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SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 TWENTY-SECOND DAY: MONDAY 5 AUGUST 2024

INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX

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MCDONALD: Your Honour, there is some administration to begin today's hearing. My learned junior will deal with that.

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MELIS: Your Honour, I propose to tender documents which were circulated to the parties on Friday 2 August 2024. To assist with the tender of those documents, I have for your Honour an updated copy of the tender bundle index, which I will hand up to your Honour now. I would ask your Honour to mark that as MFI 11.

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MFI #11 UPDATED INDEX TO TENDER BUNDLE

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As your Honour will see, the index includes the Exhibits which have already been tendered in black, and new documents are marked in red text. I'll provide a brief overview of what those new documents are. Tab 2.2-4 comprises the transcript of the bail hearing in respect of Joseph George Kokotovic on 1 March 1979; Tab 11.50A comprises new and existing occurrence pad entries in chronological order. I note that comments have been inserted into the list of Exhibits to note where duplicates are located within Exhibit 11.50.

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Exhibit 11.76 has been supplemented with a letter from the NSW Commissioner of Police, clarifying certain aspects regarding the documents forming bundle A and bundle B, which were produced to the Supreme Court of New South Wales on 24 June 1980, in response to a subpoena to the NSW Commissioner of Police issued on 15 May 1980. The letter has been inserted

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at red pages 616-1 and 616-2.

Tab 11.76A comprises versions of documents contained in Exhibit 11.76, which currently only contains a Special Branch report by Detective Constable Jefferies, dated 14 August 1978, titled "Demonstration staged by members of the Croatian community outside the West German consulate, Trelawney Street, Woollahra, between the hours of 1pm and 2pm on Sunday, 13 August 1978. It is anticipated, your Honour, that further documents will be added to this tab in due course.

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Tabs 11.155 to 11.261 comprise selected documents produced by the NSW Commissioner of Police. Tabs 21.1 to 21.5 comprise selected documents produced by the NSW Premier's Department and Cabinet Office.

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Your Honour, further to those documents, at the July hearing block, certain documents within the tender bundle were uplifted and replaced with

better-quality versions, with your Honour's leave. These documents were contained in Exhibits 4.2-36, Tab 4.2-77, Tab 11.46 and Tab 11.66.

5 To maintain the integrity of the documents tendered at the committal hearing of the Croatian Six, the following changes have been made:

10 Exhibit 4.2-36, containing the statement of Jan Krawczyk dated 12 February 1979, has been reverted to its original tendered version. The version that was replaced on 1 July 2024 is now contained in Tab 11.153.

15 Exhibit 4.2-77, containing the statement of Brian Robert Harding dated 18 April 1979, has been reverted to its original tendered version. The version that was replaced on 1 July 2024 is now contained in Tab 11.154.

20 Tab 11.66, containing the statement of Alastair Macdonald Milroy dated 23 April 1979, with certain annotations, was replaced at the last hearing block. That version, which was replaced in July, has been reverted to its former version. However, there are three identical versions of that statement, with different handwritten annotations. Two copies already form Exhibits 11.65 and 11.66. I seek to add a further version at 11.66A.

25 For completeness, no changes have been made to Exhibit 11.46, which was replaced at the July hearing block. The better-quality replacement version of this document has been maintained.

Further, I seek your Honour's leave to supplement Exhibit 12.6 with two additional pages of the Corrective Services NSW Parramatta gaol visitation logbook entries dated 17 May 1980, at red pages 89-A and 89-B.

30 HIS HONOUR: You have that leave.

35 MELIS: Finally, I seek your Honour's leave to amend a minor pagination error in Exhibit 11.152, which now commences on red page 1425, and to uplift the following Exhibits and replace them with better-quality versions that have been since received by the Inquiry. They are Tab 11.56, Tab 11.115 and Tab 11.141.

HIS HONOUR: Yes, very well.

40 MELIS: May it please, your Honour.

HIS HONOUR: Thank you, Ms Melis.

45 BASHIR: Your Honour, I just wonder - apropos what's just been placed onto the record, I would like to just place onto the record that the documents were circulated at 11.03pm on Friday just gone, 2 August. It contains a number of documents, including statements and reports to Internal Affairs, one of those being Exhibit 11.188, dated 25 June 1979, from Mr Bennett. I think it should be placed on the record that his legal representatives have never seen that
50 document before and, in the context of this Inquiry, Mr Bennett has still not

seen that document, your Honour, because he has already given evidence. There are others coming this week, who may or may not have had the opportunity to view documents that may be pertinent to the evidence that they give.

5

HIS HONOUR: Yes. That's noted, Ms Bashir. If anything of concern does arise, you'll no doubt let me know in due course.

BASHIR: Yes. Thank you, your Honour.

10

WOODS: Your Honour, might I make the same observation generally. Our clients have not seen any of the new documents, but, of course, that's a matter for the Inquiry.

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HIS HONOUR: Yes. Thank you, Dr Woods.

<BRIAN ROBERT HARDING, ON FORMER OATH(10.22AM)

<EXAMINATION BY MS MCDONALD

5 Q. Mr Harding, when you were giving evidence on the last occasion, 5 July, towards the beginning of your evidence, I asked you about giving evidence at the committal hearing of the Croatian Six and also at the trial. I asked you whether you had had an opportunity to read through the transcript of your evidence, at committal and at trial.

10 A. Yes.

Q. I then asked you about whether there were any corrections you wished to make after you had read through those. At page 1583 of the transcript, you gave evidence that there was a part, I think it was, of the committal transcript, where it appears that you were being attributed with certain statements, and it was actually Mr Wilson who was - you were giving evidence about something Mr Wilson said.

A. Yes.

20 Q. You described it as being a little bit untidy to explain. Then I asked you, during the break, before you came back to give evidence, if you could look at the transcript and work out where you would ask to make a correction to the transcript.

A. Yes.

25 Q. Have you had an opportunity to do that?

A. Yes.

30 Q. Is it the committal transcript?

A. Yes.

Q. Have you, in your bag, got the transcript with--

A. No. I just made a note of the page.

35 MCDONALD: Your Honour, could Mr Harding have access to the note?

HIS HONOUR: Yes, of course.

MCDONALD

40 Q. Can I just first ask, this is the committal transcript, can you give me first which day?

A. I didn't make a note of that, I'm sorry. I just made--

45 Q. What have you made a note of?

A. Just the page number.

Q. Just pausing there, what page number is the first one?

A. That was 7846, where I allegedly said, "I don't give a damn."

50

Q. Could you just hold on for a sec. When you say page 7846, do you remember it's the red page, down the right-hand bottom?

A. Look, I'm sorry, I--

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

Q. The section that you're looking at is down towards the bottom of the page. Do you see the question, "You've got no independent recollection?", where the cursor is?

10 A. Yes.

Q. That says, "I can remember typing it, I can remember generally that is what is contained in it but as for verbatim questions and answers I could not give a damn."

15 A. Definitely did not say that.

Q. Looking at that answer, which words do you say you didn't say?

20 A. "I could not give a damn." I'm reasonably sure I would have said, "I could not give it verbatim."

Q. Do you have a recollection of what you said?

A. (No verbal reply.)

25 Q. You're quite adamant that you did not give evidence that you didn't give a damn?

A. I've never said that from a witness box, ever.

Q. Looking back at the transcript, you suggest that you probably said something like, "I could not give it verbatim"?

30 A. Correct, yes.

Q. Have you noted any other corrections?

35 A. Yes, which made me, then, start thinking about cross-examination that I received at the trial, in - and, in particular, I'm talking about page 7797 of the committal transcript.

Q. Can you just hold there for a minute. That's still Exhibit 2.3-35, your evidence on 18 September, and it was red page 7797?

40 A. Yes.

EXHIBIT 2.3-35, RED PAGE 7797, SHOWN TO WITNESS

Q. Can you indicate where on the page we're looking, Mr Harding?

45 A. There's a series of questions there, where I start off speaking to Mr Brajkovic and then, at a later stage, in the house, Wilson, Detective Sergeant John Wilson, takes over, but I'm attributed with saying some of the things Wilson actually said, according to the transcript. There's about three or four questions there, according to the transcript, which says I said - it was, in fact, Wilson said. Now, I would - in view of the error about "I don't give a
50 damn," it made me start thinking - I don't believe I said that. I think it's an error

in the transcript.

MCDONALD: Can I just pause. Could we first go back to 7796, down the bottom.

5

Q. Just putting this in context, this was your evidence at the committal, and if you go just a little bit higher--

A. Yes.

10

Q. A little bit higher. Stop. Your evidence was, "Inside the house I saw Detective Sergeant Wilson and other police. I saw Mrs Brajkovic and a small child and another man." I'm just jumping over this. You're there with Mr Brajkovic, and I think Detective Morris, was it?

A. Yes.

15

Q. If we just follow down that page, we've got:

20

"I then returned to the defendant and said to him, 'Come into the front room'. The defendant then returned to the front room of the house and Detective Sergeant Wilson said to him..."

And there's some introductions.

A. Yes.

25

Q. The evidence that you were referring to on the next page, this is a conversation that's occurring between you, Detective Sergeant Wilson and Mr Brajkovic?

A. Yes.

30

Q. If we could go back to 7797 at the top of the page. For example, line 5, where it records, "I said, 'Who owns all of this?' He said, 'They belong to me'"--

A. Yes.

35

Q. -- "then I said, 'Do you realise that they are explosives and could quite easily be used to as a bomb?' He said, 'Yes, I make a bomb.'". I won't go through all of it, but are you now questioning whether you said that or whether it was Mr Wilson?

40

A. Well, it was definitely Wilson, but what I'm saying is the transcript reflects "I said". Now, I - if the tape still exists, and that is, in fact, what took place, I'd have to concede I made an error, but the point I'm trying to make is that there was three legal representatives, at least, a police prosecutor, and why wasn't I pulled up on the spot--

45

Q. All right.

A. --attributing myself?

50

Q. What I'm trying to work out at the moment is whether you want to correct any evidence, and I'm asking that from your perspective, as you sit here today, what you can remember of the events back in 1979, refreshing your memory

from reading transcript, are you now saying to his Honour that where it records, "I said, 'Who owns this?'" , "I said", your recollection is it was Detective Sergeant Wilson?

A. Correct. In other words, what my statement reflects is the true position.

5

Q. When you say, "your statement", you're referring to the statement that you made on 18 April 1979--

A. Yes.

10

Q. --which we showed you on the last occasion?

A. Yes.

Q. Other than those--

15

HIS HONOUR

Q. Just before you go on, can I just be clear about the extent of this. This relates to about the fifth line down on p 7797 where it says, "I said, 'Who owns all of this?'" And does it extend all the way down about the middle of the page where the beginning of the line is recorded as, "I said, 'Do you understand that?'"?

20

A. Yes, sir.

Q. So all that passage where the "I saids", they should be, "Detective Wilson said"?

25

A. Correct.

MCDONALD

30

Q. Any other corrections?

A. No.

Q. I want to take you back to the events of 8 February 1979. You were asked some questions on the last occasion about working on 8 February, but being told that you might have to attend a raid, or do some work subsequently after your shift ended.

35

A. Yes.

Q. And that you then remained at the CIB offices?

40

A. Yes.

Q. Again, just paraphrasing, you were hearing word around the office about something that was happening at Lithgow?

A. Yes.

45

Q. Then you gave evidence that around 9.00pm, there was a meeting where Inspector Morey addressed a group of officers?

A. Yes.

50

Q. You were then put into, if we can describe it as a squad or a group, who

were going to attend the Bossley Park premises?

A. Yes.

5 Q. The other officers who were there, you realised that they were being put into other groups or squads to attend other premises for raids?

A. Yes. As far as I know, yes.

10 Q. After you left the CIB, do you recall that instead of going straight to the premises at Bossley Park, you met up at the intersection at Prairie Road and Polding Street?

HIS HONOUR: Prairie Vale Road.

15 MCDONALD: Sorry, thank you.

Q. Prairie Vale Road and Polding Street?

A. Yes.

20 Q. There you met up with other officers from the Observation Squad?

A. Yes.

Q. That was Detectives Cook and Robinson.

A. Yes.

25 Q. Also a detective from Special Branch, Krawczyk, was there?

A. Krawczyk, yes.

30 Q. You were also told that there was another Special Branch officer who was remaining back at Restwell Road still undertaking surveillance?

A. Yes.

Q. When you met up there, the officer-in-charge was Detective Sergeant Wilson?

35 A. Yes.

Q. And on the last occasion, you confirmed that, in terms of seniority, you were the next senior officer?

A. Yes.

40 Q. When you met up at the intersection of Prairie Vale Road and Polding Street, were you allocated particular tasks or locations where different people would go initially?

A. That - that could have taken place, yes.

45 Q. Did Detective Krawczyk report back about their observations?

A. Yes. I believe so.

50 Q. Can you recall what he said?

A. No.

Q. Do you recall whether he told you that late that afternoon, he and Detective Helson actually went into the premises and spoke to Mr Brajkovic?

A. It's a possibility, yeah.

5 Q. Did he tell you that through this work at Special Branch, he'd actually met and knew Mr Brajkovic?

A. I believe so, yes.

10 Q. When you and the various other officers, and you were in the car with, was it, Detective Morris?

A. Yes.

Q. After you attended at the premises, did you then partner up, in a sense, with another officer?

15 A. On - on that night?

Q. Yes. When you arrived at the premises--

A. Yes.

20 Q. --did you partner up, or were you--

A. No. Morris was my workmate, but there were other police there, of course.

Q. Because Morris was your workmate, was it inevitable on that night that you would initially be working together?

25 A. Correct, yes.

Q. What's your recollection of where you and Morris initially went on that night?

A. At the house?

30

Q. Yes.

A. I - I believe I went and Morris went to the front of the house. I'm only basing that on what I've read. Do you want me to continue?

35 Q. Yes.

A. While we were at the front of the house, at some stage Detective Bennett came out and indicated that Mr Brajkovic was not there, to take a look around, and it was shortly after that, I believe, that we heard this - well, I shouldn't say, "we". I heard the sounds of a struggle, and Morris and I ran towards it, and it was Detective Pettiford and Helson struggling with Mr Brajkovic, and we joined in to subdue him.

40

Q. You gave evidence that Detective Helson wasn't at the pre-raid meeting at Prairie Vale Road?

45 A. Yes.

Q. And it was your understanding that he was still back at the premises undertaking surveillance.

A. Yes.

50

Q. When you arrived at the premises, did you locate or identify where Detective Helson was?

5 A. My independent recollection of this, as you'd appreciate, is not great, but I've read the transcript, I've read my statement, and it would seem as if Wilson, Bennett and Krawczyk drove in first, followed by Morris and I. Probably the surveillance people were behind us, and Helson was behind them.

Q. Is it your recollection that Helson actually drove into the driveway?

10 A. I can't say now.

Q. You've said that you heard a struggle--

A. Yes.

Q. --and that you and Detective Morris then ran towards there.

15 A. Yes.

Q. When you arrived there, what did you see?

20 A. Again - well, I've got to rely upon what I've read, and Mr Brajkovic was on his back. Detective Pettiford was, if I could use the word, astride him up the top, arms, legs, torso. Helson was trying to control the legs, and, as I say, we joined in.

Q. When you say you "joined in", what did you do?

25 A. Well, he was struggling fairly strongly, and at some stage I got behind him, lifted him, put him in a headlock, and collectively we rolled him over, and he was then handcuffed with his hands behind his back.

Q. When you rolled him over, he was face down?

30 A. Yes.

Q. You handcuffed him, or did--

A. I didn't. I think - I think it was Pettiford did.

Q. Then what happened?

35 A. Stood up. Helson had access to a spotlight, and he shone it in the area in which the struggle took place, and a white bag was detected. A white plastic bag. I went over and picked it up.

Q. Can I just pause there. When you say, "Helson had a spotlight"--

40 A. Yes.

Q. --was this a spotlight that was somehow connected with the car?

45 A. Yes. Yeah. It connected into the glove box, and you could pull it out and just remotely use it.

Q. He actually removed it from the car and brought it forward, did he?

50 A. Well, the - I'm assuming the window was wound down and he - well, it was just a matter of reaching in and pulling it out and applying a trigger, I think, and just shone it around the general area.

Q. For it to work, it still has to be connected to the car?

A. Yes.

5 Q. To use the spotlight that was attached to the car, does that suggest that the car had to be relatively close?

A. Well it was, I believe. We - we all drove in one behind the other.

Q. So your recollection is Detective Helson's car was actually in the driveway?

10 A. Yes.

Q. So it didn't move; your recollection is that from that position of his car in the driveway, he was able to get the spotlight and use it?

A. Yes.

15 Q. The spotlight was being used to illuminate the area around where the struggle occurred?

A. Yes.

Q. Were you the person who saw the white plastic bag?

20 A. I think Helson spotted it first and directed out attention to it.

Q. Were you the person who went up and examined it?

A. Yes.

25 Q. What did you see when you examined it?

A. I believe I picked it up, held it open, Helson's shone the spot into it, and I saw a newspaper wrapping with two sticks of gelignite taped together. There was, I think, a brown - brown paper wrapping, which contained detonators, and then there were loose flares as well.

30 Q. At the briefing that you had received at around 9 o'clock at CIB you had been told that there was the possibility that at the particular premises that you were attending there may be explosives?

35 A. Yes, I think so. It - look, curiously is I've got absolutely no recollection of the briefing, but I know I was there, I know Mr Morey conducted it, and more than likely he allocated who was - what our duties were, and he would have briefed us on events up to that point, which would have indicated there was a strong possibility that explosives would be at the house.

40 Q. Also a possibility of firearms?

A. Yes, perhaps, yes.

Q. You have opened this white plastic bag and there are gelignite?

45 A. Yes.

Q. In some kind of brown, I think you said--

A. The gelignite was in a newspaper.

50 Q. Then there was some kind of brown paper, I think you said attachment, or something like that, brown paper?

A. I said brown paper wrapping, which - it was probably a brown paper bag, actually, which contained detonators and the flares.

Q. So at this initial stage of the raid you had found explosives?

5 A. Yes.

Q. At that point you hadn't been into the house?

A. No.

10 Q. You've got no idea what's contained in the house?

A. No.

Q. Did you also notice at that stage that there was a shed towards the back of the property?

15 A. I didn't. I became aware of that later, yes.

Q. But obviously no search had been undertaken of the shed at that stage?

A. No, I don't think so.

20 Q. At that point, upon the discovery of explosives, what did you do then to ensure the safety of the fellow officers who were there?

A. I think I said on a prior occasion that I have a basic knowledge of explosives, which was imparted to us by the military, and it's - we were always told that if the detonators were separate and distinct to the gelignite, there was
25 no real danger, and particularly so if there was no ignition point, such as batteries, fuse, that type of thing. And they were - they were all separate.

Q. So you look in the bag, you see they're separate?

30 A. Yes.

Q. What about the condition of the gelignite; had you been taught about weeping gelignite?

A. Oh yes, yes, yeah. We were told that.

35 Q. Did you make any observations of the gelignite?

A. It seemed to be perfectly intact.

Q. Was it your thinking at the time that the items in the white plastic bag appeared to be in a safe position or safe situation?

40 A. Yes. I've - I've seen gelignite that weeps, and it comes through the packing; you can see it. And if you're exposed to it for too long, it can cause headaches, and it is unstable if it is weeping. I - I'm pretty sure at these demonstrations the military - this is over a period of time - they'd arrange the various types of explosives, plastic, gelignite, detonators, fuse. It - probably
45 over the years, I - I - I saw it, I'll guess and say three or four times which they demonstrated, and yeah, and providing the detonators are separate from the gelignite, it is secure.

50 Q. The fact that you very early on had found explosives in the white plastic bag, that must have raised a concern with you that other explosives could be

in the house, in the shed, or elsewhere on the premises?

A. I - I can't tell you what crossed my mind then, but I - I think that would be reasonable, yes.

5 Q. In those circumstances, what steps did you take first to ensure all the other officers who were there, some of them like Cook and Robson (as said) looking round the property, others like Detectives Bennett and Wilson and Krawczyk in the house, that they were alerted?

10 A. I'm - I'm guessing that there - there would have been a conversation along the line of take care.

Q. Did you tell them to take care?

A. I couldn't tell you that now.

15 Q. Mr Harding, as at February 1979, had you ever come across a New South Wales Police Force Emergency Manual?

A. There were - there were various rules and instructions and manuals. If - if you could show it to me, it might jog my memory.

20 Q. I'll show you first the cover sheet of the document. If Exhibit 14.8 could be brought up. That is the cover page, Mr Harding.

A. Yes.

25 Q. Just to orientate you, if we go to page 100, that's the beginning of the contents?

A. Yes.

Q. Can you see "Chapter 19 – bombs, grenades, shells and ammunition"?

30 A. Yes.

Q. Then if we can go to page 102, this is under "Introduction", "this manual replaces all previous general instructions to Police in connection with emergency disaster procedures". It then refers to some particular establishments where there's specific instructions. Does this jog your memory as to whether you've seen this manual before?

35 A. I don't believe I ever have. I'd be particularly interested to know it's publication date, and also where it was distributed.

40 Q. If we go down the bottom of the introduction, can you see a date, "May, 1974"?

A. Yes, I can see it.

45 Q. Just to give you some background, a notice was issued, or an Order for Production was issued to the New South Wales Police seeking, and I'll just broadly describe it, a relevant procedure or manual for the police in existence or in operation as at February 1979 dealing with bombs and explosives and police coming across it.

A. Yes.

50 Q. Just to assist you, if I take you to Exhibit 14.9, this is chapter 19 that was

referred to in the index, and can you see it's headed "Bomb Incidents"?

A. Yes.

5 Q. It then continues through, for example, "Action of police receiving a bomb threat", et cetera. What I wanted to take you to is 19.11, which is on page 124. This is headed "Commercial Demolition Explosives and Detonators Located or Received"?

A. I can see that, yes.

10 Q. Can you then just have a quick read of those three paragraphs.

A. Yes.

15 Q. You can see there it basically says if you come across commercial demolition explosives and/or detonators - and the gelignite that you found in the white plastic bag, it would meet that description?

A. I'd say so, yes.

20 Q. As you said, the detonators in the brown paper, or brown paper bag?

A. Yes.

25 Q. There it states that you won't interfere with them, but initiate safety measures, and then in 11.2, suggesting that you contact explosive experts from the Department of Army?

A. Yes.

30 Q. That procedure, did you have knowledge of it at--

A. I have no recollection of ever seeing this manual, but prior to this there was rules - rules and instructions, which every police officer was issued with, which may have contained similar material. But all - all that I'd say with this is that we would - we were not normal police officers, we were members of the Special Weapons and Operations Squad, we'd received some rudimentary training, certainly we were not experts, in my own case I was not an expert, but I - I was confident, on the basis of what I had learnt through the military, that it could be handled safely, and that's why I did it.

35 Q. Your evidence that it could be handled safely, you were referring to the contents of the white plastic bag--

A. Yes.

40 Q. --and your observations of how they were packed or organised?

A. Yes.

45 Q. It must have gone through your mind that, if this was found in a plastic bag, it was likely that there may be other explosives somewhere on the premises?

A. Probably.

50 Q. And, also, other explosives that had somehow been constructed into a bomb at that stage?

A. I couldn't tell you what ran through my mind 45 years ago, but everyone - they were all mature men; they would have known to take care.

Q. Was everybody who attended a SWOS member?

A. No.

Q. You were a SWOS member and had that training and experience.

5 A. Yes.

Q. Did you turn your mind to whether the Army or even experts from, for example, the Ballistics Unit within the police should be contacted?

10 A. No I - well, I can't really tell you what ran through our mind at that stage, but it was a fairly large operation and I doubt--

Q. Can I just pause you. When you say, "large operation", what are you referring to?

15 A. Well, I think there were about half a dozen addresses visited--

Q. All right. All the raids that night?

20 A. And I doubt if we would have had the resources to deploy them to every location, but - look, I can only repeat what I've just said, that, on the basis of my rudimentary training, I was confident that it was safe and, so far as further devices were concerned, well, that was the whole purpose of the search. If something exotic had have been found, with tripwires or whatever, perhaps things would have slowed down very quickly and experts may have been tried to be reached.

25 Q. At the point of discovering the white plastic bag, Detective Sergeant Wilson was in the house, to your knowledge?

A. Yes.

Q. At that point, did you place Mr Brajkovic under arrest?

30 A. Yes.

Q. Did you and Detective Morris then take him into the house, so that you could have a conversation with Detective Sergeant Wilson and tell him what had just occurred?

35 A. Yes.

Q. And did you go directly from the area of finding the white plastic bag, and the struggle, into the house?

40 A. Yes.

Q. When you got into the house, or entered the house, who do you recall was present in the house?

45 A. Detective Bennett, MacKenzie, Wilson, of course. That's the best I can do at the moment.

Q. Was Detective Krawczyk there?

A. More than likely, yes.

Q. What about non-police?

50 A. Sorry?

Q. Non-police.

A. Non-police? Yes. Mrs Brajkovic and her brother.

Q. That's Mr Hudlin?

5 A. Yes. And there was a small girl, as well.

Q. When you entered with Mr Brajkovic, you had a conversation with everybody there and then you asked to see Mr Wilson in another room?

10 A. When you say I had a conversation with everyone there--

Q. You walked in and you said something like, "This is Mr Brajkovic. He put up a bit of a struggle, but everything is okay now," something along those lines.

15 A. Something along those lines, yes.

Q. You then asked to speak to Detective Sergeant Wilson and you went into another room.

A. Yes.

20 Q. When you were in that other room, is that when you still had the white plastic bag?

A. Yes.

25 Q. Is this when you show Detective Sergeant Wilson for the first time the contents of the bag?

A. Yes.

Q. The room that you went into, it's been described in the evidence as kind of seemed like a workshop.

30 A. Yes.

Q. What was it like? What did it contain?

35 A. Look, I can't describe it to you now. I - if you ask me to describe the exterior and interior of the house, I've got no true recall of that, at all.

Q. When you walk into the room with Detective Sergeant Wilson, you must say something to him along the lines of, "Look, this is what we found near Mr Brajkovic out in the grounds."

40 A. I can only rely upon my statement which I made, notes that we prepared, which I read, for the first time in 45 years, two weeks ago. I could only rely upon what's in that.

Q. To show Detective Sergeant Wilson what's in the white plastic bag, how do you do that?

45 A. If I was to guess, I open it up, perhaps exposed it. I--

Q. Can I just stop you there. You said, "I guess". Do you have a recollection?

A. No, I don't.

50 Q. I'll take you to some committal transcript. This is Exhibit 2.3-35,

commencing at page 7843. These were a series of questions. If we can go down towards the bottom of the page, where Mr McCrudden asks, "At any time". Do you see there you were asked, "At any time during the evening was the dynamite or gelignite and detonators removed from the white bag?" and you answer, "Yes." Mr McCrudden then asks you another question and then you pull him up, "Do you mean completely removed from the bag?"

A. Yes.

Q. And "Well removed from the bag means taken out of the bag?", and you then say, "No I would not. It was pulled out, almost out, I did that in the front room with Wilson." Then, towards the bottom of the page, you say, "It was out on the table during the course of the interview with Brajkovic and covered with the white bag."

A. Yes.

Q. The reference to the interview with Mr Brajkovic, do you recall at the house the sequence was you leave Mr Brajkovic with Detectives Bennett and Morris, in the kind of kitchen/lounge room area. You and Detective Sergeant Wilson go into the workshop. You show him what's in the bag. Then you go out and bring Mr Brajkovic back in.

A. Yes.

Q. There's a series of questions asked of Mr Brajkovic there.

A. Yes.

Q. The reference when "It was out on the table during the course of the interview with Brajkovic and covered with the white bag," are you talking there about when Mr Brajkovic is still at the house and he's brought back into the workroom?

A. I presume so, yes.

BASHIR: I know that the question has been asked and answered, but, just a few questions above that answer, there are questions about "back at the CIB".

HIS HONOUR: Whereabouts is this?

BASHIR: Your Honour, where it says, "Mr McCrudden"--

HIS HONOUR: I see. Yes.

BASHIR: Yes.

MCDONALD: That's what I was exploring. That's why I asked the question, which the witness has answered.

HIS HONOUR: Yes.

MCDONALD

Q. Can I take you to the next page, Mr Harding. You're then asked, "Well then

in your statement you say here 'Your wife will have to be spoken to because we want to ascertain if she's involved in any of your activities'", and "he said 'She does not know what that I've had this' indicating property taken from the white bag." You answer by asking a question, "Taken from the white bag?" "That's right, taken from the white bag." Then, answer, "I've misled you there because it was not at any time completely removed from the bag, it certainly was protruding but not completely removed from the bag." Then you say, "I think you're splitting straws there, anyway." Then, to be fair to you, if we go down, the next question - jump over, "Well you see detective this is your statement I'm reading from."

"Q. How could you possibly put down 'indicating property taken from the white bag' when you in fact meant 'indicating the white bag'?"

A. No I don't mean that at all. I'm saying to you that the property within that white bag was almost completely exposed but it was not taken completely out of the bag. Perhaps I should have described it as partially showing."

I just want to ask you about those series of answers that you gave. Reading those, you go into the workroom with the white bag and the contents, with Detective Sergeant Wilson?

A. Yes.

Q. Obviously, one of the reasons you've done that is to show him what's in the white plastic bag?

A. Yes.

Q. At that point, in the workroom, when you're having the discussion with Detective Sergeant Wilson, what's your recollection today about - were things taken out of the white plastic bag, or were they protruding, or were they partially exposed?

A. I can only rely on what's there, because it was closer to the event.

Q. Looking at the answers that you're taken to, how would you summarise what you said on that occasion?

A. Now--

WOODS: Is my learned friend talking about the statement or what you say to Mr McCrudden? It's not clear.

MCDONALD

Q. I'm referring to the questions and answers I just took you to, Mr Harding. You've said that your evidence on 18 September 1979 was obviously closer to February 1979?

A. Yes.

Q. I just want to confirm, based on that, based on your reading of the answers you gave, your evidence at that point was that the contents of the bag weren't

taken out at that point, but were either protruding, but not completely removed from the bag?

A. That's what it seems to say, yes.

5 Q. We don't have the white bag. It was an exhibit for the trial, but it's gone missing. What size white bag was it?

A. Just a normal shopping bag that is still in use today.

10 Q. That doesn't help. Yes. They're banned now. Did it have a sufficient kind of opening that you could open it and look in and see what was--

A. It was just a normal plastic bag that is still in use today. Two handles. You could open it.

15 WOODS: Your Honour, can it be recorded that the witness separated his hands to a distance of about 2 feet or thereabouts. I can't recall precisely what it means in metric formula, but it was something like that.

MCDONALD: Your Honour, I might just ask Mr Harding.

20 Q. You did just put your two hands up.

A. Yes.

Q. Could you do that again, please. Roughly what's that distance?

25 A. Well, that's a guess. It's - it's impossible for me to be accurate, but in the old money, 18 inches.

Q. But as you said, it's a guess?

A. Yes.

30 Q. Based on the answers that you gave back in September 1979, it would appear that it could be, on your evidence, it could be opened to the extent that you could look in and see the contents?

A. Yes.

35 Q. Can I ask you, while you were still at the house, the white plastic bag with its contents was taken into the work room?

A. Yes.

Q. Detective Sergeant Wilson is shown the contents?

40 A. Yes.

Q. Mr Brajkovic is then brought in, and some questions are asked?

A. Yes.

45 Q. Again, it would appear that he is either indicated to him the contents of the white plastic bag?

A. Yes.

50 Q. After that occurred, there continued to be a search of the premises by the different officers?

A. Yes.

Q. You participated in a search of the workroom?

5 A. Well, I - pardon me. While I was there, I found a roll of tape, once the search continued, and the tape was identical to that which wrapped around the gelignite, and I can remember there was a clock found.

Q. That was found in the workroom?

10 A. Yes.

Q. Was that by Detective Sergeant Wilson?

A. Yes.

15 Q. Was it the case that you and Detective Sergeant Wilson were primarily in charge of searching the workroom?

A. I think you could say that, yes.

Q. Do you recall in the premises at the front of the house near the workroom was a bedroom?

20 A. That could be right, yes.

Q. Do you remember searching it?

A. I think I did.

25 Q. Was that with Detective Sergeant Wilson?

A. I can't say.

30 Q. Is it your recollection that other officers, for example, Detective Morris, and maybe Detective MacKenzie and Detective Krawczyk were searching that initial area where you walked in which appeared to be a kitchen and a lounge room?

A. That's a possibility. Look, as I say, if you asked me to do - now to describe the interior of the house, I just couldn't do it. I - I've got no great recall of that at all.

35

Q. As the person who found the white bag, was it, while you were at the premises, in a sense under your control, or did you have responsibility for it?

A. I - I may have, yes.

40 Q. While you and the other officers were conducting searches of different parts of the property, did the white plastic bag and its contents remain in the workroom?

A. I think so.

45 Q. At any stage to your knowledge, while the white plastic bag was still in the workroom, were the contents actually taken out and placed on the table?

A. I did not have - I have no - I have no recall of saying that. Look, I know my answers are not satisfactory because of the passage of time--

50 Q. No. No. That's--

A. --but I - I - I can't recall that happening.

Q. It didn't happen, according to the evidence I took you to, when you showed the bag to Detective Sergeant Wilson?

5 A. No.

Q. It didn't happen when Mr Brajkovic was brought in and he was asked some questions about the white plastic bag?

10 A. I don't believe so.

Q. Does that suggest that the contents actually weren't taken out and placed on a table?

A. It's guesswork what - what I'm doing. I - I can't be precise.

15 Q. Now, just jumping ahead. The white plastic bag with its contents, you did not transport that back to CIB?

A. No.

20 Q. That then was placed, in a sense, in the possession of Detective Sergeant Wilson?

A. I believe so, yes.

Q. And in the car that he travelled in, it was somehow transported back to CIB?

25 A. That's my understanding, yes.

Q. You went in a separate car with Detective Morris?

A. Morris, that's right. And Mr Hudlin.

30 Q. Is it your recollection that you, with Detective Morris, and then the car with Detective Sergeant Wilson and the white bag and its contents, left the premises roughly around the same time?

A. Yes.

35 Q. But you left some officers still at the premises?

A. Yes.

40 Q. Up until the time that you were about to leave, and Detective Sergeant Wilson was about to leave, is it your recollection that the white bag and the contents remained in the workroom?

A. I can't say.

45 Q. Do you have a recollection of any of the other officers coming into the work room and having a look at the white bag and its contents?

BASHIR: I object, your Honour. I'd just ask that the question be time specific. Is Counsel Assisting asking about when he was in the room, or is it the question at large the entire time.

50 MCDONALD: I'll rephrase it.

Q. Can I start with when you were in the workroom. For example, conducting the search, or picking up items that you were going to seize, do you recall any other officer who was present at the premises going into the workroom and having a look at the white plastic bag and its contents?

5 A. It could have happened.

Q. I'm not asking you that. I'm asking: do you recall anybody doing that?

A. No. No.

10 Q. Do you recall overhearing any conversation between any of the officers and, for example, Detective Sergeant Wilson, where he invited them into the workroom to have a look at the white plastic bag and its contents?

A. I have no recall of that.

15 Q. The items that were seized at the premises, who made the decision what would be seized?

A. I - my focus would have been on literature, that - that style of thing, or anything else which could have been used as a component to an explosive device, but that was my focus.

20

Q. Can I just stop you there. When you say, "That was my focus", was that a focus that you, in a sense, were directed or instructed to have, or is it something that, given what you had been told about the raid and what you had found in the white plastic bag, you decided to concentrate upon?

25 A. Yes. I'd say the latter, yes.

Q. With a raid at this time, who ultimately made the decision what would be taken? Was it up to the officer-in-charge to ultimately say, for example, "Yes, you can take that, you can take that, but that's not relevant." Or was it up to the discretion of the individual officers?

30 A. I'd say it was up to the discretion of the individual officers, and it could be sorted out later on.

Q. Do you recall any discussion between the other officers with Detective Sergeant Wilson about what was going to be seized?

35 A. No. I have no recall of that at all.

Q. As you said, your focus was on literature. When you say, "literature", what are you referring to?

40 A. Well, it - anything that could be guides to making bombs, or any - you see, I can't read Croatian for a start, but anything which indicated political activity in line with what they were trying to achieve.

Q. So ideological type--

45 A. Yeah, yep.

Q. --either literature or publications?

A. That's right, yeah.

50 Q. Also, you said anything that could be used as a component--

A. Yes.

Q. --of a bomb, and you gave evidence beforehand that you found the tape?

A. That's right.

5

Q. Which seemed to be tape that had been used to put some batteries together?

A. No. The gelignite. The gelignite.

10

Q. The gelignite?

A. Yes.

Q. Also you said Detective Sergeant Wilson said found a clock?

A. That's right.

15

Q. You were the second most senior officer. If other officers were grabbing items that you thought, that's ridiculous, that's got no possible relevance, could you intervene or have a word with them?

A. If I have noticed it, yes.

20

EXHIBIT 4.2-30, RED PAGE 364, SHOWN TO WITNESS

Q. Mr Harding, in an answer to a question, you did say something along the lines of, "Look, it could be sorted out afterwards", and just to give you some background, this is a list that was created by Detective Sergeant Wilson, and you can see at the top it's a list of property taken from the home of Mr Brajkovic on that night; do you see that?

25

A. Yes.

30

Q. Again, if we go down towards the bottom of the page, at 31 we've got the binoculars. I didn't ask you about that, but do you recall there were some binoculars found near the white plastic bag?

A. Yes, that's right.

35

Q. Then you can see we've got the two sticks of gelignite, the detonators, et cetera?

A. Yes.

40

Q. What I wanted to ask you about was other items, for example 22 three bow ties; 23 a wristwatch without a band; 14 a gift case with gold necklace and matching earrings; 6 ladies makeup bags containing cosmetics; do you see those?

A. Yes.

45

Q. Those items, it's just very hard to see how they could be relevant for the reason for the raid and what you were investigating?

A. I agree, unless they were, you know, contained with other stuff which could be relevant, such as a street directory, such as a black notebook, such as a photographic album, books. Unless they were all in the same container, or something like that, but, you know, bow - bow ties, I don't think they had any

50

relevance, unless they were in the same container as these other items. The typewriter, for instance, that--

5 Q. No, the typewriter I'm not going to; I'm going to some examples which I would suggest to you stand out. Did you seize any of those, the items that I'm saying stand out?

A. Did I see them?

Q. Did you seize them, take them.

10 A. Oh seize them, seize them. No, no, I don't believe I did.

Q. Do you recall seeing any of the other officers with a jewellery box, with two rings, plastic beads, chains and eight coins?

15 A. I can't answer it any other way than to say that if they were mixed in with some other stuff which was potentially relevant, they might have been uplifted, and the idea being sort it out later on and return, the non-relevant stuff.

Q. When you say mixed in with other stuff, and you keep on talking about a container?

20 A. In a drawer, in a box, that style of thing.

Q. What, you'd take the drawer?

A. Well, perhaps.

25 Q. Do you have any recollection of what occurred on that night?

A. No.

Q. What you're doing is to try and think up a reason as to why these items would have been taken?

30 A. Well, I - why - why would you take bow ties deliberately? You know, unless they were in with something else which was potentially relevant. They've just scooped them up.

SHORT ADJOURNMENT

35

Q. Mr Harding, before leaving the premises at Bossley Park, you've given evidence that your recollection is that you conducted, with Detective Sergeant Wilson, the search of the workroom?

A. Yes.

40

Q. And also the bedroom?

A. Yes.

45 Q. Do you have a recollection of whether any other officers searched the bedroom, or was it only you and Detective Sergeant Wilson?

A. I don't know.

Q. Just to be fair to you, if we go back to Exhibit 4.2-30, which was the list I showed you.

50

EXHIBIT 4.2-30, RED PAGE 364, SHOWN TO WITNESS

Q. Could we look at item 12. You can see there "one wooden", I think that's supposed to be "wardrobe drawer"?

5 A. Yes.

Q. But that is the only reference to, using your evidence, any container or drawer that was seized?

10 A. I don't know.

Q. Well, it's the only one in the list.

A. Yes, okay.

Q. You can't recall seizing or taking any of those irrelevant items?

15 A. No.

Q. Can I take you now to leaving the premises and going to CIB. You gave evidence before the break that you travelled with Detective Morris?

20 A. Correct, yes.

Q. And you had Mr Hudlin in the car?

A. Yes.

Q. Did you include, or pack in that car, any of the other items that were seized?

25 A. No.

Q. You didn't?

30 A. No. Not as far as I can recall, no.

Q. To your knowledge, the white bag and the contents of it went with the car that Detective Sergeant Wilson was travelling in?

A. Yes.

35 Q. Do you have any knowledge of how or where they were stored in the car?

A. No.

Q. When you went back to the CIB, you've got Mr Hudlin with you.

40 A. Yes.

Q. Where do you take him?

A. I think he went into the main body of the Armed Hold Up Squad office.

45 Q. So you returned to the floor that's got the Armed Hold Up and the Breaking Squad offices?

A. Yes.

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

50 Q. Do you see that's a floor diagram of the "Police Department Special

Breaking Squad" towards the top, and down the bottom, "Armed Hold Up Squad"?

A. Yes.

5 Q. Looking at that diagram, can you recall where you put Mr Hudlin?

A. All I can say is in the main body of the office. That's--

Q. So somewhere either within the Special Breaking Squad or within Armed Hold Up Squad?

10 A. No. The - the Armed Hold Up Squad.

Q. When you say, "Within the body of that", you can see that there are a number of desks there?

A. Yes.

15

Q. At one of the desks? Is that your recollection?

A. Yes.

20

Q. You gave evidence that when you came back, you attended to some other duties?

A. Yes.

Q. Those duties, I think, was making a phone call and something else.

A. That's right.

25

Q. You undertook those at your desk?

A. Yes. Probably, yes.

30

Q. Do you remember which one was your desk?

A. Yeah, I think I can.

Q. So we're looking at Armed Hold Up Squad?

A. Yes.

35

Q. We've got, is it, three rows of desks?

A. Yes.

Q. Which row?

40

A. Okay. There - there's - there were a row of desks along the windows, and I - I think I was in the second row, from the bottom, that is, and I was - I'm pretty sure ours was the second desk.

Q. From the?

45

A. If you look at the bottom of it, there were desks along the window. Then the next row up--

Q. Which has got four desks?

A. Four. I was the second - the second one in from the left.

50

Q. At that stage when you've come back to CIB, you were doing these other

duties. Do you have any knowledge about what's happened to Mr Brajkovic?
A. I think he was taken into the interview room, which is coloured - well, it looks like it's green, back in the Armed Hold Up Squad.

5 Q. Instead of green, could I suggest teal or aqua?

A. Well, okay.

Q. It's just up the top right-hand corner there's green.

A. No. This--

10

Q. No. No. No. You used the description "green".

A. Okay.

Q. You can see there's a green up the right-hand corner?

15

A. Yes. Okay.

Q. You're not talking about that green?

A. No. No.

20

Q. You're talking about down the left-hand-bottom corner?

A. Correct, yes.

Q. Just looking at that diagram, Inspector Morey's office, where was it?

A. If you travel along the bottom, it was in the bottom right-hand corner.

25

Q. Starting at the interview room where you said Mr Brajkovic was placed, if we go along those desks, which appear to be near windows?

A. Yes.

30

Q. At the bottom right-hand corner, is that Inspector Morey's office?

A. Yes.

Q. You and Detective Sergeant Wilson conducted the interview with Mr Brajkovic?

35

A. Yes.

Q. How did you become involved in it; why were you chosen?

A. Well, I don't know. He just asked me to record the interview.

40

Q. At that time, what were the different ways of recording an interview?

A. Notebooks or records of interview; there were no tape recordings.

Q. Sorry, you said notebooks or typed?

A. Yes.

45

Q. What determined which particular procedure was adopted?

A. I think usually the preferred procedure is a typewritten record of interview, and if that didn't take place, perhaps a notebook. But we - we conducted a record of interview with him, a typewritten record of interview.

50

Q. Your role was that you were the one typing?

A. Yes.

5 Q. Your evidence at the committal was that you and Detective Sergeant Wilson had a discussion with Inspector Morey before embarking on the record of interview?

A. Yes.

10 Q. You had that discussion with Inspector Morey in his office?

A. Well, could have been.

Q. Do you recall what was discussed at that stage?

15 A. No, I - I'd - I'd - I'd guess and say that Sergeant Wilson brought him up to date with what had taken place. It may well be that he already had some knowledge of that, because we had car radios. He would have brought him up to date, and Mr Morey more than likely would have said, "Well, I want you to do this, or that, or the other thing".

Q. At that point, where is the white plastic bag?

20 A. That would have been with Mr Wilson.

Q. You said, "would have been", do you recall seeing it?

A. No, not at this stage.

25 Q. Can you recall whether it was in his hand?

A. No, I've got no recall. But look, it - it - I'm sure that he would have shown Mr Morey it. Now, whether that took place in the body of the office, or - you see there was property brought back, and some of it ended up on the floor of Special Breaking Squad, and I - I think something similar was followed in the
30 Armed Hold Up Squad.

Q. When you say, "property was brought back", does that include the property that was on the list that I just showed you?

35 A. All - all the - all the irrelevant stuff, yes.

Q. What's your recollection of where it was placed or stored initially?

A. I think it was in the area outside the two interview rooms. It's - I'm not completely clear on that.

40 Q. Just placed on the floor?

A. Yes, I think so.

45 Q. The different ways that you can have or conduct an interview with somebody that you've arrested, you gave evidence of you can record it in a notebook or a typed record of interview; is a typed record of interview the preferred way of proceeding?

A. As far as I'm concerned, yes.

Q. Why was that?

50 A. Well, it's contemporaneous, it's - it's - you're not - not relying upon the

handwriting of a person, and it's quicker.

5 Q. Did you and Detective Sergeant Wilson, after your discussion with Inspector Morey, go directly to the interview room with Mr Brajkovic and commence the Record of Interview?

A. Yeah, I'd - I'd say so.

10 Q. When you arrived at the room where Mr Brajkovic was, who was in there with him?

A. I don't recall.

Q. Was he by himself?

A. No. I'd - I'd - I'd be surprised if he was.

15 Q. Why would you be surprised if he was by himself?

A. Just for security reasons, that's all.

Q. You can't recall who was there. Would you expect that it was one of the officers who attended the raid?

20 A. I'd - I'd assume so, yes.

Q. You've given evidence that you knew that night there were a number of different squads or groups who were going out to conduct raids at other premises?

25 A. Yes.

Q. When you arrived back at CIB, had those other officers who were attending other raids started to return to CIB?

A. Yes, more or less, yes.

30

Q. For example, can you see on the diagram a room adjacent to the Mr Brajkovic interview room, do you recall whether anybody was in there being interviewed?

A. I - I think it was used at some stage, yes.

35

Q. Do you recall who?

A. No.

Q. That floor on CIB that night, it must have been quite busy?

40 A. Yes, I think so, yes.

Q. Because we're talking about, what, 11 at night, 12 in the morning; it would be unusual to have so many officers coming back after conducting about four or five different raids?

45 A. Usually at that time of the night the only people that would be there would have been those rostered on either afternoon or night work.

50 Q. With the procedure with the typed record of interview, you've described its advantages, being contemporaneous, you're not relying on somebody's poor handwriting, and it's quicker. It's an important part of a record of interview to

get the interviewee to adopt the answers that he or she has given?

A. To get it ready to adopt?

Q. No, for them to adopt?

5 A. Yes.

Q. One way of doing that is to get them to sign?

A. Yes.

10 Q. Another part of the procedure at that time was to get a senior member of the Force, in a sense, to come in right at the end and go through a verification process?

A. Yes.

15 Q. What was the procedure with who that officer would be? I've used the description of a senior officer, so somebody like an inspector?

A. Oh, if - if one - one was available, or it could have - could have been a senior sergeant.

20 Q. Was it also important that they be independent, independent as in not involved in the particular operation that you were conducting the Record of Interview about?

A. No, usually we just went straight to our officer-in-charge, or if it was at a suburban police station, whoever the officer-in-charge there was.

25 Q. So here, who was your officer-in-charge?

A. Sorry?

Q. Who was your officer-in-charge?

30 A. Mr Morey.

Q. So even though he was the one who gave the briefing back at around 9.00pm?

A. Yes.

35 Q. You gave evidence on the last occasion of an impression you had that he was subject to some pressure from above; do you remember that?

A. That's - that's an impression that I still have, yes.

40 Q. Did you turn your mind to whether he was sufficiently independent to verify the Record of Interview?

A. No, it was just standard. You went straight to your officer-in-charge.

45 Q. Even though it would appear they're integrally involved in the operation that was occurring that night?

A. Yes.

Q. Detective Sergeant Wilson asked the questions?

A. Yes.

50

Q. And you typed?

A. Yes.

5 Q. What was your practice with typing up the Record of Interview, for example if anybody left or entered the room?

A. If - if there was a - a long absence, or when I say a long absence, if they exited the room for a reason, I would have recorded it.

10 Q. In the circumstances we're looking at here, if Detective Sergeant Wilson left the room, you would then record that?

A. Yes.

15 Q. Any other interruptions, or, for example, if somebody else, for example if Detective Krawczyk decided that he wanted to join the interview and observe it - I'm just using this as a theoretical example - would you have recorded that in the Record of Interview?

A. Yes, I would have, yes. But, for instance, if - if Wilson had have walked to the door, I - I would not have recorded that, because he was still in the room.

20 Q. What about if anybody else came into the room and interrupted the flow of the questions and answers for a relatively short period of time, but it was still an interruption?

25 A. If - if it was a - well, if it was a significant interruption, for instance we - we stopped what we were doing, I - I would have recorded it. But if someone came to the door and looked in, or something like that, you - you wouldn't worry about it.

30 Q. I'll just take you to the Record of Interview, which is Exhibit 4.275. Just looking at the top of red page 606, you recognise that as the Record of Interview that you typed?

A. Yes.

35 Q. If we go through to page 607, question 21 and 22, can you see there a question is asked, "'Do you agree that when you were detained earlier tonight this plastic bag was located in your possession?' Shown bag. 'Yes'"?

A. Yes.

40 Q. Then in 22, "Do you agree that this bag contained", and it then records the gelignite, et cetera, and then "contents removed from bag and placed on table"?

A. Yes.

45 Q. That would suggest that at least at the commencement of the Record of Interview Detective Sergeant Wilson has the white plastic bag with its contents in the interview room?

A. Yes.

50 Q. And at this particular point, the contents were actually removed and placed on the table?

A. Yes.

Q. It then continues on, the gelignite, like if you look at question 29, he's being asked to have a look at the ends of the gelignite sticks, et cetera.

A. Yes. I haven't got it here yet, but--

5 MCDONALD: If we can go right down to the bottom.

Q. The gelignite is still out on the table?

A. Yes.

10 Q. Then, across the page, on 608, still questions about the gelignite sticks, for example, 32, "Are they taped together?"

A. Yes.

15 Q. Then, at 34, you move to a different item, which was the roll of tape which you found and took, or seized?

A. Yes.

20 Q. It would appear that those items are in the interview room and are being shown to Mr Brajkovic.

A. Yes.

25 Q. At that point, you've got things out on the table, including gelignite and detonators, et cetera. Do you have a recollection, were they then repacked into the bag, or what happened? Did they just stay on the table?

30 A. No. They - I'm fairly certain they did not remain on the table, because - I'm looking around to see if there is a similar desk, but there's not. It was a standard issue government desk. I'm - I've got the typewriter in front of me. Wilson is setting up carbon paper for me and, as I completed a page, I'd hand it to him and he would then - this followed what we normally used to do. We'd then put it face-down, page by page - in other words, original, duplicate, triplicate - and there wouldn't have been room on the table if the gelignite had still been there.

35 Q. The procedure was obtaining copies by the use of carbon paper?

A. That's right.

Q. When you finished one page, you'd take the page out--

A. Hand it over.

40 Q. Pages.

A. Yeah.

Q. Hand them to--

45 A. Wilson.

Q. --Detective Sergeant Wilson. He would put them in, in a sense, piles?

A. He would hand me a fresh set, ready to go, and - because there was stationery in that room.

50 Q. Are you saying that, to keep on making the piles up, you really couldn't

have other items on the desk all the time?

A. No. Wouldn't have been room. And I daresay, yet again, for security, we probably would have removed the gelignite to a safe position.

5 MCDONALD: In the Record of Interview, if we could go through to red page 611, under question 87.

Q. You record there, "Detective Sergeant Wilson leaves room. Interview suspended. Then resumed"?

10 A. Yes.

Q. You can see in question 88 he says, "Sorry about that Vic I was wanted in the other room," and then resumes the questions.

A. Yes.

15

Q. That reflects the procedure that you spoke about that, if Detective Sergeant Wilson left the room, it would be recorded?

A. Yes.

20 Q. On the next page, 612, under 97, again, we've got "Interview again suspended. Wilson leaves room. Interview then resumed"?

A. Yes.

Q. Then, I think, finally, on page 613, under 106, you record again that he leaves, but this time returns with Detective Inspector Morey?

25

A. Yes.

Q. If you need to have a look at the interview in full, just ask, but at no time in that do you record that somebody enters the room and takes the white plastic bag with the explosives.

30

A. No.

Q. Do you have a recollection of that happening?

A. Well, I know that Mr Hudlin and Mrs Brajkovic were interviewed and I know, according to the notes that I was supplied with, that they were shown the gelignite. Now, if someone came to the room and pointed at them, Wilson would have known to hand them over. Now - but I do not have a clear recollection of that, because I was concentrating on my typing and it would have been just an incidental thing, Wilson didn't leave the room. That's the best I can do.

35

40

Q. Are you saying it's something that you may not necessarily have recorded in the transcript?

A. No, I probably - if someone just came to the door and pointed, indicating, "I want them," I doubt if I would have, because they weren't on the desk at the time, anyway, and, again, guessing, they may well have been outside the door or inside the door. I don't know.

45

Q. We're on page 613. This is when Inspector Morey arrives. He records, for example, at 110, "I've been told you do not wish to read it. Is that right?"

50

A. Yes.

5 Q. "Do you have any reason for not reading it?" "No. No reason I see him type." Were you still there when, as it records under question 112, Detective Inspector Morey then read out the first seven pages?

A. Yes.

Q. Then you keep on typing the subsequent answers and questions?

10 A. Yes.

Q. Do you recall the reason why Mr Brajkovic wouldn't sign the Record of Interview?

A. I'd have to read it.

15 Q. When the Record of Interview was finished, there was a decision that Mr Brajkovic would be charged?

A. Yes.

20 Q. And it was determined that you and Detective Sergeant Wilson would take him to Central for charging?

A. Yes.

25 Q. That decision that he would be charged and then taking him to Central, did that occur practically straightaway after the Record of Interview was ended?

A. More than likely.

Q. Do you actually have a recollection, or was--

A. No.

30 Q. Do you recall, after you finished the Record of Interview, other officers being present on the floor who had also been conducting Records of Interview?

35 A. I think all of the interview rooms were occupied. We had, in the Armed Hold Up Squad, two interviews alongside each other, as you saw, and I think the Breaking Squad had two interview rooms, as well, and sometimes, if you had multiple offenders, the bosses' offices were used as well. So there was the officer-in-charge's room in the Breaking Squad; same in the Armed Hold Up Squad.

40 Q. Do you recall any discussion, with any of the officers who attended other raids and conducting Records of Interview, along the lines of, "Oh, well, look, our punter wouldn't sign his Record of Interview, but we got Inspector Morey in to read it out"?

45 A. No, I don't recall any of that.

Q. Any complaint - not complaint - or raising with you that their particular interviewee wouldn't sign, for example, a notebook, or wouldn't--

A. Do you mean, during the course of the evening, did--

50 Q. Yes.

A. --we go and speak to them?

Q. Yes, because I assume there must have been a lot of chatting and discussions with a number of officers still there.

5 A. No. We attended to what we had to do, took him straight down, charged him, came back, commenced our notes. By then, it was a bit late in the day and we went home.

10 Q. Can I just ask you, if other officers had adopted the procedure of writing out in a notebook questions and answers, approaching Inspector Morey to come in and, basically, say, "Now, you're not going to sign this, but, you know, you've given these answers and you haven't been subject to any duress," et cetera, that would have been to them, wouldn't have it?

15 A. Perhaps, yes, but it normally applied to a Record of Interview.

Q. Yes, but what you're trying to do is you're trying to ensure that the answers the interviewee gives can ultimately be put before a Court or put before a jury?

A. Yes.

20 Q. To do that, you don't want any argument that "Look, I didn't say that," or "I was subject to duress," or something like that?

A. Are you asking me to interpret what they thought?

25 Q. No. I'm talking about general principles of conducting interviews or conversations with suspects or charged people at the time.

A. Yes, I understand.

30 Q. What I'm saying to you - one of the reasons for doing that is that, at the end of the day, you might have a defended hearing and admissions from the mouth of the accused or the defender is very probative evidence to put before a jury.

A. Yes.

35 Q. And you want to make sure, the best that you can, is to get those admissions before the jury and try to avoid a dispute about "I didn't say that," or "I was subject to duress." You try and avoid that?

A. Yes. Look, I can only tell you what we did; that's Wilson and I. I still don't know what the other--

40 Q. But it makes sense, doesn't it?

A. I still don't know what the others did.

Q. At any time round this period, as a police officer, did you take a notebook Record of Interview, like, recorded in handwriting?

45 A. Have I ever done that?

Q. Yes.

A. Yes, I have.

50 Q. Did you try and get the person you were interviewing to read through it and sign it?

A. I believe so, yes.

Q. If they refused to do that, one way of trying to establish verification that "That was your answer," is to bring in a senior officer, like, Inspector Morey?

5 A. Yes.

Q. The evidence you've given today is that the officer who was available on that night to perform that verification procedure was Inspector Morey?

10 A. Yes.

Q. I can take you back to it, if you need it, but do you recall, when I showed you the transcript of the Record of Interview, there were the two incidences that you recorded where Detective Sergeant Wilson left the room, and then came back and the interview was resumed?

15 A. Yes.

Q. I just want to take you to the notes--

A. Yes.

20 Q. --that you made.

EXHIBIT 11.89, RED PAGE 1290, SHOWN TO WITNESS

25 Q. I want to ask you about entries after the 1.46am where you say, "Interview concluded".

A. Yes.

Q. So just orientating you.

30 A. Yes.

Q. You can see above that "11.55", "Record of interview commenced"?

A. Yep.

Q. And then at 1.46am it's concluded?

35 A. Yes, I can see that.

Q. Then at the next paragraph, it appears to be matters included, in a sense, to explain why Detective Sergeant Wilson left the room on the three occasions. Do you agree with that?

40 A. Yes. I've got that, yes.

Q. Do you see there, the first time he left, he "...had a conversation with Detective Jameson who informed him that Brajkovic was involved in a plan to kill two men, Tomo Mlinaric and Fabian Lovokovic", and I pause there.

45 A. I can see that, yes.

Q. Before the interview, had you been told anything about a plot to kill two men?

50 A. Not that I can bring to mind right now.

5 Q. Then the next time Wilson leaves the room, this is because he spoke with Detective Howard, and informed him that Brajkovic was involved in a plan to hijack an American aeroplane in the near future. Now, I can take you back to the Record of Interview, but there are some questions about the hijacking, or proposed hijacking, when Detective Sergeant Wilson returns, but had you heard anything about that, before sitting at the typewriter?

A. Not that I can bring to mind now.

10 Q. I've asked you about the notes before, and you gave evidence that they were, in a sense, typed up on two occasions.

A. Yes.

15 Q. You started that night?

A. Yes.

Q. I think about 3.00am everybody went home. Came the next morning 8.00, 8.30am, something along those lines?

A. Yes.

20 Q. And you recommenced taking the notes?

A. Yes.

Q. You have here evidence of explosives being found.

A. Yes.

25 Q. In the context of information being obtained by Special Branch that there was a plan to blow up different places within Sydney?

A. Yes.

30 Q. So, Elizabethan Theatre, some travel agencies, the water pipes from St Mary's. Do you remember that?

A. Yes. Yes.

Q. Then we've got allegations that there was a plan to kill two men.

35 A. Yes.

Q. Then we've got allegations of a plan to hijack an American plane?

A. Yes.

40 Q. At that stage in your career, had you ever come across a matter which had, in a sense, so many, I suppose, quite extraordinary events or possible events?

A. I was involved in a lot of investigations, but are you talking about multiple offences?

45 Q. Well, it's just the investigation. As I said, it involves bombs, particular sites in Sydney. It's got a political aspect--

A. Yes.

Q. --because it's kind of anti-Yugoslavia?

50 A. Yes.

Q. You've now got a plot to kill two men, and just by their names, that would suggest either links with either Croatia or Yugoslav, and then you've got a suggestion of being involved in a hijacking.

A. Yes.

5

Q. What I'm saying to you, that's an extraordinary number of events that was part of this operation?

A. I've been involved in similar investigations. There was the Qantas hoax, where they built a altimeter bomb. When I was at Balmain, there was a woman blown up in a car. She was a - it was an Italian-based crime. She was allegedly a witch, who would put the evil eye on some other person, and they hired a criminal who built a bomb with nails and shrapnel, and they blew her up and killed her.

10

15

Q. But didn't have hijacking?

A. No. I - I was involved in--

Q. Didn't have planting the bombs at different locations?

20

A. I was involved in those sort of things later, particularly a hijacking incident.

Q. What I'm suggesting to you, Mr Harding, is that extraordinary number of events. It's the type of matter where there would have been discussion with the other officers who were back there on the night/early morning of 8 February and then 9 February.

25

A. Well, yes. I'd agree with that. At some stage there would have been.

Q. And would have generated a lot of discussion and comparing of notes between the different officers?

30

A. Look, we were involved in major crime, and without being flippant, as important as this was, it was another day at the office. Look, those detectives were quite experienced. Some of them had been involved in significant investigations, and, yes, this was yet another one. From murders, to rapes, to involving multiple offenders. Look, I can't answer it any other way. No-one started saying, "Gee, look at this." They were hard-bitten people, who'd seen a lot.

35

Q. Do you agree with me it's an investigation that at this stage was involving extraordinary events?

A. Yes.

40

Q. And it is the type of investigation that would generate a lot of discussion within the CIB?

45

BASHIR: I object. I object, your Honour. What kind of discussion is being spoken about here? These are quite general questions. I'm not sure what - I just--

HIS HONOUR: I suspect Counsel Assisting is suggesting there might have been a lot of discussion about the events.

50

MCDONALD: I'm just trying to get Mr Harding to agree that there were discussions amongst the different police officers at the moment, and then I was going to move on.

5 WITNESS: Look, I--

HIS HONOUR: He seems to be resisting the notion--

MCDONALD: Yes. There was.

10

WITNESS: More than likely there would have been discussion.

MCDONALD

15 Q. Did those discussions include, for example, you know - comparing what was revealed, or in Records of Interview, or discussions with the different suspects?

A. Well, you're describing a debrief.

20

Q. No, I'm not discussing - sorry, could I just interrupt you.

A. Yes.

Q. A debrief would suggest something more formal?

A. Yes.

25

Q. I was asking you about - I think we'd describe it in - is it a water cooler discussion? You know, it's just officers being at their place of work and discussing what happened when they went to an Ashfield address, and, you know, raided that property, brought somebody back to the interviewed, what he said, et cetera. I'm not going at that formal debriefing level. I'm looking at more discussions amongst officers that I would suggest to you occur in any workplace, and I'm not being critical.

30

A. Yes.

35

Q. I'm just trying to work out the level of discussions that were occurring at that informal level?

A. They weren't the water cooler type. There was probably over a beer the next day, or something like that, and more than likely it was discussed.

40

Q. You're talking about a beer later on. What about around the office?

A. It could have happened. I don't know.

Q. Do you still see members of the Armed Hold Up Squad that you worked with?

45

A. Yes. Yes, I do.

Q. Do you regularly get together and have a lunch or something like that?

A. I'm a member of a group that meets every four months, and that's across all of the squads. There could be 50 there, there could be 40 there. I also go - occasionally go to a luncheon group that meets in the south of

50

Sydney. That's roughly about the same time, yes.

Q. The CIB lunch--

A. Yes.

5

Q. --you said every four months?

A. Yes. It's been going for 20 years.

Q. You've attended recent lunches?

10 A. No. Not recently. On the last occasion, I couldn't make the lunch.

Q. At any of the lunches that you've attended, say, from July last year, has there been any discussion about the Croatian Six Inquiry?

A. Only that - probably that it was on.

15

Q. Do you recall, you know -- for example, the people who were involved in the raid that you were involved in, do you know which members attend the lunch?

20

A. Geez, as I say, there are - the membership, if I can use that term, are about 50 strong. Well, there's myself. John Wilson goes. Rick Grady goes occasionally, when his health allows him to. Jim Counsel does not come, because - he used to, but his health does not allow him to. That's about it.

25

Q. Your recollection is if there has been discussion about the Inquiry, it's just that it's been held. Do you recall any discussion about evidence being given, or what inquiries?

A. No.

30

Q. Can I take you back to the interview. As you are aware, Mr Brajkovic contested that he'd participated in such an interview?

A. Yes.

Q. Indeed, gave evidence that during the period that he was at CIB he was assaulted?

35

A. Yes.

Q. And that was put to you at the committal?

A. Yes.

40

Q. And also at the voir dire at the trial?

A. Yes.

45

Q. You denied that you were involved in any assault of Mr Brajkovic? Sorry, I'll rephrase that. You denied that you were involved in any assault of Mr Brajkovic at the CIB?

A. Correct, yes.

50

Q. One of the allegations that Mr Brajkovic made about the conduct of the police at the CIB, and in particular concerning you, is that when he was in the interview room, you came behind him and put a towel around his neck and

began to strangle him?

A. Yes.

Q. You denied that?

5 A. Yes.

Q. Do you recall being involved in another prosecution with a person called Mr - I think - Steep?

A. Yes.

10

Q. At trial, counsel started asking you some questions which were going to, I suspect, lead to allegations, putting to you about an interview with Mr Steep, but the judge didn't allow them; do you have a recollection of that?

15 A. I remember the trial. There was - there was - the first trial was aborted, then there was a second trial, but I remember Mr Steep.

Q. What was Mr Steep charged with?

A. Firearms offences.

20 Q. In both the aborted trial and the subsequent trial were questions asked of you which alleged similar conduct of using a towel to strangle Mr Steep?

A. Yes.

Q. What was the context of that; was it a record of interview?

25 A. I can't remember whether it was a record of interview or not, but the - I - I can - I can tell you how all this unfolded, but it's going to take a reasonable - a reasonably long explanation.

Q. Do you recall when Mr Steep's trial was?

30 A. Where?

Q. When?

A. Well it was before the - the Croatian Six trial.

35 Q. That was 1980.

A. So it may well have been 1980.

Q. Some time in 1980 before the Croatian Six trial?

A. Yes.

40

Q. Can I ask you, the allegations made to you, did you deny them?

A. Yes.

45 Q. Do you recall ultimately, was it raised in a voir dire about admissibility of admissions by Mr Steep?

A. I - I don't know. I can't remember that part of it.

Q. Our problem is we haven't got the transcript or anything of it. So you can't recall whether it was a voir dire, or in what circumstances it was raised?

50 A. No. No, I can't.

Q. Do you recall whether the evidence went to the jury?

A. I think it did.

Q. What happened to Mr Steep?

5 A. He was convicted.

Q. Do you recall who the judge was with Mr Steep?

A. No.

10 Q. Was it Supreme Court?

A. No, District Court.

WOODS: Your Honour, could I ask my learned friend how is that name spelt?

15 MCDONALD: S-T-E-E-P.

Q. In respect of the Record of Interview, do you recall Mr Brajkovic making a complaint originally to the Premier, but it was then referred to the relevant, I think it might have been Internal Affairs Section of the police?

20 A. Yes.

Q. A Detective Shepard conducted some kind of investigation into it; do you recall that?

25 A. Yes, there - there were two Detective Inspector Shepards, both attached to Internal Affairs at that time. I don't know which one it was.

Q. Do you remember participating in some kind of interview or complying with a direction?

30 A. Yes.

Q. Could we bring up Exhibit 11.187.

EXHIBIT 11.187, RED PAGE 1546, SHOWN TO WITNESS

35 Q. Do you see there it commences with a memo, "Attached is a list of statements and documents which are attached to this report", "refer to an alleged incident", et cetera, and then, "You are directed to peruse the statements and documents and to furnish a comprehensive report, forthwith, as to your knowledge or otherwise of the matters contained therein. Then

40 there is "Detective Sergeant First Class S-H-E-P-A-R-D"?

A. Yes.

Q. Then what follows is that your, in a sense, statement or report back to Detective Sergeant Shepard?

45 A. I'll have to read it.

Q. Sorry, if we can just keep on--

A. This is the first time I've seen it since that time. I didn't read the first part. Do you want me to go through it now?

50

Q. I'll just pause for a minute. What I might do, Mr Harding, is I might ask you a couple of other questions, and then at lunch time get you a copy and ask you to have a read through. I think that's fairer.

A. Okay, thank you.

5

Q. I don't know if you can answer this, but do you recall what the procedure was with these types of Internal Affair investigations?

A. Some - sometimes you'd - you submitted a report, sometimes you submitted a report and then you had to go through a question and answer session. Until I read it, I - I couldn't tell you what took place.

10

Q. I know you haven't read it yet, but do you recall in preparing this would have you relied upon, for example, the group notes?

A. Yes, I think so.

15

Q. So you can refer to, in a sense, contemporaneous records in providing your report or answer?

A. Yes.

20 LUNCHEON ADJOURNMENT

Q. Mr Harding, I just want to return to some evidence that you gave earlier today, and this concerns when you were at the Bossley Park premises. Shortly after you have arrived, you're with Detective Morris. You hear noises that suggest a struggle is going on.

25

A. Yes.

Q. My note of your evidence today is that you and Detective Morris then ran to where you were hearing some struggle--

30

A. Yes.

Q. --and that Mr Brajkovic was already on the ground--

A. Yes.

35 Q. --but was on his back?

A. Yes.

Q. And that Detective Pettiford was astride him, towards the top and the torso--

40

A. Yes.

Q. --while Detective Helson had grabbed his legs?

A. Yes.

45 Q. Then, I take it, you and Detective Morris then joined to assist in getting him handcuffed?

A. Yes.

Q. To do that, not wanting to sound flippant, but you have to turn him over--

50

A. Yes.

Q. --so that you can handcuff him with his hands at his back.

A. Yes.

5 Q. Your evidence was it was when you were assisting the other three officers in turning Mr Brajkovic over, so somebody could handcuff him, that you put him in the headlock.

A. Yes.

10 Q. Just before lunch, I was asking you about the allegations that Mr Brajkovic made in a complaint, and also at the committal, and also at trial in a voir dire that he was assaulted at CIB during the time he was there before he was charged.

A. Yes.

15 Q. Do you recall, and I'm just summarising, and this is from his Honour's judgment on the voir dire, that, "There was evidence of injuries and swelling and bruising to his face and forehead"?

A. Yes.

20 Q. And also, "Evidence of injury to his right ear."

A. Is that what his Honour said?

Q. Yes.

A. Yes.

25

Q. Do you recall that?

A. Not really, no. I don't think I was present when the decision was made.

30 Q. Again, I don't know whether you knew this, but there was evidence from a nurse and some other medical evidence, and I'm just summarising it, that when Mr Brajkovic had arrived at Long Bay, there was evidence of injuries that he had received.

A. Yes.

35 Q. And the issue becomes: how did he receive those injuries.

A. Yes.

40 Q. I want to put to you that from the material there seems to be three possibilities put forward by various interested parties. The first one is the one that Mr Brajkovic asserts, is that he was assaulted at the CIB. The second one is that his injuries were incurred before he went to the CIB?

A. Yes.

45 Q. Looking at that, it would seem to be injuries he received while the raid was being executed at the premises?

A. During the struggle with us, yes.

50 Q. If we want to then focus on it at that particular point. The other option that seems to have arisen, particularly in Detective Sergeant Shepard's investigation, is that there's a suggestion that one of his co-offenders inflicted

further injuries on him in an attempt to discredit the arresting police?

A. Yes.

Q. Do you agree they're really the three options?

5 A. Yes.

Q. Nothing else that--

A. I can't think of any others.

10 Q. If I take you back to the execution of the raid at the Bossley Park premises, what I want to suggest is by the time you and Detective Morris arrive at where Mr Brajkovic is on the ground on his back, the conduct that you and the three other officers then engage in, including you putting him in a headlock, would not be sufficient to cause the injuries observed. I'm just looking at that particular part of the struggle that occurred.

15 A. I - I disagree with that. It - it was a violent struggle.

Q. Can I just pause there. When you say it was a violent struggle, your observation started when you arrived with Detective Morris and saw Mr Brajkovic on the ground?

20 A. Yes.

Q. You did not observe what happened between Mr Brajkovic and Detectives Pettiford and Helson before you arrived?

25 A. No, but I - I know what Pettiford told me.

Q. I'll come back to that later. What I'm focusing on at the moment are your observations when you were at Bossley Park.

30 A. Well, it was dark, and as we ran towards them, obviously I - I - I could not see clearly.

Q. I'm not being critical, just trying to do this in stages, so I'm focusing first on your observations, and from your evidence this morning, and it's consistent with your evidence at the committal, which I can take you to, when you and Detective Morris arrive, Mr Brajkovic is on his back?

35 A. Yes.

Q. And we've got Detective Pettiford in a sense astride towards the top half of Mr Brajkovic?

40 A. Yes.

Q. And then Detective Helson grabbing his legs at the bottom half of Mr Brajkovic?

45 A. Yes.

Q. Then two other officers arrive to assist them; do you agree with that?

A. Yes.

Q. We've now got four officers there?

50 A. Yes.

Q. And Mr Brajkovic?

A. Yes.

Q. The aim then is to turn him over so he can be handcuffed?

5 A. Yes.

Q. At that point, your participation is that you put him in a headlock at some stage?

10 A. That's right.

Q. When everybody is turning him over to handcuff him?

A. Yes.

15 Q. You were asked about that at the committal, and you agreed that putting him in the headlock might have caused some injuries or bruising to the neck?

A. Yes.

Q. But you agreed that it wouldn't explain any bruising to the face?

20 A. I think I said that in - in the struggle I may have brushed, as I put the headlock on his face, but you see, he was thrashing about, and he's a - I've said it before, and I'll say it again, he is a very strong man.

Q. But we've got four officers?

25 A. That's right.

Q. And at that stage, as I said, it's the headlock that you put on him, and then you're saying that you might have brushed your hand or something across his face while putting him into the headlock?

30 A. That's right.

Q. Did you give that evidence at either committal or trial?

A. Yes, yes.

35 Q. You say that he was thrashing around, but did you observe at that point, while you're actually there, any other punches or kicks, or any other contact between the other officers with Mr Brajkovic's face?

A. No.

40 Q. Or any injury being put on his ear, or placed on his ear? I'm just asking when you were there?

A. No.

45 Q. If we then go back, there was a period when you weren't there, but Detectives Pettiford and Helson were, and they informed you subsequently, did they, of what occurred between them and Mr Brajkovic?

A. Pettiford told me that he elbowed Mr Brajkovic in the face, I think it is, and I did give that evidence before this.

Q. When did Detective Pettiford tell you that?

50 A. I - I couldn't be accurate to tell you that now. Maybe the transcript will

show, but I can't bring it to mind at the moment.

EXHIBIT 2.3-35, RED PAGE 7837, SHOWN TO WITNESS

5 Q. It's about point 5, "During that struggle, the only time as I understand your evidence that Brajkovic was touched around the head was when you put a headlock on him." Do you see that?
A. Yes.

10 Q. You answer, "No, I know differently."
A. Yes.

Q. Then, if I can just jump to the next question, "Well according to what I have been told, Detective Pettiford elbowed him in the face." Then you say, "I certainly did place a headlock on him which I applied very strongly." Then
15 you're asked, "But the headlock would not have caused in your estimation multiple bruises would it?" "To the neck?" "To the head." "Not as far as I was concerned, no." Then you're asked some more questions about Detective Pettiford:

20 "Q. Did you see him strike him with the elbow?
A. No I did not.

Q. Did he tell you that he'd struck him once or more than once?
25 A. I believe once.

Q. Once only, Pettiford. When did he tell you that, that he'd struck him to the face?
A. Sometime later.

30 Q. Was it that night that he told you?
A. I believe so and more particularly recently he told me.

Q. Under what circumstances did Detective Pettiford tell you this assault or this elbowing of Brajkovic?
35 A. Well recently because of false allegations which were made to our internal affairs branch."

Do you see that?
40 A. Yes.

Q. Of course, that's referring to the Detective Sergeant Shepard Inquiry?
A. Yes.

45 Q. Was it the case that, to your knowledge, a number of officers who were involved in the raid at Mr Brajkovic's house were asked to provide reports to Detective Sergeant Shepard?
A. Yes.

50 Q. One of them being Detective Pettiford?

A. Yes.

Q. You had a discussion with Detective Pettiford about what responses you had given to--

5 A. No, not at all.

Q. When did this discussion, where you were asked, "Under what circumstances did Detective Pettiford tell you about this assault or elbowing," and then, "Well recently because of false allegations which were made to our internal affairs branch"--

10

A. It could have been over a cup of tea, or whatever. I just can't bring it to mind now, but it was - it - if I was to guess, I'd say it was after the Internal Affairs preliminary inquiry.

15

Q. Why do you guess that?

A. Well, that's the best guess I've got, because, before going into an Internal Affairs inquiry, you do not discuss what each other is going to say.

20

Q. That's what I was going to raise with you. So you knew that, that you shouldn't speak to other officers?

A. Always known that.

Q. Your evidence is you complied with that?

A. Yes.

25

Q. Just a couple more answers that you gave on page 7838. There's the question, "Were you made aware of the nature of the injuries that Mr Brajkovic was treated for?" and you said, "I read them at the time but I couldn't detail them right now." Just pausing there, when you say, "I read them at the time," do you know which time you were referring to?

30

A. Probably Internal Affairs. I think we were supplied with copies of specifically what he was alleging and we were required to report on that.

Q. Then, "Were you made aware that amongst the injuries were two black eyes?" and you say, "It could well be right but he certainly did not receive them at our hands," and then you say, "It would be impossible for him to receive the two black eyes during the struggle?" "I say that according to what Pettiford told me he would not have caused those injuries and my actions with him would not have caused those actions."

35

40

A. Yes. I agree with that.

Q. Your action is the headlock?

A. That's right.

45

Q. Just confirming that the evidence you gave at the committal was that Detective Pettiford did tell you that night that he had hit or struck Mr Brajkovic in the face with his elbow?

A. Yes.

50

Q. When you saw Mr Brajkovic at the CIB, and during the period of typing the

Record of Interview, did you see any evidence of any of these injuries?

A. No.

Q. For example, had any bruising started to emerge?

5 A. No. He definitely did not have black eyes. All you've got to do is look at the police photograph to see that.

Q. No. I'm not asking you that. I'm asking what you observed while you were typing the Record of Interview?

10 A. He did not have black eyes.

Q. I didn't ask you that. Any of the other bruising to his face?

A. No. No.

15 Q. At the time, even though you knew that Detective Pettiford had hit him with his elbow in the face, you were not concerned that Mr Brajkovic had suffered any injuries when you helping conduct the Record of Interview?

A. There were none that were apparent.

20 Q. You weren't concerned about it?

A. No. I think he was asked how he was feeling or - I haven't committed to memory, but I think there's an inquiry there by Wilson about how he is, or something like that.

25 Q. There's a question and answer, "Do you agree that when you were detained, a violent struggle took place?" And he said, according to the answer, "Yes. I was stupid." And then, "Are you suffering any injuries as a result of this struggle?" And he answers, "I am all right."

A. Yes.

30 Q. If there was no concern, no evidence of any injuries emerging, I know you didn't ask the question, but can you express an opinion as to why Detective Sergeant Wilson would have asked those questions?

A. Probably just a precaution.

35 Q. Because when you arrived at the house at Bossley Park and came in with Mr Brajkovic - so this is after the struggle. You bring him around, you've got the white plastic bag, and I think you were with Detective Morris. You don't use the words "violent struggling", do you?

40 A. No.

Q. You just say to Detective Sergeant Wilson, "There's a bit of a struggle."

A. Correct.

45 Q. "But he's fine now" or--

A. I didn't say that.

Q. -- "He's all right." Or, "He's sensible now.", or something like that?

A. "He put on a bit of a struggle."

50

Q. You didn't refer Detective Sergeant Wilson to a "violent struggle" in that first comment?

A. No. No.

5 Q. Is that something that emerged subsequently?

A. No. That's probably an understatement on my part because I didn't want to let him know that he had extended us, because we're all huffing and puffing, and it was quite strenuous what we - what we experienced with him.

10 Q. It was a matter of ego, or saving face, that you didn't describe it accurately?

A. I don't - I think it's just classic Australian understatement.

Q. You agree with the description of a violent struggle?

15 A. I do.

Q. Is it based on what Detective Pettiford told you had occurred before you and Detective Morris arrived?

A. No. Overall.

20

Q. All of it?

A. That's right.

EXHIBIT 11.89, RED PAGE 1287, SHOWN TO WITNESS

25

Q. Can I take you to the first page down towards the bottom of the page. What I want to take you to is the consensus description in the notes down the bottom. We have, and consistent with your evidence, you've got Pettiford and Helson approaching him by themselves to begin with?

30

A. Yes.

Q. Then, "Pettiford again said, 'Come out of here.' Pettiford then grabbed him by an ankle and attempted to pull him out."

A. Yes.

35

Q. Then we've got:

"Brajkovic got to his feet and a violent struggle commenced. Pettiford and Helson joined by Morris and Harding. Continued to struggle in which Brajkovic was thrown to the ground and eventually handcuffed."

40

A. Yes.

Q. You weren't there when Mr Brajkovic was on his feet?

45

A. No.

Q. While you were there, Mr Brajkovic was already on the ground?

A. They already had him down, yes.

50 Q. He wasn't thrown to the ground in your presence?

A. No.

Q. What I want to suggest is this description of your involvement and Detective Morris's involvement isn't correct?

5 A. No. It is correct.

Q. You've got, "Pettiford and Helson joined by Morris and Harding, continued to struggle in which Brajkovic was thrown to the ground"?

10 A. Yes.

Q. He was already on the ground when you arrived?

A. That's right. As - as - as we approached.

Q. Well now, you didn't say that this morning.

15 A. No, the note--

Q. You said, "When I arrived--

A. This is - this is a--

20 Q. Mr Harding, let me ask my question. Your evidence this morning is when you arrived, Mr Brajkovic was on the ground on his back?

A. That is still my evidence. That is still my evidence.

25 Q. So you were not there, and you did not observe him being thrown to the ground?

30 A. No, but when we prepared our notes, Pettiford and Helson contributed what had happened earlier. It - it was a very fluid movement. Things weren't frozen in chapters. We hear the noise of the struggle, we run towards it, Pettiford and Helson get him on the ground, he's on the ground when we get there, all a fluid movement.

Q. Even with it being a fluid movement, do you agree that the way it is recorded at the bottom of page 1287 is not accurate?

35 A. No, I don't.

Q. It has you and Morris joining, and then it says, "Continued to struggle in which Brajkovic was thrown to the ground"?

40 A. Hindsight's a wonderful thing, and perhaps it could have been phrased better, but it was done at the time, shortly afterwards. It reflects what took place.

Q. It's not the case that by 2.30am in the morning of 9 February, after Mr Brajkovic had been at CIB and then taken to Central, that there needed to be a justification for the injuries that he suffered at CIB?

45 A. No.

Q. No trying to explain injuries that he received at CIB by trying to attribute them to events that occurred during the raid?

50 A. No.

Q. The notes that I just took you to which are up on the screen, there's no reference to you putting him in a headlock?

A. Isn't there? I--

5 Q. Sorry, 11.89, page 1287.

A. I can't see it there.

Q. No reference. No reference to Detective Pettiford's elbow?

A. No.

10

Q. Injuries that a suspect, or somebody arrested, incurred during the time that they were in custody with the police, or in dealings with the police, are an important thing to record accurately; do you agree with that?

A. Well, I think we did.

15

Q. Well where's the reference to the headlock?

A. It was a while--

20

BASHIR: Your Honour, I object. Sorry, the question was injuries incurred were important to--

HIS HONOUR: Yes, it's a different thing.

MCDONALD: Yeah, that's okay.

25

WITNESS: It's all under the--

MCDONALD: I'll ask the question again.

30

Q. When a suspect or somebody charged is involved in a violent altercation with police, it's important to record accurately what occurred?

A. Well, all I can say is that it all came under the umbrella of a violent struggle. You see, look, it - it could well be that Helson twisted a leg, or did - none of that's there.

35

Q. I'll ask my question again. It's important, when a suspect or somebody charged is involved in a violent altercation with the police, that what occurred, according to the police, is recorded accurately; do you agree with that?

A. I think we did that.

40

Q. I didn't ask you that. Do you agree with the principle, it should be recorded accurately?

A. Well, I agree, and I - I say to you it is all under the umbrella of a violent struggle.

45

Q. And it also should be recorded with detail?

A. Well, it was.

50

Q. Do you agree with that proposition that I'm putting to you?

A. I'm agreeing, and I - I - in my view, we did just that.

Q. Even though there is no reference to elbows in the face or a headlock?
A. No.

5 Q. Indeed, in your statement you don't even adopt the terminology "violent struggle", do you? If we can bring up Exhibit 4.2-77.

EXHIBIT 4.2-77, RED PAGE 615, SHOWN TO WITNESS

10 Q. And if you go to paragraph 2. This paragraph is your account of what happens immediately before - it ends with Mr Brajkovic being handcuffed. Your account is limited to "I heard the sound of a struggle". "Morris", I think, and "I ran to an area near a tree, which is situated near the house. I then saw this defendant, Mr Brajkovic and he was struggling with Detectives Pettiford and Helson. Morris and I assisted and the defendant was handcuffed." You don't employ the adjective, a "violent" struggle.
15 A. No.

Q. And you do not go into any detail of what ensued, or your account of what ensued, when you arrived and Mr Brajkovic was on his back.
20 A. No. It's in the notes.

Q. When you say, "in the notes", it's those couple of lines I took you to at the bottom?
A. That's right.
25

Q. The third option was - sorry, to explain the injuries - was that Mr Brajkovic approached one of his co-offenders to inflict further injuries on him, in an attempt to discredit the arresting police. You had a chance of reading your report to Detective Sergeant Shepard over lunchtime?
30 A. Yes, I did.

Q. Which is Exhibit 11.187. Did you see, on paragraph 23, on page 1549, you actually put forward that third option?
A. Yes.
35

Q. Did you come up with that by yourself?
A. How can I answer that now? I've put it in my report, so I must have.

Q. Did you discuss it with other officers, the possible explanation for the injuries?
40 A. Well, it's not unknown for that type of thing to have happened.

Q. I'm not asking you that. You say it's not uncommon, and we can see it's not uncommon, because a group of officers got together and compiled the notes - didn't you?
45 A. I'm talking about self-harm by prisoners. That's what I was talking about.

Q. All right. Sorry, I misunderstood your answer. But that proposition, or third explanation, did you discuss it with any other of the officers?
50 A. I don't believe so.

Q. At any time leading up to the provision of this report?

A. I don't believe so, but how can I be expected to remember that sort of thing after all these years?

5 Q. Mr Harding, please editorialise your answers. Please just listen to the questions and answer them.

A. You must get tired of--

Q. What I'm asking you--

10 A. --me saying I can't recall.

Q. Mr Harding, listen to my question, please.

A. I can hear you loud and clear.

15 Q. What I'm interested in - and, if you accept from me, the third option has arisen in a number of these explanations given by--

A. There you go.

20 Q. Excuse me - given by other officers, which would suggest that maybe there was a scrum of the officers to come up with the third option.

A. Scrum?

Q. I've used the word "scrum". Have you come across that word before?

A. (No verbal reply)

25

HIS HONOUR: It's also referred to as a "scrum down", isn't it?

MCDONALD: Scrum down. Thank you, your Honour.

30 Q. Have you come across the terminology "scrum down" beforehand?

A. No.

35 Q. Ever come across, and I'm talking - no, I'll ask you first about your whole career in the Police Force. Ever come across allegations that officers involved in an operation or an incident have come together, discussed what the position will be, or an explanation will be, and in a sense, come up - or concoct a particular either evidence or solution, or explanation for something?

A. I can only say we did not do it in this incident - incidence, nor have I ever heard of or witnessed other police officers doing it.

40

Q. Throughout your whole career?

A. What are you talking about now?

45 Q. The question that I just asked you, Mr Harding, and, if you can listen to my questions, this idea of a scrum down--

A. It was a term not used by us.

MCDONALD: If we could go to Exhibit 13.13A.

50 Q. Were you still in the Police Force when the Wood Royal Commission

reported?

A. Well, you know that; I told you what happened.

Q. Yes. So you were?

5 A. I was.

Q. Did you read any of the Report?

A. Only so far as it affected me.

10 EXHIBIT 13.13A, PAGE RED 58, SHOWN TO WITNESS

Q. This is from the Wood Royal Commission. It's a glossary, and can you see at the top:

15 "The expressions listed below describe corrupt and/or criminal practices and other colloquialisms referred to in evidence received by the Royal Commission and in this Report."

Do you see that?

20 A. Yes. I can see that.

Q. Then if we go through to page 59 down the bottom.

25 "Scrumdown. A police term for the practice of getting together to ensure police statements and/or evidence are consistent. The practice can be used innocently or corruptly; the latter to ensure that evidence and statements consistent support a corrupt purpose. For example, a scrumdown may occur prior to an Internal Affairs investigation to ensure that all police support each other and
30 maintain a common story about the events in question."

Pausing there, you've never come across the term "scrumdown" before?

A. Never.

35 Q. The conduct which is described in the definition of "scrumdown", in particular, in respect of an Internal Affairs investigation, had you, during your career within the Police Force, come across that conduct before?

A. No.

40 Q. Had you ever heard of other police officers engaging in such conduct?

A. No.

45 Q. And the third explanation for the injuries suffered by Mr Brajkovic, which appears in a number of the reports or statements given by officers involved with the raid, that wasn't a result of a scrumdown?

A. No.

50 Q. After you arrived at the CIB, and I think you were with Mr Hudlin and Detective Morris, you've given evidence that you went to your desk to do some duties.

A. Yes.

Q. Then you were the typist during the Record of Interview?

A. Yes.

5

Q. Then your evidence was your recollection was that it would be shortly after, you and Detective Sergeant Wilson took Mr Brajkovic to Central to be charged.

A. Shortly after?

10

Q. Shortly after the conclusion of the Record of Interview--

A. Yes.

Q. --you and Detective Sergeant Wilson took Mr Brajkovic to Central.

A. Yes.

15

Q. Then when you returned from Central, this is where a group of officers get together and start compiling the first part of the notes.

A. Yes.

20

Q. If I can concentrate on before you went to Central to charge Mr Brajkovic, did you see Detective Bennett?

A. See Bennett?

Q. Yes?

25

A. Well, I would have seen him throughout the evening, I--

Q. No. I'll start again. You've come back to the CIB?

A. Yes.

30

Q. I'm concentrating on a particular period of time. You've come back to the CIB, and you're at your desk doing some duties. So that's the starting point. You'll return to the CIB--

A. From?

35

Q. Bossley Park.

A. Okay, yep.

Q. Then the endpoint is when you leave with Wilson and Mr Brajkovic to go to Central.

40

A. Yes.

Q. Okay?

A. Yes.

45

Q. I'm looking at that time period. During that time period, did you see Detective Bennett at all?

A. I would have, yes.

Q. Where did you see him?

50

A. Probably in the office. During the course of the Record of Interview, I - I

have no recall of seeing him. Unless he came to the door and spoke to Wilson or something like that, I don't know.

5 Q. Did you have knowledge of whether he was assigned a particular task from the raid?

A. None that I can bring to mind at the moment.

10 Q. What about Detective Krawczyk? Did you see him?

A. I would have seen him during the evening, yeah. Yes.

15 Q. Where did you see him?

A. Well, when he got back to the CIB when the notes were being compiled.

15 Q. No. Can you remember the time period I'm asking you about. It ends when you leave with Mr Brajkovic to go to Central.

A. Okay. Prior to that?

20 Q. Yes.

A. I would have seen him when we returned from Bossley Park.

20 Q. Where did you see him?

A. In the office.

25 Q. He was, in a sense, a visitor. He was Special Branch.

HIS HONOUR: Special Breaking. Breaking.

MCDONALD: No. No. Mr Krawczyk.

30 HIS HONOUR: I thought you were asking about Mr Bennett?

MCDONALD: No. No. Sorry, I was jumping to Detective Krawczyk.

35 Q. He's with Special Branch?

A. That's right.

Q. And hence, not a resident of that floor in the CIB.

A. That's right.

40 Q. Where was he?

A. It's impossible for me to tell you that.

Q. Do you recall whether he was assigned a particular task?

A. I don't know.

45 Q. What about the other officers, for example Detective Helson, did you see him again at CIB?

A. Well, everyone was there. People were milling around, and property was brought in. I think I've already said that I made some telephone inquiries.

50

Q. What telephone inquiries did you make?

A. I'm fairly certain that I - I ran a warrant check on Mr Brajkovic, and that - part of that, I would have called the Warrant Bureau, and part of that would have been, in all probability, in fact I'm pretty sure I rang Criminal
5 Records as well. MO Section, maybe.

Q. I'm sorry, I missed that.

A. MO Section, maybe.

10 Q. What's it?

A. Sorry?

Q. What's MO Section?

A. Modus Operandi Section. That's a guess.

15

Q. Are you relying on what your usual procedure would have been of making inquiries in circumstances where you've arrested to somebody and you bring them back?

A. That's right, yes, that's right.

20

Q. I'd asked you about scrub down, and I've taken you to the glossary of the Wood Royal Commission. Had you also, and we're looking at around February 1979, had you also heard of a practice called "verbals"?

A. Yes.

25

Q. What was your understanding of that?

A. Fabricated conversations and evidence.

30 Q. So answers given by an accused where there's evidence of the answers by the police officers?

A. Yes, that's - that's--

Q. And the accused denies saying it?

A. Yes.

35

Q. Up until February 1978, had you ever engaged in verbals, in verballing an accused?

A. No.

40 Q. Had you ever witnessed, and I'll take your whole career, did you ever witness or observe any other police officers engaging in that practice?

A. No.

Q. How did you know about it?

45 A. You'd read about it in the press, you'd hear other criminals talk about it, and of course, there was a well-known Sydney solicitor who had that on his number plate.

Q. Did you know the term "load up"?

50 A. Yes, I've heard of that.

Q. What's your understanding of that?

A. The same, same as verbal.

5 Q. But doesn't it also involve, in a sense, the planting of evidence, for example guns?

A. Correct, yes.

Q. Or explosives?

10 A. Well, that - that - that could be an allegation, yes.

Q. Had you during your career at the Police Force ever engaged in such conduct?

A. No.

15 Q. Had you ever witnessed other police officers, or observed other police officers, engaging in that practice?

A. No.

Q. Did you know of allegations of the practice around February 1979?

20 A. In all probability.

Q. How had your knowledge or hearing of such allegations arise; where did it come from?

25 A. I've already answered that. I read about in the paper; other - other criminals, mates, in conversations you have with them, talk about things like that.

Q. Had you ever come across, in any trial that you were involved in, that being put forward as a defence?

30 A. Yes.

Q. So in those circumstances, if that allegation can be made by an accused, it would be important to have evidence that supports that the finding, for example of firearms, wasn't a load up, that it was actually found there by the police?

35 A. Yes.

Q. In February 1979, that, in a sense, verification evidence that it would be sensible for the police to obtain, how could have you obtained it; what were the avenues open to you back then?

40 A. That's - that's very hard to answer. It - you could just adopt normal investigative techniques. That could be anything, witnesses, property found, that sort of thing.

45 Q. There was no property seizure record kept at the site when items were being seized?

A. I don't know what that is.

Q. A property seizure record?

50 A. Yes.

Q. Okay. While you were at the premises, there was no record being taken, ie somebody didn't have a notebook out recording what was found and what was going to be taken?

A. No. No, that - that was done later.

5

Q. I've shown you the list that was compiled by Detective Sergeant Wilson at CIB, I think it might have been the next day or the day after?

A. Yes.

10

Q. What I'm talking about – and you had a notebook with you at the premises, didn't you?

A. More than likely, yes.

15

Q. Is taking a contemporaneous note, for example "found white plastic bag over near tree at approximately this time containing these items", that no such record was kept--

A. No. The only notes were the ones that I've referred to.

20

Q. Which were made subsequently?

A. Correct.

Q. Was any consideration given to taking photos when you were at the site?

A. We didn't have that equipment.

25

Q. Wasn't there the potential to call somebody from the Scientific Branch?

A. If they were available, but, at that time of the night, it would be rare, unless there was a call-out, and that would have delayed the whole process.

30

Q. When you say there would have been a call-out, what are you referring--

A. Well, staff on standby for call-out.

Q. You were on standby, weren't you, from about 5 or 6?

A. Yes.

35

Q. I suppose I'm being unfair to you. It wasn't part of your role to determine a call-out of Scientific officers?

A. No.

40

Q. Was there any discussion, before you attended the raid, about anything like that, about – you know, "If you find something - contacting us so we can get a camera out there," or anything like that?

A. None that I can recall.

45

Q. As at February 1979, had you come across allegations that persons in custody had either been assaulted or threatened with violence to be able to gain a confession or admissions from them?

A. Allegations? Is that what you say?

Q. Yes.

50

A. I would have heard something like that along the way, yes.

Q. Had you ever participated in any such conduct?

A. No.

5 Q. Had you ever witnessed any other police officer engage in such conduct?
A. No.

Q. Did you work closely with Roger Rogerson?

A. I was in the same squad as he, at the same time.

10 Q. Did you work different operations or investigations with him?
A. He was never my workmate, but we did jobs together, yes.

Q. Did you ever hear from Detective Rogerson any statements that he had loaded up suspects?
15 A. No.

Q. Verballed suspects?

A. No.

20 Q. Assaulted suspects?
A. No.

Q. I can take you to it, but you do know, subsequently, after he left the Police Force, he came out with revelations that that type of conduct, in his
25 experience, often occurred?

BASHIR: I object, your Honour, just to the use of the word "revelations", rather than "allegations".

30 MCDONALD: I'm talking about the revelations that he made in the press, which I suppose are--

HIS HONOUR: He said that he was revealing this had actually occurred in the Police Force. To Rogerson, it was a revelation being made to the
35 world. Whether it was in fact the case is a separate question, I appreciate that.

BASHIR: Yes, your Honour. Just in terms of the question that's being put, it's being put by Counsel Assisting as a revelation.

40 HIS HONOUR: Yes, I think, with the understanding that I've just described, the question can proceed.

MCDONALD

45 Q. Do you understand these are revelations made by Roger Rogerson after he left the Police Force, where he's revealing that tactics such as verbals, load-ups, assaulting suspects were common throughout the Police Force?

A. I can remember an interview he did on 60 Minutes in which he said he'd never witnessed anything like that, but it seems to be that he waxed and
50 waned. It - I think it depends on what stage of his bitterness was that - as to

what he said, but, in the early stages and subsequently, he denied that such practices did take place. I think there was an interview with Ray Martin at one stage.

5 WOODS: Your Honour, it's been a long day and a long time in the witness box. Might we take a five-minute break?

HIS HONOUR: Yes.

10 SHORT ADJOURNMENT

MCDONALD

15 Q. Mr Harding, I'll take you to Exhibit 13.12.

EXHIBIT 13.12, RED PAGE 44, SHOWN TO WITNESS

20 Q. This is a report from a newspaper in October 1991. Can you see right at the beginning of the article it talks about Roger Rogerson told a national television audience that police regularly committed criminal acts to frame suspects and secure their conviction?

A. Yes.

25 Q. Then just to give you an example, if you go down that column, can you see the paragraph commencing, "Roger Rogerson was finally detailing, from the inside, the full extent of corrupt police practices - most notably, in 'fitting up' suspects with crimes which police might not otherwise be able to prove in Court". And then you can see in the next paragraph he talks about "so-called 'police culture' or 'the cult' - the widespread practice of 'loading up' and 'verballing' criminals"?

30 A. Yes.

35 Q. So when I was talking about the revelations made by Roger Rogerson, I'm talking about such comments that he's made in a television program, and then repeated in the press, that in his experience, such practices as he's described, verbals, were a part of a cult of the police. Now, you, before the short break, referred to Mr Rogerson waxing and waning about such allegations; when were you referring to?

40 A. Well, I can recall a couple of interviews at least in which he denied such things took place, and he also said he'd never worked with corrupt police, never witnessed anything like that. For reasons best known to himself, he - he went public and said all this sort of stuff.

45 HIS HONOUR

Q. When he was denying that such things occurred, was that when he was still a police officer or subsequent?

A. No, subsequent, yeah.

50 MCDONALD

Q. Before these reported?

A. Yes, before - before this, I'd say.

5 Q. But his description of such things as the cult - the widespread practice of loading up and verballing criminals, does that accord with your experience in the Police Force?

A. No.

10 Q. The Findings of the Wood Royal Commission, which did find a lot of those practices were either widespread in certain parts of sections of the Police Force, what was your reaction to those findings?

A. Well, I didn't read the Report, except for that section that applied to me. I - I - I can't even remember if I - if I read any of it in detail.

15 Q. You would have read it in the press?

A. By then I'd moved on, and I - I had a fairly - by then I had a - I had a fairly demanding job.

Q. You had a what, sorry?

20 A. A fairly demanding job, which involved a lot of travel, but look, he's the only person who can answer why he did all of that sort of thing.

Q. Moved on from Mr Rogerson, looking at the Findings of the Royal Commission, now you said you haven't read the report--

25 A. No, I haven't.

Q. --except for a particular section, but you would have read the press reporting at the time of--

A. I may have, yes.

30

Q. Were you surprised, shocked?

A. Well, I - I can't answer that. All I can say to you is that I didn't behave in that way, nor did I work with anyone that did.

35 Q. Can I just ask you some final questions. I asked you about another trial, which your recollection was it was towards the beginning of 1980, I think--

A. Yes.

Q. --of Mr Steep; do you recall how to spell Mr Steep's name?

40 A. Yeah, S-T-E-E-P.

Q. No E on the end?

A. I don't think so.

45 Q. Do you remember his Christian name?

A. John.

Q. Your recollection was it was in the District Court?

A. Yes.

50

Q. Do you remember the judge?

A. No, I don't.

5 Q. Can I go back to The Croatian Six, and I'm just summarising it. Your involvement was really attending the briefing at CIB on 8 February at night?

A. Yes.

Q. Going to Bossley Park and participating in the raid?

10 A. That's right.

Q. Returning to CIB, being the typist for the Record of Interview?

A. Yes.

15 Q. And then with Detective Sergeant Wilson taking Mr Brajkovic to Central for him to be charged?

A. That's correct.

Q. Then returning to CIB, and I think on the last occasion you said you were the typist for the notes?

20 A. That's right.

Q. So you were there with some other officers for a period of time, and then you return the next morning and complete the notes?

A. Correct, yes.

25

Q. Then, I think it was about 19 April, you complete your statement?

A. That's right.

30 Q. When you were at CIB, as we have seen, the white plastic bag with its contents were in the interview room at least for some period?

A. That's right.

Q. Do you recall anybody returning with the white plastic bag at any stage when you were still in the interview room?

35 A. No.

Q. Do you recall what happened to the white plastic bag?

A. I'd only be guessing, but I - I think Wilson retained it and locked it away.

40 Q. Do you know where he locked it away?

A. No, I don't.

Q. What was your understanding of the procedure at that time if, during a raid, officers had seized something like explosives?

45 A. Well, they - at the appropriate time, they should have gone to the - it was originally the Mines Department, which I think underwent a names - a name change to Dangerous Goods, and get it to them, because they used to analyse it and give us a report as to the content and the effectiveness, that sort of thing.

50

Q. Was it also your understanding of the procedure that Dangerous Goods would retain possession of the items and then, if necessary to be tendered at a trial or committal, they could be located there, brought to Court, et cetera?

A. I think so, yes.

5

Q. Again, was your understanding that the procedure was - I think your answer was, kind of, at an early opportunity or a first opportunity, they should be sent to Dangerous Goods?

A. Yes.

10

Q. Is that your recollection of the procedure, that it should have been something like, as soon as possible or shortly after?

A. Well, it depends on the circumstances, but, as a - I'd agree with that, yes.

15

Q. When you were giving evidence in July, I took you to a screed that Inspector Morey had and handed out to certain officers about information that was obtained at Lithgow on 8 February.

A. Yes.

20

Q. In the screed was a reference to a person called Vico Virkez.

A. Yes.

Q. Until Mr Virkez was mentioned at some kind of briefing on that night, had you come across him before?

25

A. Never.

Q. Had you ever come across him subsequently?

A. No.

30

Q. Did you ever visit, first, Mr Virkez in gaol?

A. No.

Q. Did you ever visit any of the other members of the Croatian Six in gaol?

A. No.

35

Q. Were you aware of any links between Mr Virkez and, for example, the government of Yugoslavia, or the Yugoslav Intelligence Service?

A. No. I only became aware of that when this Inquiry was announced, and I fiddled around with the internet and read some stuff there.

40

Q. I took you back to your involvement on 8 February, 9 February and then 19 April with your statement. Putting to one side that you attended the committal hearing and the trial, to give evidence, did you have any involvement in the ongoing investigation or compilation of the brief of evidence?

45

A. Nothing.

MCDONALD: No further questions, your Honour.

HIS HONOUR

50

Q. Mr Harding, can I just ask you this, you were the subject of allegations in this trial, that you were involved in verballing Mr Brajkovic.

A. That's correct.

5 Q. Had you ever been subject to allegations like that before this case?

A. I think I had, yes.

Q. How often?

10 A. Not often. It'd be terribly hard to give you a number, but - bearing in mind I was a detective for a very long time, but it did happen from time to time.

Q. When it first occurred that you were the subject of an allegation that you had been involved in verballing somebody, did it concern you?

15 A. Of course.

Q. Did it concern you on each and every occasion it occurred?

A. After a while - well, there wasn't that many, but after a while, I think, you just take it in your stride and get on with the job.

20 Q. For how long in your career were you the subject of such allegations?

A. Well, it happened from time to time. That's the best I can do at the moment. I've got no records or anything like that.

Q. Can you estimate at what stage was about the last time it occurred?

25 A. The last time?

Q. Yes.

A. Probably 1988.

30 Q. Prior to 1979, do you know for how long it had occurred that you were the subject of such allegations?

A. Not really, sir.

Q. Would it be a matter of at least some years prior to 1979?

35 A. I can't accurately answer that, but it may well have taken place during that period.

Q. Of some years?

A. Yes.

40

<EXAMINATION BY MR BUCHANAN

45 Q. Mr Harding, my name is Buchanan. I represent the Petitioners, the people who applied for this Inquiry. I'd like to ask you some questions, please. You'll have to pardon me if I cover a little bit of territory that was also covered by Counsel Assisting, but I'll try not to be too repetitive. You were shown the NSW Police Emergency Manual, or, rather, extracts from it by Counsel Assisting it earlier today.

A. Yes.

50

Q. Was it your evidence - please tell me if I've misheard it - that you had never come across that document before?

A. I was not familiar with it, at all.

5 Q. Does it surprise you that you weren't familiar with it?

A. I - just looking at it, I think that would be the type of document that would be perhaps in the Radio Branch.

Q. Radio Branch?

10 A. Radio Branch. If an emergency took place that - the operator could consult with his duty officer and they could set out what should or should not take place.

Q. Right.

15 A. And the other thing that I'd like to add is when I worked at Kogarah, which was a uniformed job, and at Burwood on a relieving basis, part of your job was to inspect what documents you had in the station, and, in other words, a tick and the flick to make sure everything was up to date, quarterly inspections, and I just can't remember ever seeing that - that document.

20

Q. I think Counsel Assisting took you to a couple of paragraphs which said effectively this, and perhaps we should, indeed, show it to you again.

EXHIBIT 14.9, RED PAGE 124, SHOWN TO WITNESS

25

BASHIR: Your Honour, could I ask the questioner and the witness to keep their voices up, please?

HIS HONOUR: Yes. Please.

30

BUCHANAN

Q. If we could go to 19.11.1, please. This is headed, "Commercial Demolition Explosives and Detonators located or received." Do you see that?

35

A. Yes.

Q. Then paragraph 19.11.1 reads, "When commercial demolition explosives and/or detonators are located or received, members of the Force will not interfere with them but initiate safety measures."

40

A. Yes.

Q. Just pausing there, it would seem surprising that you weren't aware that that apparently was the policy position of the Police Force at the time?

A. I didn't say that. I - I--

45

Q. No. I'm asking you, though. Don't you think it's surprising that you wouldn't know that?

A. Well, I'm saying generally that's a common sense direction, and I - I think that this document was uplifted from earlier documents. I've referred to the police rules and instructions, which every member of the police were issued

50

with when they join, but, yeah, look, that's a common sense direction.

Q. It's not one that you complied with on this occasion, though, on your evidence.

5 A. Well--

Q. You say you found explosives, and you promptly interfered with them?

A. Well, I think I was entitled to on the basis of my background, and there was no danger involved.

10

Q. An option would have been to have left them where you found them?

A. Well, that would have slowed the whole investigation down.

Q. You've got to do it quickly to be efficient, do you?

15

A. Well, as I keep saying, the - the lasting impression that I have about this night was the urgency of it. To get it done, to tidy it up, to stop these people from doing what they intended to do.

Q. Well, you'd found some explosives. You weren't going to go and give them to any Croatian, were you?

20

A. Certainly not.

Q. They were in police custody, weren't they?

A. That's right.

25

Q. You could have set a guard there to make sure that they couldn't be interfered with before the morning when a photographer could come and take a photograph of them in situ, couldn't you?

A. Well--

30

Q. If you'd found them.

A. I think that we acted properly on the night. They were subsequently photographed, but not in situ.

Q. There's an advantage, though, when police are investigating the suspected commission of offences involving illicit items, such as explosives, to having a photographic record created of exactly where the illicit items were found.

35

A. I would have been useful, yes. That's for sure.

Q. You were involved, weren't you, in ensuring that uniformed police attended the property that night?

40

A. Yes.

Q. How did you do that?

45

A. I think I used the radio.

Q. You used the telephone. The landline telephone on the premises, didn't you?

A. And the telephone as well.

50

Q. Did Mr Wilson ask you to do that?

A. He may have, yes.

5 Q. Would you have done it off your own bat without Mr Wilson saying you should or could?

A. We probably discussed it. It was a mutual decision.

10 Q. What was the purpose, as you understood it, of having uniformed police officers attend the property?

A. To relieve the Observation Squad.

Q. Relieve them in performing what task?

15 A. Well, to get on the job. If they were required in another area. That's the Observation Squad.

Q. To relieve them in performing what task, though? What was it that the uniformed police would do--

A. They were guarding the house.

20 Q. Did you have an understanding of why it was necessary to guard the house?

A. Well, in case there had to be any follow up. To make sure that nothing was interfered with.

25 Q. Were you told when you rang, I assume a police station, and asked for uniformed police to come to the site, were you told that they would be coming in the near future?

A. I can't remember now.

30 Q. Do you have a memory of leaving the premises with an understanding that uniformed police would be attending?

A. Yes.

35 Q. When you left the premises, the Observation Squad officers were still there?

A. Yes.

Q. As you understood it?

40 A. Yes.

Q. If illicit items such as explosives were actually found, they could have been left in situ, and they wouldn't have been interfered with because police would have been there to make sure they weren't interfered with; that's right, isn't it?

45 A. Well, it--

Q. If the explosives were there.

50 A. They were there. You see, I keep referring to the speed of the night and all the rest of it, and I've got it in the back of my mind that we were directed to return to the office with what we found.

HIS HONOUR

Q. Mr Harding, you're not answering the question.

A. Sorry.

5

Q. Mr Buchanan is asking whether it was possible that that could have been done. Was it possible?

A. It's - it's possible, unless a higher authority, such as Mr Morey, directed that we return with the property that we found.

10

BUCHANAN

Q. Did Mr Morey direct you to return with the property that you found?

A. May have, not - not me personally, but he - he may have.

15

Q. What makes you think that?

A. Well, that's just a feeling that I've got. We - we were in regular radio contact with the local police, and Mr Morey would have been able to communicate with us quite easily.

20

Q. That radio contact would have been via a radio in a police car?

A. Correct.

25

Q. What I want to suggest is that if you really had found explosives in these premises, you could have left them where you say you found them, set a guard there, arranged for the Scientific Section to be notified to bring out a detective to take photographs of them as soon as they could, or at least by daylight, and you would then have had a much stronger case, wouldn't you, thinking of your own interests, to prosecute against Mr Brajkovic?

30

A. I'm - I'm not sure how - how I can answer that. If you've got an inspector telling you to return to the office now with the Exhibits, you do it, but as a general proposition, it would have been handy to have a photographer there.

35

Q. You're elevating a feeling that you have, are you, to the status of evidence that Mr Morey gave such a direction?

A. I - I - I believe that is a strong possibility that he did.

40

Q. Strong possibility? You're just making evidence up as you go along, aren't you?

A. No, I'm not.

45

Q. Why did explosives need to go back to CIB? You've seen them, you knew where they were, you could ask Mr Brajkovic questions either there and then or at CIB, if that was what you wanted to do; why did the explosives need to go back with him?

A. Well, it's just the normal procedure when you interrogate someone to show what we're talking about.

50

Q. Could we have a look at that page again from the New South Wales Police Emergency Manual. You see paragraph 1911.2:

5 "The Department relies upon explosive experts attached to the Department of the Army for the removal and disposal of the abovementioned articles. Their attendance may be initiated directly through Victoria Barracks police extension 3234, or through the Communications Branch".

Obviously, nothing like that was done in this case?

A. No.

10 Q. If it had been done, that would again have put you in a stronger position, just thinking about your own interests, if these explosives had genuinely been there, of having an independent expert to say, "Oh yes, I saw them there, I saw them there that night"?

15 A. Look, I - I can only answer the way that I've answered the previous question. We found them, there were ample witnesses who saw them.

Q. Who were the ample witnesses?

A. The police that were there.

20 Q. You didn't show them to Mrs Brajkovic, did you?

A. I think that took place later.

25 Q. Explosives were shown to Mrs Brajkovic at CIB, but who was to say that they were found at Bossley Park, that they didn't come from some stash at CIB?

A. A stash at the CIB?

Q. Yes.

30 A. Are you serious?

Q. Who was to say that the explosives shown to Mrs Brajkovic, as you understand it, that their source wasn't some stash at CIB; I'm asking you that question?

35 A. I've never seen a stash at the CIB of explosives--

Q. Could you have been aware of such a thing?

A. Sorry?

40 WOODS: Let the witness answer the question.

BUCHANAN: Quite correct.

Q. What would you like to say?

45 A. Well, I'm lost now. What are you putting to me?

Q. Were you aware of a stash of explosives being kept at CIB to be drawn upon as required, as judged by detectives to load up a suspect?

A. Never heard of it.

50 Q. You see, explosives needed to be taken to or produced to the Dangerous

Goods Branch if you were to get some sort of independent third party to say they existed, didn't they?

A. Yes.

5 Q. But in this case, as far as you're aware, they weren't shown to the Dangerous Goods Branch until some date in March?

A. I don't know.

10 Q. Did you make any arrangements to ensure that they were taken to the Dangerous Good Branch promptly?

A. No. Well, I've already answered, apart from going to Bossley Park on that night, I had nothing to do with any follow-up enquiries.

Q. And so we should ask Detective Wilson?

15 A. Probably.

Q. You see, you know, don't you, from your involvement in the trial, that the Army was brought in at Lithgow where police found explosives?

20 A. I was not present for that evidence.

Q. I'm sorry. Were you aware that there was a Lithgow connection in this case?

A. Yes.

25 Q. You didn't hear from Inspector Morey that explosives were found at Lithgow?

A. No, I did. I heard - I heard that. That was part of the briefing, as I understand it.

30 Q. You weren't aware, however, that the Army was called in by police?

A. No.

Q. That the police who were there were Special Breaking Squad police and Ballistics officer?

35 A. I - I couldn't tell you who went there, apart from Angus McDonald and Mick Simmons, and that's about all I can remember.

Q. Why would any of them call in the Army but not you?

40 A. I - I - I can't answer that. That's something you should put to them.

Q. It tends to suggest, doesn't it, that the evidence that you've given that you found explosives at Bossley Park is false?

A. No.

45 WOODS: Is that a question? I object to that question, your Honour.

BUCHANAN: It was a question and it's been answered.

HIS HONOUR: He's denied the proposition, Dr Woods.

50

BUCHANAN

5 Q. Can I ask you a different question. Was there any reason why an Army explosives expert couldn't have been called for them to attend at their convenience? In other words, why did it have to stop you going into CIB with Mr Brajkovic, if that was what you wanted to do?

10 BASHIR: Your Honour, I'm sorry, that was so wrapped up - I didn't understand the question. I object.

HIS HONOUR: Yes. I think it needs to be unravelled a bit, Mr Buchanan.

BUCHANAN: Very well, your Honour.

15 Q. There wasn't any necessity, was there, to wait for the Army to come to have a look at the explosives you say you found before you took Mr Brajkovic to CIB, was there?

A. There was no necessity? Is that what you're saying?

20 Q. That's what I'm asking you.

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

Q. How would it have hindered your investigation of this matter, given the explosives you say you found, if you had organised for the Army to attend?

25 A. Probably would have slowed it down.

Q. How?

A. Well, you'd have to wait for him to arrive - or him or her to arrive, to examine it, to secure it, that sort of thing.

30 Q. Why would you have had to have done that? Why couldn't one of the other officers who was there have done that, rather than you?

35 A. I think I answered this previously, that, when you interrogate someone, it's appropriate that you show them what you say you found during the course of the formal interview.

Q. You never showed any explosives to Mr Brajkovic, did you?

A. They were shown to him during the interview.

40 Q. Mr Wilson said to Mr Brajkovic, at CIB, that explosives had been found at his house, and Mr Brajkovic said, "Show them to me."

A. No.

45 Q. Isn't that what happened?

A. No.

Q. In February 1979, your stature, your build, could have been fairly described as "well-built", couldn't it?

50 A. How can I answer that?

Q. Can I ask you, you have pretty much the weight on now that you had on then?

A. No. No, I've put on a fair bit of weight.

5 Q. And your height, can I ask you that, please?

A. Five-foot-11 in the old money.

Q. You struck Mr Hudlin with a torch at Bossley Park, didn't you?

A. Definitely not.

10

Q. What was it about the premises at Bossley Park that you thought necessitated a guard being placed, or, as you understood it, Mr Wilson thought necessitated a guard being placed?

A. Just a follow-up, that's all.

15

Q. You've told Counsel Assisting about the fact that you typed up the document headed, "Table of events and notes in relation to the arrest of Brajkovic"?

A. Yes.

20

Q. Which is Exhibit 11.89. That was prepared in order to provide a source for detectives who had participated in the raid to compile their statements of evidence for Court. Would that be fair to say?

A. Yes.

25

Q. You and your colleagues had to create that document, I suggest to you, because you loaded Mr Brajkovic up and verballed him?

A. No.

30

Q. You needed, what I want to suggest is, a script, and artificial narrative, in pretence of what had occurred.

A. No.

Q. In pretence of what had been said by Mr Brajkovic.

35

A. No.

Q. You say that that was not an unusual procedure, to compile such a document?

A. Definitely was not unusual.

40

Q. How many times do you think you would have prepared one altogether in your career as a police officer?

A. There's no way I could answer that.

45

Q. It would be so many times?

A. It happened regularly.

Q. You were asked, this morning, questions about the evidence that you gave at the committal hearing of a conversation that you alleged occurred between Mr Wilson and Mr Brajkovic in the front room, it's been called a workroom or a

50

study or a workshop--

A. Yes.

Q. --of the house at Bossley Park.

5

BUCHANAN: I wonder if we could have a look, please, at Exhibit 2.3, day 35, p 7797. Can you see the very top of the page, Mr Harding? And perhaps if we go to the preceding page, just so that we can put it in proper context.

10 EXHIBIT 2.3, DAY 35, RED PAGES 7796-7797, SHOWN TO WITNESS

Q. This is your evidence. When you say, "he", you mean Detective Sergeant Wilson, and at about seven lines from the bottom it's:

15 "He said, 'Yes.' Detective Sergeant Wilson then said 'Detective
Harding has told me that he found this bag here in your possession
outside.' He was indicating the bag which I have referred to earlier
in my evidence. He continued and he said 'I am going to ask you
20 some questions about these things and as you have already been
told you need not say anything unless you wish as anything that you
do say may be taken down and may be used as evidence in Court,
do you understand that?' He said 'Yes, I understand.' I indicated
the property that I've referred to, that is the property which was
25 found outside and I said 'Who owns all of this?' He said, 'They
belong to me.' I said 'Do you realise that they are explosives and
could quite easily be used to as a bomb?' He said 'Yes I make
bomb.' I then said 'We will want you and all the other people here to
come back to the CIB with us where you will be further questioned
about this property.'"

30

By the time you gave evidence at the trial in 1980, the way you gave evidence was to attribute the questions leading to the alleged admission, "Yes I make bomb", to have been addressed to Brajkovic, not by you but by Sergeant Wilson?

35 A. It was definitely Wilson.

Q. Can I suggest to you that the evidence that you gave at the committal was of a verbal, and you got the evidence mixed up?

A. No. Not at all.

40

Q. Because you weren't giving evidence from a memory of anything that had actually occurred. It was a verbal?

A. No. It was never in the transcript. That's what I say.

45 Q. In your evidence in the trial, it was pointed out to you that at the committal hearing your response was to say a number of times that you did say that you gave that evidence, but you were mistaken, and Wilson said it. Do you recall that?

50 A. I answered those questions on the basis that what Mr - I think his name was Lloyd-Jones - was putting to me was accurate. You see, I've never read

this transcript until probably about three weeks ago, and it wasn't until I read it in detail and picked up that other error that I realised this is probably wrong.

Q. That's not what you said at the trial, is it?

5 A. No. I assume what Lloyd-Jones was putting to me was accurate.

Q. When you say you assumed what Mr Lloyd-Jones was putting to you was accurate, in what respect do you now say it was not accurate?

10 A. Well, he - he was reading from the transcript, which was incorrect, and I assumed that the transcript must be correct because he's reading from it, and on that basis I conceded that I may have made an error. But as I say, I - I'm not convinced, unless the tape still exists - I've never done it before in any evidence I've ever given, substituted myself for another police officer. It's an error in the transcript.

15

Q. It's a scripting error? It's an acting error?

A. No.

EXHIBIT 2.1, DAY 22, RED PAGE 736, SHOWN TO WITNESS

20

Q. Can you see the large paragraph commencing:

25 "Q. And you made that error of attributing this conversation to yourself in all of those questions, one after another, is that what you say?

30 A. I have already told you on more than one occasion I was wrong because this was the first occasion in about three years that I had corroborated another police officer. Usually I give that type of evidence myself and I just slipped into the way in which I normally give evidence. I definitely want to tell you that Wilson asked these questions and the accused supplied answers."

A. Well, look, I feel I've already answered that. I answered it in that way on the basis that what Lloyd-Jones had put to me was accurate.

35 Q. I want to just give you the opportunity of responding to this: what Mr Lloyd-Jones did was he told you what you were recorded in the transcript of the committal as saying, don't he?

A. That's right.

40 Q. Where he got that evidence.

A. But the transcript is incorrect, in my opinion.

Q. When you told the Court in the trial:

45 "I was wrong because this was the first occasion in about three years that I had corroborated another police officer. Usually I give that type of evidence myself and I just slipped into the way in which I normally give evidence."

50 You were really explaining to the Court that you had a role to play in this

verbal, and you assumed the wrong role in giving your evidence the way you did in the committal.

A. Not at all.

5 Q. Do you appreciate, though, that the answer you gave, "I have already told you...I was wrong because this was the first occasion", et cetera, "Usually I give that type of evidence myself and I just slipped into the way in which I normally give evidence", reads very much like you're talking about acting on a stage?

10 A. No. I - I don't know how you can say that.

Q. When you construct a verbal, you'd understand how that has to be done, don't you?

A. There was no verbal.

15

Q. There have to be roles played in a verbal, don't there?

A. Look, I - I answered it at that time because I believed that I must have done it, but when I was finally supplied with the transcript of the committal, and I read it, and the fact that I was not called up at any stage when I allegedly said, "I said" instead of "Wilson said", tells me that it's an error in the transcript.

20

HIS HONOUR

25 Q. Mr Harding, what you're saying is - amounts to this, doesn't it, in this passage of your committal evidence there are six instances of you giving evidence, or you are said to have given evidence, of saying "I said", or "I then said"; that's six times?

A. That's right.

30 Q. Which amounts to the person preparing the transcript, the transcription typist, having listened to a recording of you six times in a very short passage saying "Detective Wilson said" and has typed "I said"?

A. That's right, but it's an error. I - I--

35 Q. It's not a one off, it's six times in a short period of time that a person listened to a recording of you saying "Detective Wilson" and typed "I".

A. But it - it is an error, and I refer you to the other bit about me allegedly saying, "I don't give a damn".

40 Q. Yes, that's one instance, one error, one transcription error, but this is six times the error in a short passage of evidence.

A. Well, that would seem to be what took place.

BUCHANAN

45

Q. Would this be right, Mr Harding, that when you gave your evidence at the committal on that occasion, you were not giving evidence of a recollection of events, you were attempting to give evidence of a recollection of the contents of your statement?

50 A. No.

Q. Would that be right?

A. Well, as you know, we had to commit it to memory in those days, and--

5 Q. Yes, you committed the statement -- the contents of the statement to memory?

A. That's right.

Q. Yes, and what does that mean?

10 A. Well, I - I - you - you - you give your evidence from memory, and as I keep saying to you, I - it's my firm belief that whoever transcribed the committal evidence got it wrong.

Q. At no stage were you giving evidence of a recollection of events, you were trying to give evidence from something you had typed up later; is that fair to say?

15 A. I - I - I could recall what happened on the night, and the statement just supported that, that's all.

Q. On 1 May 1980, on the voir dire in the trial, if we could have a look, please, at Exhibit 2.1, day 13, red page 418, you gave evidence about a clock. Before saying that you saw Sergeant Wilson with a clock which had the glass face with a hole bored in it, and a hand of the clock was missing--

20 A. That's right.

Q. --you gave evidence that you saw Wilson with a clock which had the clock face removed and the large hand was also missing; is that right?

25 A. That's right.

Q. Under cross-examination on the voir dire, red page 420, you accepted that there was a big difference between saying the clock glass was missing and saying the clock glass had a hole bored in it.

30 A. I got it wrong in my description.

Q. You called it an error, and you later called it an error in phraseology - red pages 7 to 8 and 730.

35 A. I think what I said was that the clock had a hole bored in the face. What I should have said, had a hole bored in the glass covering into the face, and dare I say that Counsel Assisting in her opening address to this Inquiry described it pretty well much that way as well.

40

Q. Would that aspect of your evidence not have been an example that you were giving evidence of your recollection of a script, not of anything that actually occurred?

45 A. No, I - I saw the clock on the night during the interview; I next saw it at the committal; I next saw it at the trial. So there was gaps in between.

Q. But the clock came from somewhere known to detectives at CIB, not Mr Brajkovic's premises; isn't that the case, to your knowledge?

50 A. No, not at all. It was found there.

Q. The first person outside of CIB who saw this clock would have been when it was produced at the committal hearing in late 1979, correct?

A. I - I don't know that.

5 Q. Well, can you think of any reason why any independent person would have seen it?

A. I - I don't know what happened to it after the night.

10 Q. But you know, don't you, that this clock was produced, manufactured with a hole in it, by police?

A. No.

15 Q. I'll change the subject, if I may, Mr Harding. You've told us that you didn't see what has been called Detective Inspector Morey's screed that was distributed at the briefing before you went to Bossley Park?

A. That's right.

20 Q. In evidence in the Inquiry there was a second screed that was distributed by Detective Inspector Morey; are you aware of that?

A. No.

Q. Did you go to see Detective Inspector Morey upon your return to CIB?

A. Yes.

25 Q. Were you with anyone when you did that?

A. Yes. Wilson.

Q. Was there anyone else in the room?

A. The room was full.

30 Q. The room was full?

A. People coming and going, yes.

Q. Was Detective Inspector Perrin there from Special Branch?

35 A. I can't say.

Q. Did you exchange any words at any stage with Detective Inspector Perrin of Special Branch that night?

A. I don't think so. I can't recall him being there.

40 Q. Did Detective Inspector Perrin talk to any other detective in your presence at CIB that night?

A. Not that I'm aware of.

45 Q. Did Detective Inspector Perrin show you any document or photograph that night?

A. No. I can't remember Mr Perrin being there.

Q. There's evidence, namely, his statement, to the effect that he was.

50 A. Okay.

Q. But you can't remember him being there?

A. No, I can't.

5 Q. Did you see or receive a typewritten document, which might be called a
screed, at the time you were in Mr Morey's office at the time you returned from
Bossley Park?

A. No.

EXHIBIT 11.36, PAGE 132 SHOWN TO WITNESS

10

Q. Could you peruse the document that's on the screen in front of you? I'm
not going to ask you to read it all to yourself, but just simply peruse it, to see
the nature of the subject matter. You'll see it's headed, "Further information
received from Detective Sergeant Turner at Lithgow", you'll see a paragraph
15 about men called Bebic and Virkez, a paragraph commencing, "Bebic stole the
explosives," then, underlined, a subheading, "The targets for the bombings
were," and then there's a list of premises. You don't recognise that document
or have a memory of seeing a document of that kind?

20

A. The first time I saw this document was when I went for a legal conference
with Dr Woods.

Q. You can tell us, can you, that a copy of that document wasn't on the table
in front of you when you were typing the timetable and notes of events?

A. If it was there, I did not notice it.

25

BUCHANAN: Thank you. I have a bit more, your Honour. I'll probably be an
hour and a bit.

HIS HONOUR: Thank you.

30

Mr Harding, we'll have to continue your evidence and, hopefully, complete it
tomorrow.

<THE WITNESS WITHDREW

35

ADJOURNED PART HEARD TO TUESDAY 6 AUGUST 2024