

INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX

REPLY SUBMISSIONS OF THE COMMISSIONER OF POLICE, NSWPF

A. INTRODUCTION

1. The Commissioner of the New South Wales Police makes the following submissions in relation to some discrete points raised in the submissions for the Director of Public Prosecutions, NSW (**Director**). The matters responded to are as follows:
 - a. The submission that the information known to Jefferies on 8 and 10 February 1979 about Virkez's approaches to the Yugoslav Consulate should have been disclosed to the defence, and was not: at [84].
 - b. The submission that Milroy's evidence about passing the above matters to the Office of the Director of Public Prosecutions (**ODPP**)¹ or the Crown Prosecutor was not reliable to establish that Shillington QC was informed: at [92]-[98].
 - c. The submission that Cavanagh did not inform Shillington QC of Virkez' relationship with the Yugoslav government at the meeting of 22 February 1980: at [99]-[104].
2. *First*, as to the Director's submissions that the information known to Jefferies on 8 and 10 February 1979 about Virkez's approaches to the Yugoslav Consulate should have been disclosed to the defence (inferentially, by the NSW Police), Mr Milroy's evidence was consistently that this information was passed on to the prosecuting authorities, including the ODPP and/or the Crown.
3. As the Director states at [85]-[86] of her submissions, there was an attempt by Jefferies to obtain evidence of Virkez's information to the Yugoslav Consulate on 8 February 1979 from the Vice Consul or from the officer who took the call from Virkez. This was done

¹ Then the Clerk of the Peace.

at the instigation of Turner and/or Milroy.² As the Director submits, this tells against any decision to conceal that information from defence.

4. Moreover, there is no reason to conclude that the absence of a statement from personnel at the Yugoslav Consulate in the brief prepared for committal that the information was not passed on to the Crown Prosecutors for trial. Milroy's evidence is that his responsibilities extended to putting the brief up for trial, and liaising with the Crown in doing so. It follows that relevant information that may not have gone forward for the purposes of establishing a basis for committal would have been passed on for the purposes of informing the Crown of the evidence to be led at trial.
5. In any event, the early involvement of the ODPP at committal stage reinforces that information that was acquired at the early stages of the investigation was likely to have been communicated to the prosecutors.³ White's evidence was that he attended the committal at the bar table on a watching brief, that he attended meetings with Turner, Milroy and the Police Prosecutors during the committal, and communicated what had transpired during the committal to Shillington QC and Viney.⁴ That is consistent with Milroy's evidence that even at committal (when the prosecution was conducted by Sergeant Brady), "because of the complexity of the case, we basically dealt with the DPP."⁵
6. The Director's submission in relation to the failure to disclose the information as to Virkez's approaches to the Yugoslav Consulate falls away when regard is had to Milroy's clear and unqualified recollection, in response to a question from counsel for the Director, that (a) Turner would have made notes of what both Jefferies and Cavanagh told them about Virkez's background, because "he was quite a prolific note taker"; and (b) "that was passed on to ... the lawyers that were appearing for the Crown, when we had the meetings."⁶ He later said "I remember Jefferies and Cavanagh coming to our office, so I'm not confused at all."⁷

² Milroy, T5/295.1-14.

³ Milroy, T5/284.1-12.

⁴ Ex 15.17, [10]-[12], [19].

⁵ T6/338.40-44; T6/339.7-13, 30-32; T7/394.45-50.

⁶ T7/397.2-5.

⁷ T7/397.38-39. Similarly firm evidence was given at T7/399.37-42 and T7/416.30-34.

7. The later suggestion by Counsel Assisting, accepted by Milroy, that the information would have been passed only to the Police Prosecutor, arises from the proposition put to him that because the information came to light “in the early days” it must have been communicated only to the Police Prosecutor.⁸ That proposition assumes that Milroy would only have communicated the information once, and that, even at the early stage, the ODPP would not have been involved in such discussions, contrary to his spontaneous recollection of his dealings with the ODPP in his earlier evidence and the arrangements in place at the committal. The Director’s reliance on this evidence at [94] of her submissions should not be accepted.
8. *Second*, the proposition that Milroy’s evidence that he passed the information on to Shillington QC or a ODPP solicitor is unreliable or an assumption also does not reflect the evidence, for the reasons outlined above. The evidence Milroy gave about being confident that the information being passed to the Crown Prosecutor, because the nature of it was consistent with the Crown’s closing submissions about Virkez’s role is not an assumption, it logically reinforces his memory that the information was passed on.⁹
9. The possibilities raised by the Director at [96] of her submissions were not put to Milroy. They are not internally consistent (for example, they assume that a matter would have been raised with the prosecuting officers only once during a lengthy trial and committal process) nor are they consistent with Milroy’s evidence (for example, he was cross-examined by Counsel Assisting on the absence of any reference to the 10 February meeting in Jefferies’ statement¹⁰).
10. One reason why the Inquiry would infer that the matter was raised with the Crown in preparations for the trial is the changed role Virkez adopted at the trial: that is, at the time that Virkez elected to plead guilty and give evidence at the trial, matters relating to his role in the discovery of the bombing plot assumed new significance. Taken with the other evidence of Turner and Milroy’s engagement with Shillington QC and Viney, that is a powerful reason to conclude that the information was passed on to the Crown at a later stage than when it came to the officer’s attention in early February 1979.

⁸ T7/413/31-45.

⁹ See Commissioner’s submissions, [44].

¹⁰ T7/401.

11. Finally, rather than being improbable that Shillington QC would have known the information about Virkez's links with the Yugoslav Consulate but closed the case with the submission that "there was not a skerrick of evidence" as to Virkez being a Yugoslav agent, the nature of the information about Virkez's engagement with the Yugoslav consulate provides an explanation that makes that scenario fairly probable, for the reasons explained in paragraph [67] of the Commissioner's submissions.
12. *Third*, the evidence of what was recorded by Cunliffe as to the *character* of Virkez's connection to the Yugoslav Government, relied on by the Director at paragraphs [99]-[100], should not be treated as reliable reflections of what was said at the meeting in that regard:
 - a. The conclusion as to "YIS links" in the minutes of the Second Interdepartmental Meeting is contrary to Boyle's recording of what he said at the meeting about Virkez reporting to a "suspected Yugoslav Intelligence Officer" which is to be preferred to Cunliffe's draft minutes, which record Boyle saying that Virkez was an agent run by a YIS Officer;¹¹
 - b. Moreover, the file note of Cavanagh's conversation with Cavanagh to the effect that NSW Police "may suspect that V. is Yugoslav agent but have not been told", if it is to be read as Cavanagh withholding information from NSW Police about Virkez being an agent, is inconsistent with Cavanagh's evidence to the Court of Criminal Appeal and Milroy's evidence of what Cavanagh told he and Turner about Virkez's relationship with the Yugoslav Government.
13. The manner in which Cunliffe's evidence should be treated by the Inquiry is addressed in paragraphs 6 and 7 of the Commonwealth's submissions. The Commissioner agrees with those submissions. The descriptions in Cunliffe's records of meetings and phone calls, and his letters over the period under Inquiry should be treated with similar caution where not corroborated by other evidence.
14. It is open to the Inquiry to find that Cunliffe formed the opinion, at an early stage, that Virkez was a YIS agent and this influenced the records he made of his discussions with Commonwealth agencies in relation to the matter. As the Director submits, the evidence

¹¹ Ex 10.1-3, Red 8.

before the Inquiry does not establish “YIS links” in the sense conveyed by Cunliffe’s minutes.

15. The better conclusion, and the one the Inquiry should accept, is that what was discussed at the meeting between Shillington QC, Cavanagh and others on 22 February 1980 was Cavanagh’s opinions in relation to Virkez’s role as a “provid[ing] community information” and “no professional agent.”¹² Such a conclusion is consistent with:
- a. Milroy’s evidence of what he was told by Cavanagh;
 - b. the opinions of Jefferies and relevant officers of ASIO as to the nature of Virkez’s relationship with the Yugoslav Government;
 - c. the record in the minutes, corroborated by St John, that Cavanagh assured those present at the Second Interdepartmental Meeting that the lawyers for the prosecution knew of Virkez’s relationship with the Yugoslav Government; and
 - d. the logic of events surrounding the 22 February 1980 meeting.



C.O. GLEESON SC



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¹² Ex 2.4 Red 9568.