDonald [1999] 1 CAR 409 helpfully recited at paragraph 1-274 of the 2010 edition of Archbold. I quote:

"The condition in section 22(3)(b) that the prosecution should have acted with all due expedition poses little difficulty of interpretation. The condition looks to the conduct of the prosecuting authority (police, solicitors, counsel). To satisfy the court that this condition is met the prosecution need

not show that every stage of preparation of the case has been accomplished as quickly and efficiently as humanly possible. That would be an impossible standard to meet, particularly when the court which reviews the history of the case enjoys the immeasurable benefit of hindsight.

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Nor should the history be approached on the unreal assumption that all involved on the prosecution side have been able to give the case in question their undivided attention. What the court must require is such diligence and expedition as would be shown by a competent prosecutor conscious of his duty to bring the case to trial as quickly as reasonably and fairly possible. In considering whether that standard is met, the court will of course have regard to the nature and complexity of the case, the extent of preparation necessary, the conduct (whether cooperative or obstructive) of the defence, the extent to which the prosecutor is dependent on the cooperation of others outside his control and other matters directly and genuinely bearing on the preparation of the case for trial. It would be undesirable and unhelpful to compile a list of matters which it may be relevant to consider in deciding whether this condition is met. In deciding whether the condition is met, however, the court must bear in mind that the period ... specified in the regulations is a maximum, not a target; and that it is

a period applicable to all cases ... The court will not, in considering whether this condition is satisfied, pay attention to pretexts such as chronic staff shortages or ..., overwork, sickness, absenteeism or matters of that

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kind.

"Under section 22.(3)(a), the court must be satisfied that there is good and sufficient cause for extending or further extending the maximum period of custody specified in the regulations. The seriousness of the offence with which the defendant is charged cannot of itself be good and sufficient cause within the section; nor can the need to protect the public. ... Nor ... can it be a good cause that the extension is only for a short period."

In my judgment the scale and the complexity of this case are critical factors. I summarised the history of this case and the nature and conduct of the abuse application earlier in this judgment in an effort to convey an impression of this scale and complexity.

On any fair view it seems to me that disclosure has been and continues to be a formidable daunting exercise. Mr Hilliard Queen's Counsel, leading counsel for the prosecution, described the exercise of disclosure in a case such as this as far harder than conducting the trial itself and I agree with him, difficult though the

trial proceedings, if there are to be trial proceedings, will be.

The extraordinary nature of the case has required the prosecution to undertake an exercise in disclosure

of exceptional if not unprecedented proportions. They have had to consider what documents to disclose relating not only to the most recent investigation, itself of great length and complexity, but relating to all four of the earlier investigations. They have had to examine documents covering a period of more than 20 years. I am told that more than 500,000 pages of material have had to be examined in this connection. Remarkably further disclosable material is still being produced at the present time in the form of the transcripts of the continuing debriefing interviews of the witness [Witness C].

Moreover, the prosecution have had to conduct the disclosure exercise by applying a test which is somewhat broader in scope than that provided for by the Criminal Procedure and Investigations Act 1996, since criminal investigations in this case began long before the 1 April 1997, the day appointed pursuant to section 1 subsection (3) of the 1996 Act.

Having said that, it does seem to me that the application of the somewhat broader test is unlikely to

have made any significant difference from the outcome of the application of the test under the 1996 Act.

I should add, however, that the prosecution have had to deal with the process of disclosure against the

background that one of the defendants, Garry Vian, who had exercised his right to silence whenever interviewed by the police, did not serve a defence statement until 16 September 2009. Another defendant, Mr Cook, also exercised his right to silence whenever he was interviewed by the police and he has never served a defence statement at all.

This cannot have eased the disclosure process. I would like to emphasise, however, that these two defendants are not to be criticised for adopting the stance they have. Neither was obliged to say anything when interviewed. Moreover, the Criminal Procedure and Investigations Act 1996 does not apply to this case because of its age and none of the defendants has ever been legally obliged to serve a defence statement.

I should make it clear before moving on, however, that what I have just said in relation to the right to silence is said entirely without prejudice to any possible adverse inference pursuant to section 35 of the Criminal Justice and Public Order Act 1994 against Mr Garry Vian, Mr Cook or any other defendant in any

trial that may take place.

Also worthy of note in relation to considering the question of due diligence and expedition is that the prosecution were clearly aware from an early stage of

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their responsibilities and of the complexity of the case, as can be demonstrated by the very fact that Ms Stangoe was appointed two and a half years ago. I doubt if anyone would envy her the task that she was set.

In more recent times trial counsel, Mr Hilliard Queen's Counsel and Mr Rees, have taken on responsibility when they have had time for reviewing the disclosure process. It is also worthy of note that of the 500,000 pages to which I referred earlier, well over 60,000 pages have been disclosed on various different dates.

As disclosure has been made the defence teams have been extremely astute to examine it carefully, to consider whether it revealed the existence or possible existence of further disclosable material and to make requests for further disclosure accordingly.

Their performance in this regard has been highly impressive. I am told that at times requests for further disclosure have been received on a daily basis. The 360 item schedule for Mr Rees, but one of the

22 defendants, tells its own tale.

23 Moreover, as I have made clear in relation to the

24 question of the 8 July 2007 I do accept Mr Hilliard's

25 submission that the defence written submissions and

supporting documentation served during September 2008 in relation to the abuse of process applications raised matters which had a bearing on disclosure and which the prosecution could not reasonably have been expected to anticipate.

Moreover, I have seen for myself how matters have been raised during the oral development of the written submissions and during questions that have been asked and answers that have been given by police witnesses, or at least some of them, who were called to give evidence, which in my view also could not reasonably have been anticipated but have had a bearing on disclosure. These have often prompted specific requests for yet further disclosure which have been promptly attended to.

I am acutely aware of the length of time for which the defendants have already been in custody. I am anxious to avoid creating any impression that disclosure by way of drip feed is to be condoned. I bear in mind that there have been individual failures of the disclosure process, though not, as I hoped to have made clear, as many as the defence have contended for.

But having now presided over this case for many weeks I feel, I hope rightly, that I am well placed to take an overall informed view of the disclosure process and of the question of due diligence and expedition.

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Having regard, as I have said already, to the exceptional scale and complexity of the case and adopting the approach of Lord Bingham Chief Justice in the McDonald case, it is my judgment in this particular case that the prosecution have acted with due diligence and expedition.

Accordingly, I grant the application to extend the custody time limits which, if memory serves me correctly, extend until the 1 March 2010 but again I invite correction if I am wrong. Whether any further extension will be necessary or will be granted if applied for will depend on the situation that prevails at the time of any such application when the matter will of course be considered afresh.

That concludes my judgment.

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(The court adjourned until January 18 2009 at 10.30 am)

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Appendix D

IN THE CENTRAL CRIMINAL COURT NO T20087180

Old Bailey
London
SE1 2HJ

3rd March 2010

Before:

THE HONOURABLE MR JUSTICE MADDISON

R E G I N A

-v-

WILLIAM REES
GLENN VIAN
GARRY VIAN
JAMES COOK

MR N HILLIARD QC, MR J REES QC and **MISS H STANGOE** appeared on behalf of the **Prosecution**.
MR R CHRISTIE QC and MR J LENNON appeared on behalf of the the Defendant REES.
MR D WHITEHOUSE QC and **MR S FERGUSON** appeared on behalf of the Defendant **GLENN VIAN.**
MISS J HUMPHRYES QC and **MR G HARRIS** appeared on behalf of the Defendant **GARRY VIAN**.
MR P MENDELLE QC and **MR J O'KEEFFE** appeared on behalf of the Defendant **COOK**.

MR JUSTICE MADDISON: This is an application by the prosecution further to extend the custody time limits in respect of the four defendants, in this instance to 20 September of this year.

The defendants are charged with the murder of Daniel Morgan on 10 March 1987. The police operation that gave rise to the present case began in April 2006. It was the fifth such operation to have taken place during the years since the murder was committed.

The four defendants were arrested in April 2008. They have been in custody ever since. The date presently set for any trial there may be is 13 September 2010. I refer to any trial there may be because I have yet to rule on an application made on behalf of all four defendants to stay these proceedings as an abuse of the process of the court.

The application is, therefore, to extend the custody time limits for one week after the provisional trial date. That date is in fact the third on which this case has been listed for trial. It was originally listed in April 2009 and subsequently in October 2009.

There have been many previous applications to extend the custody time limits. Some have been unopposed, it being recognised on behalf of the defendants that there was a good and sufficient cause for the extension being sought and that any lack of due diligence and expedition on the part of the prosecution had not contributed to the need for the extension.

Some applications have been contested on the grounds that the prosecution had acted without due diligence and expedition and that this had brought about the need to apply for an extension.

Two such applications were heard by the Common Serjeant of London and by me on 23 April 2009 and 18 December 2009 respectively. On each occasion, the defence objections focused on failures and delays on the part of the prosecution in relation to the disclosure of unused material. On each occasion, disclosure was still continuing and was acknowledged by the prosecution not yet to be complete.

On each occasion, however, the application was granted. Typed or transcribed copies of both judgments are available and so for present purposes it is sufficient to say that on both occasions the applications to extend the custody time limits were granted on the central basis that although the process of disclosure had had its shortcomings this was a case of exceptional complexity which had generated an exceptional quantity of material, against which difficult background the prosecution had acted with due diligence and expedition.

The extension that I last granted on 18 December 2009 was until 1 March 2010. It has been extended day by day since then to allow for the hearing of this further application to be completed.

Once again, objection is taken to the application to extend, and again the central ground of objection is the way in which the disclosure of unused material has been conducted and indeed continues to be conducted. It is submitted that this indicates a lack of due diligence and expedition on the prosecution's part.

Some of the submissions presented on behalf of the defendants have, in my view, involved an attempt to reopen arguments based on the conduct of the prosecution prior to 18 December, up to which date I had previously held that the prosecution had acted with due diligence and expedition. Those submissions I have not found helpful. Many of the submissions, however, have concentrated on developments,

some of them significant in my view, since 18 December.

To begin with, it is pointed out on behalf of the defendants that approaching three years after the police operation began and approaching two years after the defendants were first arrested and approaching one year after this case was first listed for trial, disclosure is still continuing a pace. Even since the last extension of the custody time limits on 18 December two further substantial schedules relating to unused material have been served and a third one is expected imminently.

In addition to this general point, numerous individual examples in relation to disclosure are relied upon, including, for example only, disclosure only recently made of Witness Protection Unit files relating to several important prosecution witnesses.

For reasons that will become apparent, with one exception, it is unnecessary for me to consider these various individual points made on behalf of the defendants.

I would say, however, that the submissions based on the fact that disclosure is still continuing, that being a general submission, inevitably gains force as time goes by.

Accepting, as I previously had, that this is an exceptional case, and aware as I am of the scale of the task of disclosure, a line has to be drawn eventually. There must come a stage at which the very fact that disclosure is still continuing leads to the conclusion that there has not been due diligence and expedition on the part of the prosecution.

In this particular case we are, in my judgment, close to that line. I doubt whether the fact that disclosure is still continuing would by itself have justified a conclusion at this stage that there has been a lack of due diligence and expedition on the prosecution's part, but it is a matter to which I will return later in a context that

will become clear.

The discrete issue in relation to disclosure that has arisen and with which I must deal in some detail relates to a highly complex sequence of events in a case in which frankly nothing seems to be straightforward. The issue that I need to examine is probably best understood against the background of some general observations relating to two proposed prosecution witnesses, [Witness W] and [Witness A], in that order. I will make these observations as brief as I can.

Dealing with [Witness W], on 17 September 1998 he was arrested for conspiring or soliciting to murder the present defendant James Cook. He was also arrested for other serious offences including some relating to drugs. On 1 October 1998, still in custody, he gave an account to the police implicating Cook and two of the other present defendants in Morgan's murder. [Witness W] was then debriefed during several interviews and this process continued until 24 February 1999.

On 8 July 1999 [Witness W] pleaded guilty to several serious offences including soliciting the murder of the present defendant James Cook, and he received a total of seven years' imprisonment, subsequently reduced, if memory serves me correctly, by the Court of Appeal Criminal Division to a total of five years' imprisonment.

The sentences that he received reflected the assistance that he had given to the police and the further assistance that he was expected to give by giving evidence against the defendants he referred to in connection with the murder of Morgan.

I turn to [Witness A]. In 1998 the third police enquiry into the murder of Daniel Morgan began. It was codenamed Operation Two Bridges. During it, probes were placed in the business premises then occupied by the defendant

Jonathan Rees. No one was arrested for the murder as a result of this operation but the covert recordings taken led to the arrests of the present defendant Rees, the former defendant Sidney Fillery, a man called William Newton, the proposed prosecution witness [Witness A] and [Witness A's] wife on money-laundering charges. [Witness A] and his wife were arrested on 4 November 1999.

Having been interviewed about the alleged money laundering, [Witness A] was interviewed about the Morgan murder. He claims that the police told him that if he provided information there was a reward of £50,000 and that "all this", a reference to the money-laundering allegation, would go away.

In fact, he provided no information at that stage and claimed ignorance of the Morgan murder, even though, if he gives evidence, the prosecution expect him to say that Glenn and Garry Vian, two of the four present defendants, had already spoken to him about the murder.

Ultimately, counsel instructed on behalf of the prosecution advised that none of those arrested for the money-laundering offences should be prosecuted.

The history in relation to [Witness A] has to be taken one stage further. On 24 August 2004 [Witness A] and the present defendant Garry Vian were arrested for serious offences involving class A drugs. [Witness A] was later convicted, as indeed was Garry Vian. [Witness A] was sentenced to 17 years' imprisonment. Confiscation proceedings followed.

[Witness A] later told the police that the financial investigation into his own affairs was proving a nightmare. He was worried not only about the confiscation proceedings but also the length of his sentence. It was against that background that he eventually agreed to give evidence for the prosecution in relation to the Morgan

murder case.

It will be apparent from that brief summary that the police might reasonably have expected to find historical material bearing on the credibility of [Witness A] and [Witness W] as witnesses in the present murder case.

Detective Chief Inspector Beswick, a senior officer in the squad conducting the present investigation, has given evidence in the course of the current application to extend the custody time limits.

He told me that, indeed, once the most recent police operation, codenamed Abelard II, began in 2006 he, Detective Chief Inspector Beswick, became aware that very little material seemed to be available relating to [Witness W], particularly in relation to his having incited or solicited the murder of the present defendant James Cook, and in relation to the debriefing of [Witness W] in 1999.

There was some material available relating to [Witness A]. It related to his arrest for money laundering in 1999. What was available was the file submitted by the police to the Crown Prosecution Service for advice on whether or not to proceed. This file included witness statements, some records of interview of those arrested and a case summary. The file also contained the advice of counsel that the case should not proceed at all.

All of this material, said Detective Chief Inspector Beswick, was available to the police before the end of 2006.

There then began a remarkable chain of events. In the first part of 2007 the present investigation team approached the Department of Professional Standards, a different section of the Metropolitan Police, which had conducted the money-laundering investigation in 1999 to see if any more material in relation to

[Witness A] was available.

Detective Constable Anderson of the present investigation team established that the DPS had a large number of crates of material. The exact number of crates differs from document to document, but the number appears to have been of the order of between 15 and 17.

From these crates, DC Anderson obtained a second copy of the CPS advice file of which the investigation squad were already in possession. Otherwise, however, it seems from the evidence given by Detective Chief Inspector Beswick that no one from the investigation squad in relation to the present case ever examined the contents of any of the crates, at least until years later.

They took the view that there could be nothing relevant in the crates because they concerned a criminal investigation, that is the money laundering 1999 investigation, which was unrelated to the Morgan murder case and at the end of which counsel had advised that there was insufficient evidence to prosecute.

Accordingly, Detective Chief Inspector Beswick and Detective Chief Superintendent Cook gave their consent to the files being returned to the DPS secure store from which they had originally been extracted. And there they remained, as will be seen, until on or about 19 November 2009, a period of nearly two and a half years later.

In the meantime, the investigation squad maintained their efforts to trace further materials relating to [Witness W]. Their enquiries were directed at the DPS and the regional crime squad. This resulted in the provision of some limited material related to [Witness W's] debriefing process but nothing in relation to his incitement to kill the defendant James Cook.

Repeated requests by the investigation squad for further material were met, I was told, with replies that no further material was available. Those of whom the enquiries were made replied that they had searched boxes which it was thought might have contained relevant material but there was none.

Eventually, during the week of 16 November 2009 Detective Chief Inspector Beswick sent Detective Inspector Clarke to visit the DPS at their Putney offices in order to either search the boxes again or at least to take a statement from the officer or officers who had searched the boxes, with the apparent result that nothing of significance was in them.

Detective Chief Inspector Beswick said that the visit by Detective Inspector Clarke had two beneficial effects. The first was that the DPS rechecked their records and identified 18 crates of material that they thought might contain material relating to [Witness W], though they might not. Sixteen of these were delivered to the investigation squad on 19 November 2009. These 16 crates turned out to be the same ones of which the investigation squad had been made aware in 2007. In fact, mid-2007 at the latest.

However, Detective Chief Inspector Beswick did not realise this at the time, presumably because back in 2007 the investigation squad had assumed that the crates concerned would contain nothing relevant and so had not examined their contents.

Accordingly, Detective Chief Inspector Beswick was angered by the very late arrival of all this material in the crates. On 20 November 2009 he sent an email to Bernie Greaney of the DPS, which had sent the crates. I am going to read that email in full. I quote:

"Bernie, since April 2006 we have been asking DPS for all the Morgan-related material, in particular Operation Two Bridges and the prosecution file for [Witness W]. We have been constantly told that we have all the material and the [Witness W] files have been searched for and cannot be found.

"This week, I asked DI Doug Clarke to come over and view/search the boxes you said had been searched or obtain a statement from the DPS offices who had searched for and could find material relating to this case."

I interpose at this stage to say that I was told by Detective Chief Inspector Beswick that there was an error in that part of the email which should have read "could not find material relating to this case". I continue with my citation from the email.

"As a consequence, 14 further crates of Two Bridges material have arrived from the secure store."

I again interrupt my citation from the email to say that Detective Chief Inspector Beswick told me that there was another error there and that the "14" should have been a reference to "16". I continue with my citation from the email:

"(Who physically searched those?) and other crates have been identified at Old Ilford. The Old Ilford papers appear to contain at least some of the [Witness W] material. Some good news, perhaps.

"The disclosure demands in this case are unparalleled. We have worked on well over 500,000 documents and have so far managed to keep afloat, just.

"Disclosure, as always, is the central core of the defence abuse argument. And they, like this team, could not believe the [Witness W] papers did not exist, so kept asking for them.

"The 16 [and I say "16" though the email originally said "14"] relate directly to this

case and to the further SOPCA witness. They are full of drug-trafficking and financial investigation papers that may or may not undermine the witness."

I interpose again to say that I was told by Detective Chief Inspector Beswick that the reference to the first SOPCA witness was intended as a reference to the witness, [Witness A]. I continue with the citation from the email:

"I will need a detailed statement from DPS as to what searches have been done and why these files have not been found until now. It will need to cover when the searches were done and who by and a categorical statement that there are no more to be found."

Again I have to interpose to indicate that no such statement, so far as I'm aware, has ever been taken in this case.

MR REES: My Lord, I don't wish to interrupt your judgment but we did receive it late yesterday and it was distributed, so such a statement was delivered to the court yesterday. It was Mr Greaney, I think. It was from Mr Greaney. We had a statement from Mr Greaney yesterday.

MR CHRISTIE: After court rose.

MR REES: Yes.

MR JUSTICE MADDISON: I am grateful for the correction, of which I was unaware at the time that I prepared this judgment. It doesn't, however, have any effect on the conclusion, to which I will come in due course.

I continue with my citation from the email:

"The murder case currently at the Old Bailey is in the most severe jeopardy because of this issue. We will have to review this material for disclosure. We will have to inform the defence we have this material. A full review cannot be

realistically completed in less than two months. As a direct consequence of this issue we are very unlikely to win custody time limit battle on 4 December 2009. How on earth we can show due diligence when the MPS ..." presumably a reference to DPS --

MR REES: Metropolitan Police Service.

MR JUSTICE MADDISON: Metropolitan Police Service, thank you.

"... has had this stuff all the time. The defendants will undoubtedly get bail. If they do, we will undoubtedly lose witnesses. Please arrange this statement as a matter of urgency and make absolutely sure there is no more."

And the email ended with in effect the electronic signature of Mr Beswick.

Detective Chief Inspector Beswick followed this up with a briefing note dated 22 November 2009 for the benefit of certain officers of the investigation squad. I will cite only a part of this briefing note, as follows:

"We have recently received a substantial quantity of new material from DPS relating to Operation Two Bridges. An initial examination of the material indicates it is primarily but not exclusively financial exhibits and correspondence concerning the arrests of [Witness A], [Witness A's] **wife**, William Newton, Rob Heron, Jonathan Rees and Sidney Fillery for money laundering in 1999. This operation was generated by information gathered during the probe phase of Operation Two Bridges. It is apparent that there is some other material which is relevant to the current enquiry.

"We are currently at court fighting an application to stay on the grounds of abuse of process. It is imperative this material is catalogued and assessed for the purposes of disclosure, quickly and effectively. In order to achieve this aim,

a large number of officers will be deployed to assist this process."

I comment quite simply that it is apparent from the email on that briefing note that Detective Chief Inspector Beswick was acutely aware of the urgent situation presented by the arrival at that stage of all these crates of material and of the need to inform the defence of it at the earliest opportunity.

The 16 crates were examined and their contents put on schedules between 23 and 27 November 2009. Three further crates, I was told, were delivered from the DPS to the investigation squad on the 27 November, one of which was returned as being irrelevant. The other two were inspected and their contents were put on a schedule on the same day.

By or about this stage the investigation squad seemed to have tumbled to the fact that the crates were in fact the same ones as those of which they had been made aware in the middle of 2007. This must have come as quite a shock. Having failed to examine them in 2007 on the basis that they would not contain anything relevant relating to [Witness A], they had now received them nearly two and a half years later, pursuant to their request for information relating to [Witness W], only to find that they contained relevant material relating not only to [Witness W] but to [Witness A].

I turn to the second beneficial effect of Detective Inspector Clarke's visit to the Putney offices of the DPS. This was to add yet another layer of complication, that DPS officers based not at Putney but at Old Ilford found some 81 pages of material relating to [Witness W's] incitement to kill Cook.

It will be recalled that reference to this was made in the Detective Chief Inspector's email from which I have already cited.

These 81 pages were recovered from material relating to an entirely separate police operation, codenamed Operation Windermere, and it appears from what I have been told that there was an element of good fortune concerning the discovery of this material.

The 81 pages were provided to the investigation squad at or about the end of November.

An examination of these 81 pages enabled the investigation squad then to obtain from the Serious Organised Crime Agency a crate of further materials which included interviews and tapes relating to Witness W's incitement to murder Cook. I will refer to this as the single Witness W crate, for what I hope will be the purposes of clarity.

I move on to 18 December 2009 when I extended the custody time limits until 1 March. Neither I nor any of the defendants knew a thing about the 18 crates of material or about the email from Detective Chief Inspector Beswick dated the 20 November to which I have referred. Notwithstanding DCI Beswick's expressed opinion to which I have referred that the recent development should be drawn to the attention of the defence as soon as possible.

I extended the custody time limits. On 21 December 2009 and thus after the limits had been extended the prosecution sent to the defendants the 81 pages of Witness W material to which I have referred. On 12 January of this year, an MG6C schedule was served on the defendants, relating to the disclosure of unused material. This did not refer to the 18 crates or any of their contents. It did refer to the email, though in terms, if I can cut this short, by citing from the first paragraph of the email. Nevertheless, although from a reading of the MG6C one would not gain an

impression of the potential dynamite appearing in the latter stages of that email, nevertheless it was referred to and it was referred to with an invitation to inspect the document but it was not disclosed or its existence was not disclosed until 12 January, again after I had extended the custody time limits.

I am told that on 1 February 2010 another MG6C schedule was served. This too did not refer to any of the contents of the 16 or 18 crates.

On 15 February the defence were offered facilities to inspect the contents of the single [Witness W] crate, and if I understand matters correctly they did so on the 22 February. It is asserted on behalf of the defendants that the crate contained relevant material and this has not been gainsaid by the prosecution.

It was also on 22 February that Mrs Hill, a solicitor representing the defendant Glenn Vian, discovered Detective Chief Inspector Beswick's email of 20 November 2009. This was the first time that anyone connected with the defence had known of the full contents of that email.

On 28 February -- and I am going back now only a few days -- a compilation schedule of the material discovered in the 18 crates was provided to the defendants for the first time. Yesterday, on the 3 March 2010 a lever-arch file containing copies of some of that material was provided to the defendants.

It is against that chronology, that history, that I have to consider the application now made to extend further the custody time limits.

Mr Rees, on behalf of the prosecution, who if I may say so has done his very best in the face of what seemed to me to be overwhelming difficulties, has argued that the material in the 18 crates, late though it may have been disclosed, was either irrelevant or duplicated by unused material already served. I am quite satisfied,

however, that the crates contained material which should always have been disclosed.

Quite apart from anything else, the fact that there were reasonable grounds to arrest [Witness A] for money laundering in 1999 meant, in my judgment, that the papers relating to that case were likely, at least, to contain material damaging to [Witness A's] credibility, even though counsel later advised, it seems, on the basis of less material than now available, that there was insufficient evidence to proceed to trial.

To turn from the general to the particular, the crates were found to contain, amongst many other items of material, photographs of a barn owned by [Witness A] showing handguns, bullets, a knife, handcuffs, knuckledusters and gloves in the premises concerned. I am told and accept that [Witness A] had made admissions in relation to some of this material, but some only. He had admitted the finding of guns at his premises though claiming that the guns had been planted there and had nothing to do with him.

He had not said anything in relation to knives, bullets, handcuffs, knuckledusters or gloves. The photographs, in my judgment, have always clearly been disclosable to the defence.

Moreover, and I am dealing no more here than with particular examples, I am told, for example, by Mr Whitehouse that the material in the crates contains references to properties in which [Witness A] appears to have an interest around the world, suggesting, at least, that he has been involved in money laundering on a vast international scale.

Miss Humphryes, and I take yet but a further example, has drawn my attention to

documents suggesting deception and manipulation on [Witness A's] part with a review to reducing the amount of the confiscation order made against him following his drug conviction following his arrest in 2004 involving on [Witness A's] part, it would appear, a deception both of the Crown Prosecution Service and of the court making the confiscation order in relation to the ownership of a particular property that was taken into account when deciding in what sum the final confiscation order should be made.

Mr Mendelle has drawn my attention to other documents within the crates, referring on this occasion not to [Witness A] but to [Witness W] and, in particular, to an apparent attempt on his part to defeat confiscation proceedings by means involving the deliberate and dishonest undervaluing of property.

I should say that I am not in a position to make any finding of fact, or any final finding of fact, as to whether or not [Witness A] and [Witness W] have indeed been manipulative and dishonest in the ways suggested, but what I am in a position to do, and what I do do, is to find that there is material within the crates that would assist the defence in cross-examining these witnesses when it comes to establishing their credibility and accordingly there is material there which would correspondingly potentially undermine the prosecution case.

Indeed, I would add that the very fact that the prosecution have served a 71-page composite schedule of the contents of the 18 crates and a lever-arch file full of copies of some of the material concerned does make it difficult, with the best will in the world and despite the in some ways admirable efforts of Mr Rees, for the prosecution to argue that really these 18 crates and their contents can be disregarded for the purposes of considering whether or not the prosecution have

acted with due diligence and expedition.

I regret that, in my view, this is a sorry tale. In essence, and this is the heart of the matter despite the length of time for which I have been giving this judgment, the prosecution are only now in the process of disclosing material which is properly disclosable which has been discovered in crates of which they were aware but which they decided not to inspect in the middle of 2007. As always on these occasions, of course, I have the benefit of hindsight but it does seem to me that a clearer example of a lack of due diligence and expedition is difficult to imagine.

I appreciate that for some of the period concerned, indeed much of the period concerned, the investigation squad were enquiring of the DPS whether or not material was available and the DPS were wrongly saying that material was not available. However, the DPS are just as much for these purposes part of the prosecution as are the investigation squad, and from whichever angle one approaches the matter one comes, in my view, clearly to the conclusion that the prosecution, taken as a whole, have been guilty of a lack of due diligence and expedition in this regard.

Moreover, the times at which and the circumstances in which the existence of all this material in the crates and the existence and contents of the email of inspector Beswick on 20 November of last year were first disclosed to the defendants also in my view involves a lack of due diligence and expedition on the prosecution's part, as indeed does the fact that neither I nor any of the defendants knew a thing about the 18 crates or their contents or the email when the custody time limits were extended on 18 December.

I should like to make it clear that I have no reason to believe that I or the defence were

deliberately misled. I accept that disclosure, as I think I have already said earlier in this judgment, in this case has presented massive problems for the prosecution. I have been told that the disclosure of the material discovered in the crates as it were took its place in the queue and thus it was that its existence only came to the knowledge of the defendants, and indeed to me, after I had last extended the custody time limits.

Nevertheless, in the circumstances to which I have already referred in some detail I am clearly of the conclusion that the material in the crates or at least its existence and the email itself indeed should all have been put to the front of the queue.

Had the defence had this material at their disposal on 18 December they would in my judgment have had a much stronger hand to play when opposing the application then being made for the extension of the custody time limits, and although the outcome is impossible now to be certain about, it is at least well within the bounds of possibility that I would have refused to extend the custody time limits had I been informed in the way that I now am.

Accordingly, I find that the way in which the disclosure of the contents of the crates has been dealt with does indicate a lack of due diligence and expedition on the prosecution's part.

If I needed any support for the conclusion that there has been a lack of due diligence and expedition I would find it in the fact that the general process of disclosure is still continuing after all this time. To that general observation I referred earlier in this judgment.

However, I reach my conclusion about lack of due diligence and expedition based really exclusively, as I think I am entitled to do, on the sorry tale of the crates and their

contents.

Lest it be thought that I have overlooked some matters that have been urged on me, and here urged on me on the part of the prosecution, may I indicate that I am aware of the fact that the present trial date of 13 September earlier fixed provisionally was fixed for that date very substantially having regard to the professional availability of Mr Christie QC, leading counsel for the defendant Jonathan Rees.

Accordingly, I am aware of the availability to the prosecution of an argument that, irrespective of any lack of due diligence and expedition on their part, Mr Christie's unavailability would constitute a good and sufficient cause for the yet further extension of the custody time limit until the date sought, namely 20 September 2010.

However, in the unusual circumstances to which I have referred, and not least having regard to the fact that this is the first opportunity that I have had to consider lack of due diligence and expedition arising before I dealt with the application on 18 December, it does seem to me that, exceptionally, I am entitled in relation to the crates to have regard to the full history in reaching the conclusions that I reach today.

In any event, were it necessary for me to refer to section 22(3) of the Prosecution of Offences Act 1985 I would observe that that subsection gives me a discretion to decline to extend the custody time limit even if the conditions for its extension have been met.

For reasons which I trust I have made sufficiently clear, accordingly I decline to further extend the custody time limit and it follows that the limit which expires at the end of today will go no further and that I imagine that for practical reasons the

defendants will be bailed at some stage during the course of the day with the exception, if memory serves me correctly, of Garry Vian.

(The Court adjourned)

Appendix E

Friday, 11 March 2011

(10.30 am)

MR JUSTICE MADDISON: Yes, Mr Hilliard.

MR HILLIARD: My Lord, we are grateful for the time that we have been afforded this week which has enabled us to review the overall position in the light of very recent developments. It goes without saying that we have discussed the matters that I am about to outline with Daniel Morgan's family, with the police and of course with the Crown Prosecution Service who are responsible for taking final decisions in this case.

On 10 March of 1987, 24 years ago yesterday, Daniel Morgan was brutally murdered. He lost his life and the suffering that his family have endured since cannot be measured. I have some idea of the extent of it because they have been regular attenders during these proceedings. Daniel Morgan's sister gave expression to her feelings in court recently in terms that must have been understandable to all who heard them. I know your Lordship understood them because you said so.

I acknowledge also that these defendants were charged together with this offence in April of 2008. They have pleaded not guilty and have had to wait until today for these proceedings to conclude in the way they shortly will.

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The latest inquiry was faced with enormous, indeed unique challenges. A large amount of material had been gathered by earlier investigations and the latest inquiry generated a vast amount of material itself which in turn resulted in extensive further investigations.

The task of investigating and preparing this case has been immense and unrelenting. In particular, as your Lordship observed on 18 December of 2009 in relation to disclosure:

"On any fair view it seems to me that disclosure has been and continues to be a formidable, daunting exercise. The extraordinary nature of the case has required the prosecution to undertake an exercise in disclosure of exceptional if not unprecedented proportions. They have had to consider what documents to disclose relating not only to the most recent investigation, itself of great length and complexity, but relating to all four of the earlier investigations. They have had to examine documents covering a period of more than 20 years. I am told that more than 500,000 pages of material have had to be examined in this

connection."

Your Lordship has heard that the latest estimate is that we are now dealing with approximately 750,000 pages of documents.

As to the complexity of the issues, the written arguments and documents submitted by the parties in respect of various legal arguments run to thousands of pages.

A critical part of any investigation of any crime is to see that the defence are provided with such material that fairness demands they have so as to ensure that any trial is a fair one. In appropriate circumstances investigators are required not just to retain material for the purposes of disclosure but also to pursue reasonable lines of inquiry, whether these point towards or away from the suspect.

Paragraph 3.5 of the Code for Crown Prosecutors provides as follows:

"Prosecutors must make sure that they do not allow a prosecution to start or continue where to do so would be seen by the court as oppressive or unfair so as to amount to an abuse of the process of the court."

It goes without saying that a trial will not be a fair one if the obligations concerning the obtaining and retaining of material and its inspection and

disclosure are not met, notwithstanding the nature and size of the task.

We have been engaged in argument about this in this case for many months but a series of recent events have

led us, the prosecution, to conclude that the matter is now beyond argument for our own purposes and for reasons I must explain because the public interest requires that they be clearly understood.

A number of witnesses in this case had been the subject of agreements made pursuant to the Serious Organised Crime and Police Act of 2005. The evidence of one such witness, [Witness B], was excluded by your Lordship after extensive hearings at the beginning of last year. The court process provides a forum for such matters to be examined and resolved.

Subsequently the prosecution itself, the inquiry team and lawyers, decided that it would no longer be right to rely upon another such witness, [Witness C], in the light of investigations that the police have made into the credibility of further allegations she subsequently made which went far beyond the confines of her evidence about this particular case.

[Witness W] was the only witness who then remained in the case against James Cook. We, the inquiry team and lawyers, did not think that with [Witness W's] evidence

alone there was a realistic prospect of conviction so far as Mr Cook was concerned and thus, the case against him came to an end. Your Lordship endorsed that conclusion.

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Since then we have concentrated upon the evidence of [Witness A] and it is consideration of events surrounding his evidence that has brought us to the present position. In the course of his extensive criminal history he had been a police informant using the pseudonyms of [Witness A1] and [Witness A2]. Exploration of that history is of importance for the light it may shed on his reliability as a witness.

In November 2010 material was recovered which was subsequently provided to the inquiry team in January 2011. It was but a tiny part of [Witness A's] history as [Witness A2] but it was sufficient to cast significant doubt about his reliability as a witness.

Of concern for present purposes was the fact that that material was only recovered by chance, having been left in premises which had previously been occupied by the Department of Professional Standards of the Metropolitan Police who vacated the premises in, I believe, December of 2006.

The material was sufficient to mean that we, the inquiry team and lawyers, felt that we could no longer

rely upon [Witness A] as a witness. The inquiry team were not responsible for the fact that these particular [Witness A2] papers only came to light when they did.

In December of 2010 it was discovered that documents

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relating to [Witness A], which had at least at one stage been assessed as being of possible assistance to the defence, had gone missing without the defence having had the opportunity to see them. They were described as a docket and two information reports. Soon after, as I have indicated, we had concluded that [Witness A] could no longer be used as a prosecution witness. But as a matter of due process the loss of some documents and the chance discovery of others were obviously matters of considerable concern. Nonetheless, we considered at that stage that it was right to continue with the case.

We then embarked on a detailed examination before your Lordship of the circumstances surrounding the recovery and analysis of a large amount of material, some 18 crates worth which again involved [Witness A], but which also had potential implications for the way in which procedures had operated in this case.

The 18 crates came from the Department of Professional Standards and contained material relating to a money-laundering investigation carried out by their financial investigation unit concerning [Witness A] and others.

The missing documents I have just spoken of came from one of those 18 crates.

In the course of written submissions that we made after the hearings this year we acknowledged, for

example, that at least some of the team of officers who have looked at the material did not appreciate the potential significance of some matters which were of importance so far as [Witness A] was concerned. In acknowledging that, although there is an issue about this, we did not accept that the evidence about the whole of the process with the 18 crates established any conscious wrongdoing. On any view the task was not an easy one and the pressure of work was considerable.

Whatever the reasons there were failings in the whole process by which the material in the 18 crates was assessed and communicated and it matters not for present purposes why that was. I am emphatically not seeking to rehearse all the many competing arguments and positions about the handling of the 18 crates. There is, as your Lordship knows, a gulf between them leading to a suggestion by the defence that the police had deliberately contrived to mislead the prosecution and the court about the contents of the crates so as to win a custody time limit argument by saying that there was no disclosable material in the crates when it was or

should have been appreciated that there was.

We, again, as your Lordship knows, did not accept that motivation and have submitted that a combination of matters, such as pressure of work and overreliance upon

initial assessment led to the failure of the process. But fail it did, and that too is a matter of considerable concern.

My Lord, it is right to record that we have at all times had in mind the requirement of the Code for Crown Prosecutors that there must be a realistic prospect of conviction. That means proof of guilt by the prosecution beyond reasonable doubt against the background of a presumption of innocence.

By the start of this year we no longer had the use of [Witness B], [Witness A] and [Witness C] as witnesses and although it was our view that there was still a realistic prospect of conviction, on any view that decision had become very finely balanced after the start of this year. Thus, it should not be thought that this was a prosecution that was free from difficulty. Far from it, even assuming that the rest of our evidence was admissible, and a number of issues which were or were to be the subject of legal arguments will not now be resolved. In all of them the defendants forcefully asserted their innocence.

In our view the prosecution case could not survive any weaknesses beyond those that we knew of when the preliminary evidence finished in February of this year. Matters do not, however, end there.

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Notwithstanding the time that had been spent examining the circumstances of the receipt of 18 crates from the Department of Professional Standards, on Friday last prosecuting counsel learned for the first time of four more crates of material from the DPS. One of the crates appears to have contained sensitive material unrelated to this case. The other three contained money laundering material relating to, amongst others, [Witness A]. The inquiry team had taken possession of them in March of 2008. Three of the crates were still in their possession, the one I have referred to had been sent back to the DPS.

We believe that the vast majority of the material in the three crates is replicated elsewhere but the real point is, if that it is right, that no one could have known that until last weekend when they were subjected to detailed examination for the first time. The material had not been listed anywhere or reviewed for disclosure.

In court on Monday this week I described this as "remarkable" and it is that on any view. Plainly they

should have been subject to the disclosure process. Mr Rees and I have been engaged for the whole of this week in considering the Crown's overall position. Having made an assessment at an early stage about the

likely outcome, we have concentrated our efforts upon that and not upon the history of the four crates.

My Lord, we of course recognise that there have been other areas where the disclosure process has previously been the subject of challenge. But I should record that the court had concluded that the trial should nonetheless proceed as communicated in the court's email of 30 June of last year. Plainly though, matters have developed since then.

My Lord, all that I have outlined thus far is a matter of considerable regret to all of us on this side of the court and of dismay to the family of Daniel Morgan. But before the court comes to rule upon the integrity of its own processes there is a prior question for us, namely the safety of the prosecution process.

My Lord, the time has come when the prosecution no longer feel that we are able to satisfy the terms of paragraph 3.5 of the Code for Crown Prosecutors to which I referred earlier. It seems to us that that is now the inevitable conclusion to be drawn from the combination

of matters that I have outlined.

In addition, any jury's assessment of the available evidence would in our judgment inevitably and rightly be affected by the knowledge that the prosecution accept

that we cannot be confident that the defence in this particular case necessarily have all of the material to which they are entitled.

In those circumstances it seems to the prosecution that the prospects of conviction are also significantly affected to the point that it can no longer be said that the evidential test in the Code for Crown Prosecutors is satisfied. Police, Crown Prosecution Service and counsel are all of this view.

It is of necessity an overall view and takes account of the scale of the task which this investigation has had to confront, not only in its reach back to 1987 and before but in its breadth in more recent times. Nor am I losing sight of the amount of material which the inquiry team have been responsible for obtaining and disclosing to the defence. On occasions that has been acknowledged by some of those who represent the defendants, notwithstanding many hotly contested disputes about other matters.

On the other hand, the recent events which I have outlined have emerged long after the defendants' arrests

and the original trial date of April 2009.

Your Lordship has had to consider these issues over the last months, save and excepting the question of the four crates. We cannot know, at the moment at least,

what conclusions you had come to. Nonetheless, we have to do the right thing by the principles that guide us. In reaching our conclusions we have meant to do the right thing by the defendants. It has, I acknowledge, taken a protracted process to get to this point, but the many issues have been extraordinarily complex.

The family of Daniel Morgan also looked to the same process to find justice for him only to learn that, notwithstanding the efforts that were made, there will be no trial in this case for the reasons I have explained.

I have apologised to them for the fact that we have reached the position we have. There are lessons to be learned and there is work to be done to ensure that such a position is not reached again.

My Lord, accordingly, and for the reasons I have given, the prosecution offers no evidence against each defendant and accepts that the court will enter verdicts of not guilty in respect of each of them.

My Lord, after that has happened there are one or two consequential matters that maybe I can address.

MR JUSTICE MADDISON: Yes. Thank you.

I think it would be inappropriate to delay the inevitable next step and upon your offering no evidence against the three remaining defendants I direct verdicts

of not guilty in each of their cases.

I will be adding a few remarks of my own, Mr Hilliard, but perhaps before I do that it would be right that I should ask defence counsel, consequential matters apart, whether there is anything which they wish to say at this stage. Mr Christie?

MR CHRISTIE: Just very briefly, my Lord. We obviously hear everything that Mr Hilliard has said and know that he has himself taken this matter on very careful consideration, as indeed Mr Rees has as well. We do welcome the fact that this prosecution is not to proceed further but say that in our view it is not before time. It is striking we think that this decision comes following Monday's hearing at which your Lordship was seeking assistance as to how to approach the conflict between what counsel said and what police officers had said in the very lengthy 17 day voir dire.

Much has already been said in the course of this case and in particular, in relation to Mr Dalby's evidence in relation to Mooregate about damage limitation, and it occurs to us that notwithstanding all

that has been said, that there is an element of that here.

But whatever else is said about anything it is quite plain that in December 2009 your Lordship was not

provided with all the information that you should have been, as indeed were we not, and as a result of that and as a result of police not providing a proper process, whether negligently or dishonestly we may never know because of course this decision takes away the need for your Lordship to make a formal ruling about those matters that we have dealt with recently, it is quite clear that Mr Rees and Mr Glenn Vian remained in custody for three months at the very least, having already spent two years in custody, three months longer than they should have done. That is both an issue that goes to the liberty of the subject but it is also deeply regrettable.

In those circumstances, as I have said at the beginning, we welcome the decision and are glad that it has happened but this is at a stage where we were on our sixth listing of this case for trial and we think that it is right that we publicly make that observation.

My Lord, nothing else.

MR JUSTICE MADDISON: Thank you. Mr Whitehouse?

MR WHITEHOUSE: My Lord, I don't have anything to add.

MISS HUMPHRYES: I am in the same position as Mr Whitehouse, thank you, my Lord.

MR JUSTICE MADDISON: Thank you.

Mr Hilliard, may I address you, please, on behalf of

all counsel and all parties.

I had been forewarned before coming into court of the course which the prosecution were going to take. I did not know what you were going to say, if anything, by way of explanation. I had considered whether I should make any remarks on the situation that has now arisen and had decided that it was right that I should make a few comparatively brief remarks. There is a considerable duplication between what I am about to say and what you have already said but, nevertheless, I think it is appropriate that I should say as follows.

This is the end of a long and, as I am sure everyone associated with this case will agree, exhausting road. It is a case that has always had with it highly unusual difficulties for all parties. Many of those difficulties arise out of the age of the case. The very fact that the trial was going to investigate, had there been a trial, events taking place in 1987 is not only an unusual state of affairs but it is one that self-evidently presents difficulties, not only to the prosecution but to the defendants, even if those

difficulties alone could be addressed by the trial process, as I had, all other considerations apart, decided that they could.

Another of the difficulties arises out of the

evidence available to the prosecution in this case, and to that you have already referred in some detail. There is no doubt, it seems to me, that given the evidence available to the police before these proceedings were instituted the police did have ample grounds to justify the arrest and the prosecution of the defendants.

I make it clear that in saying that I am not suggesting that they or any of them are guilty. That could only have been determined after a trial and they should know that I am conscious of the enormous burdens and anxieties which they have had to bear following their arrests and prosecutions.

But the prosecution's case that remained in due course after witnesses had fallen away was dependent substantially, although not entirely, on witnesses of bad character and I am aware of the fact that the prosecution will have had to keep under constant review the strength of its own case and the likelihood ultimately of convictions.

Another difficulty which all parties, but particularly the prosecution, have had to contend with

is the shear volume of the material to which again Mr Hilliard, you have already referred.

This dreadful murder, as dreadful it was, has been investigated four times before the investigation that

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brought this case to court. There was an investigation in 1987 in the immediate aftermath of the murder; a further investigation in 1988 and 1989 carried out by the Hampshire Constabulary; Operation II Bridges in 1998 and 1999; the parallel operations Abeland 1 and Morgan II in 2002. And the paper generated by those investigations and by the present one has put burdens which will not be found in many cases upon those responsible for putting together the prosecution's case and for deciding which documents should properly be disclosed by way of unused material.

It is right to say that disclosure has raised problems repeatedly during these court proceedings, but I endorse the view that you have expressed, that the recent enquiry in relation to the 18 crates and the recent discovery of the four further crates do give rise to a general sense of uncertainty as to whether the disclosure process in this highly unusual case can in truth ever properly be carried out.

It will be apparent from what I have said that I regard the decision which you have now taken to offer no evidence as a principled decision, and although that

decision avoids the need for me to deliver what would have been a remarkably lengthy judgment on the many, many issues that have arisen in this case, I think it

correct to add that in my view the decision that you have taken is not only principled but it is right.

Prior to taking this decision the prosecution has been conducted with appropriate vigour. I would like to pay tribute to the skill and industry with which counsel for the prosecution, and principally I have seen you and Mr Rees, have presented this case both by way of written and oral submissions.

But the tributes ought not to stop there. There have been occasions when I perhaps have betrayed more irritation than I should about the amount of detail relied upon in the course of certain submissions and by the repetition of points made in the course of argument. But my firm view is that the legal representatives for all of the defendants, faced with a mammoth and most difficult task, have responded magnificently to it. And the quality of the written and oral submissions that I have received has, taken overall, been of the highest quality.

The industry and the tenacity which has been shown by the defence teams is to be commended and the

defendants will leave court knowing, if they did not know before, though I think they must have known before, that they have been very well served.

The comments that I have just made have been

directed principally towards defence counsel, but it is right that I should add that I have become well aware during these long legal proceedings of the extent to which the solicitors representing the defendants also have played a significant part in the research and the preparation of their cases.

Finally, Mr Hilliard, may I address some remarks to the family of Mr Morgan. There will have been times when they must have been confused about the fact that we were not trying, whether or not the defendants or any of them were responsible for the murder of Mr Morgan, but were trying a large number of highly complex preliminary issues. In all the years that I have been a judge, and there are many, many of them, I have never come across a case in which there have been so many issues or such complex issues to be resolved before a trial could even get underway. And I anticipate that the combined experience of counsel, and it is very considerable combined experience, has ever come across a case of this kind.

The family have attended on a regular basis in

a combination of representatives. They have throughout these proceedings behaved with commendable restraint. They will inevitably be disappointed by the outcome but they, I think, should be commended on the dignity with

which they have faced these proceedings knowing, as everyone in court will have known, the extreme distress under which they will have been observing the way in which the case has developed.

That is all, Mr Hilliard, that I wish to say.

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