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SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 TWENTY-FIRST DAY: FRIDAY 5 JULY 2024

INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX

10

MELIS: Your Honour, just one administrative matter before I call the next witness.

15

HIS HONOUR: Just a moment. Dr Woods?

20

WOODS: Your Honour, may I seek your leave to appear for Mr Edward Grahame MacKenzie, who I understand is the next witness, via AVL. We've recently been instructed, this morning, indeed, but we've had the opportunity of speaking adequately with the witness. I also ask that he be allowed to have with him, while he's giving his evidence, a support person, by the name of James Edwards, an AFP Sergeant of Police. I'm instructed that Mr MacKenzie suffers from PTSD, as a result partly of his war service in Vietnam--

25

HIS HONOUR: I think I've been given sufficient information about the need for the support person. You needn't set it out for me.

WOODS: Thank you, your Honour.

30

HIS HONOUR: I grant you that leave, and he may have the support person with him as he gives his evidence.

EXHIBIT #17.1 SUBSTITUTED WITH A 15-PAGE DOCUMENT WITH ADDITIONS AT PAGES 4-1 AND 4-2, ADMITTED WITHOUT OBJECTION

35

AUDIO VISUAL LINK COMMENCED AT 11.26AM

<EDWARD GRAHAME MACKENZIE, SWORN(11.26AM)

<EXAMINATION BY MS MELIS

5 Q. Mr MacKenzie, can you see and hear me clearly?

A. Loud and clear.

Q. Thank you. I am Christine Melis, I am one of the Counsel Assisting and I will be asking you questions today.

10 A. Yes.

Q. What is your full name?

A. Edward Grahame and the MacKenzie's M-A-C-K-E-N-Z-I-E.

15 Q. In February 1979 you were a Detective Senior Constable with the New South Wales Police Force; is that correct?

A. Correct.

Q. At that time you were attached to the Armed Hold Up Squad?

20 A. Correct.

Q. When did you join the New South Wales Police Force?

A. Mid-1965.

25 Q. Relative to that date, when did you roughly join the Armed Hold Up Squad?

A. I'm not sure what the date would've been; it would've been the late '70s.

Q. Late '70s?

A. Yes.

30 Q. Can you recall how long you were with that squad?

A. I think about three and a bit years.

35 Q. Would it be fair to say you were with the squad up until sometime in 1980/81?

A. Correct.

Q. Can you recall which unit or station you were at just prior to joining the Armed Hold Up Squad?

40 A. Bankstown Detectives Office.

Q. After you left the Armed Hold Up Squad, where did you go?

A. I left the Police Department and set up my own newsagency.

45 Q. A newsagency did you say?

A. Correct.

Q. Did you have any other occupation or profession after that time?

50 A. After seven years I joined the ACT Corrections and worked in the Remand Centre at Belconnen.

Q. How long were you at the Remand Centre?

A. Nearly ten years.

5 Q. Was it just the Remand Centre in Belconnen, or did you also work somewhere else just prior to that time?

A. No, just the Remand Centre.

Q. Did you at any point in time work at Villawood?

10 A. No.

Q. Can you tell us, what were the circumstances in which you left the Police Force in the early 1980s?

A. My nerves were playing up and I was mentally and physically tired and had enough.

15 Q. You attended a raid at 16 Restwell Road, Bossley Park on 8 February 1979?

A. Yes.

20 Q. In respect of that raid, you gave evidence at the committal proceedings in respect of what we've termed the Croatian Six; is that correct?

A. Yes.

Q. Have you read a transcript of your evidence at the committal?

25 A. Yes.

Q. Is there anything you now wish to change?

A. No.

30 Q. It is a true and correct record of the evidence you gave?

A. Yes.

Q. Can I pause there, Mr MacKenzie; do you have a copy of your evidence transcripts with you?

35 A. Yes.

Q. You also gave evidence at the trial of the Croatian Six in May 1980; is that correct?

A. Yes.

40 Q. You have read the transcript of those proceedings?

A. Yes.

Q. Is there anything you now wish to change?

45 A. No.

Q. It is a true and correct record of your evidence?

A. Yes.

50 Q. You also made a one-page statement dated 9 February 1979; correct?

A. Yes.

Q. You've had the opportunity to read it?

A. Yes.

5

Q. Is there anything in the statement you wish to change?

A. No.

Q. It is true and correct?

10

A. Yes.

Q. I want to now ask you some questions about the preparation of that statement. We see that you made your statement the day after attending the raid at Bossley Park, that is, you made it on 9 February 1979?

15

A. Yes.

MELIS: Your Honour, for the record, the statement is Exhibit 4.2-35, red page 377.

20

Q. Mr MacKenzie, do you recall whether you were asked by anyone to make a statement at that time on 9 February?

A. No.

25

Q. Was it your general practice to make a statement as soon as possible after events had occurred?

A. Yes.

Q. On the night of the raid, is it the case that your partner was a Detective Senior Constable Pettiford, for the record P-E-T-T-I-F-O-R-D?

30

A. Yes.

Q. Was he your usual partner in the Armed Hold Up Squad?

A. Yes.

35

Q. We see that he also made his statement relevant to the Bossley Park raid on 9 February 1979 - for the record, your Honour, Exhibit 4.2-34, I'm sorry, I don't have a red number - did you and Detective Senior Constable Pettiford confer with one another when making your statements that day?

A. Yes.

40

Q. You did?

A. Yes.

Q. You have a recollection of that?

45

A. Yes.

Q. Can you describe to us what, did you just sit around your desks and refresh one another's memories of the events; did you?

A. No, I don't remember what we actually said.

50

Q. Was it a practice at the time in the Armed Hold Up Squad to sit down with your partner or other officers after an event or an operation and discuss the events?

A. Yes, we did.

5

Q. Was this with a view to ensuring there was one consistent narrative about the event?

A. I don't know how to answer that question.

10

Q. Well, perhaps you can explain to the Inquiry what was the purpose of getting together with other officers after an event to discuss the event.

A. The one purpose was we were just to type up our statements, that's all.

Q. I'm sorry, I missed that.

15

A. The one purpose was to type up our statements, not to collude, if you're inferring we were colluding to make up statements, that's not right. We were telling the truth and that's all I've got to say.

Q. Have you heard of the term 'scrum down'?

20

A. No, I have not.

Q. The Royal Commission into Police Corruption came to hear evidence about scrum downs and the Royal Commission's report describes the practice in this way, and I'm quoting now from the Royal Commission's findings - your Honour, it's Exhibit 13.13(A), red page 111-19:

25

"It was where police would meet together to refresh each other's memories and to ensure that there were no pitfalls in the prosecution, even if this involved giving evidence which was not truthful."

30

Was that a practice that you were ever involved in whilst with the Armed Hold Up Squad?

A. No. Never. I was in the business of telling the truth.

35

Q. Was it a practice that you understood occurred amongst other officers in the Armed Hold Up Squad, or any of the other squads of the CIB?

A. No. Never. To my knowledge, never.

40

Q. The Royal Commission into Police Corruption also heard evidence that the Armed Hold Up Squad had, and I quote, "a substantial reputation for this practice" - same red page number, your Honour. Can you comment on this from your direct knowledge, Mr MacKenzie?

A. No, I cannot.

45

Q. You deny that the Armed Hold Up Squad had a substantial reputation for the practice of scrum downs?

A. That's not right.

50

Q. So you deny it?

A. Yes.

5 Q. There was also evidence during the Royal Commission of junior officers being informed by senior officers of the version of events that would be given in their statements with the expectation that this would be reflected in the evidence - Exhibit 13.13(A), red page 111-19. Mr MacKenzie, were you ever approached by a senior officer and told what the version of events would be on a case and expected to stick to that version, or put another way--

10 A. No.

Q. --hold the line?

A. No. Never.

15 Q. I take it that never occurred with respect to the raid at Bossley Park; that is, you were never told by senior officers what the version of events would be in respect of that raid?

A. No, we - no. That is totally incorrect.

20 EXHIBIT 11.89, RED PAGE 1287, SHOWN TO WITNESS

Q. Mr MacKenzie, a document's about to come up on the screen and I understand it is a document that has been provided to you and you may have it in front of you, in which case you may also like to look at it in hard copy in front of you?

25 A. Yes.

Q. Mr MacKenzie, can you see that document?

A. Yes, I can see a document, but I can't read it because the print's too small.

30 Q. That's okay, when I take you to certain parts of it, I'll ask for it to be expanded - perhaps it could just be a little bit expanded on the screen so we can read the heading - this document has the date "9 February 1979, Armed--"
A. Yes.

35 Q. "--Hold Up Squad" and it's titled "Timetable of events and notes in relation to the arrest of Brajkovic"; do you see that?

A. Yes, I - clearly.

40 Q. Have you had the chance to look at this document before today?

A. I looked at it last night.

Q. Did you recognise the document?

A. No, I haven't seen - never seen it before.

45 Q. If we have a look through it we can see it's a chronological statement of events that occurred with respect to the raid at Bossley Park, and it starts at 9pm. If we can just scroll through--

A. Yes.

50 Q. --to the last page, please, red page 1291. Sorry, Mr MacKenzie, I'm just

confirming, you can still see the document?

A. Yes.

Q. We can see that there's an entry there of 2:30am. You see that?

5 A. Yes.

Q. 2:30am meaning now we're in the early hours of 9 February 1979.

A. Yes.

10 Q. It says there that, "Returned to this branch and commenced these notes. Notes completed up end of first paragraph on page 2", and then it says, "Present when notes typed: Wilson, Harding, Bennett, Morris, Helson and Krawczyk". You see that?

A. Yes, I see it. Yes.

15

Q. Your name is not there and neither is Detective Senior Constable Pettiford's?

A. Yes.

20

Q. The evidence was, certainly, at trial that at this time when these notes were being typed up you were, in fact, dropping off Mrs Brajkovic, her daughter and Mr Hudlin at the Auburn Station. You recall that?

A. Yes, that's correct.

25

Q. And that you departed a little before 2am from the CIB to drop them off?

A. Yes.

Q. You have a recollection of doing that?

A. Yes.

30

Q. See, however, the entry at 8:30am, you see that? Now we're at 8:30am on 9 February?

A. Yes.

35

Q. The notes are recommenced and completed?

A. Yes.

Q. This time you are noted as being present with Detective Sergeant Pettiford. Do you see that?

40

A. Yes.

Q. Do you sitting here today have a recollection of attending the Armed Hold Up Squad at 8:30am on 9 February and participating in the preparation of these typed notes?

45

A. No, I don't.

Q. Was it a practice in 1979 or 1980 to prepare typed documents like this that detailed in a chronological fashion the events of a particular job?

A. No, I don't - I can't answer that question, because I don't know.

50

Q. Are you telling us that this was the first time that you had participated in such an activity?

A. No, I can't remember.

5 Q. You can't recall being present and you can't recall whether you had ever participated in this kind of activity, but you have told us that it was a practice in that time to get together with other officers and talk about the events of a job for the purposes of typing up your statement. You agree with that?

A. Yes, I do. That's correct.

10

Q. In doing that, presumably, you would participate to the extent that you would talk about what you recall happened, for example?

A. Yes.

15

Q. If another officer recalled something that did not accord with your memory, you would raise that in that discussion?

A. I would just raise the truth.

20

Q. The Inquiry has heard evidence that these notes were typed by Detective Senior Constable Harding at his desk. Does that help to refresh your memory of the Detective Senior Constable being at his desk and typing these notes with you all around him?

A. No, it doesn't.

25

EXHIBIT 4.1-LLL, RED PAGE 128, SHOWN TO WITNESS

Q. Mr MacKenzie, I'll just give you a moment to orientate yourself with this document. It is a floor plan of the third floor of the Remington Building.

A. Yes.

30

Q. We can see there that the floor's divided up between the Armed Hold Up Squad and the Special Breaking Squad.

A. Yes.

35

Q. You can see the words "Armed Hold Up Squad"?

A. Yes.

40

Q. Are you able to tell us, relative to that diagram, there are one, two, three, three sets of desks before you get to some lockers and then you enter the Special Breaking Squad. Do you see that?

A. Yes.

45

Q. Are you able to tell us which desk was Detective Sergeant Harding's?

A. No, I can't.

50

Q. Can you remember your desk?

A. No, I don't remember where it is.

Q. In some evidence you gave at the trial, Exhibit 2.1-24, red page 820, you did say that Detective Harding's desk was nearly next to yours and that "there

was one desk separating us". Do you remember that being the case? That your desk and his desk were close to one another with only one desk separating you both?

A. No, I don't remember.

5

Q. With respect to those typed notes that I showed you a moment ago, Mr MacKenzie, do you remember having those notes with you when you compiled your statement?

A. No.

10

Q. You don't have any recollection?

A. No, I don't.

Q. But it is a possibility, is it not?

15

A. I don't remember.

Q. To be fair, in your evidence at trial, and this is 2.1-23, red page 814, you said you did have the advantage of the notes to compile your statement?

A. I don't remember.

20

Q. I want to now ask you some questions about the events of 8 February 1979.

A. Yes.

25

Q. Do you recall how you first came to become involved in the raid at Bossley Park? Can you recall someone coming up to you and telling you that you would be required on this job?

A. Yes, Inspector Morey said there was a job at Bossley Park and we would be required to go to it.

30

Q. We know from your statement that you attended a conference at about 9pm on 8 February 1979 before you went to the raid; that's correct?

A. Yes.

35

Q. That was led by Detective Inspector Morey?

A. Correct.

Q. I just want to explore with you what you can remember being told at that 9pm conference? What details about the operation were you told?

40

A. I was told by Inspector Morey that he considered the people we were going to visit dangerous, they could have firearms or explosives and to be very careful of booby traps in the premises and it was a quite a dangerous job.

Q. Quite a dangerous job?

45

A. Yes.

Q. You were told that there was a prospect of finding explosives at this property?

A. Yes.

50

Q. How did you and the other officers prepare for that possibility?

A. Naively just fronted, on reflection, quite naively.

Q. I'm sorry, you said you just fronted?

5 A. We just did our job and did what we were required to do, but on reflection it was quite naive, because lady luck was on our side. We could've all been blown up.

Q. Were there any safety considerations at play for yourselves, the officers
10 and members of the public?

A. No, not really. Not to my knowledge, no.

Q. But, certainly, you understood from that 9pm briefing that when you arrived
15 at the property you would be searching for explosives?

A. Correct.

Q. Do you remember any other details that you were given at the 9pm
conference?

20 A. No, I don't.

Q. In your evidence at the committal, and I don't need to take you to this for
the moment, this is Exhibit 2.3, red page 6786, you told the magistrate that you
were given information about the raid that had occurred earlier in the evening
at Macauley Street, Lithgow. Do you remember that?

25 A. Yes.

Q. Do you remember what other details you were told about that operation?

30 A. I think from memory that there were explosives found at the address at Lithgow.

Q. Were you told the name of the suspect whose premises you would be
attending?

A. I don't remember.

35 Q. Do you remember when you first came to learn his name?

A. I don't remember.

Q. You also told the committal hearing that you were told during that 9pm
40 briefing that there were other addresses to be visited simultaneously that night. Do you remember that?

A. Yes, vaguely.

Q. You understood that there would be other raids, at other addresses,
conducted at the same time that night; correct?

45 A. Correct.

Q. At the Bossley Park raid, you were under the supervision of Detective
Sergeant Wilson?

50 A. Yes.

Q. Before attending, you made a stop at the intersection of Prairie Vale Road and Polding Street, Bossley Park?

A. Yes.

5 Q. Do you remember that now?

A. No, I don't.

Q. In your statement, at paragraph 2, you say that at that location you had a conversation with Detective Krawczyk, from the Special Branch.

10 A. Yes.

Q. Had you worked with Detective Krawczyk before?

A. No, not really.

15 Q. Had you worked with members of the Special Branch before?

A. No.

Q. At committal, you said that it was at this location that you were all given instructions of where you would position yourselves at the property. Do you recall that?

20

A. That would - yes, that would be right.

Q. That would be right?

A. Yes, that would be right.

25

MELIS: Your Honour, that's Exhibit 2.3, red page 6784.

Q. Did you have an understanding of what Detective Krawczyk had been doing with respect to this job earlier in the day?

30

A. No.

Q. Did you know that he had been observing the premises earlier in the day?

A. No.

35 Q. I take it that you were told something about the layout of the house before you arrived?

A. Yes.

Q. We know that you arrived with other officers at around 10:15pm at the Restwell Road, Bossley Park premises, and you were in the same vehicle as Detective Senior Constable Pettiford; correct?

40

A. Correct.

Q. In your statement, at paragraph 3, you outline the various positions of the officers and you say you and Detective Senior Constable Pettiford went to the rear eastern side of the property.

45

A. Yes.

Q. I'm going to see if I can try and refresh your memory now, Mr MacKenzie.

50

EXHIBIT 4.1-000, RED PAGE 72, SHOWN TO WITNESS

Q. Has that come up on your screen, Mr MacKenzie?

A. Yes.

5

Q. Just taking a moment to look at that black and white photo, does that spark a memory for you of the premises at 16 Restwell Road, Bossley Park?

A. Just partly, due to my memory.

10

Q. Just partly? What are the things that pop out in your mind when you look at that photo?

A. Well, how dangerous it could have been if the - any explosives that we found there were hooked up to detonators and trip wires. We could have all been blown up with abandoned vehicles.

15

Q. Do you remember having that thought when you came to the property?

A. Yes, I did.

20

Q. Did you express that concern to any other officer?

A. No, I didn't.

Q. You just went in and did your job; is that right?

A. Correct.

25

Q. Looking at this here, you said in your evidence at committal and at trial, consistently, that you described the eastern side of the premises, which is where you said you went, as being on the other side of the driveway.

A. Yes.

30

Q. Looking at this photo, we can see where the driveway is. You and Detective Senior Constable Pettiford went to, if I can put it this way, the left side of that photo, to the rear, to the back of the property?

A. I'm not sure.

35

Q. If you accept from me that your evidence was that you went to the eastern side of the premises, that being the other side of the driveway, you would agree with me that it would be on the left-hand side of that photo, where you went to the back of the house?

A. Yes, I'll agree with that.

40

BASHIR: The question has been put and answered, but it's not necessarily consistent with the evidence that was given. If he's on the eastern side of the house, on the other side of the driveway, he's not necessarily by the house, your Honour.

45

MELIS: We can clarify that, your Honour.

HIS HONOUR: Yes.

50

MELIS

Q. In any event, Mr MacKenzie, you went to the rear of the premises?

A. Yes, I did.

5 Q. And at this stage, you haven't gone inside, have you?
A. No.

Q. Do you recall you had a torch with you, to assist you in your search?

A. Yes, I did.

10 Q. But Detective Sergeant Pettiford didn't have a torch; is that right?
A. I can't answer that. I don't know.

Q. You said in your evidence that you searched the shed. Do you remember that?

15 A. Yes. Yes, I did.

Q. Did you find anything in the shed?

A. I don't remember.

20 Q. Do you recall seeing any fertiliser in the shed, or bags of fertiliser?
A. I don't recall.

Q. We also saw in that photo what you described as some abandoned vehicles.

25 A. Yes.

Q. Did you search those?

A. Yes.

30 Q. Did you find anything?
A. No, I don't recall.

Q. Taking it broadly, you did a search of the outside of the premises and then you, at some point, moved inside and made a search of the inside of the house. You'd agree with that?

35 A. Yes.

Q. I'm going to now ask you some questions about some specific evidence that you gave at both the committal and the trial.

40 A. Yes.

Q. You gave evidence at the committal, on 16 August 1979.

A. Yes.

45 Q. That's Exhibit 2.3-19, red page 6772. You said at the committal that, at one stage whilst you were in the backyard, you saw Detective Harding and Morris leading Mr Brajkovic into the premises, by the rear door. This is red page 6780. Do you remember that?

A. Yes.

50

Q. You do?

A. Yes.

5 Q. Prior to making that observation, did you hear any noises of a commotion or a struggle?

A. I don't recall.

10 Q. Do you recall whether it was quite quiet on that property when you were doing your searches in the rear?

A. I don't recall.

15 Q. In your cross-examination at the committal, you said you saw Detective Harding had a small plastic bag - red page 6780. A small plastic bag. Do you recall that?

A. Yes, I do.

MELIS: Could the witness please be shown Exhibit 2.3-19, red page 6780?

20 Q. If we just look, from the top of the page - this is Mr McCrudden asking you questions at the committal.

A. Yes.

25 Q. If you just go to the third question down, "Did you see them carrying anything?" Do you see that?

A. Yes.

Q. You answered:

30 "A. Yes, I think it was Detective Harding had a plastic bag, small plastic bag.

Q. Now you know what was in that plastic bag don't you?

A. I know now. I didn't know then.

35 Q. You knew that night didn't you?

A. No.

Q. Didn't you never see inside that plastic bag?

40 A. At that stage I didn't but when I went inside the premises I then saw what was in it."

Do you see that?

A. Yes.

45 Q. Just trying to understand that piece of evidence. Did you see what was inside the bag at the premises that night?

50 A. My memory here is playing tricks on me. I remembered Detective Harding with the white plastic bag, but I can't really remember what I saw at the house. But I'm positive, back at the CIB, the same bag had explosives in it. But what was - but I still can't remember, my mind is playing tricks, what

was actually in the house in relation to those explosives.

5 Q. This evidence about Detective Harding carrying the plastic bag and you seeing what was in it, there was no mention of that in your evidence-in-chief at the committal. I can take you to it but, take it from me, there's no evidence of it at - it's red page 6772, your Honour. There's no mention of the plastic bag or you inspecting anything in the bag. Do you agree with that?
A. Yes.

10 Q. There's also no mention of those facts in your statement. Do you agree?
A. Yes.

Q. It was the practice in those days, wasn't it, to learn your statement off-by-heart and recite it in your evidence-at-chief?
15 A. Yes, it was.

Q. One explanation of why this evidence is not in your evidence-in-chief is because it wasn't in your statement to begin with?
20 A. Yes.

Q. It's important evidence, though, isn't it?
A. I suppose so. Yeah, you can say it would be.

Q. It is a matter that you would expect to see in a statement, especially a statement that was made so soon after the events on 9 February?
25 A. Yes.

Q. It's also important, isn't it, because it goes to the fact that explosives were found in the possession of the accused, which is a matter upon which police would charge and later seek to prove; would you agree with that proposition?
30 A. Yes.

Q. So can you tell us why it was not in your statement?
A. No, I can't, but all I know is that I saw Detective Harding with a white plastic bag and I know there was - back at the CIB there were explosives in it; I know that to be the truth. And I know for a fact - I know for a fact that Detective Harding found the explosives there.
35

Q. How do you know that as a fact?
40 A. Well, he's previously told me. He's an honourable, honest person.

Q. If you could help us with that, Mr MacKenzie, when did you say Mr Harding told you about finding the explosives; was it on the night?
A. I - I don't, I can't recall, I don't remember.
45

Q. Have you spoken to Mr Harding more recently?
A. No. Not in 40 years.

Q. He's told you, you say, some time relative to these events occurring?
50 A. Yes, correct.

Q. Had you read any of his statements or did you know what evidence he gave at the committal and trial in this matter?

A. No. I was not present.

5 Q. Taking this chronologically, you then gave evidence on a voir dire at the trial on 6 and 7 May 1980; okay?

A. Yes.

EXHIBIT 2.1-16, RED PAGE 497, SHOWN TO WITNESS

10

Q. This is your evidence on 6 May 1980, Mr MacKenzie, and this--

A. Yes.

15 Q. --first page is your examination-in-chief. If we have a look at question 6, "What happened when you arrived there"; do you see that?

A. Yes.

Q. Then you reiterate what happened and you will see about seven lines from the bottom--

20

A. Yes.

Q. --a sentence starts, "I could also see that Detective Harding was carrying a white plastic bag"; do you see that?

A. Yes.

25

Q. On this occasion, on 6 May 1980 on the voir dire, you have included in your evidence-in-chief the fact of the white plastic bag and observing the white plastic bag?

A. Yes.

30

Q. Is it fair to say that by this stage you have understood the importance of this piece of evidence?

A. No. I'd say my mind has tripped in, boom. It's tripped in and I've - included it.

35

Q. In your evidence-in-chief on this occasion, take it from me you were not asked nor do you offer any evidence about looking into the bag or seeing what was in the bag?

A. No.

40

Q. It is then in cross-examination that you were asked some specific questions about the plastic bag by Mr Lloyd-Jones and it's important that I take you to these passages. If we could please go to red page 500 of the same Exhibit. If you look towards -- it's about the middle of the page, Mr MacKenzie, around question 11, the question is, "You did not see any gelignite or explosives, did you?"; tell me when you're there?

45

A. Yeah, I can see that, yes.

Q. Can you see that?

50

A. Yes.

Q. Your answer is, "I saw it back at the CIB."

A. Correct.

Q.

5

"Q. You did not see any plastic bag with explosives in it at the house then - obviously?

A. I saw Detective Harding walking along the driveway with the plastic bag but I didn't know what was in it.

10

Q. What time was that?

A. That was not very long after we got there.

Q. Did you say to any of the other police, "did you find anything?" or anything like that?

15

A. Yes, I did have a conversation with Detective Pettiford about it."

A. Yes.

20

Q. Do you recall what the conversation was with Detective Pettiford about finding something?

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

Q.

25

"Q. Did you go and have a look at these pieces of gelignite which were supposed to have been found?

A. Not when he walked into the house, no. I saw them back at the CIB."

30

You see that?

A. Yes.

35

Q. The final question on that page, Mr MacKenzie is, "You did not see any explosives in the house, did you", answer, "No, I didn't there. I don't remember seeing them there."

A. That's correct.

40

Q. That was evidence that you were giving to the best of your recollection; wasn't it, Mr MacKenzie?

A. Yes.

45

Q. You would agree with me that in just that passage that we've been through together, you were given several opportunities to recollect whether you had seen the explosives at the premises and each time you have said you didn't see them there, rather you saw them at the CIB?

A. Yes.

50

Q. That is a clear memory that you had?

A. No. No, it's not a clear memory.

Q. But you don't disagree with the evidence that you've given?

A. It's not a clear memory. You've got to look at the confusion of also of the whole search in the dark and take it in its context, which you're not doing.

5 Q. We'll talk about those matters in just a moment; I just want to continue taking you through your evidence chronologically at this stage. Your first day of evidence at the trial before the jury was on 15 May 1980, so this is about eight or so days after the voir dire; do you follow me?

A. Yes.

10

EXHIBIT 2.1-23, RED PAGE 812, SHOWN TO WITNESS

Q. This is your evidence before the jury and this time - do you see that now, Mr MacKenzie?

15 A. Yes.

Q. This is your evidence on 15 May 1980?

A. Yes.

20 Q. This is your examination-in-chief and if we go over the page to red 813, and if we look - the last quarter of the page there's a question starting, "Now, while you were at the house, did you at any stage examine the white bag"; do you see that?

A. Yes.

25

Q. If we can just go through that passage with you now, the question is:

"Q. Now, while you were at the house, did you at any stage examine the white bag or its contents?"

30 A. I just had a quick look at it, yes.

Q. In the house do you mean?

A. Yes.

35 Q. Did you see what was inside it?

A. I could see some explosives and there was some dets. They were an aluminium colour with some green and red wire on them. I could also see some flares."

40 Then you're shown a photo?

A. Yes.

Q. A series of photos, and you agree that they are the things that you saw?

A. Yes.

45

Q. Then you were asked:

"Q. What did you see shown in that photograph?

50 A. I saw the explosives, the ones that are taped with I think it was a tape, brown colour, around them."

Do you see that?

A. Yes.

5 Q. That was your evidence about the - looking inside the bag in examination-in-chief and if you--

A. Yes.

Q. --go over the page, your evidence continues:

10 "Q. I'm just asking you about the things in that photograph you saw in the bag?

A. Yes.

Q. What do you mean when you say yes?

15 A. I saw the explosives with the brown wrapper around them, I saw the dets. I also saw the flares and there was some newspaper there in the bag too."

Do you see that?

20 A. Yes.

Q. Still on that page, there is some cross-examination about this topic by Mr Lloyd-Jones?

A. Yes.

25

Q. You see towards the one, two, three, four, five - about five questions from the bottom, "Now, the first time that you ever heard any suggestion". Do you see that?

A. Yes.

30

Q.

"Q. Now, the first time that you ever heard any suggestion that gelignite was in the premises I suggest to you was after you got back to the CIB?

35

A. No sir, that is not right.

Q. You claim that you did in fact look into the bag and saw some gelignite at the house, do you?

40

A. Yes sir.

Q. Where was the bag at that stage?

A. I think it was in the accused's workshop on a bench."

45 A. Yes.

Q. Mr MacKenzie, do you recall this workshop that--

A. No.

50 Q. --you gave evidence about at the trial?

A. No, I don't.

Q. There is evidence that when you entered the premises you did a search of the kitchen and lounge areas.

5 A. Yes.

Q. Did you ever search any of the front rooms, one being this room that's been identified as the workshop?

10 A. No, I don't recall.

Q. Do you recall ever going into it?

A. I don't recall.

15 Q. When you said in the passage of evidence that I just took you to that you did see the gelignite at the premises that night, can you tell us do you recall whether you looked inside the bag in the workshop or were the items laid out on the bench in the workshop?

A. No, I don't recall. I don't recall.

20 Q. Do you remember how you came to see the contents of the bag, for example, did someone tell you, "Come have a look"?

A. No, there was stuff strewn everywhere. The place was a mess.

25 Q. When you say you say you saw these explosives, were you on your own when you had a look at them?

A. No, I wouldn't have been on my own. There were other police there, but I don't know who they were.

30 Q. Do you recall at all being invited by Detective Sergeant Wilson to have a look?

A. No.

Q. Did Detective Sergeant Wilson at any time that night tell you and other officers that explosives had been found?

35 A. I don't recall.

Q. Do you agree with me, Mr MacKenzie, that for the first time in the sequence of your evidence as I've taken you through from committal to voir dire to evidence before the jury that this is the first time you are giving actual detail about what you say you saw in the bag?

40 A. No, that's not right.

Q. It's not right?

A. No.

45

Q. Why do you say it's not right?

A. Well, I don't understand what you're saying. Each time I've given evidence, the truth of what happened.

50 WOODS: I object.

WITNESS: I could've gotten mixed up.

HIS HONOUR

5 Q. Just a minute, Mr MacKenzie.

A. I could've gotten - yes.

Q. Mr MacKenzie, Dr Woods is taking an objection, so I just need to hear from him at the moment.

10

WOODS: The objection, your Honour, is that it's not clear what my friend meant when she said, "this time". Is she inviting the witness to contemplate the evidence he's giving today or is she taking him to the evidence in the trial?

15 HIS HONOUR: I thought it was the latter, but perhaps you might put it more precisely.

MELIS: I can rephrase that, your Honour.

20 Q. Mr MacKenzie, I have attempted today to take you in a chronological fashion through your evidence in relation to this matter from committal through to your evidence at trial, both during the voir dire and your evidence before the jury. You understand that, that that's what I've been doing?

A. Yes.

25

Q. I've deliberately very carefully taken you to parts of your evidence related to your observations about the plastic bag and--

A. Yes.

30 Q. --whether or not you had a look at what was in that plastic bag, if you saw the items in that bag. Yes?

A. Look, after - look, after a period of 45 years, the bottom line is there were explosives in the house and there were explosives back at the CIB. I will swear on a stack of Bibles that is the truth and I'd also like to add, for - have on the record, in my dealings not one police officer that night did anything illegal or untowards and the accused was not assaulted or treated badly in any way. That is the bottom line. I can sit here all day and you can ask me questions all night. After a 45-year period, I'm doing my best.

35

40 Q. Thank you, Mr MacKenzie. I'm just trying to establish as best as we can for the purposes of this Inquiry the evidence as you gave it at the time and as you recall it now. I just want to ask you a couple more questions on this topic, if I might. In the most recent part of the evidence that I took you to, which was your evidence before the jury, do you agree with me that it was actually the first time that you gave specific details about the items that you said you saw in the plastic bag? Do you agree with that proposition?

45

A. Yes.

50 Q. And, again, what you say you saw at the premises, in terms of explosives, is important evidence, isn't it?

A. Yes.

Q. Because it is corroborating the evidence, again, that explosives were found in the possession of the accused; correct?

5 A. Yes.

Q. My question to you, firstly, is why is it that the specifics of the objects that you say you saw were only mentioned for the first time before the jury in this matter?

10 A. That's my fault, because my memory was at fault, and I didn't give the evidence.

Q. To be fair to you, my second question is how is it that you emphatically said on the voir dire that you did not see the contents of the bag at the premises, but rather at the CIB, and then at trial you changed your evidence to say that you did see it at the premises?

15 A. That's my fault. My memory failed me.

Q. Mr MacKenzie, the sequence of your evidence that I have taken you through from committal to trial suggests that at least between your evidence on voir dire and your evidence before the jury you have discussed your evidence with other officers on the raiding party and you have changed your evidence to corroborate the police version that explosives were found and sighted by you. What do you say to that?

20 A. No, that is totally incorrect.

Q. Did you speak with any of the other officers about the evidence that you gave on the voir dire?

25 A. No, I don't recall that.

Q. Do you recall ever speaking to the officers-in-charge of the whole investigation, Detectives Turner and Milroy, about your evidence?

30 A. No, never.

Q. By the time you came to give your evidence on 15 May 1980 before the jury, a number of the raiding party officers had given evidence. They included Pettiford, Wilson, Morris, Krawczyk, Harding, Helson and Bennett. Are you sure that by the time you came around to give your evidence you didn't discuss the evidence with these other officers?

35 A. No.

Q. Would you consider that to have been improper?

40 A. Yes.

Q. Seeing explosives during a raid like this, was it a pretty surprising or dramatic thing for you?

45 A. It was dramatic.

Q. Was it the first time that you had seen explosives?

50 A. No.

Q. In what context had you previously seen explosives?

A. In a war situation.

Q. Is this—

5 A. In Vietnam.

Q. You're referring to your time—

A. Yes.

10 Q. —at Vietnam, Mr MacKenzie?

A. Correct.

Q. Had you ever seen sticks of gelignite around the offices of the CIB?

A. No, not before that raid.

15

Q. Could it be, Mr MacKenzie, that there were no explosives found at the premises that night and that the explosives you say you saw back at the CIB came from a different source?

20

A. No, that is totally incorrect. Detective Krawczyk and Harding are honourable men and what happened is the truth and I should add, also, for the record, that the brave actions of those officers that night, there's no doubt in my mind that quite a substantial part of Sydney could've got — been blown up or people killed. That should be put on the record.

25

Q. In your time with the Armed Hold Up Squad, particularly around this time, 1979/1980, did you ever witness police fabricating evidence against an accused in a bid to secure a conviction?

A. No, never.

30

Q. Did you ever hear about it happening?

A. In gossip only.

Q. In gossip only? Is that between officers within the Armed Hold Up Squad?

A. Just general police talking in the pub.

35

Q. Did that concern you?

A. No. Not really, no.

Q. How did that not concern you, talk about fabricating evidence against an accused to secure a conviction?

40

A. Well, it's just - I think it's usually grog talking, not the truth.

Q. In your time with the Armed Hold Up Squad, again, particularly around 1979/1980, did you witness police planting an illicit item on a person or loading them up?

45

A. No, never.

Q. Again, did you hear about that happening?

A. No, I haven't. No.

50

Q. I'm going to leave that topic now and move onto something else. We know that at one point you moved inside the house to search it and before you did that, Sergeant Wilson came out and gave you certain instructions. Do you recall what they were?

5 A. No, I don't.

Q. Could it have been that he wanted you to come inside and search the inside of the house?

10 A. It could have been.

Q. Did he tell you at that point that explosives had been found?

A. No, I don't recall.

15 Q. You gave some evidence at the trial that you searched the lounge room and the kitchen and that Mr Brajkovic was sitting on the end of the lounge and he was there the whole time that you were doing your search. Do you recall Mr Brajkovic sitting on the lounge?

A. No, I don't.

20 Q. There is some evidence before the Inquiry that Mr Brajkovic was taken to one of the front rooms by Detective Harding, where he was spoken to by Detective Sergeant Wilson and shown certain things, and then he was returned to the lounge room. Do you recall ever witnessing that movement of Mr Brajkovic from the lounge area to one of the front rooms?

25 A. No.

Q. Did you speak to Mr Brajkovic whilst he was in that area?

A. No.

30 Q. Did Mr Brajkovic ask about the search and you said words to the effect of, "What do you want to know for? Shut up and sit down"?

A. No, that's not correct.

35 Q. Did you say to him on more than one occasion, "Don't move," or "Sit down and shut up"?

A. No, I did not.

Q. You pushed him down into a chair?

40 A. No, that is not correct.

Q. He asked to speak to a solicitor?

A. That's not correct.

45 Q. If he had asked to speak to a solicitor, would he have been given the opportunity to do so?

A. Certainly would have.

50 Q. Mr Brajkovic's brother-in-law, Mr Hudlin, said words to the effect, about Mr Brajkovic, "He wants to be allowed legal advice," and Detective Harding grabbed Mr Hudlin and struck him in the face with the torch.

A. No, that is--

Q. Did you witness it?

A. No, that's not correct and I did not witness it.

5

Q. You yourself, Mr MacKenzie, did not find any explosives or explosive components during your search of the inside and outside of the property?

A. No, I did not.

10

Q. But other items were taken from the premises, back to the CIB. Do you remember which items you found, yourself, and transported back to the CIB?

A. No, I don't remember.

15

Q. Some of the items included a typewriter, a duplicating machine, and some literature in a foreign language. Does that jog your memory?

A. No.

20

Q. There were also some other items taken, like, jewellery, including rings, Mrs Brajkovic's makeup, a silver spoon, a wooden drawer. These sorts of items are clearly not relevant, are they?

A. No.

25

Q. Do you know why they were taken back to the CIB?

A. No, I don't.

Q. Can you recall how the items were transported back to the CIB? Can you recall in which cars certain items were put?

A. No, I don't.

30

Q. We know from your evidence that you and Detective Senior Constable Pettiford escorted Mrs Brajkovic and her daughter back to the CIB, in your car; is that right?

A. Yes, that's right.

35

Q. Why was she taken back to the CIB?

A. I don't know.

Q. Who instructed you to take her back?

A. I don't remember.

40

Q. Do you remember the small child she had?

A. Yes.

45

Q. You do?

A. Yes.

Q. As far as you understood, Mrs Brajkovic wasn't under arrest, was she?

A. No.

50

Q. A statement could have been taken from her the next day, could it have

not?

A. Could have.

5 Q. You or another officer could have shown her the plastic bag and the explosives at the premises, couldn't you?

A. Could have, yes.

10 Q. You could have made a note of this fact in your notebook or the notebook of another officer, for example?

A. Yes.

Q. There's nothing improper about that, is there?

15 A. No. I was just doing my job. I was instructed by some officer there, a senior officer, I don't remember who, to take them back to the CIB. It's exactly what I did.

Q. The drive back to the CIB, do you have a memory now of Mrs Brajkovic sitting in the backseat with her daughter?

20 A. No, I don't.

Q. Do you remember if she said anything to you on the trip back?

A. No, I don't.

25 Q. Back at the CIB, you and Detective Sergeant Pettiford took a statement from Mr Hudlin, Mr Brajkovic's brother-in-law, even though you had escorted Mrs Brajkovic; is that right?

A. Yes.

30 Q. Who decided that you would take that statement of Mr Hudlin, as opposed to Mrs Brajkovic?

A. The senior officer would have directed me to take the statement.

35 Q. When you arrived back on level 3 at the CIB, where do you say all the items that were taken from the Bossley Park premises, which part of the CIB were they taken to?

A. I don't recall.

40 Q. I'll refresh your memory on this. At committal and trial, you said that the property was positioned on the floor, on the right-hand side of the two interview rooms of the Hold Up Squad. This is Exhibit 2.3-19, red page 6805, and Exhibit 2.1-16, red page 504. I'm going to bring up the diagram of the floor plan again, Mr MacKenzie, so you can help us understand this evidence.

45 EXHIBIT 4.1-000 RED PAGE 128, SHOWN TO WITNESS

Q. There's the floor plan again, Mr MacKenzie.

A. Yes.

50 Q. You said, "The property was positioned on the floor, on the right-hand side of the two interview rooms of the Hold Up Squad."

A. Yes.

5 Q. There are some areas there that are coloured in. If we see on the Armed Hold Up Squad side, there is, I think, a pink square and a teal-coloured square. Do you see that?

A. Yes.

10 Q. Do you say they are the interview rooms?

A. Yes, that's correct.

15 Q. Where do you say you saw the items on the floor, exactly?

A. I'm not quite - no, I'm not quite sure. I think they were on the floor near the interview rooms, but I am not sure.

20 Q. Do you have a recollection of seeing them there? Were they just, like, in a pile?

A. I'm not sure, but I know I saw, bottom line, explosives back in that office, in that room. I'm quite sure.

25 Q. In your evidence on the voir dire, at the trial, you said that there was some gelignite on the floor, in a plastic bag, earlier in the evening. To be fair to you, I think I'll take you to this.

EXHIBIT 2.1-16, RED PAGE 504, SHOWN TO WITNESS

30 Q. If you look at about the sixth question.

A. Yes.

35 Q. You see there?

A. Yes.

Q. I should take you to a few questions above. You're asked:

40 "Q. What do you mean by 'property to be sorted'?"

45 A. There was property in boxes on the floor and it was sorted out.

Q. What property was that?

A. The accused's property.

50 Q. And gelignite with it?

A. There was some gelignite on the floor, in a plastic bag, earlier in the evening."

Do you see that?

45 A. Yes.

Q. What did you mean by "earlier in the evening"?

A. I can't - I cannot answer that. That is - that is not - that is not correct.

55 Q. Is it possible that you saw gelignite at the CIB before you left for Bossley

Park?

A. No, definitely not.

5 Q. There is evidence that you and Detective Krawczyk from the Special Branch sorted out these items that were on the floor.

A. Yes.

Q. Can you help us understand what the sorting-out entailed? What were you doing exactly?

10 A. We were just sorting out whatever the items were on the floor.

Q. Were you tagging them?

A. We could have been, but I don't remember.

15 Q. Were you making a list of them?

A. We could have been.

Q. When you finished sorting them, where did they go?

20 A. I don't recall.

Q. Do you have a recollection today of seeing Mr Brajkovic back at the CIB?

A. No, I don't.

25 Q. You said in your evidence, both committal and trial, that you did see Mr Brajkovic at the CIB and that the door of the interview room was partly open and you remember him seated in the interview room - Exhibit 2.3, red page 6779.

A. Yes.

30 Q. Does that refresh your memory, seeing Mr Brajkovic seated in the interview room?

A. No, it still doesn't, but if he was brought back to the CIB, he would've been immediately put into the interview room.

35 Q. When you say you saw him in the interview room, was he alone or was someone with him?

A. I don't remember.

40 Q. In your evidence you thought that Detective Harding may have been with him?

A. I don't recall.

Q. But you would have expected an officer to be in the room with him, would you not?

45 A. Yes.

Q. A suspect wouldn't be left alone in an interview room, would they?

A. No, he would not.

50 Q. Did you see Mr Brajkovic leave the CIB and be escorted to Central Police

Station?

A. No, I did not.

Q. Did you ever go into the interview room yourself, Mr MacKenzie?

5 A. I don't recall.

Q. According to Mr Brajkovic you were in the interview room at some stage with Detectives Wilson, Harding, Morris and Bennett and Mr Brajkovic asked, "What for I have been arrested and what for my family arrested"; do you remember that?

10 A. No. That's not right.

Q. Could that have happened, could you have gone into the interview room with those officers?

15 A. No, I did not.

Q. There are allegations by Mr Brajkovic that in that interview he was physically assaulted by Officers Morris and Harding. Did you witness any officer assault Mr Brajkovic, Mr MacKenzie?

20 A. No. That is totally incorrect. He had no - well, if he had been assaulted, he would've had injuries on him.

Q. You say you didn't see any injuries on Mr Brajkovic at the CIB?

25 A. No. No, at no stage.

Q. On your version you only saw him once seated in the interview room; is that right?

A. Yes.

30 Q. You didn't see him again that night?

A. Well, I could've but I honestly don't remember, but he was never ever assaulted; he had no injuries on him whatsoever is my evidence.

Q. You did however see him the next day at Court; didn't you?

35 A. Don't remember that.

Q. Again, in your time with the Armed Hold Up Squad, particularly around this period, 1979/1980, did you ever witness police assault a suspect to elicit an admission?

40 A. No. Never.

Q. Did you hear of it happening?

A. No. Never.

45 Q. I now want to move to your interview with Mr Hudlin?

A. Yes.

Q. This interview occurred between yourself, Mr Hudlin and Detective Senior Constable Pettiford?

50 A. Yes.

Q. Do you remember doing the interview?

A. No, I do not remember doing it.

5 Q. I think you say – or you said at committal - red page 6781 - that it would've been a good hour before you took Mr Hudlin's statement?

A. I don't recall that.

10 Q. Certainly, you were sorting out the items on the floor at the CIB first, weren't you, before you took the statement?

A. Yes.

Q. That would've taken a little time?

A. Yes.

15 Q. That was prioritised over taking Mr Hudlin's statement?

A. Yes.

20 Q. Assuming that's correct, that it would have been about an hour after you arrived that you took the statement, assuming you arrived back at the CIB at about 11:35pm, which is what that chronology of notes tells us, the statement would've been taken sometime around 12:35 or thereabouts, in the early hours of the morning?

A. It could've been.

25 Q. Your evidence was that Mr Hudlin was shown the plastic bag, with the various items inside. I wanted to ask you, do you remember who went and retrieved the bag and items to show Mr Hudlin?

A. I don't remember.

30 Q. It could have been you though?

A. Don't remember.

Q. It could've been Detective Pettiford?

35 A. Yes, it could've been.

Q. Do you recall where they would have been retrieved from?

A. No.

40 Q. Could they have still been on the floor at the CIB outside the interview rooms?

A. Don't remember.

45 Q. Do you remember whether you opened the bag to show Mr Hudlin the items or whether you laid them out for him?

A. Don't remember.

Q. In his statement - this is Exhibit 4.1-KKK - Mr Hudlin described the bag as white and red with the words 'world-wide'. Is that how you remembered he bag?

50 A. No, I don't remember.

EXHIBIT 4.1-MM SHOWN TO WITNESS

Q. Mr MacKenzie, I think this was a photo that was shown to you during the trial. Does this photo jog a memory for you about the items that--

5 A. No, it doesn't.

Q. --you saw that night?

A. No, it doesn't.

10 Q. Can you see that there's a clock in that photo; do you see a clock?

A. Yes.

Q. On the left-hand side, and sort of next to it there are two batteries soldered together; can you see that?

15 A. Yes.

Q. Are they items that you showed Mr Hudlin?

A. I don't remember.

20 Q. This is probably stretching it, Mr MacKenzie, but do you remember the colour of the tape, the masking tape that was around the gelignite?

A. No, I don't.

25 Q. Mr MacKenzie, do you remember when the jury came back with their verdicts in the Croatian Six matter and they were sentenced; do you have a recollection of that?

A. No, I don't.

30 Q. Was there any discussion amongst the officers when the sentences were handed down?

A. At a later stage there was, yes.

Q. What can you tell us about that?

35 A. Well, this was in the pub actually, and how pleased the police were that went out there, and the repercussions if they'd actually gone ahead with their plans of blowing up half of Sydney, which would've been the water supply, Potts Point, the theatre at Redfern, and a travel agents at Bondi, and the police were just talking how lucky they were that all that was foiled. And the ironical part was that the Detective Inspector in charge of the matter, who's passed
40 away, said you blokes will get a mark on your service register, I'm going to buy you a beer, and he did neither, which we thought was quite amusing; sad but amusing. And 35, 45 years later we've saved up half of Sydney from being blown up, and I'm here in the Queanbeyan Police Station.

45 Q. Do you remember where that discussion took place; was that back at the--

A. Yeah. No, it was at the hotel, at the Macquarie Hotel, Wentworth Avenue, Surry Hills, and a small pub at the back of the CIB.

50 Q. When the sentences were handed down, there was a bit of a, can I put it this way, celebration amongst the officers involved?

5 A. There was, yes. And privately also for me on a personal basis, that being an infantry soldier in Vietnam on several occasions, I've nursed blokes that have had their legs blown off by explosives, so it was quite a poignant matter for me, more than the other police, because I know exactly what a stick of gelignite will do to a person's body. On a personal note.

10 Q. Mr MacKenzie, just one more matter with respect to the interview you conducted with Mr Hudlin. That interview was conducted on the third floor, wasn't it, of the CIB?
A. Yes.

15 Q. In your evidence at trial - this is Exhibit 2.1-24 red page 824 - you told the Court that his "statement was taken in the main office of the Armed Hold Up Squad but it was enclosed with some lockers"?
A. Yes.

Q. If we can just clarify this again by reference to the diagram.

20 EXHIBIT 4.1-LLL SHOWN TO WITNESS

Q. Your evidence was that his "statement was taken in the main office of the Armed Hold Up Squad", so orientating ourselves to that first bottom part of the diagram, and you say, "it was enclosed with some lockers".
A. Yes.

25 Q. I know it's difficult because you're unable to mark up this diagram for us, but can you tell us where that was on this diagram; are you able to describe it for us?
A. No. No, I can't remember. I can't tell you.

30 Q. We can see that in the middle of the diagram there are some small squares which we understand were the lockers and they divided the Armed Hold Up Squad and the Special Breaking Squad; do you see them?
A. Yes.

35 Q. Could they have been the lockers that you were describing?
A. Yes, they could very well have been, yes.

40 Q. That were part of the main office?
A. Yes, that's right.

Q. So Mr Hudlin was interviewed somewhere around those lockers on the Armed Hold Up Squad side?
A. Yes, he could have been.

45 Q. I think you say it was enclosed with some lockers; are you suggesting there that where you took his statement was quite private?
A. Yes, I think it may have been, yes.

50 Q. There weren't any other officers just walking past while you were taking the

statement, for example?

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

5 MELIS: Your Honour, there is just one matter that I would like the opportunity to consider over the lunch break, if that would be permissible.

HIS HONOUR: Yes.

10 Mr MacKenzie, we're going to take the lunch break now. We'll resume your evidence after that. We'll resume at 5 past 2.

LUNCHEON ADJOURNMENT

15 MELIS

Q. Mr MacKenzie, before the lunch break you had given some evidence about your time in the Army and—

A. Yes.

20 Q. —a tour in Vietnam; is that right?
A. That's correct.

Q. Can you tell us when you were in the Army and when you were in Vietnam?
25 A. October 1966 to October 1968, a two-year period.

Q. A two-year period you were in the Army?
A. With one - yes, and with a one-year period in Vietnam from '67 to '68 with the 2 Battalion.
30

Q. Thank you. You told us that you saw in Vietnam what explosives could do; you remember giving that evidence?
A. Correct. Yes, I did.

35 Q. With that in mind, was it of concern to you when you came back to the CIB on the night of 8 February 1979 seeing the gelignite and detonators and other items in that white plastic bag just lying on the floor of the CIB; was that of concern to you?

40 A. No, it wasn't, because the detonators would have to be inserted into the gelignite, then hooked up to a battery to give this electric charge, otherwise they wouldn't go off. With gelignite actually you can break a piece of it and light it and warm up your billy with a piece of gelignite.

45 Q. You had that knowledge at the time?
A. Yes.

Q. In your evidence at the trial - this is Exhibit 2.1-16, red number 506 - you said, you didn't know anything about explosives, so you did not touch them.
50 A. Well, I didn't - I was an infantry soldier, not an engineer, so I'm - I was an infantry soldier, I'm not - not legally qualified to say I'm an expert or could deal

with it, but I know what sets off a stick of gelignite and it's got to be set off with a detonator.

5 Q. Do you have a recollection of handling the gelignite or detonators or any of the items in the white plastic bag on that night?

A. No, I don't.

10 Q. Did anyone in the Armed Hold Up Squad at that time have any greater knowledge than you about explosives?

WOODS: I object to that. How can the witness answer that?

HIS HONOUR: Yes. To his knowledge did they have knowledge.

15 MELIS: To his knowledge, yes your Honour.

Q. To your knowledge, did any officer in the Armed Hold Up Squad have greater knowledge about explosives?

20 A. No.

Q. Or training about explosives?

A. No.

25 Q. You gave evidence about sorting the items that had been brought back from the Bossley Park premises and that those items were outside the two interview rooms of the Armed Hold Up Squad.

30 BASHIR: I object to the question. I know that it was put in these terms before lunch, but the evidence was that it was the property that he sorted. My friend keeps saying "items", but the evidence is that he sorted the property.

HIS HONOUR: Items which comprised the property, yes.

35 MELIS: I can use the word property, my learned friend.

Q. You sorted the property that was outside the two interview rooms at the Armed Hold Up Squad. You recall that evidence?

A. Yes.

40 Q. And you also told us that you saw Mr Brajkovic in the interview room and that when you saw him the door was partially open. You remember that evidence?

A. Yes.

45 Q. Were you, essentially, with Detective Krawczyk sitting outside those two interview rooms whilst you sorted the property? Is that where you did the sorting?

A. No, I don't remember.

50 Q. Do you remember whether the interview room that Mr Brajkovic was in had

its door partially open--

A. I remember a door being--

Q. --the whole time that he was in there?

5 A. I remember it being partially opened.

Q. Was it the practice at the time to leave the door open or partially open when a record of interview was being conducted?

10 A. Yes, it could've been.

Q. Did you at any time hear Mr Brajkovic being interviewed in the interview room whilst you were--

A. No.

15 Q. --sorting the property?

A. No, I did not.

Q. You couldn't hear any noises coming from the room at all?

20 A. No, I did not.

Q. Mr MacKenzie, you told us that when you were doing your search outside the premises, it was dark; correct?

A. Yes.

25 Q. You had a torch, didn't you?

A. I can't remember whether I had a torch or Detective Pettiford. I don't remember.

30 Q. I want to show you a photo which you don't have in front of you. Your Honour, if I could just hand up - and, your Honour, I can indicate that a copy of these photos have been provided to the parties and if I could arrange for Mr MacKenzie to see on the screen, please, the photo on page 3 of the bundle. Can you see a photo on your screen, Mr MacKenzie?

35 A. Yes, I can.

Q. Do you see that it appears to be a photo of a shed?

A. Yes.

40 Q. It's got a number of pieces of, I'll describe it as, machinery and other metallic items? Do you see that?

A. Yes, that's right. Yes, I do.

Q. Does that refresh your memory of what you saw in the shed on the property at Bossley Park on the night of 8 February 1979?

45 A. Yes, it does.

Q. I think before lunch you said words to the effect of, "The place was in a mess"?

50 A. Yes, I did.

Q. Is this an example of what you were referring to?

A. Yes, that is correct.

5 Q. In this shed was there a light inside the shed that you could put on?
A. I don't remember.

Q. You didn't take anything away from this shed; is that right?

A. Yes.

10 Q. We can see in the photo that there are two bags. One of the bags has the word "nitram" written on it. Do you see that?
A. Yes.

15 Q. And the other bag, you have to look very closely and strain your eyes to see it, but it says, "Nitrogen fertiliser"?
A. Yes.

20 Q. Do you have any recollection of seeing those bags of fertiliser on the night?
A. No, I don't.

Q. Did you have any knowledge at the time that fertiliser or, more specifically, ammonium nitrate and diesel could make an explosive?
A. No, I didn't know.

25 Q. Given the state of the shed as we can see it in this photo, you wouldn't have been able to search it thoroughly; would you agree with that?
A. I would agree with that.

30 Q. Is it the case that you had a look, but didn't do anything more than that, you just had a look with your torch?
A. No, I searched it to the best of my ability.

35 MELIS: Your Honour, I do intend to tender this bundle of photos, but if I might have your Honour's leave to do it at a later point?

HIS HONOUR: Yes

MELIS: I have another document to tender.

40 Q. Mr MacKenzie, I've just been asked if you could please move more to the centre of the screen, as your face is obscured on the live stream. Thank you. Mr MacKenzie, do you recall, in 1996, you were a Custodial Officer at Belconnen? Correct?
A. That is correct.

45 Q. You were involved in the discovery of the body of a man named Shannon Robert Camden?
A. Yes.

50 Q. He was a prisoner on remand at the Belconnen Remand Centre?

A. That is correct.

Q. And he had taken his own life?

A. Correct.

5

Q. You were not on duty when Mr Camden died, but you were working on the next shift, when Mr Camden's body was actually found; is that the case?

A. Yes.

10

Q. In 1996 and 1997, there was an Inquest into Mr Camden's death. Do you remember that?

A. Yes, I do.

15

Q. You gave evidence at that Inquest?

A. Yes, I did.

Q. Quite lengthy evidence?

A. Yes, four or five days.

20

Q. One of the issues at that Inquest was whether Corrective Services officers had performed the required observations of Mr Camden in his cell, in the hours preceding his death?

A. Yes.

25

Q. In the Coronial Findings, the Coroner made a number of findings about you, including that you had given exaggerated and untrue evidence. Do you agree with that?

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

30

Q. And that you failed to inform Corrective Services officers or investigating police, when questioned, that another Corrective officer had lied about his observations of Mr Camden's cells?

A. No, that's not correct.

35

Q. What is your understanding of the evidence?

A. Well, I - when the person hung himself, he was at - I was at home, in bed, asleep. I was the next shift that arrived. The police, the superintendent and everyone was there. I was just the next officer that was arriving. It was nothing, absolutely nothing, to do with me, what happened when I was not there. The police, the Coroner and the superintendent were responsible for it; I certainly was not. And I was charged all - with nothing, and the - actually, and if you read the whole Findings the Coroner felt very, very sorry for me, for the insidious position I was put in, that it's on the record.

40

45

Q. There was also a finding by the Coroner that you had been the subject of attempts by other officers to persuade you to--

WOODS: Your Honour, I object to this. This matter was not the subject of a prosecution. Consideration was given to a prosecution and it was not prosecuted. So it's going to be a lengthy distraction, if we're going to

50

investigate this matter to reflect on this man's character.

5 HIS HONOUR: What is the relevance of this? Just for Mr MacKenzie's benefit, I think you're asking him about the Findings made by the Coroner, not whether the findings were correct, in fact. Is that right?

10 MELIS: Yes. Your Honour, I'm not seeking to investigate the matter. I'm seeking to simply put these matters to Mr MacKenzie on the record as they appear in the evidence in Exhibit 17.

HIS HONOUR: Yes.

15 MELIS: Of course, your Honour, I was to put to him that nothing in fact came of these allegations, either by way of prosecution or disciplinary matters. He's already given that evidence.

HIS HONOUR: Having regard to that, what is the relevance of this?

20 MELIS: It was simply an opportunity to put that evidence on the record, your Honour, but I don't have to take it any further.

HIS HONOUR: I don't think it'll assist me.

25 MELIS: Your Honour, before I sit down, there are a few documents I wish to tender.

30 EXHIBIT #11.151 LETTERS (2) OF COMPLAINT FROM VJEKOSLAV BRAJKOVIC DATED 24/02/79 AND 30/01/80 TENDERED, ADMITTED WITHOUT OBJECTION

EXHIBIT #11.152 PHOTOGRAPHS (5) VJEKOSLAV BRAJKOVIC'S PROPERTY AND SHED AT BOSSLEY PARK TENDERED, ADMITTED WITHOUT OBJECTION

35 <EXAMINATION BY MR BUCHANAN

Q. Mr MacKenzie, my name is Buchanan. I represent the petitioners who are the people who applied for this Inquiry.

40 A. Yes.

Q. Can I just ask you a couple of questions about things that you said in answer to questions that Counsel Assisting asked you earlier?

A. Yes.

45 Q. At one stage Counsel Assisting asked you, and I use words to the effect of what Counsel Assisting asked, could it be that there were no explosives found at the premises that night and that the explosives you say you saw at the CIB were from a different source; do you recall that question?

50 A. Yes.

Q. Your answer was to the effect of, "No, that is totally incorrect"?

A. Yes.

5 Q. You went on to say, "Detectives Krawczyk and Harding are honourable men and what happened is the truth"?

A. Yes.

Q. Why did you mention those two detectives in answer to that question?

10 A. Well, they're just fellows that I've dealt with before and I find them quite honourable and efficient police officers. All the police officers there that night were 100% honest and true men. None of them at any stage did anything illegal, none of them.

15 Q. There were about eight detectives in the team that you were part of that went to Bossley Park; is that right?

A. Yes, that's right.

Q. Or that were at Bossley Park?

20 A. Yes.

Q. You selected out Detectives Krawczyk and Harding to describe as honourable men and what happened is the truth?

25 A. Well, they were just the two names, they were - look, they're all - the whole group were honourable. You can't read anything into my answer; there's nothing you can read into that answer at all. That's.

Q. Well, your answer is actually susceptible of the explanation that you had a guilty conscience about those two men; isn't it?

30 A. That's an absolutely ridiculous statement to make. The opposite - Detective Krawczyk is an honourable man, so is Mr Harding; they're honourable people.

35 Q. Did you discuss with Detectives Krawczyk or Harding, before you gave your evidence in the trial, after the voir dire, did you discuss with either of those men the evidence you should give?

A. No.

40 Q. Did either of them suggest that you should add to your evidence, as to what you've previously said that is, by saying--

A. No.

Q. --you'd seen the explosives at the house?

A. No, that's not right.

45 Q. Do you have any knowledge that Detective Krawczyk or Harding had something to do with the explosives that were eventually produced at CIB?

A. No.

50 Q. Did either of those men, as you understand it, obtain the explosives that were seen at CIB from some stash that was kept there to use as load ups?

A. No, that's totally incorrect.

Q. What other explanation can you give us as to why you selected out those two men in answer to a general question that you were asked--

5 A. Well, if I could remember all the - well, I don't know what you're going on about; if I could remember all the names of the other officers, I'd all recite them out too. There was absolutely nothing, because I just know those two fellows personally. There's - you can't read anything into what I'm saying. And untoward; it's just not there.

10

Q. You knew those two men personally; is that right?

A. Yes.

Q. More so, to a greater degree than you knew the other men who had been part of the raiding team at Bossley Park?

15

A. I knew Detective Pettiford well, and socially.

Q. Did you know Detective Harding socially?

A. Yes.

20

Q. Did you know Detective Krawczyk socially?

A. Yes.

Q. Detective Krawczyk joined the Armed Hold Up Squad a few months after the raid in 1979; didn't he?

25

A. I don't - I don't think he did; I thought he was in the Special Branch.

Q. Yes, but didn't he join the Armed Hold Up Squad while you were still there?

A. He could've been but I don't remember. My mind's gone on that point; I don't remember.

30

Q. Did you have anything to do with Detective Krawczyk transferring from Special Branch to Armed Hold Up Squad?

A. No, I did not.

35

Q. Do you know how come Detective Krawczyk transferred to the Armed Hold Up Squad?

A. No, I did not.

Q. You were asked by Counsel Assisting a question to this effect, "In your time at the Armed Hold Up Squad did you ever witness police fabricating evidence in a bid to secure a conviction", and you answered,

40

"Never". Counsel Assisting asked you then, "Did you ever hear about that", and you said, "In gossip only". Counsel Assisting asked you words to the effect, "Was that between officers within the Armed Hold Up Squad", and your answer was to the effect, "General police talk". Counsel Assisting asked you words to the effect, "Did that concern you?" You answered, "Not really". Counsel Assisting asked you words to the effect, "How come it didn't concern you really?" And your answer was, "It was grog talking, not the truth".

45

A. That's correct.

50

Q. So you heard officers from the Armed Hold Up Squad, when you understood they were under the influence of alcohol, talking about fabricating evidence; is that right?

5 A. Not - that's - it's just gossip, which is not true. People big-noting themselves talking rubbish, which should not be taken any notice of. Just gossip and rubbish. Does not have a skerrick of truth in it.

Q. How did you know it didn't have a skerrick of truth in it?

10 A. I just know.

Q. What was it that you recall being said by way of this gossip where the officers were talking under the influence of alcohol?

A. I can't recall that.

15 Q. You're not going to give the Inquiry a truthful answer as to what you heard when these officers gossiped under the influence of alcohol, are you?

A. That is an absolutely ridiculous question you're asking me. Absolutely ridiculous. I've sworn here earlier to tell the truth to the best of my ability, and that's exactly what I'm doing.

20 Q. Counsel Assisting told you that Mr Brajkovic alleged in the trial that he had been assaulted whilst at CIB?

A. Correct.

25 Q. You responded to Counsel Assisting to this effect, "If he had been assaulted, he'd have had injuries". Do you remember saying that?

A. Yes.

30 Q. Why do you believe that if Mr Brajkovic had been assaulted at CIB he would've had injuries?

A. If someone's assaulted, it usually follows they have some injury of some sort on them.

35 Q. Did you give the answer you gave that he would've had injuries, because you're aware of suspects having been assaulted at CIB and having injuries apparent on them after those assaults?

A. No, that is incorrect. Nobody was assaulted. Absolutely nobody.

40 Q. You also told Counsel Assisting on the same subject, "He was never assaulted. There were no injuries on him"?

A. Correct.

Q. How did you know that Mr Brajkovic had not been assaulted?

45 A. I was in the Hold Up Squad, the interview rooms were close handing. He was not assaulted. That's the only way I can answer that question.

Q. Did you give that answer because you knew from experience that you could hear people being assaulted in the interview rooms at CIB?

50 A. No, that's not right.

Q. How would you know, then, that - whether someone had been assaulted or not?

WOODS: I object to that, your Honour, that's speculative.

5

BUCHANAN: I'm sorry?

WOODS: It's mere speculation.

10

HIS HONOUR: I think it's a legitimate question.

WITNESS: My answer is nobody was assaulted that night while I was in the Hold Up Squad. My answer is--

15

BUCHANAN

Q. How do you know that?

20

A. --nobody. I know because the door was partly open and if they were assaulted, I would've heard them or heard screams or something. I heard nothing untoward or saw nothing untoward. You can ask me the question any way you like to twist around and that'll be my answer.

Q. Are screams the sort of things that you had heard in interview rooms at CIB on other occasions?

25

A. No, I've never heard screams.

Q. How do you know that Mr Brajkovic had no injuries on him?

30

A. Well, each time I saw Mr Brajkovic it appeared to me that he had no injuries on him. That's the only way I can answer that question.

Q. Thinking about -- just putting yourself back in - on the third floor at CIB on the night of 8/9 February 1979, can you tell us what your last memory of seeing Mr Brajkovic is?

35

A. No, I don't recall.

Q. Did you ever see him at CIB?

A. Yes, I did.

Q. Where was he when you saw him at CIB?

40

A. I don't recall.

Q. In what position were you in order to be able to see Mr Brajkovic at CIB?

A. I was on the same floor, the third floor.

45

Q. What was Mr Brajkovic doing at the time that you saw him when you were at CIB?

A. I don't recall.

Q. Was he seated or standing or moving or stationary?

50

A. I don't recall.

Q. But you say that you do recall, you had a good enough recollection of sighting Mr Brajkovic at CIB, to say that there were no injuries on him?

A. Correct.

5 Q. Could it be that you only saw him early on in the evening, after, say, 11:35pm, when you detectives were meant to have come back from Bossley Park?

A. No, that's not correct.

10 Q. You saw him, Mr Brajkovic, that is, later in the evening; is that right?

A. CIB, yes.

Q. What would you estimate the time was when you last saw Mr Brajkovic?

A. I don't recall.

15

Q. When you say there were no injuries on him, what part of Mr Brajkovic do you have in mind that you could see had no injuries on him?

A. Face and hands.

20 Q. There was nothing about him at all that was disconcerting to you?

A. Absolutely not.

Q. He appeared to be hale and hearty?

A. He appeared to me to be normal.

25

Q. Is it possible that you saw him being taken out of an interview room, moving through the open-plan area of the Armed Hold-Up Squad and going into the lobby, where the lifts were, to be taken for charging?

A. I don't recall.

30

Q. You see, I'd suggest to you that you've knowingly given false evidence in this Inquiry and that the reason that you have added to the matters that Counsel Assisting asked you about Mr Brajkovic being assaulted, that he had no injuries and he would have had injuries if he had been assaulted, is simply you, knowing what you've seen of other people at the hands of your friend, Mr Harding, for example.

35

A. That's a very offensive question and proposition and totally incorrect.

40 NO EXAMINATION BY MS GLEESON, MR BROWN, MR SILOVE AND MS BASHIR

<EXAMINATION BY DR WOODS

45

Q. Sir, your service in Vietnam was for two years as the basis of you being conscripted; is that correct?

A. Yeah, one year in - two years in the Army, with one year in Australia, and one year in Vietnam.

50

Q. Did that happen after you'd started in the Police Force?

A. Yes. I was in the Police Force, conscripted from the Police Force.

Q. After your term of duty, you went back to the Police Force?

A. That is correct.

5 Q. I don't want to ask you a large number of questions about this subject, but is it fair to say that your knowledge of, your experience in Vietnam gave you a considerable consciousness about things like exploding devices and trip wires and so on?

A. Yes, that is 100% true.

10 <EXAMINATION BY MS MELIS

Q. Mr MacKenzie, the evidence is that you and the other members of the raiding party that went out to Bossley Park returned to the CIB around 11:35pm. Do you accept that?

15 A. Yes.

Q. You've given evidence that it would have been a good hour before you then took Mr Hudlin's statement. Do you agree with that?

20 A. Yes.

Q. Because, in the interim, you were sorting out the property that was on the floor outside the interview rooms?

A. Yes, correct.

25 Q. How long do you say the interview took with Mr Hudlin?

A. I don't recall.

Q. Can you give us an approximate – an estimate of time?

30 A. I don't recall. I can't do that, because I don't know.

Q. Your evidence at trial was that you left the CIB at about 2am, to transport Mrs Brajkovic, her daughter and Mr Hudlin to the Auburn railway station. Do you accept it was about 2am?

35 A. Yes.

Q. That means that you had - between 12:35 and 2am, other than interviewing Mr Hudlin, do you remember undertaking any other duties?

A. No, I do not.

40 MELIS: Those are the matters.

HIS HONOUR: Mr MacKenzie, that's the end of your evidence. Thank you for participating in the process. You're free to go. You're not formally excused. If you are needed to come back and give some further evidence, you'll be notified. All right?

45

WITNESS: Yes. Thank you, sir.

<THE WITNESS WITHDREW

50

Epiq:DAT

D21

AUDIO VISUAL LINK CONCLUDED AT 2.47PM

<BRIAN ROBERT HARDING, SWORN(2.48PM)

<EXAMINATION BY MS MCDONALD

5 Q. Please state your full name?

A. Brian Robert Harding.

Q. Mr Harding, you were a former Detective Sergeant in the New South Wales Police Force?

10 A. I was a Superintendent when I left.

Q. My apologies. Can I just check, are you all right with your bag in front of you? In 1979, you were attached to the Special Breaking Squad?

15 A. No. The Armed Hold Up Squad.

Q. Hopefully I'll get this right, on 8 February you were part of a group of officers who attended the raid on Mr Brajkovic's home in Bossley Park?

A. Correct, yes.

20 Q. I'm going to start by asking you some questions about your career within the Police Force. When did you join the Police Force?

A. I joined the police as a cadet on 17 February 1960. I was then aged 15 years.

25 Q. You were a cadet for a number of years?

A. Yes.

Q. Then from other witnesses we've heard there was a period of training and then you became a sworn officer?

30 A. You completed your cadetship and you were normally sworn in at 19 years of age, and then you became a Probationary Constable for 12 months; and then after that you're confirmed as a Constable.

Q. You became a Probationary Constable on your 19th birthday?

35 A. Actually I was 18 and nine months; I picked up three months seniority through examinations.

Q. When you became a Probationary Constable, which station were you attached to?

40 A. I started off at the Recruiting Office, because you weren't allowed out on the street, even though I was sworn, you weren't allowed out on the street until you were 19 and most of my probation was in the Recruiting Office but then I moved on to other stations after that.

45 Q. From the Recruitment Office, which station were you transferred to?

A. Regent Street, Glebe, Camperdown, they were all part of the one division.

Q. Was that during that period that you were a Probationary Constable?

50 A. Yes.

Q. Then after your period as a Probationary Constable, were you assigned to another station?

A. No. I remained within what was then known as Number 2 Division and Glebe and Camperdown were part of that.

5

Q. Within that period, was your rank changed?

A. I was a Constable and I commenced plain clothes duties in 1985 - sorry, 1965, at Camperdown Police Station.

10

Q. How long did you remain at that station; and again, can I say, just roughly?

A. Roughly 12 months, then I moved on to 21 Division which was a training division and part of my time with 21 Division I was seconded to the Armed Hold Up Squad for I think it was eight months, then I went to Balmain, then after Balmain I was transferred in 1968 to the Special Breaking Squad.

15

Q. Can I just stop you there; through that period, was your rank Constable?

A. I became a Detective Constable First Class, I think, in 1968.

20

Q. Just before you went to Special Breaking Squad?

A. No, while I was there.

Q. While you were there?

A. Yeah.

25

Q. How long were you with the Special Breaking Squad?

A. Until 1976.

Q. Your rank the same?

A. By then I was a Detective Senior Constable.

30

Q. Were you transferred from Special Breaking Squad some time in 1976?

A. Yes, to the Armed Hold Up Squad.

35

Q. Some time in 1976 you went to the Armed Hold Up Squad?

A. Correct, yes.

Q. As you've given evidence you were at the Armed Hold Up Squad as a Detective Senior Constable on 8 February 1979?

A. Yes. I think I got promoted that year to Detective Sergeant.

40

Q. Still within the Armed Hold Up Squad?

A. Yes.

45

Q. Can I ask you, and again just rough dates, if you don't have an accurate recollection; from the Armed Hold Up Squad were you transferred again?

A. Yes. With regionalisation, I went to the Regional Crime Squad South; they transferred 50 of us to that squad, which was then based at Miranda.

50

Q. Again roughly when was that?

A. I'd say 1983.

Q. That meant Special Breaking Squad was disbanded; was it?

A. No, it was - no, they - they regionalised, they - and each - the CIB was duplicated.

5 Q. In the different regions?

A. Yes.

Q. From the Regional Crime Squad Southern Region--

A. South, yes.

10

Q. South Region, sorry, were you transferred from there?

A. Yes. I went to - my job title then was Divisional Detective Sergeant at Campbelltown, which was known as 35 Division then, and I'm just trying to think of the year. I think it was 1986. Then I spent 18 months there and then they further regionalized and I was transferred back to the Regional Crime Squad South West, which was at Flemington Police Station.

15

Q. Were you transferred from there?

A. I then spent approximately two years on a taskforce looking at three murders, two attempted murders and the wholesale importation of heroin into Australia and that took me through to 1989 and I was then promoted to Superintendent. Then - I was then attached to South West Regional Headquarters.

20

Q. And did you remain as the Superintendent?

A. Yeah, I was there about a year, I think, and then I was transferred. They underwent, yet again, another name change and I was transferred as the officer-in-charge of the Major Crime Squad South and I remained there for approximately two years and then I applied for the position of Patrol Commander Kogarah and I went there and then after that I became Chief of Staff South Region, and then a similar job at North West Region, which takes me through to about - it's a bit hard to be accurate with the years, but that was my last position. North West.

25

30

Q. Again, just roughly which year did you retire from the police?

A. Well, I didn't retire.

35

Q. I'm sorry.

A. I - in 1996 I was called before the Wood Royal Commission in a segment which became known as the Kareela Cat Burglar segment.

40

Q. It was known as what, sorry?

A. The Kareela, K-A-R-E-E-L-A, Kareela Cat Burglar segment and, as a consequence of my appearance there, I and others were served with a loss of the Commissioner's confidence notice and I was terminated. We then appealed that decision. I was reinstated on the proviso that I'd resign and I did and subsequently we were criminally charged and those charges were dismissed. We then commenced a civil action against the Government of New South Wales and that was settled under confidential terms in 2005. Did you need to know what I did after the Police or--

45

50

Q. No, I won't ask you any further questions about what you did post-leaving the Police. Can I just ask you two questions from setting out your career within the Police. The two years that you were on the taskforce which looked at, I think you said, some murders, attempted murders and importation of heroin--

5 A. Yes.

Q. --was that taskforce given a name?

A. Yes, Kappa, K-A-P-P-A.

10 Q. Not wanting to ask you a question to go into great detail about it, but the charges arising from the - was it the Wood Royal Commission?

A. Yes.

15 Q. Were they in respect of charges which alleged to giving false and misleading information or evidence to the--

A. No, the allegation was the - the person who became known as the Kareela Cat was previously known as the Toorak Cat, and he committed all these night-time burglaries in the Kareela area and he was arrested as a result of an operation run from Sutherland and he refused to be fingerprinted and he gave
20 an alias and we went up there to have a look at him, because of my background on the Breaking Squad. I thought he was going to be someone else, but he turned out to be - do you want me to name him?

25 Q. No, I think I can just pause you here. Was it an allegation along the lines of you used mace or something?

A. Yes, that's it.

Q. In an effort to obtain his fingerprints?

30 A. Yes, I did not use them, but I directed the use of mace.

Q. With the Armed Hold Up Squad in February 1979 did you have a regular partner?

A. Yes.

35 Q. Who was that?

A. It was Ron Morris. He's deceased now.

Q. He was one of the officers who with you attended Bossley Park?

40 A. Correct. Yes.

Q. You provided a statement, which was included in the brief of evidence for the committal and trial of the Croatian Six?

A. Yes.

45 Q. You've been provided with a copy of your statement?

A. Yes.

Q. It was the statement that was dated 18 April 1979?

50 A. Well, the date would be on it. Yes.

Q. Your Honour, that's Exhibit 4.2-77. You've had a chance to read through it?

A. Yes, several weeks ago. Yes.

5 Q. Reading through it, is there anything you wish to change or any part of the statement that doesn't accord with your recollection?

A. No.

10 Q. You gave evidence at the committal hearing on 18 and 19 September 1979?

A. Yes. I believe so, yes.

Q. Have you been provided with a transcript of that evidence?

A. Yes.

15

Q. Have you had a chance to read through it?

A. Yes.

20 Q. Anything, when you were reading through, that you wish to correct or--

A. Yes.

Q. There is?

A. I've made a note of the page number. Can I - should I refer to it, or--

25 HIS HONOUR: That's fine, yes.

MCDONALD

30 Q. Yes, if you've got a note of it. When you look at your note, if you could first identify which day it was, or maybe page? That might assist us.

A. Yes. I've got a page number. Page 7846.

EXHIBIT 2.3-35, RED PAGE 7846, SHOWN TO WITNESS

35 Q. We'll just bring it up onto the screen, Mr Harding, while that's being done, during your evidence, I anticipate, documents will be put up on the screen. If you would prefer to look at a paper copy of it, that can easily be arranged. It appears you're being cross-examined by Mr McCrudden. Do you recall whether it was towards the top of--

40 A. That seems to be page 2178.

Q. Maybe if we go to the bottom of the page - and this might have been my wrong assumption - can you see, where the cursor is, there's a reference to 7846?

45 A. Yes, it's there.

Q. Was that the number you were using?

A. Yes. It's not exactly earth-shattering, but I've recorded there - we've just passed by - just down the bottom.

50

Q. Can you identify the question?

A. Okay, yes. It's three from the bottom.

Q. Is that a question commencing, "You've got no independent recollection"?

5 A. That's it. And then it continues on and the final part is - I'm recorded as saying, "I could not give a damn." I didn't say that.

Q. So, "I can remember generally that is what is contained in it but as for verbatim questions and answers", it then records that you said, "I could not
10 give a damn."

A. Definitely did not say that.

Q. So is it the words, "I could not give a damn," your evidence is, you did not say that in the committal?

15 A. I did not. If I was to guess, I think I said, "I could not give it, verbatim," and then it turned out to be a little bit like Gone with the Wind, "I could not give a damn."

Q. Yes. That was the committal hearing on 18 September.

20 A. Yes.

Q. In both days of the transcript of your evidence at the committal, was there anything else you noted that you thought was wrong or didn't accord with your recollection?

25 A. There's another part, which - I did not record the page numbers, but - it's a little bit untidy to explain, that - on - in my evidence which is outlined in my statement, I start talking to Mr Brajkovic and then, when we go inside the house, Wilson takes over. There's parts of Wilson's questioning, if you like, which, according to the transcript - they attribute me as saying, "I said," instead
30 of "Wilson said". When we got to trial, I was cross-examined at length about that and I just assumed that the transcript was correct and I went along the lines that "Well, I must have made an error," but, when I read it and when you see that pretty silly error there about "I don't give a damn," I started to think, "Now, did I really say that," because at - at the committal, there were three sets
35 of legal advisers, Mr Goldberg, Mr McCrudden, I think, a Mr Ritchie, and the Police Prosecutor, and I was not pulled up at any stage. And it was later, on the final day - and I'm assuming it was after the prosecutor read the transcript - he said, "Do you realise that you said that?" and I said, "I did not realise I said that." And I still question if in fact I did say it.

40

Q. Can I just pause there. When you said, "On the last day, the prosecutor said to me, 'Did you say that,'" was that at the committal?

A. Yes.

45 Q. When the police prosecutor raised that with you, was that in Court, before the Magistrate?

A. No. No, it was private--

Q. That was outside Court?

50 A. It was part of a debrief in which they spoke about follow-up jobs and stuff

like that.

Q. Mr Harding, I'm going to suggest the following. Your evidence will not be finished today.

5 A. Yes.

Q. Could I suggest the following: You've got the committal transcript and the trial transcript.

10 A. Yes, I have.

Q. There'll be a couple of weeks' break before you come back to give evidence. Could you go through the transcript and identify the passages that you've just referred to?

15 A. Yes.

Q. The important thing is that it doesn't accord with your recollection of the events of that night.

20 A. No. I can't understand why I'd substitute myself for Wilson, and, if I did, it was an error, but I question whether I did it at all.

Q. I suggest that we proceed with questions now, but if you could do that in the interim and we'll raise it again on the next occasion.

A. Yes, I will.

25 Q. So we'll put the committal transcript to one side at the moment. You gave evidence at the trial on two days, 1 May 1980 and 14 May 1980?

A. Yes. That could be right, yes.

Q. You've been provided with transcripts of that evidence?

30 A. Yes.

Q. Putting to one side the issue that you've just raised, was there anything else in the transcript of that evidence that you wish to correct or doesn't accord with your recollection of events?

35 A. No, just there's some minor typos, but that's it.

Q. I want to take you back to your statement, and this time we'll bring it up on the screen.

40 A. I've got it here in front of me; is that allowed?

Q. Maybe if you put those to one side; it'll come up on the screen, but as I said, Mr Harding, if you would prefer a paper copy, we can show you one of the Exhibits. Can you just excuse me for a minute?

45 A. Yes. Thank you.

EXHIBIT 4.2-77 SHOWN TO WITNESS

50 Q. I'm sorry about that, Mr Harding. Looking at your statement, it is five pages long and it commences, you can see, at paragraph 1, "At about 9pm on

Thursday, 8 February"?

A. Yes.

5 Q. Can we jump to page 619 - down at paragraph 25 it records, "Detective Sergeant Wilson then left the room with the envelope, returned later and said to the defendant, 'Come on Vic we'll go down to Central now and you will be charged'." Now at that point that was at CIB in an interview room?
A. Yes.

10 Q. You were present?
A. Yes.

15 Q. Did you take Mr Brajkovic with Detective Sergeant Wilson to Central to be charged?
A. Yes.

20 Q. I haven't taken you to each page but is your recollection that your statement deals with the events of 8 February commencing about 9pm to the early morning of 9 February?
A. Yes.

25 Q. If we go back to page 615 - it's dated 18 April; can you see that right up the top?
A. Yes.

30 Q. Why the delay when it was – you confined yourself to events on 8 and 9 February, from completing your statement on 18 April?
A. Just other jobs, other briefs. I think this was prepared from notes that we prepared that night.

35 Q. I'm about to you to those. You've just referred to notes prepared on that night. I'll take you to the first page to begin with.

EXHIBIT 11.89, RED PAGE 1287, SHOWN TO WITNESS

40 Q. If we can expand that and go to the top of the document - can you see, "9 February 1979, Armed Hold Up Squad CIB - Timetable of events and notes in relation to the arrest of Brajkovic", and it commences at 9pm?
A. Yes.

Q. Have you recently seen this document?
A. No. This is the first time in 45 years.

45 Q. If we can just go through it and end up on the last page, which is page 1291 - but you can see it's got different times at different places and then this is the final page - and if we can expand it - up the top we've got, "2am charged at Central Police Station"?
A. Yes.

50

Q. "2.30am returned to this branch and commenced these notes. Notes completed up end of first paragraph on page 2."

A. Yes.

5 Q. Then it lists officers who were "present when notes typed"?

A. Yes.

Q. "3am off duty."

A. Yes.

10

Q. "8.30am notes recommenced and completed."

A. Yes.

Q. Again with naming the officers who were present at that time?

15

A. Yes.

Q. Then we've got in brackets, "(notes typed by Detective Senior Constable Harding)"?

A. Yes.

20

Q. That accords with your recollection, you were the typist?

A. Yes.

Q. Can you see there's signature blocks for Detective Sergeant Wilson and then for you?

25

A. Yes.

Q. That's your signature?

A. Yes.

30

Q. Can I ask you about the notes; it records on that page that they were commenced at about 2:30am?

A. Yes.

35 Q. And that you were the typist, or you were the person typing them. Where were you when you were typing them?

A. In the Armed Hold Up Squad office.

Q. Do you have a recollection of that or is it just--

40

A. No, that's what I assume.

Q. --"I couldn't have been anywhere else when I--"?

A. Well, that's - yes, when we returned to the office we would've gone to our squad. Yes.

45

Q. Were you at a desk or in a room?

A. At a desk. It was a large room. Open planning.

Q. The other officers who were recorded as being present at 2:30am, so just very quickly, Wilson, Harding, Bennett, Morris, Helson and Krawczyk, where

50

were they?

A. There with us.

Q. Standing round or sitting round or--

5 A. I don't know. They could've been standing.

Q. What was the procedure with it? If we could go back to page 1287 and expand it at the top. Can you see, "9pm conference takes place in Armed Hold Up Squad", et cetera?

10 A. Yes.

Q. How was it drafted when you've got a number of officers there, because, can I say, looking at it there doesn't seem to be, really, any or few mistakes or amendments, but what is your recollection of how it was drafted?

15 A. Well, I started typing and perhaps I, or Wilson, said, "Do you agree that this is" - and I started typing.

Q. You gave an example of Detective Sergeant Wilson. Is your recollection that he would say something like, "Now, everybody, we had the conference at the Armed Hold Up Squad round 9pm"?

20 A. That's probably the way it went, but I couldn't swear precisely that's what took place.

Q. Is your recollection that if - a silly example, if somebody was there who said, "No, it wasn't 9pm, it was quarter to 8"?

25 A. There would've been quick discussion and--

Q. They could raise that they didn't agree with that?

A. That's right.

30

Q. Then if nobody dissented, you would then type that--

A. Yes.

Q. --fact that the conference took place at the Armed Hold Up Squad at 9pm.

35 A. Yes.

Q. This procedure that was adopted at 2:30am in the morning and then continued at about 8:30am, in your experience in February 1979, was this unusual?

40 A. No, not as far as I was concerned. No.

Q. This kind of group exercise of drafting a timetable of events and notes, was that a practice that you and others had engaged in on many occasions?

A. Yeah, I'd say yes. Yes.

45

Q. There were a number of officers involved in this raid. Just asking you about your experience generally at the time, if you and your partner, Detective Morris, had gone out just by yourselves and did something that you had to then draft a statement about, would there be a similar kind of discussion between the two of you? Again, to your knowledge that was a common

50

procedure at that time?

5 A. Well, as far as I know, yes. It - when I went into plainclothes in 1965, that's the way that it was demonstrated to me to do it and then, of course, Number 21 Division was a training division and they used to recommend a similar procedure, but on top of all of that you had duty pads, you had diaries, you had notebooks, you had car diaries, but the - you - sometimes the notes would be recorded in the - on the duty pad, as distinct from the diary, and then they dispensed with duty pads, because they decided it was too much duplication.

10 Q. All right. We're talking a general procedure at the moment. When you and a partner were drafting a statement, you could also refer to, if there were notes in a notebook, a duty book or a diary or, I think you described, a car diary?

A. Yeah, there was a car diary, as well.

15 Q. At the time, as you said, you were actually trained in a procedure, at least with your partner?

A. Yes.

20 Q. It appears that that procedure was applied on the morning of 9 February, but with all the officers?

A. Yes.

Q. Was part of the reason that it was done with all the officers on 9 February was that this was a very important investigation?

25 A. I'd say it was an important job and, yeah, one of the enduring memories I've got of it was that it was fairly - it was cobbled together fairly quickly and there was a level of urgency and I don't think it'd be unreasonable to say that Mr Morey was getting downward pressure from above to, "Let's get going. Let's move", that sort of thing, because I think it frightened the socks off everyone, explosives and potential bombings and targets. That sort of thing.

30 Q. I'll come back to that, but can I just ask you when you said Inspector Morey experienced downward pressure, was that the impression you had?

35 A. That's an impression that I have, that's all.

Q. As you've described it, the impression of the pressure, it was frightening the socks off everybody, with this, I suppose, idea of explosives at different locations within Sydney and elsewhere.

40 A. Yes.

Q. Did that mean that, in drafting this timetable of events and notes - your participation in it, were you trying to be very thorough?

A. As best I could be, yes.

45 Q. It's a relatively lengthy document, it's about five pages.

A. Is it? Okay.

50 Q. It's about five pages. Do you remember, when the group were there and you were typing, was there encouragement, of all the officers, that they raise any fact or matter that they could recall which may be relevant?

A. I'm assuming so, but we're talking about events nearly half a century ago and I can only assume that those that wanted to contribute - those that did not, obviously, agreed with what others said, and I recorded it on the spot as quickly as I could.

5

Q. It is a long time ago, but do you have any recollection of any dissent or discussion about particular parts of the document?

A. I can't bring any to mind at the moment, but I wouldn't dispute that, with a group of us, someone would have disagreed, and then it was reshaped to what the consensus was.

10

Q. I was going to ask you about that. You've given evidence that you've had experience of this procedure during the time you were working in the Police Force.

A. Yes.

15

Q. How was disagreement resolved?

A. Just on the spot.

Q. Again, my example of somebody saying, "It's not 9pm, it was quarter to 8" - did that generate discussion, or how was it resolved?

20

A. It may have, but, as I say, once consensus was reached, we just - I just recorded it as quickly as I could.

Q. I'm just wondering how consensus was reached.

25

A. Probably by discussion, and, if someone was silent, it was interpreted as, "I agree."

Q. I'm jumping ahead slightly, but it arises from part of this document. Do you recall, when you were at the premises at Bossley Park, at one point, you and Detective Morris and Mr Brajkovic entered the house, through the rear door?

30

A. Yes, I think that's right.

Q. In, I think it was it like a joint lounge room-kitchen, when you walked in the rear door?

35

A. Look, I can't describe it. I had not been there before and I certainly haven't been back there since. It was dark. I'm at a loss to describe the house to you.

Q. If we can go to page 1288 of this exhibit. Towards the top, the second full paragraph, can you see it commences, "Harding, Morris and Brajkovic then entered the house, through the rear door"?

40

A. Yes.

Q. Then it goes on and says, "I then said to Detective Sergeant Wilson, 'Sergeant this is Mr Brajkovic he was hiding outside.'"

45

A. Yes.

Q. I just want to raise with you - it seems to, in that second sentence, have reverted to your personal statement form. Can you see there you're talking in the first person?

50

A. Yes.

Q. Then you go back to, "Harding then"--

A. Okay. Yes.

5

Q. Do you see the difference?

A. Yeah. That's the way I've recorded it, yes.

Q. I'm just wondering, can you account for that difference when you--

10 A. The fact that I was typing that, you know--

Q. You kind of just reverted to first person and then went back to referring to everybody by their surnames and--

A. Yes. The third person, yes.

15

Q. I want to go back to 8 February. We might just go to the top of page 1287 of Exhibit 11.89, and if we can expand the top please. You have recorded, "9pm. Conference takes place in Armed Hold Up Squad. Instructions given by Detective Inspector Morey," and then you record - and I'll just refer to surnames - "Wilson, Bennett, Harding, Morris, MacKenzie and Pettiford drive to Brajkovic's home, at 16 Restwell Road, Bossley Park. Our instructions were to meet with Special Branch and Observation Squad Police en route."

20

A. Yes.

25

Q. Just pausing there, the officers who are listed - putting to one side Detective Sergeant Wilson, all the other officers, to your knowledge, they were Detective Senior Constables?

A. Yes. I believe so, yes.

30

Q. Out of those people listed, who was the most senior?

A. Me.

Q. When you got to the site, in terms of seniority, were you really the second person in charge?

35

A. Yes.

Q. Can I take you back to the conference at the Armed Hold Up Squad office? Can you recall, were you on duty that day?

A. As far as I know, yes.

40

Q. Were you then put on like standby or--

A. Yes.

Q. So you were informed at some stage that you shouldn't go off duty--

45

A. Correct, yes.

Q. --that there might be something happening that night?

A. That's right.

50

Q. Do you recall at that time what you were told?

A. No. I'm sorry, I don't.

Q. Did you know Detective Sergeant Turner?

A. Yes, I knew him.

5

Q. And Detective Milroy?

A. Yes.

Q. Also I think it's Detective Sergeant McDonald?

10 A. That'd be Angus McDonald, yes.

Q. Yes. Did you have any knowledge that they were sent to Lithgow that, kind of late afternoon?

A. I believe - I believe that was common knowledge in the office.

15

Q. At that stage were you hearing anything about why they'd been despatched to Lithgow and what was going on?

A. Eventually it filtered down to us, but I couldn't tell you when or who, or who said what; but as the day progresses, more information came to us and then there was the briefing by Mr Morey.

20

Q. I'll take you to the briefing now, but is your recollection you're getting information along the lines of some explosives--

A. Yeah, I think so, yes.

25

Q. --or bombs being found or possibly being in Lithgow?

A. Look, I - I am agreeing with you, but I guess there's going to be witness after witness that says to you, look, it's so long ago, and that is so, but it seems to make sense that's the way the day unfolded.

30

Q. Were you a member of SWOS?

A. Yes.

Q. How long had you been a member of SWOS?

35 A. I - all up I served on it for 20 years, commencing in 1968.

Q. As part of your membership of SWOS, up until around February 1979, had you received any training in explosives?

40

A. It was more on the job training within the squad, but the military - we used to go away once or twice a year for a live-in camp for a week, and they'd put on demonstrations, they'd - it's a bit grim but they'd used carcasses of pigs and strapped explosives to them to show the devastating effect of explosives, and I think they gave us booby trap demonstrations and that type of thing.

45

Q. Did your training include identification of different types of explosives or parts of explosives?

A. Just generally, gelignite. I think the military mainly used plastic explosives, but they used to put them on a table in the outside and showed this is a detonator, this is gelignite, and then of course within the squad there was some experienced sergeants there who were ex-servicemen and they'd give

50

you guidance.

Q. Your evidence, I think it was at the trial, was that you had a basic knowledge of explosives?

5 A. Yeah, I'd agree with that, yes.

Q. During the briefing, you were told that you'd be broken into different teams and each team would be going to a particular location for a raid?

10 A. The curious thing about this is that I don't have a clear independent recollection of the actual briefing, but I know I was there. But I really couldn't tell you precisely what was said, but in general terms Mr Morey would've told us that this is your duties, so and so's in charge, this is our information; that's the way these things go.

15 HIS HONOUR: 4.2-86.

MCDONALD: If I can just return to that, your Honour.

Q. Can I first take you to some committal evidence.

20

EXHIBIT 2.3-35, RED PAGE 7803, SHOWN TO WITNESS

Q. Now can I take you to towards the top of the document - can you see the question commencing, "Do you recall receiving instructions in relation to what you were going to do at Restwell Road?"

25

A. Yes.

Q. You say, "Yes, yes, after the initial briefing if I can call it that, we broke up into other groups and particularly I was under the supervision of Sergeant Wilson".

30

A. Yes.

Q.

35

"Q. Were you told you had to arrest a man called Brajkovic?

A. We were told that we had to endeavour to locate him and search his home, yes"--

A. Yes.

40

Q.

Q. --"Bring him in for questioning?

A. If events warranted it."

45

Then I want to take you down to the question:

"Q. Did you take any notes at all of this briefing by Detective Morey?

50

A. No, I didn't.

Q. During the briefing by Detective Morey, did you see, it's described as a four-to five-page typewritten document being handed to Detective Wilson?

A. Yes, I saw Detective Sergeant Wilson with a document.

5

Q. Do you recall that being handed to him by Morey?

A. Yes, I believe that to be the case.

Q. As being handed out at the same time as the leaders of other squads were being handed similar documents?

10

A. Yes, I'd agree with that."

You were then asked whether you were familiar with the contents of the documents, "but I didn't read it".

15

EXHIBIT 4.2-86, RED PAGE 647, SHOWN TO WITNESS

Q. If we can expand that towards the top of the document. Can you see it's headed, "Information Supplied by Detective Sergeant McDonald re operation at Lithgow"?

20

A. Yes.

Q. Just have a quick read of that, three paragraphs towards the top.

A. Yes.

25

Q. Can you see there there's a reference to two men in Lithgow, in a vehicle there was - at the premises there were some bombs and other explosives. Then there's a list of names, including number 2, "Vic Brakovich"?

A. Yes.

30

Q. Then if we continue down the page. You can see there's some more information, including after the reference to Bubic and Virkez, "All persons may have firearms and bombs or explosives in their homes". Last sentence of that middle paragraph.

35

A. Yes, I see it now. Yes.

Q. Then there's a reference to them all being members of the Croatian Republican Party?

A. Yes.

40

Q. Then if we can continue to the bottom of the page under the heading, "Members of Special Branch have identified the above suspects as being", and you can see there at number 2, you have Mr Brajkovic's full name and address and date of birth?

45

A. Yes.

Q. Your evidence that I took you to at the committal is you saw Inspector Morey handing out a document to the various--

A. Yes, according to that.

50

Q. --senior officers. The information that I've just briefly taken you to, does that accord with your recollection of what either Inspector Morey told you or Detective Sergeant Wilson told you about what was going on and what to expect when you got to Bossley Park?

5 A. In general terms, yes, but I - as I say, I don't have a graphic recall of the briefing; although, as I keep saying, I know I was there, but it's gone.

Q. Did you know at the time a Detective Jefferies from Special Branch?

10 A. No.

Q. Do you have a recollection at this briefing of an officer from Special Branch who had expertise in Yugoslav, Croatian, Republican matters speaking?

A. No.

15 Q. But you were alerted to the possibility or that when you attended the particular premises there may be explosives there?

A. Yes.

20 Q. At that time, was anything said at the briefing about, "Look, if you attend the premises and there are explosives there or something like that", what you should do?

A. No, not as far as I can remember. Yeah.

25 Q. You know, for example, anything along the lines of, "Look, don't touch them. You need somebody with more than a basic understanding or knowledge of explosives to come", or anything like that?

A. Well, I truly can't remember exactly what was said, but the fact that we did, in fact, handle them would tell me that that was not said.

30 Q. Is your evidence that if you were given directions along those lines you wouldn't have handled the gelignite that you found at the premises in that way?

A. That's true, but, if I could put it this way, this job was cobbled together on the run and, back then, it was a little bit more of a robust time than it is now, in relation to safety and all the rest of it.

35 Q. That leads me to ask you a couple of questions. You've expressed, or described, it as being "cobbled together".

A. Yes.

40 Q. I think you said, "quickly", or something along those lines.

A. Yes.

Q. What do you mean by that?

45 A. Well, just simply, it - if we had have had the time - and this is retrospectively - perhaps we could have considered other options, but Mr Morey was adamant, "We've got to get moving, got to get moving now," and I could only put that down to pressure from above. And from above - I'm guessing that the politicians would have been briefed over such a thing. International implications means perhaps the Federal Government was
50 briefed, and, of course, they all push it down - politicians looking after their own

backsides - onto the police, senior police, down to our level.

Q. The evidence you've just given, is that the impression that you had?

A. Only the impression. I can't validate it.

5

Q. You do have a recollection of Inspector Morey saying things along the lines, "We've got to get moving, we've got to get onto this"?

A. That's the overall impression that I have.

10

Q. One of your last answers was something like, my note is, "It wasn't a robust time back in February 1979," in the way that you dealt with safety.

A. I think I said it was a more robust--

Q. More robust, I'm sorry. What do you mean by that?

15

A. Simply that we didn't pussyfoot around; we'd go in and do the job.

Q. I've asked a couple of other witnesses, using a contemporary term, "a risk assessment"--

A. Yes.

20

Q. I take it there was - though not in name, was there any in substance, a risk assessment undertaken?

A. Well, the - I'm guessing someone would have checked the records, such as fingerprint records, MO records. The Modus Operandi Section used to run records of threats, people prone to carry firearms or attack police, and I'm guessing that those checks were made.

25

Q. Was your assumption that, also, one of the checks that would have been made would be a criminal history?

30

A. Yes.

Q. Did you undertake that?

A. Not as - no, I don't think so. I think whatever we had was already done when the briefing took place.

35

Q. Would your assumption be that, in the lead-up to Inspector Morey issuing the instructions and also distributing that screed, that somebody else, either within Breaking Squad or Armed Hold Up Squad, would have been undertaking these checks?

40

A. I'd assume so. And just on the point of that screed, the very first time I saw that was when I attended a conference with Dr Woods and he asked me had I seen it before, and I said, "To the best of my recollection, this is the first time."

Q. Of course, that is in respect of you being summoned to give evidence here?

45

A. Correct, yes.

Q. To be fair, I might not have shown you that answer in the transcript. Your evidence at the committal was that you never actually saw the contents of the document.

50

A. Okay.

5 Q. I was showing you that more to look at what was contained in it and whether that jogged your memory as to what you were either told by Inspector Morey or Detective Sergeant Wilson.

A. Yes. I understand.

MCDONALD: Could Exhibit 11.81 be brought up, please.

10 Q. While it's being brought up, something like a criminal history back in February 1979, where would you obtain that from?

A. You'd ring the Fingerprints Section.

Q. Fingerprints Section would keep the criminal history?

15 A. Yeah. It underwent several different name changes. At one stage, it was known as "the Central Fingerprint Index", because that was all of Australia, then it was "Criminal Records", but you just used to ring and there'd be 24-hour coverage there and the voice at the other end would run the check for you.

20

Q. Was it a matter of ringing up, "Joe Smith I need some details about," and they would - could we expand that page a little bit.

EXHIBIT 11.81 SHOWN TO WITNESS

25

Q. It appears to be like some form of index card?

A. I'm familiar with it, because I was a cadet in that section, and these were the cards that we regularly, as cadets, had to file in alphabetical order. And some of them would be ten cards' long, but, yeah, that's - they used that for years and years, that particular card.

30

Q. Looking at that card, you can see up the top left-hand part of that page, you've got Mr Brajkovic's name.

A. Yes.

35

Q. And then you've got various details about date of birth, location, et cetera.

A. It's spelt incorrectly, of course, but yeah - Mr Brajkovic's name.

Q. Yes.

40

A. Brajrovic, according to that.

Q. Then, just down the bottom, you've got some details. Then maybe if we can go, I think it's, to the next page. Yes, that page. Looking at it, does that accord with your recollection of it being the next part of this index card?

45

A. I think they were double-sided and, yeah.

Q. You can see there, and I take your point about misspelling of Mr Brajkovic's surname, but can you see item number 1 records an offence and a conviction at Waverley Petty Sessions?

50

A. Yes.

Q. Then underneath you've got Central Police Station and a date?

A. That'd be Central Petty Sessions.

5 Q. Sorry, of course, Petty Sessions. Conspiracy to murder, conspiracy to cause explosions, et cetera?

A. Yes, I see that.

10 Q. These at least two, either side of the index card, that is an example of what constituted the criminal history records kept by the New South Wales Police back in about February 1979?

A. Yes, and of course the MO Section as well, which was separate and distinct to the Fingerprint Section.

15 Q. They'd keep similar information?

A. Yes, similar. I think they use a different style of card but.

Q. The MO Section, were they 24 hours?

A. Yes.

20 Q. Your expectation was that before the various teams were sent to the various locations for the raids, there would've been checking of the MO Branch criminal history/fingerprints, really to get intelligence on--

A. Yeah, just some background, yes.

25 EXHIBIT 11.89, RED PAGE 1287, SHOWN TO WITNESS

Q. Towards the top of the page, I took you to the first entry which referred to your instructions that you were going to meet other officers en route?

30 A. Yes.

Q. It refers to the Special Branch and Observation Squad police?

A. Yes.

35 Q. The Special Branch officers who attended, do you recall they were Detective Krawczyk?

A. Yes.

Q. And Detective Helson?

40 A. Yes. They were the two Special Branch people involved in our part of this job.

Q. Did you know them beforehand?

A. No.

45 Q. Then you had two Observation Squad police?

A. Yes.

Q. Detective Cook?

50 A. Kim Cook, yes.

Q. And Detective Robinson?

A. Yes.

Q. Did you know either of them beforehand?

5 A. Yes, I did.

Q. Which one, or both?

10 A. I knew both but I probably knew Kim Cook better than Ian Robinson because he did a lot of work for us on the Breaking Squad, very good work too.

Q. Can I take you to 10:05pm, and this records the en route meeting?

A. Yes.

15 Q. Can you see that Detective Krawczyk of Special Branch was in attendance and then with Cook and Robinson?

A. Yes.

20 Q. But Detective Helson was still in position taking observations of Mr Brajkovic's home?

A. Yes.

25 Q. Then you record, "Krawczyk spoke with the group, outlined events up to that time at Brajkovic's home". Can you recall, did you learn at that time that Helson and Krawczyk had been undertaking some surveillance of the house that evening?

A. I can't recall that at the moment, no.

30 Q. Do you recall Detective Krawczyk saying, "Earlier in the evening we actually went in and spoke to Mr Brajkovic"?

A. I can't swear to that. I can't tell you what he told us. It would have been a general outline of his knowledge I guess.

35 Q. That records that Detective Helson was still in position taking observations. From this rendezvous location, is your recollection that the various cars then went to 16 Restwell Road?

A. Yes.

40 Q. Do you recall en route or when you got there any contact with Detective Helson to give the officers an update about if anything had happened during that period when he appears to have been by himself surveilling the--

45 A. There may well have been, because I can't specifically recall it, but the police radios in those days, there was VKG, but you could talk car to car if you needed to. I think one of the channels was three and that was - sometimes used to try and beat the press listening in on operations. But, look that may well have happened.

Q. So a possibility was that one of the cars might've spoken to Detective Helson on this particular channel?

50 A. It's a possibility, yes.

Q. When you get to the premises--

5 HIS HONOUR: Ms McDonald, you seem to be moving to a different phase of it, the arrival at the premises. I'm looking at the time, there's some housekeeping matters to deal with; is that an appropriate time?

MCDONALD: That would be, thank you, your Honour.

10 HIS HONOUR

Q. One thing before you go, Mr Harding, for the transcription people you mentioned a taskforce earlier in your evidence that you worked on as Kappa, that was spelt K-A-P-P-A?

15 A. Correct, yes.

HIS HONOUR: Thank you. You can step down. We will have to continue your evidence on another day. Do we know what day?

20 MCDONALD: Your Honour, the next tranche of evidence is 5 August. I just pause because we also have another witness part heard. I would anticipate either Mr Harding or that witness will commence at 10 o'clock on that day and then the next uncompleted witness will continue. Your Honour, I would suspect it'll either be the Monday or Tuesday of that week for Mr Harding.

25 HIS HONOUR: 5/6 August looks like when we'll have you back. You'll be given a precise indication as soon as that's possible. Thank you, Mr Harding.

<THE WITNESS WITHDREW

30 Are we settled on the orders in relation to the timetabling of the submissions phase of the Inquiry?

MCDONALD: Yes, your Honour. Proposed orders have been circulated to the parties. If I can hand up.

35 HIS HONOUR: I've got a copy.

MCDONALD: Your Honour, just may I inquire through your Honour if everybody else has received a copy?

40 WOODS: I haven't yet.

HIS HONOUR: I take it there's been some discussion about the proposed dates and this is by agreement?

45 MCDONALD: No, your Honour. I've had a discussion with Mr Buchanan about staging, but, the actual dates, no.

50 HIS HONOUR: Is everyone able to look at this quickly now and indicate their agreement with it, or their dissent in relation to it, or would you like a bit more

time?

GLEESON: I can indicate that, for the Police Force, we looked at it over lunch and there's no difficulty from our perspective.

5

HIS HONOUR: Thank you, Ms Gleeson.

BROWN: There's no difficulty for my part either, your Honour

10

BASHIR: There's no difficulty on our part, your Honour.

HIS HONOUR: Thank you, Ms Bashir.

SILOVE: There's no difficulty for the Commonwealth.

15

BUCHANAN: No difficulty for the petitioners.

HIS HONOUR: So far so good.

20

WOODS: Your Honour, that's suitable from our perspective.

HIS HONOUR: I'll make the orders as set out in the document that has been circulated to everybody. Now as to the timetabling of submissions in the matter, through from Counsel Assisting providing theirs, by 13 December, until final oral submissions, on 5 to 7 March next year.

25

Just in relation to the latter point, I can indicate that there will be time limits involved, so that the final oral submissions can be completed in that three-day period. The extent to which time is limited to particular parties will largely depend upon the range of issues that are identified in the written submissions. Expect that there will be an imposition of time limits, but the detail will have to await the provision of the written submissions.

30

I would like to be confident that we will be in a position to work to this timetable. That means that the evidence really must conclude on the final tranche of hearing dates, in November. I would hope that parties will give thought to how long they expect witnesses to be engaged in giving evidence, from their perspective, and there to be some consultation with those who assist me, so that we can go forward with confidence that the evidence will complete by that stage, if not earlier.

35

40

MCDONALD: Your Honour, just on that matter, if the parties can consult with the Team Assisting and also if we can foreshadow, if convenient to your Honour, it may be, on certain dates, we start earlier or sit later?

45

HIS HONOUR: I'm certainly willing to do that, if it is necessary to achieve the target timetabling. It mightn't be agreeable to some, but it's something that's just going to have to happen, unfortunately.

50

WOODS: Your Honour, can I ask, in terms of dates, we're going to be sitting

from the week of 5 August, then--

HIS HONOUR: I don't have the details in front of me.

5 WOODS: I'll speak to Counsel Assisting, your Honour.

HIS HONOUR: Yes. Just another matter that I'm wondering
about. Mr Brown, you appear for the New South Wales Director of Public
Prosecutions, but I confess I'm a little unsure as to the nature of the interest
10 that you are here in respect of. There could possibly be an interest in
personnel and the institution, or it could be in relation to the convictions and
the ultimate findings that the Inquiry should make in terms of the statutory
questions that are posed. Which is it, or is it both?

15 BROWN: It's both, your Honour. At the time that I sought leave, there was no
opposition. I did have those bases ready to identify at the time I sought leave
to appear, your Honour. I don't immediately have it in front of me, but yes.

HIS HONOUR: Yes, I had welcomed your seeking leave to appear on behalf
20 of the Director but I had thought at that stage that there was a need to have a
contradictor involved in the Inquiry and that's the assumption I had made, but I
just wondered in more recent times whether that is the way it was perceived by
the Director and by yourself. If that is the case, all right, thank you. Is there
anything else?

25 BASHIR: Yes, your Honour. I have two things. One actually that may arise
from the conversation. We have raised previously whether or not Mr Brajkovic
might be recalled and we didn't know whether Counsel Assisting had made a
final decision on that or whether that's been factored into the timetable, and I
30 just wanted to raise that as something that may need to be given consideration
in the meantime.

The second thing is more straightforward and that is in relation to an Exhibit
that was referred to today, namely Exhibit 4.2-77, the statement of
35 Mr Harding. There was a substitution of what was said to be a better copy,
but, your Honour, I believe it's actually a different document. I believe that
what was originally there is the Exhibit and it does have the Exhibit Number
000174 on it, that is what we had previously. The document that we have
now, that was brought up on the screen today, which is the one that has the
40 line through it and the handwriting on it does appear to be - it's the same
content except it has this handwriting on it, your Honour, so it appears to be
another copy.

HIS HONOUR: It looks like a prosecutor's copy.

45 BASHIR: Exactly, your Honour, and that handwriting is on, we've seen,
potentially, the same on other documents and it may be the prosecutor's
copy. Rather than the Exhibit itself. It's just that 4.2-77 is described as the
Exhibit that was tendered at the committal hearing. I think maybe the
50 document that Counsel Assisting originally had is the Exhibit and this is

another copy of Harding's statement. I just raise that for consideration, your Honour.

5 HIS HONOUR: The difference between the two is the handwriting that appears on the copy that is now 4.2-77.

BASHIR: That's the significant difference. The copy that I have of the Exhibit which we all had originally also has underlining under some of the parts of it.

10 HIS HONOUR: There's handwriting, there's a line through every page, there's some parts underlined.

15 BASHIR: Exactly. Yes. That appears to me to be a copy. The one that has what appears to be the Exhibit marking on the side of 000174, which we had originally, has the underlining on it and it does have beside para 13 numbers handwritten, 1, 2, 3; and it has some handwriting beside para 22 also.

20 HIS HONOUR: Right. So what are you suggesting, that the substitution should be undone?

BASHIR: Perhaps, your Honour, but I've just raised that, Counsel Assisting may have a response.

25 MCDONALD: Your Honour, when that Exhibit was brought up, the copy I had in front of me was different and there was a little bit of interchange here. Apparently both versions were originally in the brief and one was inadvertently removed, but what we will do, we will work out what has happened what has gone wrong and clearly identify both versions, which Exhibit number they should be and a proper description.

30 HIS HONOUR: All right. Thank you.

35 BASHIR: Yes. Your Honour, I'm not suggesting that it - it's just that whatever the Exhibit is should be in 4.2 and the other one would sit with 11 as having been produced by the police perhaps.

40 HIS HONOUR: All right. That will be taken care of. Just one other matter, I've been tidying up here because you'll know this hearing room's going to be used for other purposes over the next week or two. I found a copy of the inside front cover of Exhibit 15.11 and it was a book marked by Mr Bebic during the Record of Interview. This, I've made a note on it, is not marked as an Exhibit; should it be? It's got some marking at the top and a photo at the bottom.

45 BUCHANAN: Your Honour, it might've been made by - yes - I think it's been made by me. I took a photograph of the book when it was somewhere here and it's something that I was going to draw to the attention of - certainly the Inquiry in closing submissions, but it's simply a photocopy of what we will be submitting is a significant part of the book. It's the Osvetnici Bleiburga book from memory.

50

HIS HONOUR: The transcription people are going to love you for that, Mr Buchanan.

5 BUCHANAN: And it was said to have been shown to Mr Bebic on 8 February but your Honour can see that there's a name and address in there which is not consistent with Mr Bebic and there was cross-examination on that.

HIS HONOUR: Yes.

10 MCDONALD: If I can interrupt, the original book is before your Honour; it's part of - it was seized and I think the photocopy of just that page.

15 BUCHANAN: I think I showed this to Counsel Assisting or one of Counsel Assisting's team.

HIS HONOUR: All right. So it is in evidence in the book.

MCDONALD: In its original form.

20 BUCHANAN: In original form.

WOODS: Your Honour, as alluring as the prospect is, I won't be seeking leave to cross-examine Mr Buchanan on that subject.

25 HIS HONOUR: Very good, and I don't need that. All right. I'll adjourn.

ADJOURNED PART HEARD TO MONDAY 5 AUGUST 2024