

Transcript: Commissioner Andrew Colvin, Deputy Commissioner Michael Phelan and Deputy Commissioner Leanne Close discuss Bali Nine

ANDREW COLVIN: Can I say first up and acknowledge that this must be a very difficult time for the family and the friends of Myuran Sukumaran and Andrew Chan. You would not be human if your thoughts weren't with them at this time. Can I also express regret that the Indonesian Government chose to follow through and proceed with the executions. In all of the circumstances it seemed like an unnecessary thing to do and the AFP, like many of our partners in government, for the last several months have worked very hard behind the scenes to try to secure a different outcome. I also need to acknowledge that many in the Australian community are angry with the AFP for our perceived role in 2005 that led to the executions last week. I understand that. We respect and we understand the very strong desire that has come from within the Australian community for the AFP to explain our actions and to give people information about what our role was. For me as commissioner it's vitally important that the Australian community understands and has confidence in the AFP and that that confidence comes from them making informed judgments and decisions about our actions. So, it's for this reason that we believed that it was important that we stood here and held this press conference today where we had an opportunity to speak and answer the questions that the community has and to explain what our role was and in some cases to correct some of the misreporting that has occurred. In doing so I have to say upfront, it is not necessarily my intention to convince the public to agree with the decisions that we made in 2005. Policing is difficult, and it involves making very difficult decisions. What I want to do today is to give the public enough information - the right information, so that they can make informed decisions. What I plan to do today is make a few brief comments myself and then I will hand to Deputy Commissioner Phelan who will make a few brief comments and Deputy Commissioner Close. They will talk about the historical aspects of this investigation as well as I think importantly address how we deal with these matters today. You will understand that this investigation is complex, it's been complicated from the start. So if we refer to notes at certain times throughout this press conference, you'll understand why. But before I do hand across to my Deputy Commissioners there is a few things that I'd like to say.

Contrary to the view of some the AFP has at all times been open, accountable and transparent for the role that we played in 2005. We've appeared before a number of parliamentary hearings in relation to this matter and answered questions. We've given substantial evidence at criminal trials both here in Australia and also in Indonesia about this matter. We've given substantial information to the Federal Court and given testimony in relation to an action that was brought against the AFP that scrutinised our actions in 2005 and we have made a number of media appearances over the course of the last 10 years.

Now, as commissioner I welcome that scrutiny of our role and I believe it may not end today. We've also never denied, however, the role that we played and the role that the information we provided to Indonesian police played in the arrest of those nine Australians 10 years ago. We chose not to speak publicly about this matter over the last three or four months. We chose not to speak publicly because we didn't want to negatively impact in any way government's very strong efforts for clemency in this case. That was the right decision. However, it is very different to say that we've never been accountable and we've never answered the questions about this matter. We chose not to do that and that was the right decision over the last three or four months. I'd also like to address some of the misreporting that this investigation commenced as a result of a tip-off from a concerned father in 2005. It simply did not. Deputy Commissioner Phelan will provide more information about the investigation in a moment but the AFP was already aware of and had commenced investigating what we believed was a syndicate that was actively recruiting couriers to import narcotics to Australia at the time of Mr Rush's contact with the AFP.

The simple facts are that at the time we were working with a very incomplete picture. We didn't know everybody that was involved, we didn't know the organisers, we didn't know all the plans, we didn't even know what the illicit commodity was likely to be. We were not in a position to arrest any of the members of the Bali Nine prior to their departure from Australia. It's for these reasons at the time that the AFP made the decision to consult and engage our Indonesian partners and asked for their assistance. It was operationally appropriate and it's consistent -

and it was consistent with the guidelines as they existed then. I can assure you that if we had enough information to arrest the Bali Nine before they left Australia, we would've done just that.

Equally, while there has been a great deal of attention placed on the nine Australians that were arrested in Bali in 2005, relatively little attention has been given to the other six syndicate members that were arrested and prosecuted here in Australia as a direct result of the information that the Indonesian National Police was able to provide to us after their intervention in Bali. Had that not occurred, those prosecutions may well never have taken place. Now, as to the question of why they were not allowed to return to Australia, again Deputy Commissioner Phelan will provide some more information about this to you in a minute but just as you would not expect the Indonesian police to dictate to the AFP nor any other law enforcement agency in this country how we should deal with the commission of serious crimes in Australia, nor can we dictate to our Indonesian partners or any of our foreign partners how to deal with the commission of serious crimes in their country.

This is the harsh reality for Australians who go overseas and become involved in serious crimes. Transnational crime is just that, it is transnational. The AFP has a mandate and a very strong focus on preventing the impacts of transnational crime in Australia. Our strategy for many years is to take that fight offshore wherever possible to minimise and reduce the impact that it has here in Australia. We are a very lucrative market for drug traffickers. Those people who seek to profit from drug trafficking by organising, overseeing, recruiting couriers and organising importations stand to make a large amount of money. It's well known that the illicit drugs, it's been well spoken about lately that illicit drugs - it's been well spoken about lately, but illicit drugs are destroying our communities in Australia and are destroying our families. Between 2007 and 2011 alone there were 4,100 reported deaths from heroin and

other opiates alone. Now, that doesn't include other illicit goods. That's heroin and other opiates alone, 4,100 deaths.

So, to dent this supply of narcotics, law enforcement agencies, especially the AFP, work very closely with our partners in the region who, unfortunately, are sometimes source countries and transit countries for illicit goods into Australia. It's a hard reality that many of these countries still have the death penalty for serious offences. For this reason, we cannot limit our cooperation just to those countries that have a similar judicial system or similar policies to that of our own. We must be able to work effectively with those countries that are closest to us when you consider the region that we are part of. Now, I'm very conscious that Australia has a long-standing opposition to the death penalty. We support that organisationally, we actually support that personally. The AFP's policies and procedures regarding the death penalty are appropriate. They were reviewed after 2005 and they were tightened to reflect the changing environment that we were seeing. They have been endorsed and supported by successive governments and they are monitored regularly and updated when they need to be.

Now, Deputy Commissioner Close will say more about our death penalty guidelines today. Particularly, though, when we're deal with transnational crime, it's imperative that we can work with our partners. On the key question of could this happen again, I wish I could assure you that this scenario could never happen again. But I cannot. The guidelines relating to how the AFP deals with death penalty situations has changed considerably since 2005 and we now have a range of additional factors and additional considerations that we must take into account. This is appropriate. But every investigation is different, no two scenarios are the same and when we commence an investigation we cannot always predict where that investigation may lead. The revised guidelines that were significantly revised in 2009 tightly manage how we would deal with that same scenario today but the reality is - and this is important, while [indistinct] Australians choose to travel overseas to foreign

jurisdictions and participate in serious crimes especially drug trafficking and transnational crime that possibility still remains.

The Bali Nine is a tragic reminder of the risks associated with people with Australians who travel overseas to participate in drug trafficking and other serious crimes. If there is to be a message out of these executions that we saw last week that took place, I sincerely hope is that other young lives are saved by people thinking twice before participating in serious crimes overseas. Now, I will hand over to Mike in a moment. There's one final point that I feel needs to be said. As I've said, decisions like this aren't taken lightly. They're agonising decisions. Police officers have to make difficult decisions each and every day. They're made by individuals whose motivations and intentions are to protect the community from crime and to protect the community from those people who'd do us harm. I also have an obligation to the men and women of the AFP to ensure that their welfare is well taken care of and public references to blood on our hands, public references to a cavalier approach, public references to shopping the Bali Nine in exchange for some conspiracy of a greater relationship, cartoons depicting the AFP as the firing squad, cartoons depicting the or the Grim Reaper are not only misinformed and ill guided, they are in my view in very bad taste.

Police naturally have thick skins. You wouldn't be a police officer if you didn't have a thick skin but they also have friends and family who read and see those types of headlines, those types of comments and are influenced by them. Let's not forget that police are members of the community as well and they are also human beings. Comments like that do not pass lightly. Now I believe it shows an incredible disrespect for the hard and often dangerous work that police in this country do each and every day to protect our community from illicit drugs. With that I'm going to hand to Deputy Commissioner Phelan, then we'll hear from Deputy Commissioner Close and then we will take whatever questions you have.

MICHAEL PHELAN: Thank you, Commissioner. In early February 2005, the AFP began its investigation into the so-called Bali Nine. The investigation focused on a syndicate of Australians who we believed were travelling to Indonesia to buy drugs and ultimately import them into Australia. In the first few weeks, we

identified three persons of interest, one of which was Andrew Chan in mid-February, later followed by Renae Lawrence and Matthew Norman. In March 2005, we didn't know the hierarchy of the syndicate at all, the identity of the majority of the syndicate members, the source of the drugs, or even the type that might even have been imported. Andrew Chan was the first member of the Bali Nine - sorry, that later became known as the Bali Nine to depart from Australia on 3 April 2005. His departure didn't add very much to the knowledge that the AFP had at that particular time of the syndicate. Four other members, Lawrence, Norman, Martin Stephens and Chen, left for Bali three days later on 6 April. Stephens and Chen were unknown to the AFP at this time and became linked to the group because of an analysis of travel bookings they'd all made. The AFP at this time was completely unaware of Myuran Sukumaran's involvement and did not become aware of his involvement till after the intervention of the Indonesian authorities after conducting surveillance at our request.

There's some really clear points that I want to clarify here, particularly around the information that was passed by Scott Rush's father. It's important to really clear the record on this matter. It's been reported that the AFP took the tip-off from Scott Rush's father and then promised that his son would be prevented from leaving Australia, and this information was then provided to the Indonesian authorities as the bulk of the knowledge that the AFP had of the Bali Nine syndicate. This is simply not true.

On 7 April a seconded member working with the AFP's counter-terrorism unit received a phone call from a lawyer acting on behalf of Scott Rush's father. In the phone call, the lawyer asked if he could put his friend in touch - a friend of his, Scott Rush's father - in touch with the police. The officer said yes, and Scott's father called him shortly afterwards. I'm advised that at no time in either of these conversations with either Mr Rush or indeed his lawyer did the officer promise that Scott Rush would not be stopped from travelling to Bali. As a matter of fact, nor did he have the ability to do so.

Claims that the AFP gave these assurances that Scott Rush would be stopped and warned before he left Australia are completely incorrect. The individual police officers involved with those

conversations have in fact tendered sworn affidavits in evidence to the Federal Court matter to that effect. After his phone call with Scott Rush's father, the officer placed what's called a travel alert on Scott Rush. Which he triggered, which Scott triggered when he presented for customs and immigration checks on 8 April.

The important point to note here is that Scott Rush was linked to three airport alerts, not one, but three. First, the alert that was placed on as a result of the conversations with his father; the second, an alert was placed because proximate to the same time an anonymous information came in to Crime Stoppers into New South Wales, and a pass alert or an alert was put on at the same time. The third one was another alert that had been previously put on in relation to one of the subsequent people arrested in Bali. He was directly linked through travel bookings with that individual. So on three separate occasions, Scott Rush was linked to this syndicate.

The important point to make here is that if Scott Rush's father or his lawyer acting on his behalf had never made contact with the AFP, we would still be in exactly the same position we are today. It made absolutely no difference.

It's also been reported that some of the information that Scott Rush's father gave us - in other words that his son may have been going overseas to do no good - formed the basis of our complaint to the Indonesians. Not one bit of the information that came from Scott Rush's father made its way to Indonesia. Not one bit.

Travelling on the same flight as Scott were Michael Czugaj and Tan Nguyen who the AFP became aware of on 8 April as well. At this time as the Commissioner said the AFP only had fragmented information about the syndicate. We had bits and pieces of information that had come to us beforehand to form a basis of putting airport alerts on. Other individuals were being picked up at the same time on 7 and 8 April, and we were putting together a picture because when the analysis was done then and there on that day, there were a coalescence of information. In other words; tickets were paid for the same place in cash, passports were issued at the same time and the linkages were put together.

Given this time frame and the information that was available - as opposed to evidence, and I want to make it quite clear there is a mile and a half between information and evidence that was available - the AFP had absolutely no grounds to arrest any of the individuals at that particular time. There has been some commentary that perhaps we could've charged someone with conspiracy; that is absolutely false. If we had charged someone with conspiracy at that time, a first-year lawyer would've been able to walk at a first hearing. There was simply no evidence. There was information, but no evidence. We must remember this was an investigation that started off as an intelligence probe so there was no physical surveillance in Australia, no electronic surveillance, and indeed no sworn testimony from anybody. So extremely difficult to try to prove that a conspiracy... actually impossible in these particular circumstances.

As I've said as some of the people left Australia travel alerts were activated. The alerts in themselves do not allow police to take any action. They flag that someone may be of interest unless they had warrants etcetera, so there was no basis upon which we could stop. There are legislative reasons as to why we can stop people but in this particular case, none of those were apparent.

It's also been asked if Scott Rush's father wanted us to alert his son, why didn't we? Why didn't we just tell him that a young fella was going overseas potentially involved in no good? You've got to appreciate that in 2005 with the scant information that we had it was incumbent on us to find all of the details around this particular syndicate, what they were up to, and we needed to find out all that information so we could either stop further importations occurring and go to the source of the narcotics themselves. It is absolutely not feasible to alert somebody who's going overseas that we are of police interest to them in relation to a serious and organised crime investigation of this nature. It is absolutely imperative that we find out what's going on after they go.

The Bali Nine obviously left Australia at this particular point in time. That leaves us with two clear options as to which way we could then take the investigation. One way, which is the way the organisation went, was to request that the Indonesian police

conduct surveillance on our behalf and evidence collection. We understood - and I'll be clear, and I've been saying this now for the best part of ten years - that decision was made in the full knowledge that we may very well be exposing those individuals to the death penalty. I've said that before and it's not a position that the AFP has stepped away from. We knew what may occur as a result of that.

Particularly we understood that if we made the request of the Indonesians to conduct surveillance and evidence collection that if they found them in possession of drugs they would take their own action, and they would do what they saw fit. Similar situation here in Australia and everywhere else throughout the world; one could appreciate that if we had live narcotics here that we would not let them run to Indonesia, nor would we let them run anywhere else for that matter. The other option of course that was available to us is to facilitate an interdiction back here in Australia. The AFP was completely unaware, as I've said, of the hierarchy of the syndicate. We didn't know anything about where they were getting the narcotics from, how much, how deep the syndicate ran. And it's all well and good to look back in hindsight now where we know it was a very sophisticated operation, and I do say that, and I don't say it lightly. These people were involved in multi-importations of large amounts of heroin, and had linkages into many other investigations that the AFP was carrying out at the time and subsequently. That's what we knew in hindsight. But at that particular time, we didn't know anything about how much drugs would come in et cetera.

To let them come back through to Australia, we may have had no evidence when they came back. We may have very well grabbed a couple of mules that come back, but we did not - we would not have been able to have any evidence in relation to the wider syndicate. And for those of you who've been reporting on crime for the last 30 years or so and know anything about drug importations, in order to get overseers and organisers we'd have had to have the couriers roll over. And for those of you who can do the analysis, over - many - and many drug importations over the years involving couriers that have come through, you can probably count on a couple of hands the amount of times couriers without any other information - so, without any electronic surveillance, without any physical

surveillance, without any testimony, who roll over on their overseers. So we may very well have got four people here in Australia.

Our greatest priority is always to ensure the safety of the community. The interesting thing to note is even if we had've with the very scant knowledge we had allowed the narcotics to get on the plane, we still didn't know other things that could happen to those drugs at the time they go through. And they're all sorts of things that go through an investigator's mind when making these decisions, and that includes trusted insiders at the airports, it includes handovers and so on that happen on the planes. However remote those possibilities are, those are the things that go through investigators' minds at the time that they make these decisions to hand over information that is absolutely necessary to request the surveillance and evidence that's needed.

Targeting drug importation at its source gives police the greatest chance of seizing the drugs and identifying those upstream and dismantling the entire syndicate and catching the senior members. We had our greatest chance of doing that while receiving the information that we did from the Indonesians as a result of what they did. And in fact, as we've said many times over the last 10 years, it was as a result of the surveillance that was carried out by the Indonesian authorities that identified Myuran Sukumaran as part of this syndicate. It was absolutely unknown to the AFP prior to the intervention of the Indonesian authorities at our request.

Following the arrest, AFP investigators used the information provided by the Indonesian National Police to progress investigations back here in Australia in relation to syndicate members. As a result of this co-operation, as the commissioner said, the AFP built a case against six people who were charged in Sydney and in Brisbane for their involvement in two endeavours to import and indeed, a couple of aborted attempts as well in relation to the same syndicate surrounding the supply of drugs to the syndicate and ultimately for importation in Australia. All six were convicted in Australian courts and received sentences between two to 10 years. All of the information used to progress that component of the syndicate was obtained as a result of the information that was gained from the Indonesians.

I think that's all I will say at this particular point. Happy to answer questions later. I will hand over to Deputy Commissioner Close. Thank you.

LEANNE CLOSE: Thanks, Mike. My name's Leanne Close. I'm the Deputy Commissioner Operations for the AFP. My job is to lead all of the teams involved in Commonwealth investigations offences in relation to the work that we do, including drug operations, organised crime, and our international liaison officer network. So our network surprises 96 officers working in 29 countries around the world.

I'm going to take you through the AFP's guideline in relation to the death penalty from 2005 to now, so you can better understand how they operate. As you heard, Justice Finn of the Federal Court ruled in 2006 that the AFP acted lawfully and in accordance with all its legal obligations in respect of Operation Midship, or the Bali Nine investigation. However the review did recommend that we review our processes to strike a better balance between justice outcomes and the AFP's responsibility to protect the community from criminal activities. Since then, we've continually reviewed and updated our guidelines.

The AFP national guideline on international police-to-police assistance in death penalty situations provides the foundation for all of our officers and sets out our obligations in relation to the exchange of information with foreign law enforcement agencies. The guideline is based on Australia's strong opposition to the death penalty. Compared to 2005, our current guideline has a much greater level of clarity and certainty for our officers and our decision-makers in relation to investigations that involve death penalty situations. The need for law enforcement agencies to exchange information with foreign counterparts is still recognised in the guideline, but today each matter must be assessed on a case-by-case basis before an assessment is made about international co-operation.

If the AFP is aware that providing information might result in the arrest or prosecution of an Australian citizen for an offence which carries the death penalty, a senior manager holding at least the rank of commander is the decision-maker and must consider certain factors first. In 2005, this specific level approval

was not in place. Now every single time, we consider providing information in these circumstances, we assess a number of factors: the purpose of providing the information and the reliability of the information; the seriousness of the suspected criminal activity; the nationality, age, and personal circumstances of the people alleged to be involved; the potential risks to the person or other people in either providing or not providing that information. We assess Australia's interest in promoting and securing co-operation from overseas agencies to combat crime and the degree of risk to the person if we provide the information, including the likelihood of whether the death penalty may be imposed.

Importantly, ministerial approval is also required to be sought by the AFP in cases where a person is being detained, arrested, charged, or convicted with an offence that carries the death penalty. In the past, ministerial approval was only required where a person was already charged and convicted. Each year, the AFP commissioner must also report to the minister about the number of cases and circumstances in which assistance was provided in death penalty cases. This is a requirement that we did not have under the 2005 guidelines.

I want to make it very clear that the real-time exchange of police information is an essential part of the AFP's ability to combat crime. We work with foreign law enforcement agencies every day. But as police officers, we know that there is a plan required and judgment in relation to the information that we provide. Our main objective is to protect the community from harm. If we didn't have the ability to work with all of our law enforcement partners, we simply couldn't function. I know it would be impossible to do our job.

Illegal drugs are a scourge in our communities, and the AFP and our partner agencies work hard to fight this crime. To put this into some context for you, since 2012, Commonwealth agencies have seized nearly 10 tonnes of amphetamines, two tonnes of cocaine, and one tonne of heroin, as well as vast quantities of cannabis, precursors, and sedatives with a total weight of 20.3 tonnes. The seized amphetamines, cocaine, and heroin alone would've added up to 200 million street hits. That means that would be more than eight hits for every man, woman and child

in Australia. We'd never have seized these drugs without international co-operation. I believe the balance is right.

Our message to the community is that you should feel confident and assured that the AFP takes our obligations and responsibilities in this area extremely seriously. The current guidelines allow us to do our job effectively as well as providing appropriate checks, safeguards and balances. Thanks commissioner.

ANDREW COLVIN: Okay. Now, we're going to try to get to everybody's questions. I imagine there is a lot.

QUESTION: Commissioner, would you have changed anything about the way that the AFP conducted the operations? And you mentioned at the beginning that the families were in your thoughts. Do you think the AFP owes them an apology?

ANDREW COLVIN: No, I don't believe we owe them an apology. It's a very difficult question. I mean, we can't apologise for the role that we have to try to try and stop illicit drugs from coming into this community. We've said many times that illicit drugs are destroying families and [audio skip] our communities. In answer to your first question, would I have changed anything? Look, I said we regret that the Indonesian Government went through with the executions. I think in the circumstances, as has been said many times by a number of members of government, that - look, that was wholly unnecessary. And if it's to be believed and reported and we have no reason to think anything differently, Chan and Sukumaran were rehabilitated, and that's a credit to the Indonesian justice system.

QUESTION: Deputy [indistinct]...

ANDREW COLVIN: But we can't second guess decisions that were made by investigators 10 years ago.

QUESTION: Deputy Commissioner Phelan, in 2006, you said that you ultimately took responsibility for that decision to hand information over. Can you confirm that's right? How many other people in the senior levels of the AFP were involved in that decision-making process to hand that information over and was there any consultation with ministers or their officers?

MICHAEL PHELAN: No, I was the most senior person in the AFP prior to the information being supplied to the Indonesian authorities. The minister's office and indeed the government were not briefed at all prior to that. It was clearly an operational decision that fit at the time within the guidelines, and I was the most senior officer in the AFP that was aware.

QUESTION: No one else in the AFP higher up the chain was involved?

MICHAEL PHELAN: No.

QUESTION: Commissioner, if Australians today have - believe they have information about transnational crime or drugs, why would they give that information to you if they're concerned about it but are also concerned that giving information to the Federal Police could lead to an Australian being executed overseas?

ANDREW COLVIN: Well, first of all, let's put this in context. This was 10 years ago. The AFP conducts thousands of these investigations each and every day. You've heard from Deputy Commissioner Close about the amount of narcotics that we are seizing. Of course we need the public to work with the police. Of course we need them to provide information to police that helps our investigations. In terms of Mr Rush, I think Deputy Commissioner Phelan that has put into that in good context for everybody. Scott was, unfortunately for Scott, involved in a broad syndicate, a much larger syndicate that was responsible for large amounts of narcotics being brought into this country. That is our job. Our job is to combat transnational crime. We need the community to work with us. They do work very well with us. I think out there in the community, there is a great deal of support for the work of the AFP in this field.

QUESTION: Could - if they give you that information, could that information be used by foreign authorities in death penalty cases?

ANDREW COLVIN: Well, I've just said. I mean, I can't - I would love to look you in the eye and say I can give you an absolute assurance, but no two cases are the same. When we start an investigation, when we had that first seed information, we do not always know where it will go. We don't know who's involved, we don't know what the drugs are, we may not even know what the crime is. Information is just that. It's easy in hindsight to look back. It's like a jigsaw

puzzle. When you've got the picture, the jigsaw is a lot easier to put together. When all you've got is pieces, it's very difficult to put together.

QUESTION: Could I ask - excuse me. Could I ask you about that hindsight thing? Given what you now know, you didn't know it then but you now know that it resulted in those executions. Would you - would the AFP act in exactly the same way in terms of its relationship with Indonesians?

ANDREW COLVIN: No two cases are the same. No two cases are the same. The guideline, as we've gone into some detail, asks us to take into consideration very specific caveats and factors around - one significant reform, I have seen a number of reports to say that the new guideline is not substantially different to the old one. It is substantially different. It is substantially different insofar as it asks us to consider at a much earlier stage whether we will share information well before arrest. That wasn't the case in 2005. It is the case now, so we would have to think about this differently.

I can't give you an ironclad yes or no because each situation is different, and you must understand that investigations start from seed information and we don't always know where they will go. In this case, it helped us identify a broader syndicate. It helped us take out a broader syndicate. It ostensibly helped protect Australia from future importations and that's a difficult truth of the matter.

QUESTION: Commissioner Colvin, are you completely satisfied with the new guideline? Are there any steps in place to revise that, particularly in the wake of the executions that have just gone ahead? Are you completely satisfied with that guideline?

ANDREW COLVIN: Okay. So in terms of - am I completely satisfied? Yes. I think the guideline is appropriate. I think the guideline is good. The guideline was reformed and it should have been reformed. It took into account circumstances that needed to be taken into account. I think the guideline is appropriate. In terms of should it be change in relation to the events of last week, as tragic as the events of last week were - and they were tragic, we know that - that doesn't change the facts from 10 years ago. The guideline was reviewed. Justice Finn made some very strong comments quite appropriately about what he believed the guidelines

needed to [indistinct] include and that's been done. Nothing has changed. There's no new information as a result or no new circumstances as a result of the executions other than the fact that the Indonesian Government saw fit to go through with the executions.

QUESTION: Commissioner, I know you say cases vary, but you have an intimate knowledge now of the Bali Nine case. Surely you have a sense today, if those circumstances were repeated...

ANDREW COLVIN: Yes.

QUESTION: ...whether the police would co-operate with Indonesia or protect the Australian citizens. Surely you have a sense one way or another which way your agency would go?

ANDREW COLVIN: Okay, so my first point to that is which Australians citizens do you want us to protect? Those that are impacted by narcotics each and every day - I know that's not your question, but that needs to be put into context.

QUESTION: [Interrupts] [Indistinct] it's a valid point but it doesn't address the question I have asked specifically.

ANDREW COLVIN: No. The guideline...

QUESTION: Which way do you believe your agency would go, faced with an identical set of circumstances today?

ANDREW COLVIN: Okay. Faced with identical set of circumstances and the guideline that we have now, I believe that our investigators would need to take into account a number of different factors. They may well not choose to go down the same path they did in 2005. But I can't get into the mind of every investigator and know everything that they're thinking.

QUESTION: You think it's likely, though, the outcome would be different, given...?

ANDREW COLVIN: I believe it's likely but I cannot give you a firm answer one way or the other because every circumstance is different.

QUESTION: Commissioner, on the subject of the ministerial directive...

ANDREW COLVIN: Yes.

QUESTION: ...can you please explain to us what that actually changes, what the situation is with the directive? Did the AFP ask the government to remove the directive or did it just do it off its own bat and were there circumstances where, with that directive in place, the AFP would be impeded in terms of operations against terrorism or - and various other areas?

ANDREW COLVIN: Brendan(*), to answer your first question, did we ask for it to be removed? No. But the reality is the ministerial direction is a very high-level strategic document that tells me as the AFP commissioner what my priorities should be, what government's expectations of me are. It doesn't tell us how to go about doing that. So whether the guideline is referred or the objection to the death penalty is referenced in that ministerial direction or not largely is irrelevant to me. The guideline exists and I expect all AFP officers in their investigations to take account of that guideline. It didn't need to be in the ministerial direction; we didn't ask for it to be removed but largely, it's a distraction because the direct [indistinct] - the ministerial direction is a strategic-level document telling me what my priorities are. It doesn't tell me how to go about executing those priorities.

QUESTION: Could it affect - could it have an impact on...

ANDREW COLVIN: No. No.

QUESTION: ...AFP operations in any way?

ANDREW COLVIN: No, because the guideline exists regardless of the ministerial direction.

QUESTION: And just clarifying another point, in terms of - you asked yourself the key question in this whole business, whether this could happen again, and you answered the question in some detail. We have countries now which are very strongly enforcing the death penalty, like China, for drug offences. And there are a number of Australians on death row in China. Is there basically - are you still in a position to feed information to the Chinese authorities about drug smuggling in China?

ANDREW COLVIN: We are, Brendan, and we have to be but we have a guideline that very tightly dictates what are the considerations that we have to do, and there are a number of instances - a number of instances - and Deputy Commissioner Close can give you some numbers where we have to make a conscious decision not to because those guidelines are in place, and that's appropriate. So does it limit, does it restrict, does it hamper at times our ability to work in a completely open fashion with our partners? Yes, it does. I think that's appropriate because Australia has a long-standing, very strong objection to the death penalty and we need to be conscious of that. The flip side - and this is the challenge for the AFP and all law enforcement - is to do the work we do, we need to be able to work with those countries. We are in a region that is surrounded by countries that have the death penalty.

QUESTION: Commissioner, are the masterminds behind the Bali Nine drug network, which seem to be a smallish network - are the masterminds behind it still at large? Is there - are there ongoing operations relating to this case?

ANDREW COLVIN: I wouldn't say it's a smallish network. At the end of the day, nine Australians were arrested. There's another six we prosecuted here. That's 15 alone. Did everybody - was everybody arrested and prosecuted who we think may have played a role in this? No. But I also want to make the point that we often put too much emphasis on the idea of the mastermind or that there's always somebody else in control of it. As I said in my opening statement, people who organise, oversee, recruit stand to make a lot of money and it's not a clear hierarchical syndicate as we always try to think about. That gets portrayed in TV. It's not reality. So there are always ongoing investigations. The intelligence that we took out of this investigation has been used in subsequent matters and helps inform our view. We would always like to arrest more people. That's not possible on this occasion; 16 - I'm sorry, 15 people were prosecuted. [Indistinct] question over here.

QUESTION: Oh, it's just to the masterminds or not - I mean, there were organisers, and there were drug mules. Can you reflect or go through the AFP's satisfaction with how the arrests ended up? The true kingpins, they're out there or dead.

ANDREW COLVIN: Look - sorry, say the last bit again.

QUESTION: Or dead. Isn't it that some of them are dead?

ANDREW COLVIN: Look, there's been some reports that the Indonesian police did in an exchange with one person who was a suspect - so we can't go beyond that, to say they were a suspect in this matter - that there was an exchange and that person is now dead. There are other people that we have intelligence to suggest that they were involved, mostly offshore, not here in Australia. But in terms of whether we're satisfied, we can only do what the evidence allows us to do. In this case, 15 people were prosecuted. That's 15 less people that were bringing heroin into this country and at least two of those people were reasonably senior and were pulling the strings and organising.

Now, I want to be very respectful of what happened last week. So I'm not here to give more information or to condemn those people further. It was tragic what happened last week. We need to be conscious of that but these are difficult investigations.

QUESTION: Commissioner, you've said that the AFP has tough new guidelines but you've also said that with perfect hindsight and the identical circumstances you wouldn't know as the head of the AFP what an officer should do. Does that not show that they're too subjective, that they're too vague?

ANDREW COLVIN: I didn't say I wouldn't know what an officer should do, I said I can't always know what an officer's thinking in the matter. Are they too subjective and vague? No, they're not because this is not an exact science that we're dealing with. We often don't know the individuals involved. We often don't know the narcotics. What we might have is seed information. The only way we can put those pieces together and try and remove a syndicate, be it drugs or any other transnational crime, is to work with our partners.

QUESTION: What would you want them to do, as the head of AFP, in the circumstances...

ANDREW COLVIN: I want them to study the guideline, I want them to understand the guideline and I want them to apply the guideline. I can't be more specific than that.

QUESTION: Excuse me, just back on the question of masterminds, Hong Viet Luong was named in court as a senior organiser of this. He fled after the Bali Nine arrest. There was also a man described as having a Mohawk in a nightclub identified as a kingpin. He has never been found or identified, both in Australia. The six people that you mentioned who were arrested back here couldn't be described as kingpins. Wouldn't you have had a better chance of actually arresting the senior organisers of this had you allowed the Bali Nine to come back here and continue the investigation?

QUESTION: Look, no, I don't believe we would've, because for a start we wouldn't have identified those six people that were prosecuted in Queensland. We may have had enough to arrest - obviously the couriers that came through that we knew about that were carrying the narcotics we would've had enough to arrest them. Unless they were prepared to give us information, which on this matter most of them weren't prepared to give us a great deal of information, we would've had to stop there, we would have had nothing further. Now look, Deputy Commissioner Phelan will know a bit of detail and specifics about those two individuals but again, just because they're mentioned in court is a long way from our ability to actually prosecute them. There were subsequent investigations, there were - investigations for quite a lengthy period of time after this investigation - after the arrests. We followed as many rabbits down as many holes as we can. We prosecuted those that we had evidence on. Mike might have more to say.

MICHAEL PHELAN: The Commissioner is absolutely right. We chased as many of the rabbits down as many of the holes as we could. What we - obviously for around this particular syndicate we wanted to do everything we possibly could to close down every angle back here in Australia. There simply was not enough evidence in relation to those people that's admissible in court. The interesting point that you make around whether or not, by letting the couriers come back to us Australia, we would have been able to follow it further down the train here, that pre-supposes a number of events that need to occur and that is that the couriers themselves when they arrive need to cooperate and as I alluded to earlier on, that doesn't happen anywhere near as often as people think it does. The amount of evidence that we actually needed against potentially against Andrew Chan who

was, of course, on the plane as well, we would've had to have been able to get enough evidence off him.

Remember this this is not a traditional investigation. It was an intelligence probe. No electronic surveillance no, physical surveillance, nothing. All we would've had would have been four couriers with eight kilograms of heroin. Would've been very, very difficult even to grab and have enough evidence against the overseer particularly unless the others rolled over and gave evidence. The mere fact we were able to prosecute the other six in Australia, of - of course, some of them gave - and some other witnesses, of course, were indemnified witnesses and gave evidence against other couriers, which I'm sure you're aware of. The only reason we were able to use that leverage was because of what happened in Indonesia. But for that, we would have had four couriers here that would've been linked like nearly every other serious and organised crime investigation that we have, where there are links, some of the tenuous, some of them more firm than others, but simply not enough to proceed against those.

QUESTION: Commissioner, was there at the time, or is there now, any scope for any sort of informal undertakings or dealings with your counterparts in Indonesia in respect of avoiding the death penalty?

ANDREW COLVIN: Look, there always is but just as if a country was to ask Australia for assurances about how a matter would be dealt with at court, my answer would be I can make representations to the court but the court will make the final decision. That's the answer that we get and that's the appropriate answer. Now, could there be more, could we consider treaties with countries, could we consider new arrangements? Yes, we do and we talk to them about that all the time. And would that help in this scenario? Possibly but it's not an ironclad because courts will make its own decisions about it.

QUESTION: [Indistinct] six people that were arrested in Australia, isn't it true that that information came from Renee Lawrence after she was arrested not from Indonesian police at all?

MICHAEL PHELAN: No. Some of it, but not all of it.

QUESTION: Some of it came from her?

MICHAEL PHELAN: Yep, some of it but not all of it.

QUESTION: After she was arrested?

MICHAEL PHELAN: That's right.

QUESTION: A vast majority of it?

MICHAEL PHELAN: No, not the vast majority of it at all.

ANDREW COLVIN: I think we've answered that.

QUESTION: You referred in your opening remarks to I think a - conspiracies - conspiracy theories around the broader relationship. Are you saying that no consideration was given whatsoever to the broader relationship particularly on counter-terrorism in making the decision about how to inform the...

ANDREW COLVIN: Absolutely, categorically no. The idea that we shopped these Australians into this situation because we wanted to try and curry favour in relation to other investigations is fanciful and offensive. Of course it is important that we have relationships with our partners and we've already spoken about the guidelines, the review guidelines ask us to take into consideration partnerships. But the way it's portrayed, that we wanted to do some sort of trade-off is just inaccurate.

QUESTION: Not necessarily in the mindset of the officers at the time but perhaps the structure of the relationship at the time had been built in such a way that information sharing was expected and this might've...

MICHAEL PHELAN: I'm happy to answer the question, Commissioner. I mean, I made the decision and no, it didn't enter my mind at all. When I made the decision or authorised the decision, at the end of the day, I was thinking about this particular syndicate and the protection of Australians here, the amount of narcotics and trying to build the jigsaw. The relationship with Indonesia was not in my mind. Had it been Thailand, had it been Vietnam, exactly the same considerations would've come into my mind.

ANDREW COLVIN: And could I just say on that - sorry can I just say on that before we move off it, there are international obligations imposed on Australia that we are signatories to around the exchange of information, around cooperating in trying to prevent the illicit narcotic trade. There are bilateral relationships that we have in Indonesia. They're all appropriate and they go to working together to combat transnational crime. But my point was still, as I say, I think it's inappropriate to reference it as that we shopped them, that we traded them, that there was some - and you've heard from Deputy Commissioner Phelan about what was on his mind. I just think that those comments have an impact on our officers who are out there every day working hard in dangerous circumstances to stop illicit drugs getting into our communities.

QUESTION: And Deputy Commissioner, when you made that decision, did you have the full backing of all of the officers who were working on the case or was there dissension in AFP ranks about exposing people to the death penalty?

MICHAEL PHELAN: Certainly the vast majority, but there - I can remember at least one occasion at the time where a request was made by one of the investigators in Brisbane to come off the team because...

QUESTION: As a result...

MICHAEL PHELAN: ...as a result of the passing of information - was not comfortable with us dealing with a death penalty situation. I didn't even ask who the investigator's name was so I just said no problem. If that's what they want to do...

QUESTION: So you still don't know?

MICHAEL PHELAN: No, I still don't know. I have no idea.

ANDREW COLVIN: And importantly - I think that's a really important point. I mean, I welcome that. I really do because we need diversity of opinion. As I said up front, these are not easy decisions and the fact that there were some officers less comfortable than others goes to the point that each and every day, police officers have to make difficult decisions. They are human. They make judgments. They use their discretion. I think it's entirely appropriate that that

person - and good on whoever it was, putting their hand up and saying, you know, I don't think I want to be part of this.

QUESTION: Commissioner, can you take us into your state of mind further at the time on the issue of the death penalty, how did you test - how serious was this as an issue for you at the time? How did you test it, weigh up the benefits and the cons?

MICHAEL PHELAN: No, thank you for that. And if anybody thinks that over the last 10 years, I haven't agonised over this decision, then they don't know me and they don't know what it's like to be not only a senior law enforcement officer but whether you're a constable and you have to make split decisions or decisions at the moment or indeed decisions when you have to have - when you have more information in front of you. These are difficult decisions. I agonised over it at the time. As a matter of fact when the first decision was made to hand over information to the Indonesians by lower level officers I stopped it because I wanted to have a full briefing on everything that was happening at the time - at the time, not post obviously it, to have as much information as I could to authorise the activity. What was going through my mind was very much around what I wanted to achieve at the end here for the Australian public. I've - by that time been in the 30 years now, I'd been in the job 20 years by then. I'd run narcotics investigations, I've seen the misery that drugs causes to tens of thousands of families in this country. We are charged with executing the laws of this country to the best of our ability. That's the sort of thing that weighed on my mind at the moment. Yes, I knew full well that by handing over the information and requesting surveillance and requesting the evidence gathered, if they found them in possession of drugs they'd take action and expose them to the death penalty. I knew that.

I went in with an open mind but I weighed up a number of things in my mind as to what I thought was appropriate and I've agonised over it for 10 years now and every time I look back, I still think it's a difficult decision, but given what I knew at that particular time and what our officers knew, I would take a lot of convincing to make a different decision [indistinct]. It was not easy.

QUESTION: Deputy Commissioner, do you feel that there was - if not an explicit or even a discussed agreement, that there was some sort of expectation, do you feel let down as a result of what happened?

MICHAEL PHELAN: No, I don't. Look, I've said on a number of occasions as well that when you're dealing with a sovereign nation from - another sovereign nation, once you hand over information and request things, it really is in their hands. So, there was no agreement that they would let them run live. I wouldn't ask that. I mean, we wouldn't do that here. We never do that. I mean, even with our major controlled operations that we do here, the vast majority of them - we actually take the narcotics out and do a substitution as everybody knows, for the sole reason that if we lose control, if we lose surveillance of them, no narcotics go out into the community. We might lose some [indistinct] some talcum powder or some sugar or something. We don't lose heroin, we don't lose cocaine and we don't lose ice. Similarly, I would never allow heroin - if I know it's an amount of heroin to come back here to Australia if I can help it because I didn't know what other hand-offs there may have been or other scenarios and albeit, like I said remote, as an investigator given the time, you've got to consider all those options.

QUESTION: Commissioner, since the new guidelines in 2009, have there been specific instances where the AFP has opted not to cooperate because of the death penalty concerns?

ANDREW COLVIN: Yes, absolutely. I mean, on each and every day - and we report these numbers to Parliament, our investigations take us down paths where we deal with countries that have the death penalty. And our investigators under the guideline need to seek approval to either go forward and exchange information or not and it depends on the factors that we've outlined and it depends on what we know. Now, I don't have the figures.

LEANNE CLOSE: So, in the last three years, we've had more than 250 requests in relation to matters that may involve the death penalty guidelines. Of those, we've not approved about 15 that haven't gone forward in terms of exchange of information.

ANDREW COLVIN: Now, keep in mind, that's only those that get brought forward for approval. I know that there are a lot, because investigators

know what the guidelines are, so they don't bring it forward for approval unless they think they need to progress it. Most would never reach that point because we know what the expectations of the guideline are.

QUESTION: [Indistinct]

ANDREW COLVIN: Sorry.

QUESTION: ...[indistinct] with other authorities and their frustration building up on Australia saying no?

ANDREW COLVIN: Oh look, I can assure you that even from this press conference today that our partners overseas that have the death penalty for serious narcotic offences will be watching and will take note of the fact that we've made the comments that we have today. I trust that our relationships with them are strong enough that they'll continue to work us with and trust us and with us to share information because to not do that would be a tragic set of circumstances for Australia, but they know and they very strongly know our opposition to the death penalty. Equally, they know that they have death penalty on their statutes and they strongly support the laws that they have.

QUESTION: What procedures take into account that when you're dealing with a country like China, they have a court system which uses a much lower threshold of proof than would be used in Australia or other western countries?

ANDREW COLVIN: You've heard what we've take into account [indistinct]?

LEANNE CLOSE: Of course we absolutely understand that. That's why we have our liaison officers around the world, as well, providing us that level of detailed information and the decisions are not taken lightly. They take time to work through for some of those very reasons you point out there. I think importantly in relation to information sharing, we have 72,000 requests for information every year through Interpol and euro-pol. So, amongst that - obviously that's not all related to death penalty type countries or offences involving our Australians with - who may be subject to the death penalty but that's the volume of sorts of inquiries and information that we share across the world each year.

QUESTION: Are there cases out there that you haven't solved because of the concerns about not passing on information that might lead to someone...

ANDREW COLVIN: Definitely. Absolutely. On instances where our investigators have appropriately made the decision not to share information we're obviously in the dark and sharing that information may have illuminated certain parts of a syndicate, may have given us more information, that's the reality of the situation. We have a strong objection to the death penalty. The AFP takes it seriously. We have to make those judgments and we've heard some of the things that have to be weighed up, the seriousness of the crime - you know, we have to weigh up what the system of justice is as we talked about. One of the biggest changes from the guideline in 2005 to what we have today is to take account of the fact that in Australia we have a common law system of justice. We are surrounded by countries that have a common law system of justice, they have continental systems of justice where charges come at a much later stage.

These are all very, very relevant factors. But, you know, of course when - I can never answer that [indistinct] with absolute clarity because we won't know, but I would be under no illusions at all that where we haven't shared information, that that's probably negatively impacted on our investigations. And that's appropriate and that's just the reality.

QUESTION: It seems that this came down ultimately to an operational decision rather than, in some ways, a human-to-human decision. You wanted the wider drug ring and so these people were let go instead of being stopped. Can you understand why that is difficult to understand or that is a difficult thing in particular for Scott Rush's family since they asked you to stop him?

ANDREW COLVIN: Well, I think we've addressed the Scott Rush issue and I want to take the pressure off Scott Rush's father because a lot of the way it's been reported is that that his information, his tip off, has led to this. It didn't and I feel for Mr Rush that it's been portrayed that way. I don't agree with you that it's just an operational decision. I think you've heard from Deputy Commissioner Phelan about the factors he took into account. We have to weigh up the impact of narcotics in this country. I said to you 4,100 deaths from heroin and other opiates alone in

a four-year period. This is having a detrimental affect on the community. We have an obligation to protect all members of the community and that involves difficult decisions. So, this was a difficult decision, a very difficult decision. Operationally, it was a sound decision but that doesn't mean that there weren't human factors in it.

QUESTION: Deputy Commissioner, the 15 cases that were knocked back, were they all relating to China?

LEANNE CLOSE: No, there were several different countries in relation to those ones.

QUESTION: Mostly to China or...

LEANNE CLOSE: Oh, I'd have to go back and check that...

ANDREW COLVIN: No, they wouldn't be. We're surrounded by countries that have the death penalty and in some of these countries eyes I've said, transit countries and source countries for narcotics. So, you know, it would be a mix. China is obviously a very key partner for us but they have the death penalty. Sorry, over here.

QUESTION: Talk about being a difficult decision, would it be easier or perhaps more difficult for police if you didn't have to make that decision and it was a law that police could not refer anyone to another country where the death penalty is involved, so you don't have to make the decision?

ANDREW COLVIN: Oh, there'd be no decision to make of course but our ability to stop drugs coming into this country would be - well, all transnational crime would so severely impacted. And I'm not saying that just to scare the horses. You only have to think about the region that we're in. We are a relatively affluent country sitting in Asia, where we are a market for drugs. We are a market for transnational crime. That is a decision that others will have to make if that's what they wish to do. My advice would be to be very careful and be very wary of the impact that would have.

LEANNE CLOSE: 100 countries around the world have the death penalty on their statutes.

ANDREW COLVIN: Including some of our most significant partners like the US.

QUESTION: And Papua New Guinea [indistinct] arisen with the AFP officers deployed in Papua New Guinea.

ANDREW COLVIN: Yes it has, we've had to be very careful about - we work with our Papua - as you know we've got 73 police in Papua New Guinea trying to help train and give advice to them. Now, we'd only(*) get involved in direct operational matters. That's part of the mission is to try and train advise but, having said that, to from time to time we will come across death penalty areas. Papua New Guinea have recently amended their statutes to reintroduce some harsh penalties and death penalty for offences. So it is - this is a real issue. I mean, people look at it as it's something that happened 10 years ago. This is each and every day we're having to make those decisions. Alright I might take one more question. I think we've just about exhausted the room. If there's no questions?

QUESTION: Commissioner, can I just get an idea of the level of cooperation now 10 years on? We've seen our ambassador recently recalled. Are we getting the same level of cooperation from Indonesia? And do concerns about corruption ever come into the AFP's mind when dealing...

ANDREW COLVIN: Yeah, of course it does and I have spoken publicly about these issues in the region as well. We're in a region where these are real issues for AFP to work with. The recalling of the ambassador is the decision by government to send a very clear message and it does that. Police work a level below that. Obviously, we have a police-to-police relationship which goes through ebbs and flows like you would always expect, there's times where it's good and there's time's when it's not strong. My concern is it to make sure that it's strong enough to deal with the contingencies we have to deal with, to deal with the terrorism matters, to deal with the serious crimes that we have to work with together on occasion. It is a difficult region that we work in. It'd be very nice if all of our partners in the region thought, act and interpreted things like we do, but they don't. So, that's a reality for us. As I say, though, transnational crime is impacting on us. We are in a region that we are significantly impacted by activities of our near neighbours. Look, I might leave it...

QUESTION: Just one - sorry, just one last one to clarify ministerial guidelines, is that legally binding or was it legally binding on the AFP?

ANDREW COLVIN: Well, in our Act, it requires the government to give us a ministerial direction. If you look at the guidelines, it tells us things that we need to prioritise. It doesn't tell me that I prioritise one over the other and that's always a concern because on any given day I might be dealing with a counter-terrorism matter or I might be dealing with a child abuse matter and priorities shift. And that's why the AFP moves its resources around. So it gives me my strategic priorities. It's enshrined in the AFP Act that the government must do it and from time to time they will reflect changes in their attitude and the policy to us in that document. But if you look at it there's nothing legally binding about I must do one or the other. I mean, that's a statutory independence of the AFP, the statutory independence of my role as commissioner.

The government can give me guidance and tell me its policy priorities but ultimately I have to make the decisions about what the AFP do and don't do. Look, can I say thank you very much everybody for coming along this morning. I'm very conscious that for some of this has been a long time coming. We did say that we would always take the questions. As I said at the outset, this isn't the first time we've done it but it's the first time we have in the last three or four months and I appreciate your patience in waiting. We had to wait for the right time. So thank you very much.

* * END * *