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SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 FIFTEENTH DAY: MONDAY 20 MAY 2024

INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX

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AUDIO VISUAL LINK COMMENCED AT 10.01AM

HIS HONOUR: Yes, Ms Epstein.

15

EPSTEIN: Your Honour, we have Mr Godden on the screen. I call Robert Godden.

<ROBERT GEORGE GODDEN, SWORN(10.02AM)

20

MACKEY: Your Honour, just briefly, I appear in place of Mr Silove for the Commonwealth as represented by ASIO. My name is Mackey.

HIS HONOUR: Thank you, Mr Mackey.

25

<EXAMINATION BY MS EPSTEIN

Q. Sir, is your full name Robert George Godden?

A. Yes.

30

Q. Mr Godden, my name is Epstein. I am Counsel Assisting and I will be asking you some questions this morning. If at any stage you can't hear us, could you please indicate that?

A. Yes.

35

Q. Mr Godden, I understand you have a support person in the room; is that correct?

A. Yes.

40

Q. Now, again, for the purpose of your evidence this morning, if at any stage you need to consult with or refer to your support person for assistance, could you please let us know that?

A. Yes.

45

Q. You were a police officer who attended a raid at 9 Livingstone Road, Burwood on 8 February 1979; is that correct?

A. Yes.

50

Q. Located at that premises were three individuals who were arrested; Mr Joseph and Ilija Kokotovic and Mile Nekic; is that correct?

A. Yes.

Q. You also attended that evening 20 Eurella Street, Burwood, being the residence of Mr Nekic?

A. I don't remember attending there, but yes.

5 Q. What was your rank at the time, Mr Godden?

A. Detective Senior Constable.

Q. What branch or squad were you attached to?

A. Armed Hold Up Squad.

10

Q. How long had you been with the Armed Hold Up Squad?

A. Went there in 1976/7, so this is '79, a couple of years, three years maybe.

Q. When did you first join the police force?

15

A. 1965.

Q. Where were you stationed when you first joined?

A. My first station was at Rose Bay.

20

Q. How long were you there for?

A. Sorry?

Q. How long were you at Rose Bay for?

A. 12 months, 18 months.

25

Q. Where did you transfer to after that?

A. Regent Street Police Station.

Q. Again, how long were you there?

30

A. 12 months.

Q. Where did you go next?

A. I went on A-list at Glebe Police Station; what they call A-list which was - trainee detectives' work, and then I went to 21 division after that.

35

Q. And after that?

A. After that to Kingsgrove Police Station?

Q. I'm sorry, could you say that again?

40

A. Kingsgrove Police Station.

Q. Kingsgrove, yes, as a detective?

A. As a plain clothes constable, yes. I wasn't designated detective then.

45

Q. Then where did you go?

A. At Kingsgrove, after that I went to - geez - I went to a detectives training course and after that went to Special Crime Squad.

Q. How long were you there?

50

A. Couple of years, two years.

Q. Was it from there that you ended up in the Armed Hold Up Squad?

A. I went from Special Crime to Crime Intelligence Unit and after that, about 12 months, I went to Armed Hold Up.

5 Q. How was it that you came to be recruited or become a member of Armed Hold Up Squad?

A. How is it I became a member of the Hold Up Squad?

Q. That's right?

10 A. Just natural transfer.

Q. You weren't requested by anyone in particular or recruited?

A. No. I probably volunteered - if they asked me; I just don't know whether they asked me or not, but I would've volunteered if they did.

15

Q. How long did you stay with the Armed Hold Up Squad?

A. I've had a couple of stints at the Hold Up Squad. The first stint would be - I was there for about four years.

20 Q. Where did you go after that?

A. I left Squad; I went to Darlinghurst.

Q. Can you just talk us through the rest of your police career from there?

A. Pardon?

25

Q. Could you talk us through the rest of your police career from there?

A. After I went there I went back to Kingsgrove Police Station and from there I've worked on various task forces.

30 Q. You said you went back to--

A. I retired in 2021 - 2001.

Q. You said at some point you went back to the Armed Hold Up Squad; is that correct?

35 A. Yes.

Q. When was that?

A. That's - dear, so I'd say around - about 1984/85, something like that.

40 Q. How long were you there at that point in time?

A. Maybe six months; I, you know, I went to a task force I think from there.

Q. Turning your mind back to 1979, your first stint in the Armed Hold Up Squad, at that point in time was it also necessary to be a member of SWOS?

45 A. Not - wasn't necessary, but it was convenient to be so, yes.

Q. Were you a member of SWOS?

A. I was trained to be a member of SWOS, yes.

50 Q. What did that training involve?

A. Various - well, training in firearms; camps, you know, like SWOS camps.

Q. Did it involve any training in explosives?

A. No, not really, no.

5

Q. You gave evidence at the committal proceeding for the Croatian Six and also the trial; is that correct?

A. I gave evidence, yes.

10

Q. Have you been provided with a copy of your transcript of evidence from committal and trial?

A. Yes.

15

Q. Have you also been given a copy of your statement dated 9 February 1979?

A. Yes.

20

Q. Have you had a chance to review those documents?

A. I have read them, yes; or tried to read them.

Q. Having had the chance to review them, is there anything in those documents that you wish to correct?

A. No.

25

Q. Sitting here today, to the best of your knowledge, are you able to say whether the evidence you gave at the committal, at the trial, and in your statement, was true and correct?

A. Yes. I'd say it was true and correct.

30

Q. I'm going to ask you some questions about the events of 8 February 1979. Do you recall how it was that the Armed Hold Up Squad came to be involved in the raids that you attended?

A. I have no recollection but I am going off what my statement says, and we were placed on standby that afternoon of 8 February, placed on standby to do a job, yeah.

35

Q. Sitting here today, do you have any actual recollection of having attended the raids and what occurred that evening?

A. No. Not really, no.

40

Q. I'll ask you some questions about various things to try and see if that jogs your memory at all, and if you could do your best to assist us; I appreciate it's some time ago, but to the extent that you are able to recollect details, it can assist. At the time, did you have a particular partner you worked with?

45

A. I was working with Detective Senior Constable John McHugh.

Q. Was he your regular partner?

A. He was what?

50

Q. Was he your regular partner that you worked with consistently?

A. Yeah, at that time, yes.

Q. Who did you report to within the Armed Hold Up Squad?

A. Detective Inspector Morey.

5

Q. Do you recall who the officer-in-charge of the raids and the incident overall that evening was?

A. What, at the house you're talking about?

10 Q. Before you got to the house, when you were still at CIB, for example, was there a particular officer who was giving directions?

A. Not really, but Detective Inspector Morey did - probably did a briefing. I think the senior officer would've been Detective Sergeant Rogerson.

15 Q. When you say Inspector Morey would've done a briefing, do you have any recollection of such a briefing?

A. No, I haven't.

20 Q. Do you recall being provided any information before attending the raid about the location or what you were to expect at the raid?

A. As I said, I can't remember what was said, but I imagine there would've been; we would've been told what was there, yes.

25 Q. Do you recall being told whether there were explosives expected to be present?

A. Not specifically, no.

Q. Do you recall whether you were told anything in particular about the men who were likely to be present at the property you were to visit?

30 A. Not directly, no.

Q. You may have seen from having reviewed your evidence and statement that your evidence was that you attended a conference at Burwood Police Station upon arriving there; do you recall that occurring?

35 A. I don't recall it occurring, but it's in my statement.

EXHIBIT 4.2-82 SHOWN TO WITNESS

40 Q. Thank you, Mr Godden. I'll just ask for that to be enlarged please. Excuse us one moment, Mr Godden, while we get that document on the screen. Mr Godden, are you able to see that document?

A. Yes.

45 Q. Take a moment to read it to yourself and let me know once you've done that?

A. Yes.

Q. Do you recall having seen that document?

A. No.

50

EXHIBIT 2.3-44, RED PAGE 8417, SHOWN TO WITNESS

EPSTEIN: If we could please enlarge the bottom of the page, about three questions from the bottom.

5

Q. Mr Godden, I want to draw your attention to three questions from the bottom that begins: "Q. I think you have mentioned you were possessed of a screed...". Are you able to see that on the screen?

A. Yes.

10

Q. Could I ask you to read from that question to the bottom of the page?

A. Which question is that? Which? The bottom of the page?

15

Q. Three questions from the bottom that begins: "I think you have mentioned you were possessed of a screed...". Could you please read from there until the end?

A. Sorry, I'm not with you. Where - what question are you talking about?

20

Q. Can you see the cursor on the screen that's hovering? A little hand?

A. Yeah, I can. Yeah. "I think you had mentioned...".

Q. Can you--

A. --...you were possessed...", yeah.

25

Q. If you could read to yourself from that question down to the end?

A. Yes.

Q. Could we scroll down, please?

A. Sorry?

30

Q. I'll just ask for the document to be scrolled down.

A. Yep.

35

Q. Can you see there at the bottom in parentheses states, "(Mr Scott asks for Exhibits '180' and '181'.)"?

A. Yes.

40

Q. If you take it from me that the document I've just shown you before was Committal Exhibit 180, does that help refresh your recollection at all about having seen that document previously?

A. No recollection of that.

Q. Are you familiar with the word "screed"?

A. Sorry?

45

Q. Are you familiar with the word "screed"?

A. The word?

50

Q. "Screed". S-C-R-E-E-D?

A. I don't really know. I can't say I am.

Q. I'll take you to the screen again. Can you see the questions you were asking here were--

A. I see - I see the word. I see the word there, yeah.

5 Q. Was that a word--

A. You--

Q. I'm sorry.

A. I see the word "screed", yeah.

10

Q. Was that a word that was used to describe a document containing relevant police information back in around 1979?

A. It could be, yes.

15 Q. Do you recall prior to attending the raid in Burwood having been given a document with information about the men who were to be located at Burwood?

A. No. I don't

EXHIBIT 4.2-83 SHOWN TO WITNESS

20

Q. Could you please enlarge at the top of the screen? Are you able to read that, Mr Godden?

A. It's very - very difficult, yes. Go.

25 Q. Please do your best, and if there's anything you're struggling to read, could you let me know and we'll read it out loud to you.

A. Right.

Q. Tell me once you've gotten to the bottom and I'll scroll down.

30

A. Yes.

Q. Could we please scroll down?

A. Yes.

35 Q. Mr Godden, do you recall having seen this document previously?

A. No.

EXHIBIT 2.1-41, RED PAGE 1274, SHOWN TO WITNESS

40 Q. Mr Godden, I'm going to ask you some questions about the fourth question from the top. Could I ask you to read from that question down to the bottom of the page. The question beginning: "I think you were then given a three-page screed...". Are you able to see that on the screen?

45 A. I can see the cursor there, yeah. A little cursor. Is that the question you want me to start from, is it?

Q. Yes, please.

A. "I think you were then given a three-page screed by Det. Morey at that stage, weren't you?"

50

Q. Yes. If I could ask you to read from there to the bottom to yourself, and tell me if there's any difficulty in reading it.

A. Is that it - what was that again?

5 Q. If you could read from that question to the bottom of the page to yourself, and let me know if you have any difficulty in reading those words.

A. Yeah. Yep. Just scroll down a bit.

10 Q. Mr Godden, it then goes on to a different topic, so you can pause once you've read what came above.

A. Yeah, I did. Sorry?

Q. Were you able to read the section that was just on the screen?

15 A. Yes.

Q. Having reviewed that section of your transcript, does it refresh your recollection at all about the document I just showed you?

A. No. It doesn't.

20 Q. Turning to the events of the evening, once you arrived at Livingstone Street, Burwood, do you recall what happened at the premises?

A. No.

25 Q. Your evidence was that you entered the premises via the rear door with Detective Counsel, Grady and McHugh. Do you have any recollection of that occurring?

A. No. I don't.

30 Q. Your evidence was that you went to the attic where you saw Mr Joseph and Ilija Kokotovic and Mile Nekić. Do you recall that happening?

A. I've got - I've got no recollection of that, no.

35 Q. At trial, Mr Nekić gave evidence that he ran down the stairs and was met by Detective Rogerson, who stopped him with a gun to his stomach. Did you witness that occurring?

A. What was that again?

40 Q. Mr Nekić gave evidence at trial that he ran down the stairs, and was met by Detective Rogerson, who stopped him with a gun to the stomach. Did you witness that occurring?

A. No.

45 Q. Are you able to say positively whether you witnessed it occurring or not? That is, do you have an independent recollection today of whether it occurred?

A. I've got no recollection of that happening.

50 Q. In the attic, the evidence at trial was that you had seen two sticks of gelignite and detonators on the table, and you then arrested Mr Nekić in relation to those explosives. Again, do you recall that having occurred?

A. I haven't got a recollection of it. I - I read it in my statement just recently.

Q. To your knowledge, was he searched at the premises? Do you recall?

A. I did search the premises.

5

Q. Was Mr--

A. Yeah, I did. Sorry?

Q. Was Mr Nekic searched at the premises to your recollection?

10 A. No. Not that I can recollect, no.

Q. Are you able to tell us what happened when he was taken downstairs?

A. I've got no recollection. Apart from what I've already read in my statement, I've got nothing else.

15

Q. The evidence at trial was that you asked Mr Nekic where he lived, and he gave you another address in Burwood, 20 Eurella Street, and you then left the Livingstone Street property with Detective McHugh to go to the premises at Eurella Street. Do you recall that premises at all?

20

A. No.

Q. If I tell you it was a flat at the rear of the property, does that assist?

A. It doesn't. I have no recollection of that.

25

Q. If I tell you that the evidence at trial was you undertook a search and found 16 books on army training, does that assist you at all?

A. No.

Q. Mr Nekic was then conveyed back to the CIB, and you were involved in interviewing him at the CIB. Do you recall that having occurred?

30

A. I don't, no.

Q. Mr Godden, I'll ask for your statement to be brought up on the screen.

35

EXHIBIT 4.2-94, RED PAGE 665 SHOWN TO WITNESS

Q. Could we please turn to red page 665? Could you enlarge from the third paragraph? Mr Godden, could you please read the third paragraph that begins: "Following this I returned to the room..." and tell us when you've gotten to the bottom.

40

A. Yes. "I returned to the room", yes.

Q. Just read it to yourself, and tell us once you've gotten to the bottom of the page.

45

A. Yes.

Q. Just scroll down, please.

A. Yes.

50

Q. Keep going to the next page please. If you could keep reading, please,

Mr Godden?

A. Yes.

5 Q. Scroll down, please. Just excuse us one moment. Are you able to read what's on the screen there, Mr Godden, and tell us once you've gotten to the bottom?

A. Yes, I can.

10 Q. We'll go down to the end of this page and then I'm going to ask you some questions about what's come so far. Have you read to the bottom of what's on the screen now, Mr Godden?

A. Yes.

15 Q. Can you scroll down, please? Sorry, Mr Godden, just one moment. If you read to the bottom of this page and then I'll ask you some questions.

A. Yes.

20 Q. Could we please bring up the bottom of page 665 on the screen? Mr Godden, your evidence was at trial and at committal that you were involved in interviewing Mr Nekic at the CIB. Do you recall having--

A. Yes.

Q. --been involved in that interview?

25 A. Do I recall? I don't recall interviewing him, no.

Q. Can you see in your statement the section that you've just read, your evidence was that Mr Nekic did not wish for his interview to be typed out?

A. That's in my statement, yes.

30 Q. Instead notes were taken in a notebook?

A. In my statement, yes.

35 Q. Mr Nekic, at trial, denied having said that he did not wish for his interview to be typed out and said he did not recall any typing or writing in notebooks by detectives. Are you able to say anything in relation to that allegation?

A. I can only rely on my statement, and it doesn't say that at all.

40 Q. Does it strike you as strange that a suspect would agree to have their interview recorded in a notebook but not typed?

A. Not necessarily, no.

Q. Why do you say that?

A. I don't know what the suspect's going to do.

45 Q. Wouldn't it seem unusual to you though, that they would agree to one form of notation of what they were saying in an interview but not another?

A. As I said, I can't read their mind, no.

50 Q. In your experience as a police officer, was there any greater weight placed on a typed interview than a handwritten one, for example?

A. No, not that I've - no, I don't think so.

Q. Do you recall anything in particular about Mr Nekić's reaction or demeanour that evening?

5 A. No, I don't even remember the - Mr Nekić, but I - I don't remember any confrontation from Mr Nekić whatsoever.

10 Q. I'm going to take you through some of the questions that you asked that are recorded in your statement. See on the screen there one of the first questions you asked in the last paragraph was, "You said before that you were going to tell me what you were going to do"; do you see that on the screen now?

A. Yes.

15 Q. Mr Nekić went on to describe some - what he and his friends were going to do in relation to the Croatian cause - if we scroll down so you can see that? You see that, that was his first answer?

A. What - where is that again, please?

20 Q. Can you see the top of the page that's currently--

A. "The Yugoslav Government;" yeah.

Q. Yes, and he refers to--

25 A. Got it.

Q. --"Next Saturday night, a dance and"--

A. Yep.

30 Q. --"singing at the picture theatre in Newtown", and so on; "Me and my friends decided that this must stop"?

A. Yes.

Q. You then ask, "How were you going to do that"?

35 A. Yeah.

Q. And he says, "We planned to have a meeting", so on, "The bombs were going to be brought down from Lithgow and we were going to put them in the theatre", et cetera?

40 A. Yes.

Q. Your next question then is, "Who was going to plant these bombs"?

A. Could you scroll down a bit there? Yeah, "Who was going to plant", yes.

45 Q. Yes, and he provides you with some details about how that was to occur, and at that stage Detective Grady beckons you from the room?

A. Yes.

50 Q. Then when you come back into the room, you ask him some questions about the particular gelignite detonators and connectors that were found at the premises?

A. Yes.

5 Q. You then leave the room and hand those back to Detective Grady and when you come back, you ask some questions about who was going to be at a meeting tonight at Tony Zvirotic's place; do you see that?

A. Scroll down a bit more for me. Keep going. Yes.

10 Q. You ask a question then, "When did you decide to put the bombs in the various places" and there's some information about the meetings that were occurring?

A. Yeah.

15 Q. You then turn to the question about the books that were found in Mr Nekic's flat--

A. Yes.

20 Q. --indicating the books? Now, why is it at this stage you didn't ask any more details about where the explosives had come from?

A. Where?

Q. The explosives had come from?

A. I don't know why I didn't ask him, but I didn't ask him.

25 Q. You didn't ask him questions either about whether there were any more explosives out there to be found, either in situ at particular locations that had been part of the conspiracy or in the hands of other individuals?

A. No.

30 Q. Do you recall why not?

A. No, I can't answer that; I don't know why not.

Q. Does it strike you as a logical question to have asked the suspect?

35 A. It depends on the circumstances and the atmosphere of the time, but what I did was record it there in my statement, and if you note my statement was made the next day, so if it's not there, it's not there.

Q. What would it have been about the atmosphere that might've caused you not to ask questions?

40 A. You know, when you interview people, you've got different sort of atmospheres as to how people react. I don't know why I didn't ask him.

Q. Can we keep going on the next page, please? I ask you to read what's there now, please and tell us when you get to the bottom?

45 A. Yes.

Q. Can you see there, Mr Godden, that you've turned to a completely different topic, which is a planned murder of the two named men?

A. Yes.

50 Q. Again, sitting here today, does it seem strange or odd to you that you

would not have probed in further detail the details of the bombing conspiracy and where any further explosives might be located?

A. I think I - he said that he didn't want to talk any more in my recollection. Just that - I don't - is that contained in my statement; I don't know?

5

Q. It is. It's contained later on and I'll take you to that, but just at this particular point in time, Mr Nekic is still cooperating with you, isn't he?

A. Well, he - yeah, he said he didn't want to talk about the - what was going to be the murder of two men; or that plan to kill them. Well--that's - well, he explains it there in my statement.

10

Q. Can you see the first mention of the two men is raised by you, isn't it?

A. Yeah, "I've been told that...by you and two other men to murder two men named Mlinaric and Lovokovic", yes. Yes.

15

Q. What I'm asking, Mr Godden, is that you were previously asking some questions about the planned bombing and the meetings that took place in the lead-up to this conspiracy; do you recall having read that just now?

A. Yes.

20

Q. You've now changed topic completely to the planned murder of these two men; that's correct, isn't it?

A. Yes.

25

Q. It's you who has introduced the new topic in the interview; isn't it?

A. Well, it's a different sub - probably yes.

Q. Yes, it's a different subject, isn't it?

A. Yes.

30

Q. So why is it that you didn't ask more questions to ascertain, for example, whether there were explosives out there in the hands of others before moving to this new topic?

A. I don't know. Don't know.

35

Q. This would have been a concern, wouldn't it, that there were explosives potentially out there in the hands of other people?

A. Well, I was interviewing him but that wasn't my concern interviewing him, although I'd never got around to asking him about other people, no.

40

Q. You would've wanted to know everything you could about the planned explosives; isn't that correct?

A. Yes, but my - he - he said he didn't want to talk anymore; that's what my understanding was.

45

Q. Why didn't you exhaust the topic of the explosives before moving onto a new topic?

A. Why didn't I what?

50

Q. Exhaust the topic of explosives before moving onto a new topic?

A. I don't know; I can't answer that.

5 Q. Mr Godden, if I was to say to you that the admissions made by the other members of the Croatian Six followed quite a similar format to what you've set out in your statement, what would you say to that?

A. What was that again?

10 Q. If I was to say to you that the recording of admissions made by other members of the Croatian Six followed quite a similar format to what is set out in your statement, what would you say to that?

15 WOODS: Your Honour, I object to that. That's speculative and unfair to this witness. He doesn't have the other material before him and it's perhaps a matter for address, but it's not a matter for a question.

HIS HONOUR: In the light of his experience with the various officers that were involved in this matter on the night, I'd be interested in his views about this, Dr Woods.

20 WOODS: Very well, your Honour.

EPSTEIN

25 Q. Mr Godden, do you need me to repeat the question?

A. Yes, please.

30 Q. If I was to say to you that the recording of admissions by other members of the Croatian Six followed a similar format to what is set out in your statement, what would you say to that?

A. It's just a matter of coincidence, I suppose. That's all I can say.

35 Q. Did you speak to other detectives who had been involved in the arrest of other members of the Croatian Six about fabricating admissions?

A. About fabrication of?

Q. Admissions?

A. Well, I - I - it's not fabricated, if that's what you're asking me.

40 Q. Did you speak to any other police officers about fabricating any other admissions?

A. No.

45 Q. Are you aware about whether there was any evidence of admissions fabricated in relation to the Croatian Six?

A. No. I'm not.

50 Q. Mr Nekic, at trial, denied having made these admissions. What do you say to that?

A. Well, he made the admissions. Nothing more.

Q. I'll ask you to continue reading. I'll scroll down a little bit further. Can you please read on the screen and tell us once you get to the bottom. Have you finished reading?

A. Yes. Yep.

5

Q. We'll scroll down further. Can you read to the bottom of the page, please. It's quite difficult to read at the bottom, so just do your best.

A. It's a little bit distorted at the bottom of the page.

10

Q. It is, unfortunately, but that's the best copy we have. So just do your best.

A. Yes.

Q. If we could just finish off the statement, please?

A. Sorry?

15

Q. We'll just scroll down to the bottom, so you can finish reading.

A. Yes.

20

Q. Mr Godden, you see there at the end of your statement you've recorded a question you asked Mr Nekic, "Do you wish to read what I have written in my notebook?" And he said, "No."?

A. Yes.

Q. Why did you ask that question?

25

A. Well, it was a common courtesy to ask him does he want to read it.

Q. Did you take any steps to read back what was recorded in your notebook?

A. Sorry?

30

Q. Did you take any steps to read back what was recorded in your notebook?

A. I didn't catch that. What was that again?

Q. Did you take any steps to read back what was recorded in your notebook?

A. No.

35

Q. How was it recorded? Was it long-hand or shorthand?

A. Well, it was written by me. Some of it in my own shorthand, which is just - you know, some right - short for myself, and long-hand.

40

Q. If Mr Nekic had elected to review what was in your notebook, it would have been quite difficult for him to read it, wouldn't it?

A. Well, I - I can't answer that. It's my writing. He - he might have had some difficulty. I don't know.

45

Q. Shorthand is quite personal, isn't it, the way that shorthand note are taken?

A. Yeah, but if he - well, if he had any query, I would have assisted him.

Q. How were you expecting him to read your shorthand notes?

A. Well, I just asked him. Did he want to read it.

50

Q. Wouldn't it have made more sense to read it back to him and suggest that that be done?

A. No. Well, I - I didn't think of that.

5 Q. You didn't take any steps, did you, to have a senior officer come into the room at the end of the interview and verify what had been said, did you?

A. No.

Q. Why is that?

10 A. Well, I didn't think it was necessary. I - I suppose in hindsight, I should have.

Q. Why didn't you think it was necessary?

15 A. Well, again, my - sort of a - answer any more questions, sort of participate in the interview anymore, so I didn't think it was necessary.

Q. It was fairly significant admissions he had made, weren't they?

A. Yes.

20 Q. I expect that you would have wanted to have those admissions tendered in court at a later date?

A. Yes.

25 Q. You would have wanted to ensure that there was no challenge to what was said by him in that interview?

A. Yes.

Q. Wouldn't it have been an appropriate course to have someone come into the room and verify what was said during that interview?

30 A. It would have been - yes, I agree with that. In hindsight, I didn't, you know.

Q. Not just in hindsight--

A. Hindsight - in hindsight, I should have.

35 Q. Not just in hindsight, Mr Godden. At the time, that would have surely occurred to you as a sensible thing to do?

A. I didn't think it was at that time.

40 Q. What was your general practice at the time when you were interviewing suspects?

A. Well, they generally take them down, and - and maybe they would read it or something, you know? Read it over. I don't know why I didn't do it.

45 Q. Did you tend to record things in notebooks more than you typed out answers?

A. It depends on the demeanour of the person being interviewed.

Q. When you say, "the demeanour", what would it be about their demeanour that would make you opt for one rather than the other?

50 A. Well, they - if they weren't to - to be recorded by a typewriter, or if

they - you know, if there's any - taking it down in my notebook.

Q. It's the case, isn't it, that if it was recorded in a notebook, it would be more difficult to have the suspect verify what was recorded, isn't it?

5 A. Well, yes and no really. It's hard to say.

Q. Well, if it was typed out, there was a nice typed-up piece of paper?

A. Easier - easier to read, yes.

10 Q. Easier to read, yes. The normal practice, was it not, to have an independent senior officer come into the room afterwards and have them sign the typed record of interview?

A. Say that question again, please?

15 Q. The normal practice would be to have a senior officer come into the room afterwards and have a suspect sign a typed record of interview?

A. Yes. A typed record, yes.

20 Q. Did you make a deliberate decision in this case not to offer a typed record of interview?

A. Sorry, what was that?

Q. Did you make a deliberate decision in this case not to offer a typed record of interview?

25 A. I think I did offer him a typed - offer him to have a typed interview.

Q. Mr Nekić said at trial that he was left alone for most of the time that he was in the interview room, and the only questions he was asked was about whether he knew Mr Virkez and Mr Bebić. What do you say to that allegation?

30 A. Could I have that again, please?

Q. Mr Nekić said, at trial, that he was left alone for most of the time he was in the interview room, and the only questions he was asked were about whether he knew Mr Virkez and Mr Bebić. What do you say to that allegation?

35 A. I'm sorry, I can't recall that, but I don't think that would have happened.

Q. Why do you say that?

A. Well, I don't think it's - he would have been left in the room for a long time by himself, no.

40

Q. Is that because of general procedure that you're aware of?

A. Well, it's not general. It's just the way things happened, really.

Q. How is that, that they happened?

45 A. Well, you know, I can't answer that. I've - you know, it's - he may have been in the room for a short period; he may have been in the room for a long period, depending on the circumstances.

50 Q. You've just expressed some surprise at the idea that he would be left alone in a room for a lengthy period of time. Is there something--

A. I don't think he would have - I don't think he would have been left in the room for a long time, no.

5 Q. Is there something about how things were normally done that you can point us to, to assist us in understanding your answer?

A. I'm sorry, I don't understand that question, sorry.

Q. Was it the case that ordinarily suspects would not be left in a room for a lengthy period by themselves? Is that why you've given your answer?

10 A. Well, he wouldn't have been left in the room a long time by himself, no.

Q. He also said that when he was asked if he knew anything about some explosives found in Lithgow, he said, "No." That's quite contrary to the Record of Interview I've just taken you through. You would agree, wouldn't you?

15 A. Did he say that to me?

Q. I'll rephrase the question so that it's clear. Mr Nekić's evidence at trial was that he was asked if he knew anything about explosives found in Lithgow, and he said, "No." Could I ask you to--

20 A. That was his evidence?

Q. That was his evidence, yes. Can I ask you to comment on that, having regard to the interview I've just taken you through.

25 A. I'm sorry, I'll have to - refer to my statement again as to what he said.

Q. But if it's not in your statement, are you suggesting that it's not correct?

A. I'm not suggesting. It probably wasn't said at all.

30 Q. Taking you back to the raid itself, prior to attending the raid, it was the case that there was no evacuation of neighbouring premises. Do you recall that?

A. No. Well, my recollection is that there was no evacuation, no.

Q. I'm sorry, could you repeat your answer?

35 A. I'm saying, my recollection is I can't remember what happened at all, but to my knowledge, there was no evacuation by any neighbours - of any neighbours.

40 Q. If you can take it from me that there was no evacuation. On entering the premises, there were a number of women and children. Does that sound familiar?

A. Yeah. I - I recall - well, I don't recall it, but there were women and children there, yes.

45 Q. Again, there was no evacuation of those women and children upon entering the premises?

A. Not to my knowledge, no.

50 Q. Does it strike you as strange that when police officers were attending a raid at which it was anticipated there would be explosives found, no steps were taken to evacuate those people?

A. No.

Q. Could you explain your answer, please?

A. I said no. Not to my knowledge.

5

Q. I'm asking you whether you find that strange that no steps were taken to evacuate those people?

A. Well, it does seem strange, but the - it didn't happen, anyway.

10

Q. Does it seem strange because gelignite and detonators are potentially dangerous?

A. Yes.

15

Q. You would expect, would you, in your experience as a police officer that steps should have been taken to evacuate those individuals in the house?

A. Maybe, yes.

20

Q. What about in neighbouring houses? Would you expect that steps should have been taken to evacuate those houses?

A. Maybe, yes.

25

Q. Before attending this raid, had you ever been part of a raid, or execution of a search warrant, where explosives had been found?

A. Prior to this raid, you mean?

Q. Yes?

A. Not that I recall.

30

Q. What about afterwards?

A. Not that I recall, no.

35

Q. Mr Nekic's evidence, as well as the evidence of Mr Joseph and Ilija Kokotovic, at trial was that there was no gelignite at their premises, and there was an allegation made at trial that the evidence given by police officers of having found gelignite was a fabrication. Are you aware of police having fabricated evidence about having found gelignite and detonators at that premises?

A. No.

40

Q. Are you aware of the term "loading up"?

A. Aware of?

Q. The term "loading up"?

A. Loading up?

45

Q. Yes?

A. Yes, I'm aware of that, yeah.

50

Q. What does that mean, to your knowledge?

A. Well, it means planting, or whatever you want to call it, evidence on people,

you know, on suspects.

Q. During your time in the police force, were you ever aware of police having engaged in practices of loading up?

5 A. No.

Q. You didn't come across that at all amongst your fellow officers?

A. I've heard the term, but - and I don't - no first-hand knowledge of it, no.

10 Q. What about second hand knowledge, hearing other officers--

A. It's only by your; you're telling me second hand knowledge. I don't - that's all I know.

Q. Did you ever hear other police officers speak of having engaged in loading up?

15 A. No.

Q. Are you aware of whether police officers in this case engaged in loading up members of the Croatian Six?

20 A. No.

Q. Is your answer saying that you are not aware, saying you have a positive knowledge that that did not occur, or you don't have--

25 A. No.

Q. --a recollection one way or another?

A. Got no knowledge of it.

Q. Mr Godden, you prepared a statement for trial that I've taken you through; do you recall in 1979 what the procedure was for preparing your statement?

30 A. Sit down at the typewriter and type it out.

Q. Did you confer with other police officers in the course of preparing your statement?

35 A. No. I had my notebook with me, that's all.

Q. Again, do you have a positive recollection of having done that or are you speaking from your general procedure?

40 A. No. That's what - that's what I would've done.

Q. Did you have a general procedure of consulting with other police officers; for example, your partner or other people who'd been involved in the same incident as you when preparing a statement?

45 A. I may have asked the other police officers; I just don't recall, but normally I - I'd sit at the typewriter and type own statement.

Q. I assume you would refer to your notebook when you were doing that?

A. Yes.

50 Q. Would you have ever referred to notes made by other detectives or other

police officers when preparing your statement?

A. No.

EXHIBIT 4.2-81 SHOWN TO WITNESS

5

Q. Could we enlarge paragraph 3 please? Could I ask you to read that to yourself, please? Mr Godden, have you read that?

A. Yes.

10

Q. Now I'll take you back to your statement, Exhibit 4.2-94. Could paragraph 2 please be enlarged?

A. Sorry, are you talking to me?

15

Q. Just enlarging a particular paragraph on the screen, Mr Godden, then I'll ask you to read that - paragraph 2, they're not numbered but it begins, "Shortly after I went with Detective McHugh", thank you. So, Mr Godden, could you please read to yourself the paragraph that's on the screen now, "Shortly after I went with Detective McHugh"?

A. Yes.

20

Q. You'd agree, wouldn't you, that it's quite similar in terms to the paragraph in Detective Grady's statement that I have just taken you to?

A. I - well, I suppose so, yes.

25

Q. Were there discussions between--

A. Well, it's just - it's just as it happened, you know, we recorded it.

Q. Were there discussions between yourself and Detective Grady about what to put in your statement?

30

A. No, not that I recall. No.

Q. Mr Godden, after the interview of Mr Nekic at the CIB, did you have any further involvement in the investigation or prosecution of the Croatian Six?

A. No.

35

Q. Were you involved in any way in preparing the brief of evidence?

A. Only in preparing my statement for the brief of evidence.

40

Q. Do you recall having been told about the involvement of Mr Virkez in the bombing conspiracy?

A. Mr?

Q. Virkez, V-I-R-K-E-Z?

A. No.

45

Q. Does that name mean anything to you?

A. Not really, no.

50

Q. Do you recall having been told about any connection between this case and the Yugoslav Consulate?

A. We - sorry, what was that again?

Q. Do you recall having been told about any connection in this case to the people involved with the Yugoslav Consulate?

5 A. No.

<EXAMINATION BY MR DE BRENNAN

Q. Mr Godden, can you see and hear me?

10 A. Yes. Sorry?

Q. My name's Mr De Brennan, I appear for the petitioners in this matter.

A. Right.

15 Q. I want to take you back to the evening that you conducted the raid on the Burwood residence. Prior to that, you had had a meeting at the CIB where you'd received some information from a Detective Inspector Morey?

A. Yes.

20 Q. Then you had a further meeting at Burwood Police Station, and I'm going to suggest to you that that was overseen by Detective Sergeant Rogerson?

A. Yes, and I think there might've been a Detective Sergeant Crothers from Special Branch there.

25 Q. Yes, and then was it the case that you had a further meeting before going into the residence at Burwood?

A. I don't recall that, no.

30 Q. You would agree that it was Detective Sergeant Roger Rogerson that told you and your colleagues, or some of your colleagues, that you should go to the back of the house?

A. Yes, could've been, yes.

Q. You did go in through the back of the house?

35 A. I don't recollect it, but it's in my statement, yes.

Q. Yes, and it's the case, isn't it, that you then went up to the attic where you saw the Kokotovic brothers and Mr Nekić?

A. Again, I'm going off my statement, I've got no recollection of it.

40

Q. You accept that that is what you said in your statement?

A. Yes.

45 Q. Can I ask you this, when you got up to the attic, do you have any recollection of whether you saw the three gentleman that I've just mentioned first, or was it the case that you saw the explosives and the detonators first?

A. I've got no recollection of that, no.

50 Q. Do you recall in your statements in connection with this matter making reference to one of the Kokotovic brothers having some scissors?

A. I heard - what's in my statement, yes.

Q. It's the case, isn't it, that police reported that there had been a scuffle with one of the Kokotovic brothers and a police officer?

5 A. That's in my statement, yes.

Q. Just in relation to that, was there any concerns by you or your colleagues at the night about being in a relatively small attic area where there are explosives on the table and the three men being present?

10 A. So any concern - no, when I got there, there seemed to be - everything seemed to be safeguarded against any - anything untoward.

Q. Can I ask you this, that when Joseph Kokotovic had had these scissors and there'd been a scuffle; did you or your colleagues say anything like "Now gentlemen, can you please come downstairs, we're conscious that there's gelignite and some detonator on that table and we want to clear the area"?

15 A. No, nothing was said like that.

Q. Did you not have any concerns for your own safety that if there was a further altercation between you and any of the three men, that, for example, police or people could fall into those tables - or that table, and potentially the explosives could go off?

20 A. I can't say I was concerned no.

Q. Similarly, do you recall any discussion between you and your colleagues about the means by which you would transport those explosives and paraphernalia downstairs and then put them on another table?

25 A. No.

Q. It was the case though, wasn't it, that at the time that the explosives were taken from the upstairs attic table to downstairs table, that there were approximately 17 people within the house?

30 A. There may have been. I - I don't know for sure, but - I don't know, I can't answer that.

35

Q. You've given some evidence that occupants of the house included women and children?

A. When we entered the house, yes.

40 Q. One of the women was pregnant?

A. Yes, I believe so, yes.

Q. Just when you took those explosives downstairs and put them on the table--

45 A. I beg your pardon, I didn't take them down.

Q. Do you remember who did?

A. No.

50 Q. Did you see that happen?

A. Not that I recall, no.

Q. You did, however, see them downstairs, though, when you came downstairs at some point?

5 A. Yes, I think I did. I think I might have questioned them about it, yes.

Q. It was your understanding that Detective Grady took possession of them ultimately from that table?

10 A. Well, somebody did. I imagine it could have been Detective Grady, yes.

Q. Did you know that Detective Grady then put them in the boot of his car?

A. No, I'm not aware of that.

15 Q. Do you recall any discussions about safety considerations and putting that material in the boot of the car?

A. No.

20 Q. Is that a practice that in the course of your career that you used from time to time; that is, putting explosives in the boot of a car and transporting them to a police station?

A. That's not my practice. I don't think I've ever done it, but I think if the explosives have been rendered safe, you know, if I could put it that way, they were separated, the sort of components, if they were separated.

25 Q. Just in terms of that separation process, do you recall in the house whether anything was said about the need to keep that material separated?

A. Not specifically, no.

30 Q. You didn't take any steps to take a statement from the women that were present at the residence?

A. No.

Q. Can I ask you why you didn't?

35 A. Well, I wasn't required to, really. It was just - no, I just wasn't required to.

Q. But surely they could have been material witnesses as to what may or may not have been in that house?

40 A. Yes, but there were other police there. They may have done the interview of them, I don't know.

Q. One of the things that would have exercised your mind as an experienced detective at this point was that it was important for police to be able to show that occupants of a house had custody or control of any illegal or unlawful goods or material?

45 A. Yes.

Q. That was part of your training, wasn't it, that wherever possible you should try and--

50 A. Well, they charge them. They would charge them with possession of it anyway.

Q. Yes, but do you remember in the course of your policing career hearing about what was called a "*Filippetti* defence"?

A. I don't know what you're talking about.

5 Q. Do you remember hearing in 1978 anything about a case where drugs were found in a household where a lot of occupants were and the Court of Criminal Appeal found that police couldn't establish custody and control of the items because they hadn't excluded that they could belong to other occupants?

10 A. I may have been aware of that, sir. It doesn't - it doesn't ring a bell with me.

HIS HONOUR: Mr De Brennan, when was *Filippetti* decided?

15 DE BRENNAN: 1978, I think.

Q. But just as part of your training, in matters such as these, I'm going to suggest to you that it was prudent policing practice to speak to occupants, all occupants, of the house where illicit material had been found?

20 A. Well, I think that was done.

Q. And to take statements from those persons?

A. Yes, that was done.

Q. From the female occupants?

25 A. Well, did I take a statement from the female occupants you're saying?

Q. Yes.

A. No, I don't know. She may have been spoken to by other police. I don't know.

30 Q. You didn't take back to the CIB any of the female occupants in the house for the purposes of taking a statement?

A. No.

35 Q. You didn't see your colleagues do that, did you?

A. No.

40 Q. You indicated in one of your answers to Counsel Assisting that at some point prior to joining the Armed Hold Up Squad, you'd been involved in crime intelligence?

A. Yes.

Q. Did that involve ethnic crime?

45 A. No, not that I recall, no.

Q. You say not that you recall, did you ever have occasion in that role to look at ethnic criminal intelligence?

A. I don't think I did, no.

50 Q. Did you know a Roger Cavanagh?

A. Who?

Q. A Roger Cavanagh who was a Criminal Intelligence Officer associated with the AFP?

5 A. No.

HIS HONOUR: It would have been the Commonwealth Police in those days, wouldn't it?

10 DE BRENNAN: Yes.

Q. It was the Commonwealth Police in those days?

A. I may have known him, but I don't recall knowing him, no.

15 Q. What was the nature of the criminal intelligence work that you were doing?

A. Well, surveillance, observations, intelligence, local criminals.

Q. In that capacity did you ever have dealings with ASIO?

20 A. No.

Q. You did have some dealings on this night, though, with a Detective Senior Constable Jefferies?

A. Yes, he was there, yes.

25 Q. He was from Special Branch?

A. Yes.

Q. You gave some evidence that at some point you were stationed at Kingsgrove Police Station?

30 A. Yes.

Q. Did you know Detective Senior Constable Howard from your time at Kingsgrove?

35 A. Senior Constable?

Q. Howard?

A. Peter Bowers, is it?

Q. Howard?

40 A. Yes. Yes, Brian Howard, yes.

Q. Did you know him from your time at Kingsgrove Police Station?

A. Yes.

45 Q. Was it the case that you were part of a team that was transferred across to the CIB on an interim basis and then became permanent?

A. It would have been, yes. I'm not - I'm not sure.

50 Q. But you had, therefore, known Mr Howard for some time by the time that you executed this raid at Burwood?

A. Yes.

Q. Did you also know him from your membership of SWOS?

A. Yes.

5

Q. I take it that by virtue of both of your membership, you would have done training days together?

A. Yes.

10

Q. You did have training days as part of SWOS, didn't you?

A. Yes.

Q. At those training days--

A. Can I just - can I just make a point?

15

Q. Yes.

A. You're talking about Kingsgrove. I don't think I was a member of SWOS at Kingsgrove. It was only with the Hold Up Squad that I was a member of SWOS.

20

Q. I can confine it to when you joined the CIB. You became a member of the CIB--

A. Well, I wasn't a - I wasn't a member of SWOS when I first joined the CIB. It was after - a few years after that I became a member of SWOS.

25

Q. When you had those training days as part of SWOS, you wouldn't wear your suit as part of those training exercises, would you?

A. What, my dress suit?

30

Q. Yes.

A. No. No, we had overalls, we had our SWOS gear, or later on we were issued with SWOS gear, overalls and that, yeah.

35

Q. You would wear things like personal protective gear as part of those training days?

A. Well, we did wear bulletproof dress as part of training, yes.

40

Q. Just when you went out to execute the raid at Burwood on the night, it was the case that most of you, if not all of you, were wearing suits?

A. Yes.

45

Q. This was in circumstances where you suspected that this residence may contain explosives and firearms?

A. Yes. At what point I'm not sure, but, yes, in general, yes.

50

Q. You didn't have any particular speciality firearms other than your normal firearm?

A. That's right.

50

Q. As far as you could tell, that was the case with your colleagues, wasn't it?

A. The ones that I was with, yes.

5 Q. Was there any discussion at CIB by Detective Inspector Morey or others about given what was suspected might be in the house, the need for police to be appropriately attired?

A. Well, you know, we were attired. I just don't know what you're getting at.

10 Q. By the time you executed this raid in February 1979, had you done other jobs with Roger Rogerson?

A. I - I don't recall, no.

15 Q. When you say you don't recall, does that mean it's a possibility, or--

A. Well, he was a member of the Hold Up Squad, as I was, and - and then we were at the Special Crime Squad before that. So it is possible that I did do other jobs with Roger, but I don't recall them.

Q. Do we take it from that, Mr Godden, that you, at least, knew him very well?

A. I knew him as a cop then, yes.

20 Q. Did you trust him as a colleague?

A. Yes.

Q. You didn't have concerns about him engaging in unscrupulous behaviour around 1979?

25 A. No.

Q. You thought he was a good detective?

A. I did.

30 Q. He was effective in securing convictions against criminals?

A. He was what?

Q. Effective?

35 A. Sorry, what?

Q. He was an effective investigator and detective?

A. He was a - he was an excellent policeman.

40 Q. He was seen as successful in procuring convictions against criminals?

A. Well, he was successful in investigating and locking criminals up, yes.

Q. When you say he was - I can't remember the particular word you used - but a good detective--

45 A. Yes.

Q. --what did you base that on?

A. Well, he was - all the things that you admired about a detective. For me, being a young bloke, I admired him very much, and - he was a good operator, fearless. All those - you know, things like that.

50

Q. On the night of the raid, you, at no point, took issue with anything he told you to do as part of the briefing--

A. I didn't take issue, no.

5 Q. --or the raid?

A. No.

Q. You didn't seek to challenge anything that he told you in any way?

10 A. No. I never challenged him, no. I don't know if he spoke to me that much, but I just can't recall.

Q. He was the one that told you to go to the back of the house?

A. Well, I think I've made the - yeah, I said that. Yes.

15 Q. It was him that suggested that once you got in the back of the house, you should go up to the attic, because that's where the light was on?

A. I don't recall that, no.

20 Q. Just in relation to the light, do you have a recollection that when you got to the premises at Burwood that the only part of the house that was illuminated was the attic?

A. No recollection.

25 DE BRENNAN: I note the time, your Honour.

HIS HONOUR: Yes. All right. Mr Godden, we are going to take a morning break for about 20 minutes, so you are free to relax for a bit and then we will continue your evidence after that. All right?

30 WITNESS: Thank you, sir.

35 HIS HONOUR: Just in relation to transcript matters, there was mention of Officer Crothers a number of times last week and the name was misspelt in the transcript. It's C-R-O-T-H-E-R-S, and the case of *Filippetti* that was referred to earlier this morning is spelt F-I-L-L-I-P-P-E-T-T-I.

AUDIO VISUAL LINK DEACTIVATED

40 SHORT ADJOURNMENT

AUDIO VISUAL LINK ACTIVATED

DE BRENNAN

45 Q. As I understand it, after you had been to the house where there is, approximately, 17 people at Burwood, you went with Sergeant Rogerson and others to another address in Burwood?

A. Yes. You're talking about Nekic's address?

50 Q. Yes, the Eureka Road address; do you remember that?

A. Eureka Road, yes, I do.

Q. That was at Roger Rogerson's behest?

A. I don't know. I can't remember Roger being there, actually.

5

Q. You'd accept from me that he was?

A. Well, he could have been. He probably would have been there, yes.

10 Q. Just before you went to that Eureka Road address where Mr Neki was said to be residing, was there any discussion about whether a search warrant might be obtained?

A. Not to my knowledge, no.

15 Q. Just generally, at the briefings that you had for the first raid at Burwood, was there any discussions around whether a search warrant would or would not be obtained?

A. Not to my knowledge.

20 Q. Just returning to the first raid at Burwood, when you went into the premises, at no point did you display your police identification?

A. No, I don't recall.

Q. Did you see any of your colleagues display their police identification?

A. I don't recall.

25

Q. At that time you and your colleagues were issued with what might be described as CIB cards?

A. Yes.

30 Q. They were identification cards of a sort?

A. Warrant cards, yeah.

Q. Just concentrating on that particular form of identification, do you recall whether you showed that to anyone?

35 A. No, I didn't, not that I recall, no.

Q. Do you recall seeing any of your colleagues show that to anyone?

A. No.

40 Q. It was the case, though, wasn't it, that upon your entry there were women and children in distress?

A. Yes.

Q. There was screaming and wailing?

45 A. I would call it wailing, yes.

Q. Just if I could focus on the confessions that you say that Mr Neki made, were you surprised at just how forthcoming he was when you spoke to him at the house?

50 A. I was, I suppose, yes.

Q. What about when you got back to the CIB and you were taking his statement?

A. Was I surprised then?

5 Q. Yes.

A. No. No, I'd already spoken to him at the house and it was just a run-on from back at the CIB.

10 Q. Just in relation to the statement that in your words was a run-on from the discussions of--

A. You know, it's continuations, sort of broken up, do you know what I mean? We just went back to the CIB and continued the conversation virtually.

15 Q. It was open to you in relation to the conversations that had happened earlier in the night and, in particular, the admissions to include at the beginning of the statement that you took at the CIB content relating to the admissions that Mr Nekic had allegedly made in the first or second paragraph?

A. What's your point? I don't - I don't follow you.

20 HIS HONOUR: What statement are you referring to?

DE BRENNAN: His statement, Mr Godden's statement, that he typed up at the CIB.

25 HIS HONOUR: Mr Godden's statement of 9 February 1979?

DE BRENNAN: Yes.

30 Q. Did you give consideration to including in the first paragraph or two the specific admissions that you say were given at the house?

35 HIS HONOUR: Just a minute. This is my confusion. It doesn't make sense that he would include in the first paragraph or two of his own statement the admissions that were made at the house. Are you talking about the interview that he claims he had at the CIB?

DE BRENNAN: Yes.

40 HIS HONOUR: That wasn't the taking of a statement. That was an interview that was supposedly occurring that was recorded in a notebook.

DE BRENNAN: It was more just to see, your Honour, whether any contemporaneous record was made in this officer's own statement.

45 HIS HONOUR: I don't understand it, but proceed.

DE BRENNAN

50 Q. In your own statement did you give consideration to setting out in your statement the specific admissions that you say Mr Nekic had made at the

home?

A. Well, they're recorded in my statement.

5 Q. Just in view of the admissions that were made on your account by Mr Nekic, did you speak to your colleagues about those on the night and say anything along the lines of, "The admissions I have just received are quite extraordinary"?

10 A. No, I just don't know. I've - I don't know - I don't understand your question, sir, really.

Q. Was there any debriefing amongst you and the other officers in which you all spoke about the respective admissions that had been made back at CIB?

A. That night? I don't think so, no, not that I recall.

15 Q. For example, did you go and speak to someone like Detective Senior Constable Grady and say, "You wouldn't believe it. Mr Nekic has just told me all of these things"?

A. Not that I know.

20 Q. Do you recall Mr Counsel, for example, coming to you and saying anything along the lines of, "You wouldn't believe the admissions I've just received"?

A. I think it's been recorded in my statement that I did speak to other police on and off during the night and they gave me some useful information, but I don't recall what the information was. It's in my statement, I'm sure it is.

25 Q. In the course of your policing career and in investigating conspiracies in particular, had you ever had a matter where co-accused had been so forthcoming in terms of admitting criminal conduct?

A. I don't understand what you're saying.

30 Q. I'm just asking you in the course of your policing career, if you'd ever had a matter where the admissions made by co-accused were as striking as the ones that you say you received in this case?

A. I don't recall.

35 Q. Because what I'm going to suggest to you is that, had these admissions really been made, you and your colleagues would have spoken about them in detail as part of a debriefing back at the CIB?

40 A. That could have occurred, but it wouldn't have happened overnight. You know, like, we would have gone home to bed, I hope, after we'd finished. We might have spoken about it later.

45 Q. Was there any discussion that you can recall with your colleagues who had also been involved during the raid at Burwood along the lines of, "You simply wouldn't believe how forthcoming these three men have been"?

A. No, not that I recall, no.

Q. Just in relation to speaking to Mr Nekic, was any consideration given to arranging for him an interpreter?

50 A. No.

Q. Just with respect to persons at the Burwood property on the night, was there any discussion and/or consideration given to organising interpreters?

A. Not that I'm aware of.

5 Q. It would be fair to say, though, wouldn't it, that there were persons in that house speaking in what might be described as broken English?

A. There were persons there speaking, I suppose, the women, yes, but to my recollection Mr Nekic spoke good English.

10 Q. He had a heavy accent, though, didn't he?

A. I can't actually recall. I supposed he'd been - I suppose he would have an accent. Yes.

Q. The Kokotovic brothers also had heavy accents?

15 A. I don't recall, no.

Q. What about when you were back at the CIB, was there any discussion about arranging a support person for Mr Nekic or the Kokotovic brothers?

20 A. No, I don't recall.

Q. Can I ask you why you, yourself, didn't give consideration to arranging a support person?

A. I didn't think it was necessary.

25 Q. When you went into the house at Burwood, in the first 5 minutes or so, do you recall anyone yelling out, "UDBa. UDBa."

A. No.

Q. You don't recall that?

30 A. I don't recall that, no.

Q. As you sit here now, do you say that's a possibility, or you've just got no recollection?

35 A. I've got no recollection of it.

Q. Your evidence is that you went up to the top of the attic?

A. Yes.

Q. And you saw explosives and detonators on a table?

40 A. Yeah. Well, if it's in my statement, yes.

Q. There's also a suggestion by a number of police officers that there were papers and documents--

45 A. Sorry?

Q. Papers and documents on the desk?

A. I would - well, I've got no recollection, really, but something in the back of my - there was like an office, so there would have - probably would have been papers, and other office equipment in there.

50

Q. Do you remember seeing a typewriter?

A. It's mentioned, I think, in my statement, isn't it? So I suppose, yeah.

Q. What about placards?

5 A. Not specifically, but they could have been there.

Q. Do you remember anyone saying to you at the house that it had been their intention to attend a demonstration or a protest, and that's what some of those papers were for?

10 A. No.

Q. Just in relation to those papers, did you take any steps to seize those yourself?

15 A. No.

Q. Can I ask you why you didn't?

A. Well, I wasn't - I didn't think it was necessary. There was other police there carrying out other duties, you know? Like, I might have thought that they - they would attend to that matter.

20

Q. Did you see any other police officers take steps to seize those documents?

A. Not that I recall, no.

Q. Did you, yourself, inspect those documents to see what information they contained?

25

A. No.

Q. Can I ask you why you didn't look at those, bearing in mind that they were right next to the explosives?

30

A. Well, I didn't think it was necessary. As I said, there was other police there - carrying out those - the duties of - no, I didn't think it was necessary.

Q. There's some evidence that Joseph Kokotovic, at some point, was holding some scissors. Do you recall that evidence?

35

A. I - I - it's in my statement. I don't actually recall it at - now. I don't, no.

Q. Do you remember a Detective Grady--

A. I do.

40

Q. --taking those scissors and putting them in his pocket?

A. It's recorded in my statement, again, that he did take the scissors, I think. I don't know if he put them in his pocket or not. I can't say.

Q. Detective Grady said that he didn't ultimately take those scissors back to the CIB, and he left them at the house.

45

A. I don't know.

Q. Can I ask you this: did you see those scissors again during the night other than when you went up to the attic?

50

A. No. I don't think I would have.

Q. As far as you know, no steps were taken to fingerprint the gelignite or the detonators?

A. Not to my knowledge.

5 Q. Just when you found those items, did you, or did you hear any of your colleagues, yell out something along the lines, "Find. Find", or--

A. No. Not to my knowledge, no.

10 Q. When you first saw that gelignite and the detonators on the table in the attic, Sergeant Roger Rogerson, who was overseeing this raid, he wasn't up in the attic, was he?

A. I don't recall, no.

15 Q. Did you, or the officers that you were with in the attic, who had come in through the back of the house, upon seeing the gelignite and the detonators, did any of you immediately go to Detective Sergeant Rogerson and report what it was that you had found?

A. I didn't, and I can't talk for others. I don't know.

20 Q. Would that not have been the appropriate course? For you to report what you had found to the senior officer in charge upon discovering it?

A. Well, yes, but not at the - maybe not at the time. Later, by all means, yes.

25 Q. There's no suggestion in your statement, though, is there, that upon discovering those items that you yelled out anything like, "Sarge. Sarge, come up here. This is what we found."

A. No.

30 Q. As I understand the evidence, those items were taken down and put on a table downstairs?

A. Yes. I didn't take them down. I don't know who took them down.

35 Q. Do you recall whether you, or your colleagues at that point, communicated to Sergeant Roger Rogerson the fact that you had, on your version, found those items upstairs?

A. On my version found no - no what? I'm sorry, I missed the last part of your question.

40 Q. That you had found those items upstairs? Did you--

A. The - I don't know if I saw the items upstairs. I wouldn't say if they were there when I went into the room. Whether I actually found them first, I don't know. I think - I think there was another police officer. When you talk about "found", who actually found them, I don't know.

45 Q. What was--

A. They were - they were in plain - my memory - it's hard, isn't it. They were there on the table in plain view.

50 Q. Wasn't it usual policing practice, though, upon finding items, to report that to a senior officer, or sometimes someone--

A. Yes.

Q. --designated as an exhibits officer immediately?

5 A. It depends on "immediately", I suppose, but you do tell the other officers what you've found, but it mightn't happen straight away.

Q. Was there any procedure around how you were to report that to a senior officer, or an exhibits officer?

10 A. Not really. Just - you should report it to the senior officer, you know, what you did find. Yes.

Q. Was there any register kept at the Burwood address, such as an exhibits register, that you entered the information, about what you'd found, in to?

15 A. Well, at the police station at Burwood?

Q. Yes.

A. It was - the evidence was kept in the--

Q. Sorry, even before that. At the address at Burwood of the house--

20 A. Yeah.

Q. --was there any system or mechanism by which you would write up the items that you had discovered during the search?

25 A. No. Not - not for me, no.

Q. Was there a Seizure Record at the premises?

A. A seizure?

Q. A Seizure Record?

30 A. A seizure? Sorry, what was that again? Senior record?

Q. Seizure, as in if you seize something--

A. Yeah. Yeah.

35 Q. A seizure record?

A. I didn't see any, no.

HIS HONOUR

40 Q. Was that part of police practice at that time? To have a Property Seizure Record at the location of places where searches are carried out?

A. Not - no, not really. You may make a note of it in your notebook, or something like that, but, no, you didn't carry a book around with you.

45 NO EXAMINATION BY MS NEEDHAM, MR BROWN, MS BASHIR AND MR MACKEY

<EXAMINATION BY DR WOODS

50 Q. Sir, can you please tell us how old you are at the present time?

A. 80.

5 Q. You were asked some questions, the fact of which was to - that you planted material in the house at Burwood. That is to say that you fabricated the finding of the explosives. What do you say to that?

A. I completely reject that.

10 Q. You were asked some questions suggesting that you have falsely fabricated admissions by persons. What do you say to that?

A. I completely reject that.

<EXAMINATION BY MS EPSTEIN

15 Q. Mr Godden, in the course of the questions I asked you before morning tea, you indicated that you had no recollection generally of the raids.

A. Yep.

20 Q. Is that a fair summation of your evidence?

A. Yep. Yes.

25 Q. Mr De Brennan has just asked a series of questions in which you seem to give answers that suggested you did have certain recollections of events, and I'll give you a few examples. You were asked a question about the items that were found on the premises in the attic, and you said words to the effect, "They were there on the table in plain view." Do you recall giving that evidence?

A. Yes. I think the - I that was the only evidence, but there were there, well, let's see, that - that's recorded in my statement, isn't it?

30 Q. So sitting here today, do you have an actual recollection that the items were there in plain view?

A. No, not really, not actual recollection. They were just - they were - I'm going off what my statement said.

35 Q. Mr De Brennan also asked you about there having been women and children in distress at the house, and I believe--

A. I think - I think I--

40 Q. --you answered--

A. --I think I recorded that in my statement, in my statement too.

Q. I'm sorry, I spoke across you; do you recall that?

A. I recorded it in my statement. I have no recollection at the time, no.

45 Q. You were also asked questions about practices on the evening in relation to putting explosives in the boot of a car, and you said words to the effect that you "think the explosives had been rendered safe and had been separated into different components"; do you recall giving that evidence to Mr De Brennan's questions?

50 A. Yes.

Q. Again--

A. Yes.

Q. --do you have an actual recollection of that having occurred?

5 A. Sorry, what was that again?

Q. Do you have an actual recollection of that having occurred?

10 A. Only what my statement says that the - the components of the bomb or gelignite and what else was there, but they were separated and were rendered safe.

Q. When you say--

A. That's in the - that's in my statement.

15 Q. --your statement, are you talking about the statement dated 9 February 1979 that I put on screen previously and took you through, or are you--

A. Yes--

Q. --referring to anything more general?

20 A. No, that's the statement I put on the screen. That was the only recollection I had.

HIS HONOUR: Those last two matters you've referred to I can't find where in the statement there is a reference to those things.

25

EPSTEIN: No. That's correct. I'm going to put that on screen again, Mr Godden.

EXHIBIT 4.2-94 SHOWN TO WITNESS

30

Q. Enlarge the top, please. I'll give you an opportunity to read it again, Mr Godden.

35 WOODS: I'm sorry, your Honour, may I point out something which my learned junior indicates? This witness was given not only his statement but also his committal transcript and his trial transcript. For example, at red page 8396, which is the committal transcript, he talks about the distress of the women.

HIS HONOUR: Yes.

40

WOODS: So to confine him to the statement may be a little artificial.

HIS HONOUR: All right. It's just because he himself said, it's in my statement.

45 WOODS: I know that, your Honour, but--

HIS HONOUR: Yes. You're suggesting he might be mistaken--

WOODS: That's so, your Honour.

50

HIS HONOUR: --when he's referring to his committal transcript.

WOODS: Yes, I think so.

5 HIS HONOUR: Yes. All right.

EPSTEIN

10 Q. Mr Godden, I asked you a moment ago a question whether you were referring just to your statement or whether there was evidence elsewhere that you were referring to. Can I ask you that again; when you've answered these questions by reference to your statement, are you referring simply to your five-page statement dated 9 February 1979 or are you referring to something else you've read?

15 A. I have read my statement, and I've also read transcripts from previous Courts, so I may be mistaken that it's not in my statement but I have read them.

20 Q. You've done that in the lead-up to giving evidence today, have you, reviewed your transcript from trial and committal?

A. I have to the best of my ability. I must admit though, I didn't comprehend what I was reading sometimes.

25 Q. Just to confirm there, sitting here today, are you able to give evidence one way or another whether explosives found at the raid had been rendered safe and separated into different components?

A. I remember reading and I think - well, it's in my mind somewhere but I don't know whether it was from my statement or from the transcripts.

30 Q. But sitting here today, do you have a--

A. Why would - I go through my statement, is it in my statement?

Q. I'm sorry, if you could just address my question, Mr Godden; sitting here today--

35 A. I can't - I am, and with due respect, I am - I believe I am answering your questions. If it's in my statement, that's where I've read it.

40 Q. I am just trying to understand what your recollection is today, so just to confirm, sitting here today, do you have a recollection of those events so that you're able to say, independently of what you've read, whether the explosives had been rendered safe and separated into different components?

A. No.

45 EPSTEIN: There's nothing further, your Honour.

HIS HONOUR: All right.

50 That's the end of your evidence, Mr Godden. You are not formally excused but that's the conclusion of it. If it is necessary to recall you at any point, you will be notified, all right?

WITNESS: Thank you, your Honour.

<THE WITNESS WITHDREW

5 HIS HONOUR: All right. Thank you. That link can be disconnected and I understand I need to take a short adjournment before the connection is made with Mr Counsel.

10 EPSTEIN: Yes, if your Honour pleases.

AUDIO VISUAL LINK CONCLUDED AT 12.28PM

HIS HONOUR: Yes. I'll adjourn.

15 SHORT ADJOURNMENT

AUDIO VISUAL LINK COMMENCED AT 12.39PM

20 Yes. Ms McDonald.

MCDONALD: Thank you, your Honour.

<JAMES JOSEPH COUNSEL, RESWORN(12.40PM)

<EXAMINATION BY MS MCDONALD

5 Q. Mr Counsel, I want to ask you some questions which arise from some of the evidence you gave last Thursday.

A. Right.

10 Q. Do you recall that I asked you questions about your career in the police force--

A. Yes.

15 Q. --and asked you about when you joined the Special Breaking Squad and you said you had joined it only for a couple of weeks before attending the raid on 8 February 1979?

A. I understand, yeah. I - that's my recollection.

20 Q. You also gave evidence that when you joined the Special Breaking Squad your work mate or partner was Rick Grady?

A. I worked with a Rick Grady, yes.

25 Q. Rick Grady was your usual partner or working mate when you joined the Breaking Squad?

A. Yes.

Q. Although you'd only been at the Breaking Squad for a couple of weeks, had you gone out on other raids or done other work with Detective Grady?

A. Not that I recall.

30 Q. Do you recall, what was the usual division of labour between the two of you when you were taking notes of events?

A. Well, normally, if it was an interview, Rick Grady would record, whether it be on a typewriter or in a notebook, or whatever else, but I was the senior man at that point.

35

Q. Right. You were more senior to Detective Grady?

A. Yes.

40 Q. How do you assess the seniority; was that in rank or years of service?

A. No, time and the service.

Q. Do you recall that Detective Grady had handwriting that was very difficult to read?

45 A. I can't recall that; it's - it's like - it's probably was a little difficult, but I just can't recall it.

Q. I asked you some questions at the end of Thursday about notebooks?

A. Yes.

50 Q. Was there a difference at that time between a duty book and a notebook?

A. Yes.

Q. What was the difference?

5 A. Well, the notebook was something you carried with you and to record official information, but a - I think the other one you mentioned was a diary, was it?

Q. No, sorry, Mr Counsel, a duty book?

10 A. Yeah, well the duty book to me was the diary of what we did that day, or any particular day.

Q. The diary, was that a diary for the Breaking Squad or your personal diary?

A. I just missed your question, I'm sorry.

15 Q. You spoke about a diary?

A. Yes.

Q. Was that a diary for you or was it a diary for the Breaking Squad?

20 A. Well, it was a diary for me as to what duty I performed on a particular day; but not in detail, just.

Q. You said not in detail; what would it record?

25 A. Well, if you went to a particular location, you would - depending if it was an official duty you'd probably record that in your diary, which I call a diary.

Q. There was no distinction between detectives and other officers and detectives had duty books and other police officers had notebooks?

30 A. Well, the uniformed police had notebooks, but I don't believe they had a diary.

Q. All right. So a detective would have a notebook and a duty book/diary?

A. Yes.

35 Q. Now, I was asking you some questions on Thursday about the raid on 8 February 1979.

A. Yes.

Q. Where you attended an address at Burwood?

40 A. Number 9 Livingstone Street, Burwood, yes.

Q. I asked you about what occurred when you attended that house, and do you recall that you and other officers went upstairs to the attic?

A. Well, you call it an attic; I guess it was.

45 Q. It was a room, what, at the top of the house?

A. Yes.

Q. In that room was a table with some explosives on it?

50 A. That's correct.

Q. Do you recall during the raid that one of the men who was there, Joseph Kokotovic, had scissors in his hand?

A. Did he have?

5 Q. Scissors in his hand?

A. I - it's in my statement that I can't specifically recall it, but if it was in my statement, the statement would be right.

10 Q. Mr Counsel, if you can, when I am asking you questions, if you remember something because you actually have a recollection rather than what you read in your statement, could you let us know?

A. No, I haven't any recollection of - apart from what was in my statement.

Q. All right, so you've--

15 A. Or, I can't exactly remember.

Q. All right. If something does come back into your memory, could you tell us that?

20 A. I could, yes.

Q. Sometimes when you're asked questions, it might jog your memory.

A. It may, yes.

25 Q. You've discovered there's explosives and do you recall that you and Detective Grady then take Joseph Kokotovic downstairs?

A. Yes.

Q. You put him in a separate room downstairs at the house?

30 A. I can't recall that, but it's--

Q. You've discovered, at least, I think it was two half-sticks of gelignite; did you conduct any other search of the house to see if there were any other explosives?

35 A. No, I didn't search the house at all.

Q. Because you had taken, with Detective Grady, Joseph Kokotovic downstairs, were you--

A. Yes.

40 Q. --concentrating on him?

A. Yes.

Q. Do you recall that the explosives that were found on the table upstairs, Detective Grady brought them downstairs with him?

45 A. He did.

Q. And put them in front of Joseph Kokotovic in the room downstairs?

A. I don't know where he put them downstairs; I can't recall that.

50 Q. Again, just going through the sequence of events, do you recall shortly

after that you and Detective Grady took Joseph Kokotovic to CIB?

A. Yes.

5 Q. And that Detective Grady took with him, and put in the police car's boot, the various explosives that were found?

A. Yes. He did.

10 Q. Before leaving the premises at Livingstone Road(as said) with the explosives that you took back to CIB, was there any form of record of what had been found and seized during the raid?

A. I can't recall that, no.

15 Q. When a search warrant is executed now, there's a document entitled, "Property Seizure Record", which records items seized, where they were found, by whom, et cetera. I'm not expecting such a formal document back in February 1979, but to your knowledge, was anybody keeping a record of what was found and what was taken?

A. Well, it might have been recorded somewhere, but I'm not sure where.

20 Q. When you say, "recorded somewhere", who would have recorded it?

A. Well, I don't know, because I didn't, and I - I don't know what other police did.

25 Q. The recording of what was found and what was taken, in February 1979, would have that been recorded in a notebook?

A. Not in my notebook, no.

30 Q. I'm talking more generally about procedure. Back in February 1979, was that the appropriate place for it to be recorded?

A. Well, most things like that are - are recorded as exhibits, and they're recorded in a - at the police station normally where the person is charged, but I - I can't recall because Grady handled the explosives. He'd been at the Breaking Squad longer than me. I hadn't had much to do with explosives, so he was the one who handled them.

35 Q. We'll get to this a little bit later in your evidence, but in writing your statement in this matter, you had a look at Detective Grady's notebook?

A. Yeah. Well, here, again, I can't remember, but if I couldn't understand something when I was doing my statement, I'd refer to Grady, who'd clarify it.

40 Q. Do you recall whether he'd made any note in his notebook about the explosives that were taken?

A. I don't recall that, no.

45 Q. No photographs were taken of the explosives found at Livingstone Street at the time of the raid?

A. Well, I certainly hadn't - didn't do that, no. I don't know what other police did.

50 Q. Back in February 1979, was it usual police procedure, if there was a

suspicion that explosives or firearms might be found at premises, to organise for photographs to be taken of the items in situ?

A. I didn't make those arrangements, no.

5 Q. I realise you didn't make those arrangements, I'm interested in what police procedure was back in February 1979. You'd been in the police force at that time for a number of years--

A. Yes.

10 Q. --since about 1965. Can you recall what was the police procedure at that time? Was it usual during other raids that you might have attended, for either a photographer to be present, or somehow the attending officers to be able to take photos?

15 A. Well, at that stage, I didn't have a camera, and if we wanted photographs, we'd asked the scientific police to attend and photograph them, but I certainly didn't take those arrangements at this time.

Q. Those arrangements back in February 1979, would have they been made by the officer-in-charge of the particular raid?

20 A. Well, it - it would be, yes, for him to make those decisions. Yes.

Q. You may recall from the committal and the trial that the two Kokotovic brothers and Mr Nekic, all denied that there was any gelignite or explosives in the room at the top of the house. Do you recall that?

25 A. Well, they pleaded not guilty as far as I know, yes.

Q. Inherent in that was probably denying that such explosives were there?

A. I would assume so, yes.

30 Q. Had you heard of the term "loading up witnesses"?

A. I've heard that from general conversation, but I've never experienced it.

Q. When you say you'd heard about it in general conversation, is that general conversation amongst police officers?

35 A. Amongst police officers, yes.

Q. These general conversations amongst police officers, were some of these conversations occurring in early 1979?

40 A. I - I can't recall that, I'm sorry.

Q. The general conversation that you've referred to, what were the type of things being said by police officers?

45 A. Well, I - I - just - I can't remember and I can't recall. I just have a bit of trouble understanding your question, to be honest.

Q. All right, Mr Counsel. I asked you about the term "loading up"?

A. Yes.

Q. And you said that you had heard of that term?

50 A. I've heard the term, yes.

Q. I asked you where or how you'd heard the term, and one of the things you referred to was general conversation amongst police officers.

A. Yes.

5 Q. What was said by the police officers that you were talking to about loading up?

A. I can't remember, I'm sorry. I just can't remember the details of how it came up, but it was just something I'd heard of and just obviously - I can't remember the details.

10

Q. I've used this term "loading up". What's your understanding of the term?

A. Well, they were putting objects in certain places where they actually weren't there.

15 Q. Like--

A. That's my understanding of it.

Q. So something like a gun, or even explosives?

A. Well, it could be anything. It could be anything at all, as far as I know.

20

Q. Mr Counsel, in answer to one of my questions, you said you'd never experienced it?

A. No. I haven't.

25 Q. When you said you'd never experienced it, do I take from that answer you had never loaded up a suspect?

A. Most definitely not.

Q. Had you ever witnessed any other police officers loading up a suspect?

30

A. No. I haven't.

Q. Before attending Livingstone Street, when you were at CIB and you had a conference with Inspector Morey about attending Livingstone Road(as said)--

A. That was Inspector Morey.

35

Q. Morey, I'm sorry. Was there any discussion amongst the officers there about loading up any of the houses with gelignite or explosives?

A. No. Nothing at all like that.

40 HIS HONOUR

Q. Mr Counsel, that's not in your statement. I take it you have an actual memory of that not having been said; is that correct?

A. That's correct.

45

LUNCHEON ADJOURNMENT

MCDONALD: Thank you, your Honour.

50 Q. Mr Counsel, I want to return to 8 February 1979. As you confirmed before

our lunch break, after being at Livingstone Street, you and Detective Grady took Joseph Kokotovic back to CIB?

A. Yes.

5 Q. Also Detective Grady had put the explosives in the car, in the police car and they were taken back to CIB at the same time?

A. Yes.

10 Q. Now, I asked you before lunch about any procedures in place in February 1979 when you were conducting a raid and there was a particular item that you wanted to seize, whether there'd be any record of it. Do you remember me asking you about that?

A. Yes.

15 Q. As part of your answer, you refer to an exhibit book?

A. Yes, that's held at all police stations.

20 Q. Now, can I ask you, here you and Detective Grady had seized the explosives. You were taking those back to CIB with Mr Joseph Kokotovic?

A. Yes.

Q. Was there an exhibit book at CIB in the Breaking Squad, for example?

A. No.

25 Q. When you referred to an exhibit book, you did refer to it being at a police station?

A. Yes.

30 Q. Is your evidence that if an item was seized, it would be entered at the exhibit book at the police station where the suspect was charged?

A. Well, in relation to the explosives, they would not have been kept at a police station. There's a section, and I'm not sure exactly where it's located, where you record and hold dangerous goods. That's where that would have been put. But I didn't do that. Detective Grady did that.

35 Q. So, in respect of dangerous goods, your evidence was that they wouldn't be entered into an exhibit book at a police station, they would be safely stored at either a dangerous goods unit or a--

A. Yes.

40 Q. What about the Ballistics Unit within the police?

A. I'm sorry?

45 Q. What about the Ballistics Unit within the police, in your experience, were explosives kept there or stored there?

A. No, it's a special section for dangerous goods.

50 Q. But on 8 February, you had nothing to do with where the explosives were eventually - sorry, the explosives seized at Livingstone Street were stored or recorded?

A. Yeah, I had nothing to do with the explosives. Detective Grady had been at the Breaking Squad much longer than me, and he had more experience with those items.

5 Q. Now, you took Joseph Kokotovic back to CIB?

A. Yes.

Q. One of the reasons why you did that was to try and conduct a record of interview with him?

10 A. That's correct.

Q. A record of interview, one of the aims of conducting a record of interview with a suspect is to hear their account of the alleged criminal activity?

A. Yes.

15

Q. In giving you their account, that may involve the person making admissions?

A. Yes.

20 Q. Or indeed confessing to the particular crime?

A. Yes.

Q. Admissions or confessions, they were useful as evidence at a trial, weren't they?

25 A. Yes.

Q. To be useful at a trial, you had to be able to prove that what you alleged was said was said?

A. Yes.

30

Q. That the particular suspect had been cautioned?

A. Yes.

Q. That there was no evidence of any form of duress?

35 A. Hey?

Q. Form of duress?

A. Duress?

40 Q. Yes, like hitting the person?

A. I'm sorry?

Q. Hitting the person or putting some form of pressure on the person?

A. No.

45

Q. But that was part of the aim when you conduct a record of interview to try and get evidence that the admissions were not made because of duress?

A. Yes, I'd agree with that.

50 Q. Now, I know we're talking about February 1979, but at that stage, what

were the ways available to police officers to make sure that they recorded admissions in a way which reflected that this is what the suspect said, he was cautioned, and he wasn't subject to any duress?

A. That's right.

5

Q. Are the ways that that could have been done was number one, either filmed the record of interview?

A. Yes.

10

Q. Now, were there facilities available in February 1979 for police officers to film a record of interview?

A. No, there was no facility in 1979.

15

Q. What about an audio recording, just recording on, for example, a cassette tape or some other tape of the record of interview?

A. It wasn't available, as I'm aware of.

20

Q. Did that eventually - that did become available, didn't it?

A. I'm sorry, I missed that.

Q. At some time, the taping of records of interview did become available?

A. There was none available.

25

Q. Now, another way of recording a record of interview was for questions and answers to be typed?

A. Yes.

30

Q. In February 1979, there was, obviously, typewriters available?

A. Yes.

Q. Also, police officers were proficient typists on a whole?

A. I'm sorry, I missed that.

35

Q. In February 1979, police officers often had to type up documents?

A. Yes.

Q. So, and this is a generalisation, police officers were good at typing?

A. Yes.

40

Q. Now, if a record of interview was typed, one of the police officers is doing the typing?

A. Well, he types what's said by the interviewing officer and what the reply is by the accused.

45

Q. To make sure that there can't be any issue at a trial, that that was the question asked, that was the answer given, it would be appropriate to get the suspect to sign, to read through and sign the record of interview?

A. It would, yes.

50

Q. That was part of police procedure in February 1979?

A. Yes.

Q. Was it also part of police procedure in February 1979, after the conclusion of a typed record of interview, to bring in a senior officer?

5 A. Well, on some occasions, if they're available, yes.

Q. They could confirm with the suspect that they had given these answers to these questions?

A. Yes.

10

Q. That they hadn't been subject to any duress?

A. They hadn't been?

Q. Subject to any duress?

15

A. That's correct.

Q. Now, if typing the questions and answers wasn't available, another way is for a handwritten record of questions and answers to be made?

A. In your official notebook, yes.

20

Q. Again, it's important to get the suspect to adopt in some way that these questions were asked, and these answers were given?

A. We did give them the opportunity most times.

25

Q. What, to read through, what was recorded in the notebook?

A. Yes.

Q. Also to sign?

A. If they were prepared to, yes.

30

Q. You'd ask them, your usual procedure would be to ask them to sign?

A. Yes.

35

Q. Now, with that last option, recording in an official notebook, to allow the suspect to adopt it, to sign it, you know, read through it, agree that he'd said, given these answers, the suspect needs to be able to read the notebook?

A. That's correct.

Q. Could you write answers, or could you write in shorthand?

40

A. No. No, I can't.

Q. Did you come across other police officers in February 1979 who could write in shorthand?

A. Well, there wouldn't be other officers that can do it, yes.

45

Q. In your view, recording a record of interview in shorthand, where you have a suspect who can't read shorthand or--

A. That's right.

50

Q. That wouldn't be a very effective way of getting the suspect to adopt his

answers?

A. No.

5 Q. What about a police officer who has really bad handwriting that you can't understand?

A. Well, that poses a problem, and you'd have to get somebody that could read it to read it to the accused.

10 Q. In those circumstances, you're re-reading the questions and answers; in a sense, interpreting the shorthand. In those circumstances, would it be a good idea to bring in somebody else to witness that?

A. If possible, yes.

15 Q. Because otherwise, if it's still the two same people, the person taking it down in shorthand, and the questioner, again, you're not getting an independent person to confirm that the suspect agrees that they were his answers?

A. Well, everybody can't read shorthand and can't write shorthand.

20 Q. What I'm suggesting is: if the suspect can't read shorthand, or the bad handwriting, I think you've agreed it would be a good idea to bring in an independent officer to witness the adoption?

A. If they were available, yes.

25 Q. I want to take you back to CIB on the night of 8 February. When you arrived back there, do you recall having a conversation with Inspector Morey?

A. I don't recall it, no. But the records indicate that I may have, yes.

30 Q. Which records are you talking about?

A. Well, the depositions.

Q. The - sorry?

A. The depositions.

35 Q. The transcript of your evidence?

A. Yes.

Q. When you spoke to Inspector Morey at that time, he gave you another document, or what has been described as a "screed".

40 A. Yeah. I can't remember that. There may have been something recorded, but I - I just can't recall that at the moment.

EXHIBIT 4.2-83 SHOWN TO WITNESS

45 Q. Mr Counsel, it's a document which will come up on the screen.

A. Right.

Q. Do you see that document?

A. Have I seen it?

50

Q. No. No. Step-by-step. Do you see the document up on the screen?

A. I can see it, yes.

5 Q. At the moment, we have the top-half of the document, which is entitled, "Further information received from Detective Sergeant Turner at Lithgow".

A. Yes.

Q. I won't read it all out to you, but can you see the first paragraph refers to:

10 "The men, Bebic and Virkez, have been charged with possession of firearms and explosives. The bombs located at Lithgow were allegedly made by these two men who were to bring the same to Sydney tonight."

15 A. Yes.

Q. Then if we can just move down the page to the heading, "The targets for the bombings were", do you see there were a list of targets commence with a picture theatre at Newtown.

20 A. Yes.

Q. And, "Zvirotic was to get the key to this theatre to gain entry."?

A. I think you're talking about the travel agents.

25 Q. The travel agents is number 2.

A. Yes.

Q. Do you see a, "Travel agency around the corner from the theatre in Newtown next to a bank."

30 A. I don't know. I can't recall that.

Q. Right. But I'm asking you what's recorded on the document. This is hopefully to refresh your memory. I'm taking you to the heading, "The targets for the bombings were"?

35 A. Yes.

Q. It starts with, "A picture theatre at Newtown."?

A. Yes.

40 Q. Then a reference to a travel agency?

A. Yes.

Q. And then number 3, "The General Tourist Travel Centre"?

A. Yes.

45

Q. Number 4 is, "the water supply pipes at St Mary's."?

A. Yes.

50 Q. Then 5, you've got, "In the Cabramatta and Fairfield areas and travel agencies and the Serbian Club."

A. Yes.

5 Q. Looking at that document, and if you want to read it in full, just please indicate, but does that refresh your memory of a document you received from Inspector Morey when you arrived back at CIB?

A. Well, I can't recall receiving it, but the information that I see on the document is something that I was aware of at that time.

10 Q. When you say, "aware of at that time", is that aware of before you commenced the interview with Joseph Kokotovic?

A. That I can't recall, but I probably did, but I - I can't recall when I received it.

15 Q. At this point, you and Detective Grady commence an interview with Joseph Kokotovic.

A. Yes.

Q. Where was that interview held?

A. At the Breaking Squad office in an interview room.

20 Q. In that interview room was there a typewriter?

A. Yes.

Q. How did the interview proceed?

25 A. Well, Detective Grady started to put paper into the typewriter and the accused told him he wouldn't, doesn't want to be involved in that. I don't exactly remember what he said, but he spoke to Grady and indicated that he didn't want to be involved in that.

30 Q. When you say, "involved in that", is that the typing of the Record of Interview?

A. Yes.

Q. Do you recall why he said that, why he didn't want to do that?

35 A. I don't know why he said it.

Q. Because he'd refused to have the interview typed, how did you then record it?

A. It was recorded in the notebook.

40 Q. By whom?

A. By Grady.

45 Q. Now, I've asked you about a record of interview being recorded in a notebook and you've agreed that, to assist you in proving the admissions, it's best to try and get the suspect to read through the questions and answers and to sign the notebook?

A. Well, it's preferable, yes.

50 Q. If the offender or the suspect refuses to do that, is another way of at least assisting in proof of the admissions for the other officer, the officer who asks

the questions to sign the notebook?

A. That's a possibility, yes.

5 Q. Now, you've spoken about Detective Grady taking the notes in his notebook. Do you recall that there were actually two notebooks in which the interview was recorded?

A. Yes. His was used up and he took mine to complete the rest of the interview.

10 Q. So, he started taking notes in his notebook and your recollection is he ran out of pages?

A. Yes.

Q. Then asked for your notebook?

15 A. That's correct.

Q. Then you provided your notebook to him?

A. I did.

20 Q. Did you see him continue to write the Record of Interview?

A. Yes.

EXHIBIT 4.2-85 SHOWN TO WITNESS

25 Q. Mr Counsel, do you see that that is a document which - it's a page from a notebook and it's got 59 up the top?

A. Yes.

30 Q. On that page, can I take you to about seven or eight lines down, and we have, "10.30pm, 8.2-79"?

A. Yes.

Q. Then immediately underneath we've got Joseph Kokotovic?

A. Yes.

35 Q. The handwriting, looking at the handwriting, do you recall that that was Detective Grady's handwriting?

A. Well, yes, far as I'm aware, yes.

40 Q. Do you recall that it was at times difficult to read?

A. Some parts of it were, yes.

Q. Now, if we can take you back to this entry, again looking at what is recorded after the name of Joseph Kokotovic, there seems to be an age?

45 A. Yes.

Q. I think that's "26 old"?

A. Yes.

50 Q. Then it would appear to be a date of birth?

A. Yes.

Q. Then the address at Burwood?

A. Yes.

5

Q. Then, "No phone"?

A. Correct.

10 Q. Then if you continue down, this is where the hand writing gets a bit crook, do you agree that it appears to be recording or making notes of what occurred at the raid at Livingstone Street?

A. Yeah, I'm not sure about that, I just can't see what's written there, it's too difficult.

15 Q. All right, can you see, "No phone"?

A. Sorry?

Q. My reading of the handwriting, five lines from the bottom, is, "No phone"?

20

A. Yes.

Q. Then it says, next line is, "Around"?

A. Yes, it's difficult to read and I find it hard to read.

25 Q. All right. Maybe if we can go to the next page which is red page 644 - can we spin that round at all?

A. Some of it's hard to read yes.

Q. I'm just seeing - we're nearly there - yes. At the top it talks about "in attic-type room"?

30

A. I just can't see where that is.

Q. Right. Yes. Can you see the little hand cursor? Left-hand top--

A. I see that, yeah. Yes, I see that. Attic-type.

35 Q. I'm sorry?

A. It says, "attic-type room".

Q. "At top of stairs"?

A. Beg your pardon?

40

Q. It says, "In attic-type room at top of stairs"?

A. Yes.

Q. Then "2 x half-sticks"?

45

A. Yes.

Q. "Industrial gelly"?

A. Yes.

50 Q. Then there's - goodness, something else, I think there's a reference maybe

to detonators and five connectors on table?

A. Yes.

Q. "Delay connectors on table"?

5 A. Yes.

Q. Now, can I just pause there? Looking at those entries, it appears to be the notes that Detective Grady made about the raid at Livingstone Street?

A. That's what it refers to, yes.

10

Q. Still on that page, can you see he seems to complete his account of that event with a tick? Do you see the tick in the middle of the page?

A. Yes.

15

Q. Then immediately under there it looks like, I think, "12.20am 9 February 79"?

A. Yes it appears to be.

20

Q. Then Joseph Kokotovic's name reappears?

A. Yes.

Q. With his date of birth and I think--

A. Yes.

25

Q. --that might be "same address"?

A. Yes.

Q. Then can you see we have question, "Q"?

A. Yes.

30

Q. Then there is various handwriting and what appears to be answers that go on the next page over to--

A. Yeah, I can't understand that myself.

35

Q. Yes. Just to complete this, if we can go through to page 645, red, please? It'll come up in a sec, Mr Counsel.

A. Thank you.

40

Q. Can you see on the left-hand side of the page, again we're continuing with questions and answers?

A. Yes.

Q. The first question up the top, it seems to be, "Before continuing caution"?

A. Yes.

45

Q. Then something like "told" something "at Lithgow. Admitted to plan" something "bombs"?

A. Yes.

50

Q. I'm just going to - at the moment I won't take you through it question and

answer but can you see it then continues on page 61, and then if we can go to page 646 red, please? In the exhibit--

A. Pardon?

5 Q. The pages I've just taken you to are an extract from Detective Grady's notebook and--

A. I'm not - no, but it says all mine, but it's in one lump, yes.

Q. Well, was your handwriting as bad as that?

10 A. As bad as that, no.

Q. The evidence you gave, just a little while ago, was that Detective Grady commenced making notes of the Record of Interview in his notebook?

A. Correct.

15

Q. Then you said that he ran out of pages?

A. Yes.

Q. If you go across to - this is the final page - again, we've got questions and answers?

20

A. Yes.

Q. And then it finishes down the bottom?

A. A signature?

25

Q. No. It finishes down the bottom. Something about "all going to Tony's" do you see that right down the bottom?

A. The signature?

30 Q. No. It finishes down the bottom. Something about "all going to Tony's". Do you see that right down the bottom?

A. Yes. Something about Tony's.

Q. It finishes on, it would appear to be, the left-hand side of what would have been page 62. Do you agree with that?

35

A. Yes.

Q. Were the notebooks only - contain about 61 pages?

A. I can't remember how many pages a notebook had, but they were numbered.

40

Q. It seems a relatively small notebook?

A. Yes.

45 Q. Were the notebooks in February 1979 only - consist only of about 60 odd pages?

A. I can't remember how many pages.

Q. As you gave evidence, the evidence at the committal was that the rest of the Record of Interview was recorded by Detective Grady in your notebook.

50

A. That's correct.

5 Q. Extracts from your notebook were tendered at committal, but, unfortunately, we don't have them for this Inquiry. We only have those pages from Detective Grady's notebook.

A. Right.

10 Q. Looking at those pages, and if you want them brought up onto the screen again, we can organise that. Does your signature, or initials, appear anywhere on those pages?

A. Yeah. One of those pages has my signature on the top.

Q. Which one was that?

15 A. I'm sorry?

Q. I'm just trying to identify which page it was.

EXHIBIT 4.2-85, RED PAGE 646, SHOWN TO WITNESS

20 A. Yes. That's my signature.

Q. Why did you sign that particular page?

A. I can't recall. I don't know.

25 EXHIBIT 2.1-38, RED PAGE 1103, SHOWN TO WITNESS

Q. Mr Counsel, this is evidence you gave at the trial. Can you see the question, "Did you sign Grady's notebook?", and you answered, "Yes."

30 A. I did.

Q.

"Q. When?

35 A. Later that night."

Q. Do you recall what time?

A. Not the exact time but it would have been sometime between 2 and 3 in the morning.

40 Q. And would it be fair to say that you would put your signature to such a document as a way of an endorsement of the accuracy of the document?

A. That is correct."

45 A. I suppose, yes.

Q. Then over the page you were asked this question:

EXHIBIT 2.1-38, RED PAGE 1104, SHOWN TO WITNESS

50

"Q. You can't read it though?

A. I can't read it properly, no.

5 Q. Isn't this a bit lax, to put your signature to a document when you cannot accurately read it?

A. No, not under the circumstances that I put it there."

10 A. Well, I - I would have put it there to indicate that I was aware that that was recorded by Grady.

Q. So not necessarily the accuracy of--

A. Well, some of the words I couldn't understand.

15 Q. My question was going to be: putting your signature on the top of that last page in Grady's notebook, was it to acknowledge the accuracy of the questions and answers given?

A. I'm not sure about the correctness of it, but the fact that that notebook was used for that purpose.

20 Q. The reason why it wasn't to signify the accuracy of the questions and answers, is that because you had difficulty reading Detective Grady's handwriting?

A. Yes, it was.

25 Q. Do you recall whether you adopted a similar procedure with Detective Grady's recording of the second half of the Record of Interview in your notebook?

A. I can't recall whether I did or not.

30 Q. Why on the night did Detective Grady grab your notebook to continue the Record of Interview?

A. He continued it in my notebook, yes.

Q. But why did he do that, couldn't he go and get another notebook?

35 A. Well, the area where those things are retained wasn't open at that time of the night. There was nobody there, the diaries and notebooks are locked away, and we had no access to it at that time.

40 Q. Now, with Joseph Kokotovic, you did not ask him whether he wanted to sign the--

A. I didn't ask him, that I can recall now.

45 Q. That was the evidence you gave at the committal, that you didn't ask him whether he wished to sign the notebook, and that you didn't offer to show him what had been written in the notebook. Do you want me to--

A. Not that I can recall, no.

Q. During this interview with Joseph Kokotovic, he was making a lot of admissions about his involvement, wasn't he?

50 A. Well, I can't remember exactly what was said now, but he did, yes.

Q. Well, I'll just take you to your statement, which is Exhibit 4.2-80, please. Just to orientate you, Mr Counsel, if we can go to red page 624, paragraph 6, and this is the commencement of the Record of Interview, and I'm not going to read this all out, but you can see it says, "The defendant was
5 seated in the interview room where I said, 'What is your full name', and he said, 'Joseph Kokotovic'", and spelled out. So, you're getting all those details, and then you record that he didn't want anything typed. Can I just pause there, can you see in your statement you record the defendant saying, "I'm not going
10 to say anything at all if he types it down", indicates Detective Grady, "They will kill me if they know"?

A. Yes.

Q. Did you ask him about who the "they" is, who will kill him if they know?
A. I don't believe I did.

15

Q. Wasn't that something important to know?

A. It probably was, yes.

Q. Do you know why you didn't ask about that?
A. Well I took it from the conversation that he was talking about the other
20 people that were involved with him.

Q. So the other members of the Croatian Six?
A. Yes.

25

Q. Then sorry, just if we go down the bottom of the page, we've got paragraph 7. You introduce yourself and you say, "We've got information from the police at Lithgow", do you see that?

A. Yes.

30

Q. Then across the page, if we can go to red 625, now you say after giving him a caution, "From what I have been told, I believe that the two men at Lithgow have admitted plans to place some of these homemade bombs in a picture theatre at Newtown". Now pause there, do you remember the screed,
35 the document I just showed you, further information from Detective Sergeant Turner?

A. Yes.

Q. Which had the heading "targets"?
A. Yes.

40

Q. Do you recall the first target was the picture theatre at Newtown?
A. Yes.

Q. What I want to suggest to you is that that's the basis, that document and the information contained in the document is the information you're using in this Record of Interview?

A. Yes, part of it, yes.

Q. After raising "placed some of these homemade bombs in a picture theatre
50

at Newtown, what can you tell me about that", according to this Record of Interview he then volunteers, "Yes, I know. That would be the Elizabeth Theatre"?

A. Yes.

5

Q. So, Mr Kokotovic is not only agreeing with you about planting bombs in a picture theatre at Newtown, but he's actually identifying what picture theatre at Newtown it was going--

A. Yes.

10

Q. --to be subject to the bombs?

A. Yes.

15

Q. I can take you through the whole of the statement but you have read it beforehand; this part of your statement, it's your account of the Record of Interview, isn't it?

A. Yes.

20

Q. What Mr Kokotovic is saying to you are very probative admissions about what the plot was?

A. Yes.

25

Q. What the actual targets were?

A. Yes.

30

Q. Giving you more information than the information that Detective Sergeant Turner had given you?

A. I believe so, yes.

35

Q. Confirming who was involved and when they were going to meet up? See look at paragraph 8, shown a list of names, "Were any of these men to be involved", and he said, "Maybe all of them or none of them; we only would find out from my brother and Tony at the meeting". Then you ask, "Who do you mean when you say your brother and Tony"; and again he spells out, "My brother Ilija, you know, the one with the moustache, and Tony um Zvirotic from Ashfield". So he's naming names, isn't he?

A. Yes.

40

Q. With these admissions being made by Joseph Kokotovic during this Record of Interview, wasn't it important to get him to acknowledge that he had given these answers?

A. Well, that's something he put forward, and it's recorded.

45

Q. Yes, but he doesn't sign the notebook, does he?

A. No, he doesn't.

50

Q. So he does not formally adopt or acknowledge in writing that he's given these answers has he?

A. No, he doesn't.

50

Q. You did not ask him whether he wished to sign the notebook, did you?

A. I can't recall whether I did or not.

EXHIBIT 2.3-38, RED PAGE 7962, SHOWN TO WITNESS

5

Q. If we can expand this, please? Now, this is the evidence you gave at the committal, Mr Counsel, and you were being cross-examined by Mr Scott who was a barrister. Can you see right down the bottom of the page - and maybe if we can move it a bit up - you were asked, "Was he asked whether he wished to sign that notebook", and you answered, "No, he wasn't"?

10

A. Well, that would be right; if it's there.

Q. Then if we just continue down the page to a question that commences, "Did you offer to" - there it is, thank you - and then do you see you were asked this question, "Did you offer to at least show him what had been written down in the notebook", and you answered, "No"?

15

A. Yes.

Q. Then you were asked, "Why didn't you ask him whether he would like to have a look at it, or initial it, or authenticate it in some way", and you answered, "Well, I had difficulty - Grady's writing myself, or I couldn't read it properly and I couldn't see how he could read it if I couldn't read it"?

20

A. Yes.

Q. Now, I asked you a series of questions about interviewing suspects, and recording admissions they make, and the importance of getting them to somehow adopt, or authenticate, the admissions they've made.

25

A. Yes .

Q. Here we've got a Record of Interview being recorded in a notebook, where not only do you have difficulty with Detective Grady's handwriting, but you're asking a man whose English is his second language, and where you concede that, "Look, if I wouldn't read it properly, I couldn't really see how he was going to read it." In those circumstances, did you turn your mind to an appropriate way of getting evidence, or allowing Mr Kokotovic to read the answers and indicate that he agreed that he said it?

30

35

A. I can't recall why I - why that happened. I don't know.

Q. If we continue on this page, after the questions about the handwriting, they ask you about - sorry, Mr Scott asks you:

40

"Q. There were that night very senior police officers on duty, more senior than you and certainly commissioned officers as well, weren't there?

45

A. There was one commissioned officer there."

A. Yes.

Q. Can I just ask: who was the commissioned officer who was there?

50

A. I can't remember.

Q. You were, I think, a detective senior constable at this stage?

A. I was.

Q. There was some detective sergeants present at CIB that night?

5 A. At that time, I don't know if there were or not.

Q. Had a number of raids occurred that night?

A. I'm sorry, I missed that.

10 Q. On the night of 8 February, going into 9 February, hadn't there been a number of raids conducted?

A. I don't know. I can't remember.

Q. Do you recall a raid at Chandos Street, Ashfield?

15 A. Well, I wasn't involved in anything else other than 9 Livingstone Street, Burwood, and I didn't speak to any other - other suspects or - I don't know. I had nothing to do with any other address.

Q. What I'm suggesting is that CIB that night would have had a lot of activity, because there were a lot of officers, including more senior officers to you, who had attended raids and had come back or returned to CIB.

20 A. I can't remember if there was or wasn't. They may have, but I can't recall.

Q. If we just continue towards the bottom of this page, please, 7962. You were asked:

25 "Q. No attempt was made to bring anybody else into the room to read over to him and to have him authenticate it in any way at all?

30 A. No.

Q. Why again was that?

A. As I told you before the writing was very very difficult to read."

A. Yes.

35 Q. If we can then go to the first question on page 7963. Then Mr Scott asks you:

40 "Q. But you could have given someone else a chance to read it over to him, couldn't you?

A. I didn't consider that they would be able to read it at the time.

Q. Did Officer Grady make any attempt to read his own writing back to Mr Kokotovic?

45 A. No."

A. Correct.

Q. So what we have is a Record of Interview not being typed, but being conducted by an officer in handwriting that was, in your words, "very, very

50

difficult to read."

A. Correct.

5 Q. Mr Counsel, there was no way that Mr Joseph Kokotovic was going to be able to read through the questions and answers and adopt them?

A. Well, he would have had a lot of difficulty, because I couldn't read it all properly.

10 Q. Didn't that raise a concern with you?
A. I'm sorry?

15 Q. Were you concerned about that? What about if Mr Joseph Kokotovic, as was the case, at trial said, "I never said that. That's all creative writing. That's all make believe." Did that concern you at the time?
A. No. It didn't.

Q. In February 1979, had you come across the termed "verbal"?
A. The term?

20 Q. Verbal"?
A. Verbal?

25 Q. "Verbal." V-E-R-B-A-L?
A. Am I familiar with it?

Q. Yes.
A. I have heard it, yes.

30 Q. What's your understanding of the word?
A. Well, it's verbal evidence. It's given verbally.

35 Q. Have you ever heard of it used in a derogatory way to an allegation that police officers have made up confessions?
A. Yes, I've heard of that.

Q. Did you ever, when you were a police officer, ever participate in verballing any suspects?
A. No, I did not.

40 Q. To your knowledge, was it common practice amongst police officers in the 1970s, 1980s to--
A. Certainly not police that I was involved with?

45 Q. You never witnessed another police officer verballing a suspect?
A. No, I haven't.

50 Q. Did you at any time become aware, in respect of any of the Croatian Six, whether they had been verballled?
A. Well, I wasn't aware of it, no.

MCDONALD: Excuse me, your Honour.

HIS HONOUR: Yes.

5 MCDONALD

Q. Now, I think to be fair to you, Mr Counsel, I didn't take you to some evidence that you gave at the committal or the transcript, that is, what you and Detective Grady did after conducting the Record of Interview with Joseph Kokotovic. Now, after the Record of Interview, was Joseph taken to Central Police Station to be charged?

A. He was.

Q. Did you take him to be charged?

15 A. Did I take him? Yes.

Q. Can you recall, did you take him immediately after you had finished the Record of Interview?

20 A. I can't remember if I did or not. It would have been shortly after, I would have thought.

Q. Do you recall returning to CIB after you had been to Central Police Station?

A. After he was charged?

25 Q. Yeah?

A. Did I return to the CIB? I did.

Q. Do you recall what you did then?

30 A. No, I can't.

MCDONALD: Excuse me for a moment. Could the witness be shown Exhibit 2.1-39 and red page 1121?

35 WOODS: Your Honour, before my friend proceeds with this, might I invite your Honour to ask Mr Counsel whether he needs a five or ten-minute break? He appears a little--

HIS HONOUR: Yes.

40 Q. Mr Counsel, would you benefit from having a 5-minute break at this point?

A. I'm quite prepared to do that, your Honour, yes.

45 MCDONALD: I'm just wondering whether we should keep the live stream going or continuing if that doesn't upset Mr Counsel. I'm just a bit concerned if we stop it, whether we lose him again.

HIS HONOUR: Keep the connection with him. Yes.

MCDONALD: Yes.

50

HIS HONOUR: Keep that.

We'll keep the link open with you, Mr Counsel, so we don't have difficulties getting it back. But I'll adjourn now. We'll just take a 5-minute break, okay?

5

WITNESS: Thank you, your Honour.

SHORT ADJOURNMENT

10

MCDONALD

Q. Mr Counsel, I was asking you some questions about what you and Detective Grady did in the early hours of 9 February when you had returned from Central Police Station.

15

A. Yes.

Q. I'm going to take you to some transcript from the trial, and this was when Mr Buchanan was cross-examining you. If we can expand that and go down to about point 7 on the page where a question is asked, "Where did you go after Central Police Station?" Can you see that, Mr Counsel? You were asked:

20

"Q. Where did you go after Central Police Station?

A. Back to my office."

25

A. Yes.

Q.

"Q. How long did you remain at CIB after that?

30

A. Until approximately 3.00am."

A. Yes.

Q.

35

"Q. Did you participate in any meeting or conference after you returned from Central Police Station, before 3.00am?

A. No, not that I can recall.

40

Q. No meeting of officers in relation to any of these raids at all?

A. To the best of my knowledge, I can't recall."

A. Yes.

45

Q. Then you were asked:

"Q. Did the officers who had been on the raids not talk amongst themselves about what had happened that night?

A. I don't know what they did."

50

A. Yes.

Q. And then you were asked:

5 "Q. What did you do then?

A. I sat down with Det. Grady and went through the interview that I had had with the accused Joseph Kokotovic. With Detective Grady, I went through the notebooks and I recorded that conversation into type in the form of questions and answers."

10

A. Yes.

Q. Then you were asked:

15 "Q. And was that in essence bringing into existence your statement?

A. No."

20 A. Correct.

Q. Then if we go to page 1122, you were asked:

"Q. Was it a different document altogether?

A. Yes.

25

Q. It is not a document that has to date been produced to the Court?"

30 Then you were asked, again, that question, and you answer, "Not to my knowledge."

A. Yes.

Q. I want to ask you some questions about this document that you and Detective Grady started typing up before 3.00am on 9 February.

35 A. Well, I can't recall that. I have no knowledge of that whatsoever.

Q. Looking at the question and answers, this is what I want to suggest to you, and I'm sorry, I'm jumping around. Can we go back to 1121 down the bottom, please. Can you see you were asked, "Look, were you bringing into existence your statement?" And you say, "No, I wasn't." Right? "No."

40

A. Yeah.

Q. This is a different document to your statement.

A. Well, according to that it appears to be, yes.

45

Q. What I want to suggest that you were doing, with your knowledge of Detective Grady's difficult-to-read handwriting, you were typing up questions and answers?

A. I can't recall that. I have no knowledge of that whatsoever.

50

Q. It would appear to be a good idea to try and type up the questions and answers because of the very poor handwriting by Detective Grady. Do you agree with that?

A. I do agree with that, yes.

5

Q. If you had created such a document, wouldn't it have been a good idea to then go and try and see Joseph Kokotovic at Central to get him to read through it and agreed that, "Yep. They were the questions asked, and they were the answers given."

10

A. Well, I didn't do that.

Q. It would have been a way of getting Joseph Kokotovic to adopt, or authenticate, the questions and answers that he gave during that interview?

A. I don't think that would be appropriate.

15

Q. Why not?

A. Well, how does he know what the typed-up version is compared to the notebook?

20

Q. It would have been an opportunity for him to look at the questions and answers, and agree that that's what he said. That's the important aspect of the evidence, isn't it, Mr Counsel?

A. Well, maybe in retrospect it was, or would be, but it didn't happen.

25

Q. This document that you and Detective Grady typed up in the early hours of 9 February, do you recall what you did with it?

A. No. I don't. I can't even recall doing it.

30

Q. Joseph Kokotovic gave evidence that when he was at the CIB, he was assaulted by Detective Grady; that Detective Grady struck him on the side of his head, grabbed him by his hair, and that Grady put a motorcycle helmet on him and twisted his head. Did you--

A. That didn't happen.

35

Q. When you say that didn't happen, what do you base that on?

A. What did?

Q. How can you say that didn't happen?

A. Well, I didn't see it happen and I was there most of the time.

40

Q. Does that mean that you have a recollection, a better recollection of what happened on 8 February at CIB and then into 9 February?

A. Well, I can't understand the question, I'm sorry.

45

Q. Mr Counsel, you gave evidence earlier that you really don't have a recollection of what happened on 8 and 9 February. Do you remember that?

A. Yeah, I had limited knowledge, yeah, of what happened.

50

Q. You said that you're really relying on reading your statement and the depositions as you described them?

A. Yes.

Q. But putting to you Mr Kokotovic's evidence of being assaulted by Detective Grady, you were very adamant that that didn't occur?

5 A. It certainly didn't occur.

Q. How can you be so certain that it didn't occur?

A. Because I was there most of the time.

10 Q. Are you saying that if something like that happened, you would remember that?

A. I certainly would.

15 Q. Do you recall at times people would come into the interview room and then ask to see you or ask to see Detective Grady and give you pieces of paper or some further information?

A. I don't recall that but it's possible that happened.

20 Q. I'm just asking you to assume this, it's like a hypothetical, if you had learned when you were out of the room that Detective Grady had assaulted Joseph Kokotovic, what would have you done?

A. What would I do? Well I don't know what I'd do. I'd probably ask him not to continue, but he wasn't doing it, so it's a hypothetical question.

25 Q. I'm putting it to you as a hypothetical question. Would you report it to anybody?

A. Would I?

30 Q. Report it to anybody that type of conduct?

A. Of course.

Q. Who would you report it to?

A. Well, a senior officer.

35 Q. Can I ask you about actually writing your statement and I've taken you to those questions about you and Detective Grady typing up the question and answers from his notebook and you said that wasn't the statement. Can you recall the circumstances in which you created or wrote your statement?

40 A. No, I can't.

45 Q. Can I take you back to your statement, which is Exhibit 4.2-80. Excuse me for a minute. Now, can I take you to page red 623 and paragraph 4 down the bottom. Now, this is in your statement where you're giving an account of what occurred on 8 February at the raid and you say, "On a small bench-type table, I observed two large half-sticks of gelignite, four electric detonators, and five relay delay connectors"?

A. Yes.

50 Q. Now do you see that?

A. I can.

Q. Now, last Thursday you gave some evidence that you didn't recall as at February 1979 any previous dealings with explosives or any training in explosives. Do you remember that evidence?

A. I do.

5

Q. But in paragraph 4, there's quite a precise identification of the explosives to the extent that you've got four electric detonators and five relay delay connectors?

A. Yes.

10

Q. Do you recall how you were able to record that information?

A. Well, from Detective Grady.

Q. Does that suggest that you and Detective Grady wrote your statements together?

15

A. Well, I don't know about together, but I had to check with him in regard to his writing and to ensure that I recorded the correct information.

Q. Do you recall giving evidence that you, with Detective Grady, you dictated your statement and he typed it?

20

A. I normally typed my own, but I - I can't recall that.

EXHIBIT 2.1-39, RED PAGE 1122, SHOWN TO WITNESS

Q. I took you to an extract of this transcript, Mr Counsel, beforehand about that document you and Detective Grady typed up, but can we go to the question towards the top of page and if we can expand it a little bit? "Do you recall when your statement was typed", and you say, "Yes". Then you were asked, "When was that? The next day or actually it was that day but later that day during the daylight hours of that day"?

30

A. Yes.

Q. "Then when did you do that; was anyone typing a statement with you", and you answered, "Yes. Grady typed it at my dictation"?

35

A. Yeah, well, I can't remember that either, but if it's there, and it obviously is what happened.

Q. Was that an unusual procedure that you wouldn't type your statement yourself, that another officer typed it at your dictation?

40

A. Well, I think the reason, if that happened, and obviously it did happen, that he was able to read his own writing.

Q. So is it your recollection that in preparing your statement - and I can take you to this if you need to have a look at it - that a lot of your statement records the questions and answers given during the Record of Interview with Joseph Kokotovic?

45

A. Yes.

Q. Do you say to include those in your statement you needed to access Detective Grady's notebook?

50

A. Well, I had access to it, but I don't recall Detective Grady typing my statement, but if it's there it must've happened.

5 Q. All right, but at a minimum you needed to have a look at Detective Grady's notebook?

A. Just a second, there's something come up, you know, it's gone now.

Q. You needed access to Detective Grady's notebook?

10 A. Of course I did, yes.

Q. As we have determined, you had great difficulty in reading a lot of his handwriting?

A. I had difficulty with it, yes.

15 Q. Mr Counsel, after preparing your statement, did you have any other involvement - other than giving evidence at the committal and trial, did you have any other involvement in the further investigation into the case against the Croatian Six?

20 A. Not that I can recall, no.

Q. In the screed that I took you to earlier today--

A. Yes.

25 Q. --which was entitled "Further information from Detective Sergeant Turner" and I take--

A. Yeah.

Q. --you back to the document if you want to have a look at it, but it referred to two men who were arrested in Lithgow, one of whom was a Vico Virkez?

30 A. Yes.

Q. Was it the case that the first time you heard about this person, Vico Virkez, was when you received that screed from Inspector Morey?

35 A. As far as I can recall, yes.

Q. At any time did you have any discussions with anybody from Special Branch about the Croatian Six?

A. Not that I know of.

40 Q. Were you ever told anything about Vico Virkez and his either connections with the Yugoslav Consulate?

A. I have no knowledge of that, no.

45 Q. Now, during 1979, did you continue working with Detective Grady; so he was your partner or work mate?

A. Yes.

Q. Did you, with Detective Grady, at any time in 1979 visit Parramatta Gaol?

50 A. I can't recall, I'm sorry.

Q. Can I ask you generally, was that something that police officers on occasion had to visit gaols?

A. Sometimes, yes.

5 Q. What would be the reason for doing that?

A. Well, obviously to speak to someone that was incarcerated there.

Q. But for what purpose?

10 A. Well, it could be various things. I don't know. I - I don't recall going there, but--

Q. We've had some evidence in the Inquiry about in the lead-up to a sentence, the preparation of antecedents?

15 A. Yeah.

Q. Where a police officer would prepare the antecedents of the offender?

A. Yes.

Q. Do you recall doing that at any time?

20 A. No. I can't recall it, but I would have done it. Yes.

EXHIBIT 12.6, RED PAGE 80-1, SHOWN TO WITNESS

25 Q. Just before we expand the document, Mr Counsel, this is a record that's been obtained from the archives, or the records, of Parramatta Gaol.

A. Right.

Q. It is a gaol logbook recording people who have visited the gaol on a particular date, and it's described as, "Designation", but it's "Occupation".

30 A. Yes.

NEEDHAM: Excuse me, your Honour

MCDONALD

35

Q. If you can go to the top of this document--

NEEDHAM: This is subject to an NPO. Perhaps the live stream should--

40 MCDONALD: Your Honour, I understand that the live streaming has been cut, and the non-publication order does allow questions and answers about the document to be given within the confines of the hearing.

45 HIS HONOUR: If it's only a reference to a particular officer attending on a particular date, I think that's exempted from the non-publication order. We've had oral evidence by other officers referring to them attending on a particular date. That's okay, but otherwise the content of the document is caught by the non-publication order.

50 MCDONALD: Yes. My questions are going to focus on that.

HIS HONOUR: You're taking him to an entry that pertains to him?

MCDONALD: Yes.

5 HIS HONOUR: That's all you're taking him to?

MCDONALD: Yes, your Honour.

10 HIS HONOUR: That's okay.

MCDONALD: It was just to get him to re-familiarise himself with the form of the document, and now I'm going to take him to, probably, two particular entries.

15 HIS HONOUR: Yes. All right. Thank you, Ms Needham, as well.

MCDONALD

20 Q. Mr Counsel, if we can expand the document, and look at the first two entries for 1 September 1979.

A. Yes.

Q. Do you see the second entry is, "JJ Counsel"?

25 A. Yes.

Q. "Police"?

A. Yes.

30 Q. The entry immediately above that is, "RJ Grady" from the "Police".

A. Yes.

Q. "JJ Counsel", looking at that entry, that would be a reference to you?

A. It would be.

35 Q. And also Detective Grady being your workmate, or partner, it is likely that the entry above your name would be him.

A. Correct.

Q. Can you recall this visit in September 1979, what it was about?

40 A. I have no knowledge of going there. I've got no idea.

Q. You never visited a person called, "Vico Virkez" at Parramatta Gaol?

A. Would you say his name again?

45 Q. Vico Virkez.

A. No. I don't.

<EXAMINATION BY MR DE BRENNAN

50 Q. Mr Counsel, can you see and hear me?

A. Yes, I can.

5 Q. My name is Mr De Brennan. I appear for the petitioners, or applicants, in this matter. I just want to ask you some questions about your attendance at the raid at Burwood.

A. Yes.

10 Q. It would be fair to say that Detective Sergeant Roger Rogerson was the person in charge on that evening when you arrived?

A. I would say so, yes.

Q. You were a member of the Special Breaking Squad?

A. Yes.

15 Q. Can I ask you the circumstances in which you joined that squad?

A. Well, I'd been the Fraud Squad, and I asked for a transfer, and when one became available, that's where I was sent.

20 Q. Just in terms of asking for a transfer, was there a form or something that you filled out, or how did you go about that?

A. It was only verbal.

Q. Do you recall who you spoke to in particular in requesting that transfer?

25 A. It would have been whoever was in charge of the Fraud Squad at the time.

Q. I see, so the request was made to the person in charge of the Fraud Squad to go across to the Special Breaking Squad, is that correct?

A. Not particular there. I just asked for a transfer.

30 Q. Once you had arrived at the Special Breaking Squad, it was also the case that at some point you became a member of SWOS?

A. Correct.

35 Q. Indeed, as of 8 February 1979, you were a fully-fledged member of SWOS, weren't you?

A. I can't recall. I don't think so. I don't think I'd been there long enough to have done the entry to SWOS, but I may have, but I can't recall that.

Q. You think that's a possibility though?

40 A. Well, it'd be a very slim possibility.

Q. You were asking some questions about the preparation of your statement by Counsel Assisting, and in particular whether you had prepared your statement in unison with Detective Grady. Do you remember those questions?

45 A. Well, it was, yes, because of the handwriting. I needed help with that.

Q. Just going back to your arrival on the night as part of the raid, Sergeant Roger Rogerson told you that you should go in through the back of the premises?

50 A. I can't remember which way I entered.

Q. In any event, at some point you ended up in the attic?

A. That's correct.

Q. You saw a Joseph Kokotovic with some scissors?

5 A. I believe he did, yes.

Q. As you sit here now, can I just ask you that you might permit me this indulgence, to ask you how you spell the word scissors, how you would spell it?

10 A. S-C-I - I can't remember how I spelled it.

Q. Well, how would you spell it now?

A. S-C-I-S-S-E-R-S, I suppose.

15 DE BRENNAN: Could the witness please be shown Exhibit 4.2-80? Sorry, it's the statement of Mr Counsel. Red page 623, I believe.

HIS HONOUR: 260?

20 DE BRENNAN: 623.

Q. Could I ask you to have a look at paragraph 3 about halfway down, you'll see the word "scissors" there.

A. Yes.

25

Q. You'll see that you spell it there with two Zs?

A. One Z, I can't see two.

30 Q. Then if you go down, you'll see a second reference to "scissors" in the line under, and I'm going to suggest that both of those are spelled with the letter Z?

A. Yes, I agree with that.

EXHIBIT 4.2-81, RED PAGE 630, SHOWN TO WITNESS

35 Q. In fairness to you, that is not your statement, but rather that of Officer Grady. But you'll see there in paragraph 3 that Officer Grady also spelt the word "scissors" with two Zs on three occasions?

A. I can see one. Yes, I can see - yeah, there's two that I can see, yes.

40 HIS HONOUR

Q. I can see three, Mr Counsel, in successive lines.

A. Right.

45 DE BRENNAN

Q. Mr Counsel, I'll cut to the chase. You and Detective Grady put your heads together in this matter and all of the confessional evidence was a fabrication, wasn't it?

50 A. No, I deny that.

Q. How do you explain spelling "scissors" with two Zs on your statement?

A. I can't explain.

EXHIBIT 2.1-39, RED PAGE 1139, SHOWN TO WITNESS

5

Q. Mr Counsel, could you please have a look at about just before half way down the page you'll see a heading "RE-EXAMINATION"?

A. Yes.

10

Q. Could you please read to yourself right down to the end of that page 1139, and over to the following page up until the heading which reads "FURTHER RE-EXAMINATION" on red page 1140?

A. Yes.

15

Q. You will recall that at trial, and this was on a voir dire, but you were shown a photograph purporting to be of the explosives that were found at the Burwood address?

A. Right.

20

Q. Do you recall giving that evidence in relation to a photograph of the explosives that were said to be found on a table?

A. I don't recall it, but if it's there obviously I said it.

25

Q. Yes, and your evidence at trial - Mr Counsel, I'm informed that you might not've had an opportunity to read the top of the page at 1140 until you get to the heading of "FURTHER RE-EXAMINATION". If that's the case, could I ask that you have a read of that please?

A. Yes.

30

Q. Mr Counsel, if you could perhaps let us know when you get to the question, "What time does it say received"; this is on the bottom of 1139, "I can't read it, it is 10.50 I think", if you could let us know once you get to that portion of the page, I understand that we can push it up so that you can see the balance?

A. Yes, I can see that.

35

Q. Having read that, you'll agree that the gravamen of your evidence was that you had been present at the time that the photograph of this material was taken?

A. Yes.

40

Q. And you were asked some questions about when that occurred in terms of timing?

A. Yes.

45

EXHIBIT 2.1-40, RED PAGE 1190, SHOWN TO WITNESS

Q. Mr Counsel, if you could please go to about half way down that page, you will see a heading entitled "FURTHER CROSS-EXAMINATION"?

A. Yes.

50

Q. Could I ask you, please, just to read that to yourself? Just down to the bottom of the page, thank you. If you could just let his Honour know once you've done that. For completeness, I should, or in fairness to you, let you know that the final question is this:

5

"Q. In relation to the body of evidence you gave concerning the visit to Livingstone Road, have you got any change to make in relation to that?

A. No."

10

Once you've had an opportunity to get to there, could you let the Inquiry know, please?

A. Yes. I've read that.

15

Q. You agree that, after having sat in on the evidence of Detective Grady, you took the opportunity to change your evidence that you had been present at the time when a photograph was taken of the explosives.

A. Yes.

20

HIS HONOUR: Mr Counsel, we'll need to continue this tomorrow morning. So we'll have you back.

25

WOODS: Your Honour, before we depart, may I ask your Honour to make a non-publication order, in terms which I'll hand up, but basically relating to the medical certificates pertaining to this witness, and the hospital discharge report. It's--

HIS HONOUR: Yes.

30

MCDONALD: Your Honour, could I just interrupt. Your Honour received a medical certificate and the hospital discharge records. They weren't marked in any way. Could we ask for those to be Marked For Identification number 9?

HIS HONOUR: Yes.

35

MCDONALD: Your Honour, I'll also hand up the non-publication orders.

40

HIS HONOUR: The medical report and the hospital records in relation to Mr Counsel will be the subject of a non-publication order in the terms sought.

MFI #9 MEDICAL CERTIFICATE AND HOSPITAL RECORDS IN RELATION TO MR COUNSEL

45

<THE WITNESS WITHDREW

AUDIO VISUAL LINK CONCLUDED AT 4.02PM

ADJOURNED PART HEARD TO TUESDAY 21 MAY 2024