

of the body at the Albury Morgue (part of Exhibit 88), it will be seen that these do not coincide with any degree of accuracy down the left hand side of the cheek; they do on the right hand side of the photograph, other than on the upper portion, but they do not in any way coincide in width. If we superimpose the transparency of Agostini on the transparency which I have made of the corpse at the Albury Morgue, there is a greater coincidence of outline and width and the hair part than there is with Philomena Morgan superimposed on this one in the same way. The left eyebrow of Linda Agostini coincides very accurately with the eyebrow of the corpse at the Albury Morgue. The width is quite good and the contours are quite good; the hair part, such as can be seen of it, coincides also. But I do not regard this as any proof that this is Linda Agostini. If you take the transparency of the tinted photograph and superimpose on that the transparency of Linda Agostini, it will be found that there is a great coincidence there; the eyes superimpose and the eyebrows superimpose; the width is not nearly the same down at the plane of the jaws, but there is great coincidence with regard to the eyes, the brows, and the general shape of the face. Here Philomena Morgan, in my opinion, according to Dr. Benbow's theory, becomes Linda Agostini. If we go back to Miss X, and superimpose Linda Agostini upon Miss X, we find that the eyes and the brows and the mouth, and to some extent the general shape of the face, coincide, but the width is not nearly the same. Again, according to Dr. Benbow's theory, Linda Agostini now becomes Miss X. In other words, in my opinion, the whole theory has no value at all. Miss X is a child of twelve, and if desired I can produce her. In my opinion, the problem that immediately confronts one, if one wants to try and find the life-size of

Philomena Morgan, is such that it cannot be solved. I think the classic example of that is the Ruxton case which has already been referred to. That case is a classic example of attempting to reproduce a deceased person to life-size by means of a photograph.

TO THE CORONER: I do not mean that that was a failure. The elements that are missing in this case were present in the Ruxton case.

TO MR. HEAD: Regarding the matter of the hands, which Dr. Benbow has enlarged from a very small snapshot, in that Dr. Benbow is immediately confronted with the same problem as in producing a life-size photograph of Philomena Morgan. He does not know and he has no means of knowing, in my opinion, what the original size of Philomena Morgan's hand was. On his method, he has produced a life-size photograph of the left hand of the corpse and then has simply enlarged from that snap of Philomena Morgan's hand until he has reached the same size apparently as the life-size of the corpse. But to begin with, that is totally unreliable, in my opinion, for this reason: the little camera with which that photograph was taken is by the appearance of the snap just a cheap small type of camera, and to push that photograph up to the size that he has pushed it has resulted in its going to pieces, as can be seen in the photograph, and in my opinion no reliance whatever can be placed upon the outlines of the hand; you cannot say ~~whether~~ where they finish because the image is breaking up. In any case, it goes back to the first principle, that is, that you cannot make comparisons of a three-dimensional object, such as a hand, on a plane surface, so that any measurements which Dr. Benbow has shown on his photograph have no meaning with regard to the actual position on the hand of the spots that he has indicated. A photograph (Exhibit No. 68) was

taken by me of my assistant McCallum's hand. This photograph was produced in this way: I put McCallum's hand in the approximate position of that shown in Dr. Benbow's photograph of the hand of the deceased. I then photographed McCallum's hand. I made a template from the chart shown on Dr. Benbow's exhibit and I laid that template on the paper and then printed McCallum's hand on to the paper, and that shows now the outline of the template as produced by Dr. Benbow. In my opinion, the chart of Dr. Benbow's shows the same points and the same area on the hand as it does on that of the corpse. In other words, by Dr. Benbow's method McCallum's hand becomes that of the corpse. In 1934 I remember Sergeant McRae bringing certain exhibits in connection with the Pyjama Girl case to Melbourne. After they had been examined by Mr. Taylor, the Government Analyst, I photographed the potato bag by ordinary methods. I tried it by ultra-violet light and then I photographed it by infra-red methods, and I succeeded in getting the name which appears on the photograph that is produced here, I think "DALM No. 1 Grade", if I remember rightly. After I had done that and after consulting with Mr. Taylor as to the advisability of doing it, I washed portion of the potato bag using ordinary soap and water, the idea being to try and clean up the bag to see if I could make the stencilling visible to the naked eye without means of photography. That would be in September, 1934. I would like to give some evidence as to how Dr. Benbow or his photographer has succeeded in making this photograph of Philomena Morgan, "C" on Exhibit "UU", very similar to the face of the corpse. The upper left lateral incisor on this coloured photograph has undoubtedly been put in - it has been admitted that it has been put in - and in my opinion it has been put in in such a manner that the slope

of the tooth next to the central incisor simulates that of the deceased, but the width of the left lateral incisor, in my opinion as a photographer, not as a dentist, has been made so great that it agrees with if it does not exceed now that of the central incisor. The work on the tooth is quite obvious, and getting back to the allegation that was levelled against the New South Wales Police that they had faked negatives I propose to show by means of lantern slides that even supposing the New South Wales police had faked Philomena Morgan's mouth they could not fake it to that extent that it could not be detected. The means I propose to use is the lantern to project these up until you can see actually on Dr. Benbow's exhibit the extent of the faking that has been done, by that I mean the retouching or alteration on the tinted photograph. The extent and nature of the alteration of the eyebrows is in the same category, it can be easily seen, and again demonstrates that alteration in a photograph, in my opinion, cannot be done to that extent that it can deceive means of detection. What I am putting is this, that an allegation has been levelled at the New South Wales Police that they faked things, and I say they could not do that without being detected. (At this stage the witness commenced his lantern slide demonstration). That is a lantern slide made from the New South Wales negative showing Philomena Morgan's face. This is a lantern slide made from the coloured photograph which has been produced here. To see the work on the teeth more clearly, you will have to wait until I put a further slide on. In this particular one I want you to look at the work which has been done on the eyebrows. You can see actually the work which has been done on the left eyebrow, that is the right eyebrow as seen in the picture; you can see light portions there indicating

where the work has been done. Compared with that one, you will see there is an entire difference between the two. You will remember that in the transparencies which I produced of the coloured photograph and of Linda Agostini the eyebrows coincided exactly. There is the enlarged lantern slide made from the New South Wales negative of Anne Philomena Morgan. The work which Dr. Benbow has referred to as having been done on this mouth, he used the word "faked", cannot be detected on this photograph, and I say it does not exist. You see the space between the central incisor and the first tooth to the left of it, that space is soft in density, it is black but soft and agrees with the other shadow portions on other parts of the face with regard to its quality. There is no difference in the quality there between that shadow detail and other shadow detail; take, for instance, up in the nostrils. If work had been done on these pictures then it would become as obvious as it is now in this slide showing portion of the mouth on the tinted photograph. If you look now at the first tooth which purports to be the upper left lateral incisor, the work on that tooth now becomes quite apparent, but it has not entirely hidden the original slope of that tooth. The original slope of this tooth can be seen there and it comes around in that area there (indicating). This work to me is quite obvious; it is admitted it has been worked up, it is not disputed. Going back to the other photograph, if similar work had been done, as is alleged, by the New South Wales police, it could be detected in a similar manner. Another point I would like to refer to while we have this slide here is the points on Philomena Morgan's teeth which have been used by Dr. Benbow as a point of identity when he has compared it with the corpse. The actual edge of this tooth cannot be defined, it is lost



into the lip, and that edge there cannot be defined. With regard to the measurement of the teeth, it can be clearly seen that these teeth, that is the outline of the teeth is of such a soft nature that no clear, defined ~~line~~ outline from which measurements could be made is available. I have one further slide, and that is one which I made from the plate taken from the unfixed proofs supplied to me by the New South Wales police, that is the four that have been produced in evidence. I made a slide of the mouth on that, and the purpose of this slide is to show that there is no difference actually in that width between the teeth at all, but there is a difference in the quality of the picture because this one was made from the proof that has been produced here and which has been finger-marked and knocked about a great deal; but you can still see, in my opinion, the space between the teeth is exactly similar. This other one is a much clearer one; the proof from which this was taken was in a much clearer condition than this one which was badly knocked about. You can still see the space between the two teeth; it is clearly indicated and in my opinion it is identical.

EXHIBIT NO. 89 ..... Five lantern slides.

(Page 685 follows)

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*RP*

TO MR. BARRY: I am a member of the Victorian Police Force.

I was asked to come into this matter for the purpose of giving evidence before His Worship after Agostini was arrested. All my photographic work has not been done since Agostini was arrested, and since the challenge has been made to the identification that the body is the body of Linda Agostini; if you mean by that since Dr. Benbow started to give evidence it is not so, if you mean that as the challenge. My photography has not been done since the first day of this inquest. The Agostini photographs were made available to me shortly after the arrival of the New South Wales police, and it was as a result of an examination of those negatives and the subsequent printing of them that I was able to discover the three spots on the corpse. That was prior to this inquest being opened. My attention was not directed to that by any member of the New South Wales police force. I discovered that in company with Det. De La Rue when we made the prints. We searched the prints for any means whereby we could get a point or points of identity which we could compare with the corpse. We discovered the three spots, and that was the reason then that we got Professor Sunderland to come to the Morgue to examine the corpse. No description of the deceased that I am aware of contains any reference to those three spots. I am not in a position to answer the question as to whether any description of the deceased contains any reference to the deceased having been freckled. I am not aware of any document in existence before Maych 4th of this year which contains any suggestion that there is any mark upon that body of any significance. I have not had access to all the relevant documents. There was nothing to stop me from getting access to any documents; but I saw no point in asking for them. I was dealing with the facts as I found them, not go back and prove them from any other angle. I did not think that the original description of the body would be of some importance with regard to the spots. I do agree that I do not know of any official

statement that those spots were in existence and might be of some use in relation to the identification. I have no idea whether the gentleman who took the negatives of Linda Agostini is in attendance, I do not know. I believe that they were taken at the Hollywood Studios in Sydney. As to not having any idea whether there is anyone from the Hollywood Studios here to say they took those negatives, I have heard this - I do not know whether it is so or not, but it has been mentioned in my presence - that probably someone would be brought from Hollywood Studios; but whether anything has been done or whether they have been able to get the photographer, I am not able to say. On the <sup>negative</sup> ~~prints~~ produced, Exhibit 70, I would not say the light was flat, I would say the character of the face has been fairly well brought out with the light. I do not see how you can say that the background on the negative you produce is much better defined than the <sup>back-</sup>ground of Exhibit 70, that depends entirely on what the original background was like. You cannot compare the two, because we have not got the backgrounds to compare. As to being able to see the background defined in the illustration negative, the fall of a curtain, I can see the background ~~diffuse~~ diffused, not defined. I do not agree with your suggestion that it is defined, diffused is my opinion of it.

..... EXHIBIT R.2 ..... Comparison negative.

I will look at Exhibit 70. The background there is not quite flat, other than the diffusion of background. That is, you have the highlights and shadows in the background, but it is diffused, similarly to diffusion here. I agree that you cannot have a diffusion of background; but let me put it this way if you do not like the word "diffusion", it is not brought into sharp focus in either case. I do not agree that there is no sharp background to be perceived so far as those two pictures are concerned in Exhibit 70, because it is a negative which represents an impression on the film of a picture already taken, which is a flat surface. The explanation is not

that the background is up with the face, on the flat plane. As to there being no impression there of depth at all, that brings us back to our former arguments, that you cannot show depth in a flat plane. As far as the eye is concerned, I know that it describes depth to a surface, even where it is a plane surface; that is, if you are looking at a third dimensional object. I have had the experience of looking at a two dimensional object and the eye will assign, by reason of the habit of vision, a third dimension to the photograph; by that, I mean if you take, say, an egg, or some object that has three dimensions and photograph it you can, if there are sufficient markings on it, appreciate to some extent that it has three dimensions; but you cannot measure them and say what those measurements are. I will not have for a moment that an examination of Exhibit 70 indicates quite plainly that it is a photograph of a photograph and that the background shows it. As far as your argument is concerned there, my explanation to that is this, that he has used a background which he has considered suitable to his subject, that he has used a depth of focus which is going to throw his background sufficiently far away that it will not become sharp and interfere in any way with the subject. As a matter of fact, you can see the division in this photograph between the side of the face and the back of the hair, even the back of the hair is not sharp. The depth of focus is the point he has been working for. Asked whether it may be accounted for in two ways, by the depth of focus or by the circumstance that it is a photograph of a photograph, I say no, I contest that it is a photograph of a photograph; all the elements are there of an original negative. I have the negative of a photograph of a photograph. There is a photograph of Linda Agostini. I dispute your suggestion that that negative exhibits the same characteristics as Exhibit 70. What this exhibits is loss of quality in the negative, just what you would expect to find if you copied another photograph. I can produce for

you a print made from that same plate to prove my contention.

TO THE CORONER: I have not another negative.

TO MR. BARRY: I have no other negative here which is a photograph  
*at* of a photograph, but I could produce <sup>one</sup> ~~it~~ for you. I have not  
the negative here of the photograph of Anne Philomena Morgan,  
Exhibit 20; but I can produce that to His Worship if he  
wishes to see it. Putting that glass plate I have just pro-  
duced side by side with a similar one of Exhibit 70, they  
do not exhibit the same characteristics. There is a distinct  
loss of quality in this negative that is not apparent in the  
sparkling original, and that immediately tells a photographer  
this is a copy, that is the original. (indicated.) I would say  
that the one in my left hand (part of Exhibit 70) is the  
sparkling original. The quality of the negative is sparkling.  
As to whether there is a lack of the sparkling quality about  
the one which will be Exhibit 82, to a photographer there  
is a definite loss of quality in this negative. I mean by  
quality the capacity of a thing to look bright and reproduce  
all the essentials in the photograph in a bright manner;  
the tones being in their right intensity. That is to say,  
you do not get your highlights made brighter, which you do  
here in the copy. Every time you copy a picture you get a  
loss of quality, the highlights become harder and the shadows  
become blacker. I would not say that things become more  
defined. There is a difference in quality; that is what it  
amounts to. There is a loss there, the more you copy a thing  
the sharper the outlines become. If you took two photographs  
of Linda Agostini and put them side by side and photographed  
them with the one film you would not get something that  
would be strikingly like the two negatives found in Exhibit 70;  
you would get it somewhat similar, but I would say an examin-  
*at* ion of the negatives would reveal <sup>a lack of</sup> that sparkling quality.  
As to the term "sparkling quality" being my own or a technical  
term, it is my own, but "quality" is a term usually referred  
to in photography. I think you could find "Sparkling quality"

in a manual of photography. I would say that you would find "Sparkling quality". I cannot lead you to any authority where I have got it from, and I put it forward as my own; but I have no doubt that you could find it if you searched photographic manuals. I do not recall any at the moment. I can assure His Worship that I am able, merely by examining a negative, to assert that it is a photograph of an original subject rather than a photograph of a photograph of an original subject. I will agree that the various circumstances to which I point are circumstances upon which opinions may differ, one person may say it and another person may not. I do not agree that a person might quite honestly offer the view that Exhibit 70 is a photograph of a photograph. I think if the whole of these exhibits are submitted to an independent opinion, an opinion backed by experience, that he will find, as I have found, that Exhibit 70 are originals. I have done that. I asked Mr. *Beilist* a photographic expert from the Melbourne Technical College. I did not express that view to him, he made up his mind from the exhibits as shown to him. I did not ~~submit~~ submit them to anyone who will not be called, but I am prepared to submit them to any recognised expert you care to bring along. I know that there are freckles on the corpse and I have produced a photograph to substantiate it. As to whether they are freckles on the corpse or whether they are post-mortem changes, I would say they are freckles. An examination of them, coupled with a discussion on the point with Prof. Sunderland makes me say that. As to not having had much experience in examining bodies which have been preserved in formalin for ten years or so, not those which have been preserved so much. I have not had much experience in examining bodies which have been dead for ten years; I think this is the first one <sup>that I have examined</sup> that has been dead for that long. It is not the first one I have examined which has been preserved for any length of time in formalin; I have examined others that have been preserved in formalin. I do not know how long

they have been preserved in formalin. I was at the Anatomy School at Melbourne with Prof. Sunderland, and I saw them there. That was quite recently, in connection with this case. I am not in a position to say whether this body has freckles on its stomach. If you suggest that there are the same class of spots on the stomach of the body as those which I say are freckles on the face, I say that the only answer I can give you to your suggestion is to answer it with another one and suggest you tackle Prof. Sunderland on that matter. I examined the stomach I did not see anything that looked like freckles on the stomach. I have a fairly clear recollection of what I saw. If it is said that there are marks on the stomach which are quite similar to marks on the face I am not prepared to controvert it. I found what I say is the inclusion lacuna in the tooth of Linda Agostini on the day that De La Rue and I examined the photographs. That would be on the 20th March this year when I printed the photographs. I did not make any record of that day of the finding of the inclusion lacuna. I have no note on that day that there is on the tooth of Linda Agostini an inclusion lacuna similar to that found in the body. I have no note at all. As to whether I have anything that came into existence at the time to support my assertion that I detected it at that time, I can only produce De La Rue to say that we saw it on the print at that time. As to having no note of the presence of that, I can produce, and I have produced, a photograph taken on the 23rd, two days later, to exhibit exactly the same thing on the corpse which I saw on Agostini's teeth two days before. If you suggest that the photograph of the mouth of the body was taken for the purpose of dealing with the erosion or break on the tooth and not to deal with the inclusion lacuna, I say that is not so. I told Mr. Read and Mr. Davis; I discussed it with them. I did not tell Dr. Magnus, the expert from Sydney, but I passed a note here in Court across to Mr. Read and asked him to draw Dr. Magnus's attention to it while he was in the witness box. I know that Dr. Magnus did not give any evidence about there being an inclusion lacuna

in Linda Agostini's tooth; but I asked Mr. Read to bring that under his notice. I do not remember Mr. O'Brien mentioning it. I do not know whether he was shown Linda Agostini's photograph. Mr. Bell was not asked anything about it that I can remember. Dr. Benbow when he was in the box was not asked anything about the inclusion lacuna in Linda Agostini's tooth that I can remember, but I still come back to my assertion that I passed a note to Mr. Read and asked him to bring it under Dr. Magnus's notice when he was in the witness box. I will take the photo of Linda Agostini which shows the inclusion lacuna. What I say is the inclusion lacuna is a shadow in the picture. If you suggest that it is not an indication of a depression in the tooth at all, but it is caused by the way in which the light falls, I say it is caused by the way in which the light has struck because there is a depression in the tooth. There is an enlargement of her teeth. There is an enlargement there of the teeth. I have not got a photographic enlargement of Linda Agostini's teeth here. I can produce it if it is required. If you say you want a photographic enlargement of the mouth of Linda Agostini as shown in the portrait for the purpose of comparison with the photograph of the teeth of the corpse, I say I am prepared to produce that.

TO THE CORONER: I can make it.

TO MR. BARRY: I have not one here. I have known for days that I was going to give evidence. As to knowing that an enlargement of Linda Agostini's teeth has been desired, I will take my directions from the Coroner. I have not known that it has been desired. No request came to me from Dr. Benbow. I will do anything that the Coroner asks me to do with regard to the production of photographs. I heard Dr. Benbow's evidence that an examination of the photograph of Linda Agostini standing on the side of a ship showed that there was an overlapping of the teeth. I recollect him saying that. I believe he did say that an enlargement of that photograph would show that. The photograph, Exhibit B, is quite a good

photograph of the teeth. It is showing some of the teeth. I would not say it shows all the teeth in front, because on the right hand side they do not show. It shows the one where I say there is an inclusion lacuna. I have not thought of enlarging that to see whether there is an inclusion lacuna there. Looking at it now there does not look to be any inclusion lacuna in the left upper lateral incisor. I am not going to tell you that I cannot enlarge it. It is quite capable of enlargement, but I am going to tell you that immediately you enlarge it it goes to pieces and you cannot rely on it; in other words, the grain will not stand enlarging.

TO THE CORONER: I am prepared to do it. e

TO MR. BARRY: If the Coroner so directs I will do it. I consider that the only way it can be done is to enlarge it to a degree of the teeth of Linda Agostini as she appears in this photograph, or to a degree of the teeth of the corpse as shown in the other photograph. I will also enlarge the tooth of Linda Agostini where I say the inclusion ~~is~~ lacuna is shown. I tendered some photographs on the subject of these spots on the arm. Dr. Benbow suggested that the spots had been introduced. I believe that his contention why the spots had been introduced was that the photographs were taken in different postures. I do not remember him saying that they would not appear on the photograph, from where the camera was standing. As to why I brought those two photographs Exhibit 84 into existence, Dr. Benbow was conducted to the rear of the Morgue by myself in the presence of Prof. Sunderland. He asked Prof. Sunderland to hold this photograph of Linda Agostini (Exhibit 18) alongside the shoulder of the corpse, which Prof. Sunderland did. Dr. Benbow then got his head over the corpse, down near the knees of the corpse, and said "That is the position ~~it~~ was taken from. They cannot be seen from there." My reason for taking these photographs was to put the camera in the

approximate axis that the Agostini photographs were taken from and then to show that Dr. Benbow was wrong, because the spots could be seen if the camera was in the approximate position in which the Agostini photographs were shown, and that position was not the position as indicated by Dr. Benbow when he got his head down near the knees of the corpse and said "That is the position it was taken from." I did not use a wide angle lens. I think I used a  $7\frac{1}{2}$ " lens, it might have been an 8", I would not be quite sure. I used a  $7\frac{1}{2}$ " or 8" lens on a half plate. As to that being a very different lens from the lens which it may be assumed was used for the purpose of taking a studio photograph of Linda Agostini, looking at the photograph, I have no idea of the lens used to take the photograph of Linda Agostini. As to whether I would assume it would be the kind of lens usually used in a studio, that would depend on the class of studio. In the cheaper type of studio, where the question of space is a factor, I would expect a short focus lens to be used. As to what a short focus lens is, I will put it this way, a shorter focus lens would be used in a cheaper type of studio than I would expect to see used in a better type of studio. I have no idea of what the dimensions of the lens would be in the cheaper type of studio. Asked whether the lens that I used would be a lens with a wider angle than the lens I would ordinarily expect to see used in a cheaper type of studio, I say I cannot answer that. I do not agree that the whole essence of Dr. Benbow's point was that with the type of lens one would expect to be used in a studio the spots would not show when taken at a particular angle, the reverse is the case. If there is any assumption here that I used a shorter focus lens than would be used in a studio then I would be unable to get as far around my subject as a long focus lens in a studio would. The further you go back from the subject with a longer focus lens, the more you are going to see around. If it is alleged

that appear on this photograph. I cannot see anything peculiar with regard to the chest on the daylight print (Part of Ex. G2) having the same pose as in Exhibit 20. Looking at Exhibit 20, I can see a fingerprint on the chest. As to it not being on the daylight proof, I was going to explain it to you. We are at cross-purposes. It is not on the daylight print and I would not expect it to be. You have pointed out to me two things on those daylight prints which are not to be found on Exhibit 20 and I would not expect them to be. There are two things on Exhibit 20 not to be found on the daylight prints, and I would not expect to find them. I will take the daylight print showing the side view of Philomena Morgan (Part of Exhibit G2). I am afraid I cannot pick up a circular mark under the right eye/ I ask if you mean a light circular mark about half way down between the eye and the point of the nose. Looking at Exhibit 48, I see that black mark there. I cannot see it on the daylight print/ I find that there are marks on Exhibit 20 and on Exhibit 48 that are not present on two of the prints in Exhibit G2. Looking at Exhibit 47, I will not agree that it looks as if the ear has been touched up a bit; I am not prepared to say that. As to whether the ear looks to be virtually adhering to the head in that aspect, you cannot see the ear there because the jaw line hides it. I do not agree that the lobe looks to be adhering, because the jaw line comes in there and hides the lobe of the ear. I am only expressing my opinion here. There is no evidence whatever that I can see that the lobe of the ear in Exhibit 85 has been subject to some retouching. The shadow around the lobe of the ear is not denser than I would expect. Shadows can be varied according to the quality of the print made. I am prepared to express my view that looking at photograph Exhibit 85, the lobe shadow in the photograph is a true representation of the lobe as it was in the life of the subject. I am prepared to say

that I used a shorter focus lens, I have proved it in two ways, one that they can be seen, and, two, they can be seen even with a shorter focus lens. I do not agree that on the photographs of Linda Agostini, taking a dead line through the spots, they are shown to be in different places on the different photographs. They are not shown to be in different places, but I will admit that their angle alters but so does the angle of the sitter; She has her arm round and her shoulder up in one case. I will not agree that on an inspection of the photograph the spots seem to be in different places on the arm. The impression that is conveyed to me by a comparison of the photographs is not that the spots are in different places on the arm. It is not only necessary to examine the angle at which the arm is in order to reconcile the spots on the different photographs, but the angle of the sitter, too. She is turned around further in some cases. I have the originals of certain negatives from Det. Ramus. They have been put in in evidence. I believe that they are photographs of photographs. I understand that they are photographs of unfixed proofs which were furnished to the New South Wales police. That is my impression. The unfixed proofs are the proofs that have been produced here in Court. They are what have been referred to as daylight prints. Looking at Exhibit 2 G2, I see the full face one of Philomena Morgan. I have examined it under the lens. I cannot see anything peculiar about the nose here; the light is not as good as it might be. Looking at Exhibit 20, there is a little black mark there on the nose, it could be anything. I do not agree with your suggestion that the most likely thing is that it is a pin, I suggest that the most likely thing is that in copying it is a piece of dust. It could be a piece of dust. I offer my opinion as an expert photographer that it could be equally as well a piece of dust as a pin mark. It is fairly circular, but it is only one of many

it is, yes. Making all allowance for shadows and the strange things that happen in the process of photographing people, I say that is as true a representation as you could get photographically. Making all allowances for the fact that there is depth present I still think that is a true depiction photographically of the lobe as it was in life. As to thinking I am justified in looking at that and drawing any conclusion that the lobe of the ear is sharply cut away in the fashion that it is represented, that is the opinion I have expressed, and that is my opinion based on my experience where ears are concerned. Your Worship, if I may interrupt here, I do not want to leave this up in the air. These two photographs are originals which have been given to me. It has not been fairly put by Counsel as to whether they are the two unfixed proofs out of the four which the New South Wales police handed to me, or whether these are the two which, I understand, were put in in evidence earlier, and from which the New South Wales Police made their plates. I have got some unfixed proofs; I have got four of them here. I understand there were four unfixed proofs of Philomena Morgan put in in evidence. Previous to that there were two put in from which the New South Wales police made their copies. I understand they are in evidence. It is my impression that the New South Wales police made their original plates which they handed to me, not from these, but from other proofs which, I understand, were submitted in evidence. One of the ones that I showed on the projector here this morning was taken from one of these proofs. There are four daylight prints here. Those are the four which have been put in in evidence, produced from police custody. I suggest that there are other daylight prints of Philomena Morgan in police custody, and I believe that they have been put in in evidence, and that those are the

ones from which the New South Wales police made their photographs. I heard Dr. Benbow's evidence that those photographs of Philomena Morgan (Exhibit 20) came from a negative made by a Press photographer named Don Levey and given to West; but no evidence was given that Don Levey used this proof to make his original proofs from, and that is what I am suggesting, there are two proofs in existence. That is my impression. Taking the transparencies of Miss X, Linda Agostini and Philomena Morgan, and using the right angled dividers, I will ascertain the distance between the centres of Linda Agostini's pupils on part of Exhibit 88. I have taken a measurement from the centre of the pupils, that is centre to centre. I will mark that measurement on a piece of paper and mark it "LA". Taking the transparency of Miss X (Exhibit 64), the distance there is a little less. I would only be guessing that if I estimated the distance in centimetres. I will mark that on a piece of paper. Using the millimetre scale produced I can use that to determine the difference; <sup>there is a difference</sup> of 2 millimetres. That is, Miss X is 2 millimetres narrower than Linda Agostini. Taking the transparency of Philomena Morgan (Exhibit NN) Philomena Morgan is 2 millimetres greater than Linda Agostini. Therefore Philomena Morgan is 4 millimetres greater than Miss X. As to how in the light of that experiment does my statement stand that Philomena Morgan may be Linda Agostini, there are two fundamental reasons, one is that you cannot take 3 dimensional measurements on a plane surface. There is nothing to say that both those eyes are in the same plane surface; therefore any measurement made there on that basis alone is futile. On the second basis, no one can say what was the original size of Philomena Morgan; no one can say what was the original size of Linda Agostini, therefore, enlargement of those up to any size where they will approximately fit does not mean a thing. It just means you have them up to

approximately the same size, therefore, on that basis any measurement is futile. It is correct that I superimposed those transparencies and said that on the evidence there was sufficient coincidence on Dr. Benbow's theory to result in the conclusion that Philomena Morgan was Linda Agostini. The little experiment that has been done in measuring the distance between the pupils does not destroy that. Asked to ascertain the distance between the pupils in the transparency of the cadaver (Exhibit 00) I say I cannot ascertain that distance because the left eye of the corpse is not there. I cannot take any point in the left eye as being approximately the ~~left eye~~<sup>pupil</sup> of the ~~pupil~~<sup>left eye</sup>. I am afraid I would only be guessing. I cannot take the centre of the left eye, it is impossible to determine it. Even taking the centre of the eye-slit I can only determine it approximately, which I do not think means a thing. I would say that is approximately the centre of the slit. That does not work out pretty closely with the measurement of Philomena Morgan's eyes, there is a difference of almost 2 millimetres. That is, the corpse, is almost two millimetres larger than Philomena Morgan's, that is on my estimation from the centre of that slit. That is 4 millimetres larger than Linda Agostini's. I took a transparency from an art photograph, primarily, to make use of the eyebrows and to superimpose those on the transparency of Linda Agostini in this manner. If you superimpose the eyebrows on the transparency of Linda Agostini on the tinted photograph transparency, they are a very excellent match. If I tried to make them any closer I could not do it. I brought them up to the size of the photograph of Linda Agostini simply with the enlarger. I enlarged both of them, and the basis of my enlargement was the original ~~photograph~~ transparency of Philomena Morgan that Dr. Benbow produced. I used his transparency as my standard of enlargement for the other two. As to the basis on which I enlarged, just using the transpar-

ency <sup>produced</sup> ~~used~~ by Dr. Benbow as my basis I simply pushed the others up until they approximately coincided, as near as one can photographically get an approximation. I tried Dr. Benbow's transparency on Linda Agostini. There is one produced here. As to whether I cannot get any coincidence there at all, you get the general shape of the face; that is, an oval type of face. Linda Agostini has not a triangular type of face. I would call Linda Agostini's an oval type of face. That is, wider at the plane of the parietals than it is at the plane of the jaws. It comes down in that fashion in a general manner; but I am not saying this is of any use whatever for identification. Art photographs of photographic films can shrink. The paper on which they are printed can shrink considerably. As to whether something that is subjected to the retouching that is involved in the making of an art photograph accentuates the tendency of the paper to shrink, the shrinking is not that great; there is no great difference between Philomena Morgan untouched and Philomena Morgan retouched. If you suggest that there is, I say there is not to any great extent in outline. As to agreeing that my statement, having regard to my demonstration, that Linda Agostini might be Philomena Morgan is not a correct presentation, it could not be on the facts, but let me tell you what I am basing that on. I say that transparencies are of no use whatever, even supposing you have the same person to identify. I might photograph you today and you will have quite nice contours, but if you have a week's sickness your cheeks will fall in and your contours will be entirely different. That is quite obvious, and how much more can it be so where you have a corpse in death whose changes no one can calculate. As to whether the bony structure does not alter, I am not prepared to argue on bony structures. They may not alter in certain circumstances, but where a body has been subjected to treatment such as this, with a broken nose, and I do not know

what other injuries are inside, then the bony structures may alter. If you say that if ~~ix~~ I find any difficulty about it you will take me through a similar kind of demonstration as you did with the pupils, by taking the measurement from the middle of the right pupil to the hair-line in each case, and suggest it will be found that there is no coincidence there, I say I would not expect to find it because you cannot measure a three dimensional object on a plane surface. I will superimpose the transparency of Miss X (Exhibit 64) and the transparency of Philomena Morgan which Dr. Benbow made. (Exhibit NN). I agree the indentation near the right eye of the photo of Miss X is not to be found in Philomena Morgan's photograph. As to whether when I find that, and when I find there is a difference in the pupillary distance I think my proposition that you can superimpose Miss X upon Philomena Morgan and get the same results as Dr. Benbow suggests is not well founded, I do not have to go that far, I know that these subjects are different; but even supposing that I did not know these were two entirely different subjects, and I used this method as "a means of identification, I would say that it would be entirely valueless. Firstly, because there is no information as to what the ~~fix~~<sup>life</sup> size of this person was. There is no information forthcoming as to what the life size of this person was. Even if we had those brought up to life size, and we knew that they were produced to life size, I still say, for the purpose of comparison, that it is useless, because the angle from which the photograph was taken and the state of health of the parties would interfere. That is, they may be fat-faced this week, and in a month's time they may be quite thin, therefore the contours may fall in. From that point of view I would say that it would be quite useless. With regard to this portion up on the side of the head, it could be that the angle from which this sitter was taken accentuates that.

If the head was turned a little more you might find that the forehead straightened up there. I do not know, but there is a possibility. As to agreeing with a passage on page 161 of the "Medical legal aspects of the Ruxton case" which states "Thus the first conclusion stated was that the comparison of the superimposed outlines of skulls and portraits demonstrated (1) That skull No.1 could not possibly be the skull of Mrs Ruxton and (2) that skull No.2 could not possibly be the skull of Mary Rogerson", that was the purpose of the scheme. I will agree that photography will carry you at least that far. The use of superimposed transparencies will carry you that far, a superimposed outline in that case. I agree that the following passage which you read is scientifically valuable - "Secondly, the opinion was given that skull No.1 might be the skull of Mary Rogerson, and skull No.2 the skull of Mrs.Ruxton. This opinion was based on the correspondence of features of the skull in the respective portraits, with due allowance for the relative thickness of soft parts in different regions - the outline of cranium and face; the position and form of the orbits; the position, size and outline of the nose; the position and size of the mouth; and the relation of the teeth to the empty sockets in the case of skull No.2. In general the correspondence of all these features appeared to be as close as might be expected if the skull and portraits of a known person were dealt with in the same manner, nor did there appear to be any single point of discrepancy in any of the four comparisons which could not be explained by the inherent difficulties of the technique." That is not just what Dr.Benbow has done. Dr.Benbow has used the soft fleshy outline of people's faces to superimpose on one another to show that they are one and the same person. In the Ruxton case they had two bodies. All they did there was not to endeavour to establish identification, all they endeavoured to do was to establish that Mrs Ruxton could not

be Mary Rogerson, and that Mary Rogerson could not be Mrs. Ruxton. With regard to identifying Mrs. Ruxton as Mrs. Ruxton, it was not relied upon; all they did was to superimpose her skull on her photograph to show that she could not be Mary Rogerson. If you suggest that I am not quite accurate when I say it was not relied on as part of the identification, that it was some of the evidence which went with other evidence, I say it was not relied upon for the identification of Mrs. Ruxton as Mrs. Ruxton. As to whether Counsel for the Crown disclaimed any intention of using it for that purpose, I think that was put very clearly by Prof. Brash, who brought that evidence forward, and it was commented on by the learned Judge. I can give you that passage without any trouble. It is on page 165. If you read that passage on page 165 which says "Prof. Brash in giving evidence, explained the procedure of outlining and superimposing the portraits and the skull photographs. He demonstrated the books of photographs to the jury, and stated the conclusions at which he had arrived. Dealing with the portraits of Mrs. Ruxton he said that in his opinion the comparisons of the skulls demonstrated conclusively in the first place that skull No. 1 could not possibly be the skull of Mrs. Ruxton. His Lordship stated that that was clear, but did they demonstrate more than that? The witness then stated his opinion that the comparisons also demonstrated that skull No. 2 might be the skull of Mrs. Ruxton, and in answer to His Lordship said that he could not go farther than that," I say that I think that is the crux of the situation. I am not putting to His Worship that because we have a face with flesh on it and a body with flesh on it that that is not as good as what was done in the Ruxton case where they superimposed a photograph of a skull on a photograph of a living person for the purpose of showing coincidence of certain details so that the correspondence of

these features were as close as might be expected if the skull and portrait of a known person were dealt with in the same manner; what I am endeavouring to put is this, that with flesh outlines you cannot rely on that scheme for identification, on the basis that I have already explained. In the Ruxton case they never set out to identify either of the parties, all they endeavoured to do was to show that Mrs. Ruxton could not be Mary Rogerson and that Mary Rogerson could not be Mrs. Ruxton. It is correct that is for the reason that you cannot identify a skull with a face. A skull is something that has not got a face; but we have no skull in this case, we have a fleshy outlines on which we cannot rely.

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AT THIS STAGE MR. BARRY TENDERED A COPY OF PROFESSOR BURKITT'S REPORT OF THE EXAMINATION OF A BODY FOUND AT ALBURY. D

..... EXHIBIT T/2..... Report as above.

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LUNCHEON ADJOURNMENT.  
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UPON RESUMING AT 2.15 P.M.

TO MR. BARRY: Looking at the slide of Philomena Morgan I see the mark on the nose to which you have directed attention. That is not necessarily a reproduction of a perforation of the photograph from which the slide is photographed, it could be a piece of dust, it could be a piece of grit, it could be anything on the original photograph which was being photographed, or it could be something that got on to the print subsequently. There is no indication as to what it might be. I will agree that it is reasonably spherical. As to there being no irregular signs about the outline, that depends on the degree of magnification. Viewing it from this distance it does not appear to have any apparent irregularities. If I examined it microscopically

