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## SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 THIRTY-SEVENTH DAY: WEDNESDAY 2 OCTOBER 2024

**INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX**

10

HIS HONOUR: Mr Melican.

MELICAN: Yes, your Honour. As your Honour is probably aware, Mr Ian Cunliffe is the next witness who'll be giving evidence before the Inquiry. Mr Cunliffe is a former employee of the Department of Prime Minister and Cabinet and he has given a statement, or he's made a statement, which canvasses a range of topics and matters which occurred, or which he was privy to, as an officer of that Department. AGS has been instructed now by the Department of Prime Minister and Cabinet to represent its interests in the Inquiry as part of the Commonwealth appearance before the Inquiry, and I formally seek leave to appear not only on behalf of the Commonwealth as instructed by ASIO, but the Commonwealth as instructed by the Department of Prime Minister and Cabinet.

25 HIS HONOUR: Does anyone wish to say anything about this application? No. I grant you that leave, Mr Melican.

BUCHANAN: Your Honour, whilst appearances are being noted, Mr De Brennan will be taking the next witness for the Petitioners.

30

MCDONALD: Your Honour, before calling the witness, may I tender a signed statement of Ian George Cunliffe, dated 2 October 2024, which is Exhibit 15.18.

35 EXHIBIT #15.18 STATEMENT OF IAN GEORGE CUNLIFFE DATED 02/10/24 TENDERED, ADMITTED WITHOUT OBJECTION

HIS HONOUR: Thank you, that's noted.

40 MCDONALD: I call Ian Cunliffe.

<IAN GEORGE CUNLIFFE, SWORN(2.35PM)

<EXAMINATION BY MS MCDONALD

5 Q. Please state your full name?

A. Ian George Cunliffe.

Q. You're now retired?

A. Yes.

10

Q. For this Inquiry you have prepared a statement which you've signed this morning?

A. This afternoon actually, yes.

15

Q. Before you signed it you read through it?

A. Yes.

Q. There were no other amendments or changes you wish to make?

A. Correct.

20

Q. It's true and correct to the best of your knowledge and belief?

A. It is.

25

Q. The way we usually proceed is when statements or documents are referred to they're brought up on the screen. If at any time you would like to see a paper version of the document, that can be provided.

A. Thank you.

30

Q. In your statement you set out, first, your legal career within the Australian public sector?

A. Yes.

35

Q. You then give some evidence about leaving the employment of the Australian Public Service, and you joined one of the Australia's major firms in about late-1988, and then for a period of time you worked for private firms?

A. Yes, and on my own account for some time.

40

Q. Towards the end of your legal career before you officially retired, you were practising on your own account doing a lot of pro bono work at the Carlton Legal Service?

A. Yes, mainly pro bono work, yes.

45

Q. Your statement is very detailed. What I intend to do is just take you to certain parts of it and ask you some questions. Your involvement in - if I can describe it as "the Croatian Six matter", was sometime in 1979 towards the end of the year, when you were a senior advisor in the Legal Section of Prime Minister and Cabinet, you received a copy of an undated letter from a Vico Virkez addressed to the then Prime Minister, Malcolm Fraser?

A. Correct.

50

Q. At that time you were living in Canberra?

A. Yes.

5 Q. Did you know at that time anything about the allegations made about the Croatian Six and also Mr Virkez of a bombing plot, that they had been arrested and had been committed to stand trial?

A. I don't believe I did.

10 Q. This letter, which was translated, was really your first exposure to this matter?

A. Correct.

15 Q. In your statement you say after receiving the letter you did research the Croatian Six case by finding some newspaper articles about it?

A. Yes.

Q. You state that you recalled thinking that the letter was unusual. Why did you think it was unusual?

20 A. It was my role in the Department, as was the role of many people in the Department, to receive correspondence that had been sent to the Prime Minister, and to prepare some response to that, either to come from the Department or from the Prime Minister himself. I was in the Prime Minister's Department for the best part of three years. In all of that time, there was no other correspondence that I received which had any of the hallmarks of  
25 Mr Virkez's letter, somebody from a prisoner - something from a prisoner; something complaining of a miscarriage of justice; seeking the assistance of the Prime Minister in resolving the matter; making pretty serious allegations of conspiracy, on one view, to commit acts of terrorism - serious acts of terrorism.

30 Q. As a result of receiving that letter, you made some inquiries within Prime Minister and Cabinet seeking some information about whether the Commonwealth Police, as the Australian Federal Police were known at that time, as to whether they had any knowledge of it?

35 A. Correct. I think they were the AFP by then, but I could be wrong, but I'll call them the AFP. It was at about that time that the Commonwealth Police was renamed as the AFP.

40 Q. Your communications with the Australian Federal Police or the Commonwealth Police at that time, within the structure of Prime Minister and Cabinet, is that something that you could directly do, or did you have to go through another section or branch of Prime Minister and Cabinet?

45 A. I could have directly done so, but it seemed to me that seeing that serious issues of security and intelligence were raised, they were - it was appropriate, at least, to involve the security section of the Department. My section dealt with a wide range of legal issues, but not specifically with intelligence and security issues.

50 Q. When you say, "intelligence and security issues", you're referring to security of the nation issues?

A. Yes.

Q. Intelligence issues that might involve ASIO, or the types of matters that ASIO might be looking at?

A. Correct.

5 Q. The person that you were communicating at this time was a Mr Carrington?

A. Yes.

Q. Derek Carrington?

A. Yes.

10

Q. He was in the section of Prime Minister and Cabinet, known as the Security Branch?

A. Yes.

15 MCDONALD: Excuse me for a minute, your Honour.

HIS HONOUR: Yes.

20 WITNESS: Your Honour, I had a stroke in 2009, which fortunately was at the less serious end of those things, but one of the small, residual problems that I had as a result is that sometimes I don't know whether I'm speaking loudly or softly. So if I begin to speak not loudly enough, I'd be grateful if somebody could alert me to that.

25 HIS HONOUR: Yes. We'll let you know. Thank you very much for raising that. Your volume is just perfect.

WITNESS: Good. Thank you, sir.

30 MCDONALD

Q. Around this time of, if I can describe it as "initial inquiries that you are making", a letter was obtained from an Assistant Commissioner, Roy Farmer to the Secretary of Prime Minister and Cabinet, dated 7 January 1979.

35 A. Yes.

EXHIBIT 10.1-14 SHOWN TO WITNESS

40 Q. Mr Cunliffe, you refer to this letter in your statement, but you can see it's on Australian Federal Police letterhead, addressed to, "The Secretary, Department of Prime Minister and Cabinet". The topic is, "Representation from Mr Vico VIRKEZ OF Parramatta Gaol, N.S.W."?

A. Yes.

45 Q. In your statement when you refer to this, you express a concern that the AFP were providing "scant detail".

A. Yes.

50 Q. Why were you of that view with Assistant Commissioner Farmer's response?

5 A. It seemed to me that Mr Virkez's letter raised a fair bit of detail, and there was very little detail in the response from Assistant Commissioner Farmer. It seemed to me that what is alleged to have been the subject of the conspiracy, makes it probably the most serious terrorist incident in Australia's history, and it surprised me that nearly 12 months after the arrests were made in relation to that incident, the Commonwealth Police, AFP, in this letter appeared to know so little about it.

10 MCDONALD: Can I take you back to Mr Virkez's letter.

EXHIBIT 4.3-10, RED PAGE 762, SHOWN TO WITNESS

15 Q. In this letter, and you can see this from the first page, the complaint of Mr Virkez is directed towards the New South Wales Police.

A. Yes.

Q. Then if we go across the page to red page 763--

20 WOODS: Your Honour, I'm sorry to interrupt my learned friend, but what appears on the screen near yourself is not visible on the screens at this end of the room. I don't know why.

HIS HONOUR: It's probably why I work in the old-fashioned way, Dr Woods.

25 WOODS: That makes two of us, your Honour.

HIS HONOUR

30 Q. Mr Cunliffe, you've got it on the screen in front of you, haven't you?

A. It is there. Yes, your Honour. It's here on the screen. I can't see - I don't seem to be able to change the pages, or to see the bottom of the page.

Q. That will be done as Counsel takes you through the document.

35 MCDONALD

Q. Just while we're waiting, Mr Cunliffe, it would assist if you have a quick read of what's on the screen, so it just refreshes your memory.

40 A. Indeed. Yes, I'm doing that.

Q. Mr Cunliffe, the section that's on the screen at the moment, he turns to 10 different complaints, or items or matters that he wanted to raise, some of which are complaints about the New South Wales gaol system?

45 A. Yes.

Q. You can see in point 5?

A. Yes.

50 Q. He also complains that he wrote two letters to the New South Wales Premier's Department but received no reply?

A. Yes.

5 Q. At 10 he does raise that, "In protest, I've renounced my Australian citizenship...and I request that your Australian law deports me if I receive a prison sentence." Now, that's raising a Commonwealth issue?

A. Yes.

Q. Then we have the next paragraph.

10 "...Malcolm Fraser, I know I am only a working man, a nobody of no importance, but this is not according to God and the law. Only the Commonwealth or the Federal Police can help me as I have proof and some documents which I do not dare give to this police headed by Neville Wran."

15

There he's saying that he would like the Commonwealth involved because of this proof and documents that he doesn't want to hand over to New South Wales authorities.

A. Yes. He is saying that.

20

Q. If we can go down to the bottom of the page, I think there's about another paragraph and a bit.

A. Yes.

25

Q. And then there's only about three lines at the top of page 764.

A. Yes.

30 Q. At this point, this is the letter you receive from Mr Virkez. The majority of it is about a complaint about New South Wales authorities: gaol, police, Premier.

A. Correct.

Q. He does raise this idea about, "I want to be deported".

A. Yes.

35

Q. And deportation is in the power or authority of the Commonwealth?

A. Yes.

Q. And also, this rather vague suggestion of documents that he would like to hand over.

40

A. Yes.

Q. But would only hand it over to Commonwealth authorities.

A. As you say vague, but I have "...some documents which I do not dare to give to this police headed by Neville Wran." Yes.

45

Q. The letter at this stage is primarily a complaint about New South Wales entities or people?

A. Yes.

50

Q. His issue with the Commonwealth at this point is rather limited?

A. Indeed. The subject of his letter is, yes.

MCDONALD: After receiving that and making the inquiries of the Australian Federal Police, if we jump back to Exhibit 10.1-14.

5

EXHIBIT 10.1-14 SHOWN TO WITNESS

10 Q. Given the limited involvement, or referral, to the Commonwealth in the letter, why did you, in a sense, criticise, or have some misgivings about this response, from Assistant Commissioner Farmer as being "scant" in the information it provided?

15 A. For the reason I gave before. That what is being alleged is the biggest terrorist incident in Australian history, and the matter of terrorism is the subject to which the Commonwealth has a heavy responsibility, as well as the States. I had, immediately before going to Prime Minister and Cabinet, worked as the only lawyer on the staff of and as a deputy to Justice Bob Hope in an Inquiry which was directed at ensuring that the machinery and policies of the governments of Australia were directed at effective responses to terrorist and politically-motivated violence issues as they had not been, it seemed to most  
20 people, at the time of the Hilton bombing, which is what triggered the Protective Security Review. It seemed to me that Virkez's letter is alleging a serious criminal conspiracy in the area of terrorism, and, as I say, I'm surprised that the AFP knew so little of it.

25 Q. But the allegation at that point was that he participated in the conspiracy to bomb?

A. Yes.

30 Q. He was charged, and the other defendants were charged, with a conspiracy or conspiracies under New South Wales law?

A. Yes.

35 Q. To your knowledge, the investigation was being conducted by New South Wales Police?

A. To my knowledge, yes, at that point.

40 Q. It was being dealt with by New South Wales courts?

A. Yes, with no suggestion being raised in this correspondence really that the AFP had any - had had any involvement, which I found very surprising.

40

Q. If you look at the bottom of the paragraph on that page, after referring to the charges and referring to the Consulate-General of the Yugoslavian - of Yugoslavia, he does say:

45

"Since then our officers have been in close contact with the New South Wales Police on the development of the Court proceedings, and indeed our principal research officer in that field has given evidence from the prosecution, though not in connection with Mr Virkez specifically."

50

Mr Farmer is being upfront with you that it's a State matter, State charges, State Police pursuing it. He does say they've been in close contact on the development of the Court proceedings, but then if we go to the next page, 26, "I have no knowledge of the allegations made by the complainant. They are obviously matters for the New South Wales authorities." Putting to one side the documents that he says he has, the documents and the proof, that was the case - most of the complaints in that letter were matters that would be dealt with by New South Wales authorities?

5

A. That is correct, but I find it very strange that nearly a year after the alleged conspiracy had been aborted, a very, very serious conspiracy to commit acts of terrorism, the Commonwealth Police, the AFP is saying basically, "We knew very little about this until" - what's the opening words of that previous paragraph? "Since that time" or something.

10

15

Q. Since the time that charges had been laid.

A. Could I see that paragraph?

20

Q. Yes, certainly, and you probably need to see, yes, most of it. If you look at paragraph 2, "prior to the arrests and charges ... Vico Virkez had not come to the notice of the then Commonwealth Police", but then on 8 February 1979 - and that's the key day. That's the day when the New South Wales Police get information from Virkez at Lithgow Police Station about the bomb plot--

25

A. Yes.

Q. --and raids are conducted, and as you described it, what would have been a terrorism incident was prevented.

A. Yes.

30

Q. Here they're saying, prior to the arrests we didn't know of him, but he did come to the notice of the Commonwealth Police on 8 February, and they set out the details there. In the next paragraph they do refer to another name, again "had not come to the notice of the Commonwealth Police. It was later established that" - and it says, "Marenovic". It's "Misimovic" actually, but anyway - "it was later established that he was Virkez". Then since that time - and I would suggest to you the time is after 8 February 1979?

35

A. I didn't read it that way at the time.

Q. How did you read it?

40

A. I read it as meaning since this has all erupted with Virkez's letter.

Q. One thing I should clarify with you - and you do this in your statement - could we go towards the top of the page.

A. Yes.

45

Q. It has a date, 7 January 1979.

A. Yes.

Q. You noted that should be 7 January 1980?

50

A. I think it makes no sense unless you read that as 1980, yes.



Q. Then if you go back to page 26, there Assistant Commissioner Farmer refers to that, "documents" and "proof" and that "only the commonwealth can help me."

A. Yes.

5

Q. He says, I can't comment on that at the moment, but "I will, of course, cause appropriate actions to be taken regarding that claim"?

A. Yes.

10

Q. In the letter there was a reference to the AFP's principal research area in that field. Do you remember that reference?

A. Principal research officer or something of the sort, yes.

15

Q. Did you come to know who Assistant Commissioner Farmer was referring to?

A. Well, I came to infer from subsequent developments that he was talking about a man called Roger Cavanagh.

20

Q. Had you had dealings with Roger Cavanagh before this time in about February / March 1980?

A. For this time?

25

Q. I'm sorry, we're in February 1980.

A. Yes.

30

Q. You get the letter from Mr Virkez--

A. Yes.

Q. --and as set out in your statement, you start making some enquiries, speaking to people, and there's two interdepartmental meetings that we'll come to?

A. Yes.

35

Q. Before February 1979, had you had any dealings with Roger Cavanagh?

A. In relation to matters other than the Virkez matter, no. I recall that I had a conversation with him at about that time, but quite what the chronology of that is I'm not sure at this stage. We're talking about 44 years ago.

40

Q. It seems that you're alerted in some way to the existence of Roger Cavanagh, and that he can assist you in your enquiries?

A. Yes.

EXHIBIT 5.6-10, RED PAGE 671-115, SHOWN TO WITNESS

45

Q. That's in your handwriting?

A. Yes.

50

Q. At the time, your practice of being a lawyer within Prime Minister and Cabinet, you took file notes?

A. It certainly was my practice to keep file notes. Whether the description of

being a lawyer who was in Prime Minister and Cabinet, carries a connotation that I was doing legal work. Strictly speaking, that wasn't the case. I was I think the same as many other people in the Department, who had all sorts of different backgrounds.

5

Q. It was the case that the practice you had developed by February 1980 was that you would take file notes?

A. Of things I regarded as important, yes.

10

Q. Such as a telephone call?

A. Depending on what it was, yeah.

Q. Attendance at a meeting?

A. Those sorts of things, yes.

15

Q. If we look at this file note, which is - or noted 15 February, you've got, "Cavanagh AFP phoned principal intelligence officer" I think, "of AFP"?

A. Yes.

20

Q. "Going to Sydney" - I think it's "Monday"?

A. Yes.

Q. "Will interview Virkez on Thursday next"?

A. Yes.

25

Q. And asks for a copy of his original letter?

A. Yes.

30

Q. Mr Cavanagh's saying to you that he's going to Sydney and will interview Virkez. Was that as a result of the suggestion you made, or a suggestion you made to a superior that was then passed on to the AFP?

A. No. I didn't regard it - I regarded it as AFP's business how they went about doing what possibly should have been done, which was to get to the bottom of the matter. I didn't make any suggestions as to how they might do that, and I don't believe any of my superiors did either. Having said that, I thought it was a good idea for him to talk to Virkez.

35

Q. He could find out about those proofs and documents that Mr Virkez referred to?

40

A. Amongst other things, yes.

MCDONALD: Prime Minister and Cabinet received around that time another letter from Assistant Commissioner Farmer.

45

EXHIBIT 9.1-38, RED PAGE 55, SHOWN TO WITNESS

Q. This is a two-page document. You can see at the top it's dated 11 March 1980?

A. Yes.

50

Q. It's addressed to the Secretary, Prime Minister and Cabinet. This time "attention Security Branch".

A. Yes.

5 Q. Does that suggest that it would have gone to Mr Carrington's section or branch to begin with?

A. Yes.

10 Q. But then was it a matter, because of your interest with Mr Virkez's letter and ultimately responding to Mr Virkez's letter, that you would have received a copy of this?

A. I think that's probably right. Can I see the rest of the letter, please?

Q. Yes.

15 A. Yes, I believe I did see that.

Q. There's a second page. We'll just bring that up.

A. Yes.

20 MCDONALD: Could we go back to red page 55.

EXHIBIT 9.1-38, RED PAGE 55, SHOWN TO WITNESS

25 Q. You can see at the end of the first paragraph, there is a reference to "telephone conversations between Assistant Commissioner Farmer and Mr Roger Cavanagh of this Force and officers of your Department". That included communications you had had?

A. Yes.

30 Q. You can then see in the next paragraph there is a setting out of what he's actually been charged with it, and it being noted:

35 "There are no Commonwealth offences involved at this time, and Federal Police involvement only stems from a request for specialist assistance by the New South Wales Police."

Then it continues down with informing the recipient of the letter of basically a summary of the result of the interview with Mr Virkez on two occasions. Do you see that?

40 A. Yes, I do.

Q. The first aspect that I'd like to draw to your attention is in subparagraph (b):

45 "Virkez, in the opinion of the interviewing officers, has been operating in Australia as an agent of the Yugoslav Government and it was in this connection that he became involved with the Croatian Republican Party."

Had you heard of the Croatian Republican Party at this time?

50 A. No.

Q. The reference in that paragraph (b) that, "...the opinion of the interviewing officers, has been operating...as an agent of the Yugoslav Government...", is that the first time that you had been told something along those lines in your involvement of this matter?

5 A. I believe so, yes. That's my recollection now.

Q. At that time reading that, and I know this might be difficult because you've learnt a lot of other matters since then, when you read that the opinion was that he'd been "operating in Australia as an agent", what did you understand was meant by that term, or involved in "operating as an agent"?

10 A. That it was a fairly heavy level of involvement. It's not an acknowledgment that he was a member of the Yugoslavian Intelligence Service, but that he had a close relationship with the Yugoslav Government, and presumably its intelligence arm.

15

EXHIBIT 9.1-38, RED PAGE 56, SHOWN TO WITNESS

Q. Can you see in in paragraph (c), after expressing dissatisfaction as to why he'd been arrested and charged, it then says, "He appeared to have expected that immediately Police had broken up the group, he would have been permitted to leave the country."

20

A. Yes.

Q. Then I'll just jump to (d). They did explore his claim of "proof and some documents", but that wasn't – it would appear that nothing was produced.

25

A. Yes.

Q. Then in (e):

30

"His main intent in talking with this Force appears to be a desire to make a deal with the New South Wales authorities, that is he is prepared to testify against others if he is guaranteed that he will be immediately deported following the trial..."

A. Yes.

35

Q. We'll just follow on. The next paragraph talks about, "New South Wales Crown Law authorities are anxious to come to some kind of arrangement with him...". Then Assistant Commissioner Farmer says:

40

"In view of the fact that he has freely renounced his citizenship, it may well be in the best interests of this country for Virkez to be deported following his conviction in this matter."

A. Yes.

45

Q. Then the final paragraph, "New South Wales Police are anxious to have some form of commitment by the Commonwealth to the effect that Virkez could be deported upon conviction."

A. Yes.

50

Q. At this point when you were shown this letter, the matter that Virkez raised

in his original letter, which had a Commonwealth element--

A. Yes.

Q. --that is, "deport me"--

5 A. Yes.

Q. --it seems now to have more substance, and linked with a possible arrangement whereby he would give evidence, and then be deported at the end of giving his evidence?

10 A. Yes.

Q. Upon reading that, does this now mean it's becoming, in a sense, a more important matter for the Commonwealth, because it seems as if this issue of deportation, whether it's possible, is being raised and the Commonwealth has to determine its position?

15

A. It does give some added weight to that point, I think.

Q. The reference that I took you to on the first page about him being - sorry, "...in the opinion of the interviewing officers...operating in Australia as an agent of the Yugoslav Government...", at that point did that concern you?

20

A. Yes.

Q. Why did it concern you?

A. It concerned me, first of all, this is a letter which is coming from Farmer, but quoting - well, referring to Cavanagh, so I took it to be a summation of their views, and we'd been told that Cavanagh was an expert in Croatian matters, so it's not some idle speculation by somebody who doesn't know anything about the subject, and it seemed to me that the - perhaps suspicion, mild suspicion, that I'd had from the start that all of this isn't ringing true of somebody who is an innocent abroad, who's got out of his depth, that that probably wasn't correct, or there's good chance that that wasn't correct, but rather more, was somebody who - I mean, who was perhaps even an instigator of what had happened, but he was an enemy of - of - well, antagonistic to Croatia and its interests.

35

Q. The letter, or the account, that is, as you say - you've assumed is Assistant Commissioner Farmer's and Mr Cavanagh's, it doesn't go into that sort of detail, but were they the matters that were going through your mind when you saw this letter?

40

A. Yes.

WITNESS: Your Honour, I'm afraid for many months now I've been suffering from a cough, and I - it's not COVID. It's been checked out, and I've had a CT scan, and I get the full results of those next Monday. I am told they're nothing to worry about of a present nature, but I apologise that sometimes I break out in coughs, and I don't want anybody to be alarmed, and I apologise for it.

45

HIS HONOUR: No. No need to enter an apology. Thank you, Mr Cunliffe.

50

MCDONALD

Q. From those, in a sense, introductory communications, I wanted to take you to the first Departmental meeting.

A. Yes.

5 Q. You were the person who organised that?

A. Yes.

Q. You chaired the meeting.

A. Yes.

10

Q. Did you determine who would be invited to attend the meeting?

A. My recollection is that I would have consulted with Richard St John, who was the First Assistant Secretary of the Division that I was in, so he was two up the line from me, and probably also with Brian Cogan, who was one up the line from me. I had a very close relationship with Richard St John because, like me, he was a lawyer, and Brian Cogan wasn't.

15

Q. In your statement at paragraph 37, you talk about "convening this meeting and the issues, including issues whether the Commonwealth should intervene in any way", and "whether the Commonwealth should exercise its powers in the way requested by Virkez", which was deportation.

20

A. Yes.

Q. The first issue that you've included in paragraph 37, "whether the Commonwealth should intervene in any way", what were you referring to there?

25

A. Whether we should press the New South Wales authorities with the information that is alluded to in Mr Farmer's letter.

30 Q. The letter that I just took you to?

A. Yes.

Q. At that point, Assistant Commissioner Farmer in two letters had referred to the Commonwealth Police dealing with the New South Wales Police, having contact with them. At that point, did you know the extent of the communications between the two organisations?

35

A. No.

MCDONALD: If I can take you to the minutes of the first interdepartmental meeting.

40

EXHIBIT 10.1-12, RED PAGE 21, SHOWN TO WITNESS

Q. You can see at the top of the page under "Present", you're there and noted as chair.

45

A. Yes.

Q. Mr Carrington is there, Mr Cavanagh is there, and also a Mr Boyle from ASIO.

50

A. Yes.

Q. Had you come across Mr Boyle before?

A. Yes, I had.

5 Q. What was your understanding of his role and why he was attending this meeting?

10 A. I'd come across him - I was in a similar position as with the Protective Security Review, I was in a similar position on the first Royal Commission on Intelligence and Security, also conducted by Justice Hope. Initially I was the sole legal advisor on that, and later the Deputy to the Secretary of that. It involved a thoroughgoing investigation into all of the intelligence and security agencies, including, in particular, ASIO. Mr Boyle, I think for all of the time of that, was the head of the Canberra Office of ASIO, and I had had some contact with him in that capacity, and as to why he's here, presumably as head of that Office.

15

Q. The structure of these minutes, if I can take you to the second full paragraph that commences, "Mr Cavanagh said".

A. Yes.

20 Q. In there, he is reporting about his interview with Mr Virkez in Parramatta Gaol, and he describes his belief that he was a low-level agent for the Yugoslav Government who had got out of his depth, when he became involved in the bombing conspiracy?

A. Yes.

25

Q. You said before that the last letter I showed you from Assistant Commissioner Farmer, you assumed that it was really a lot of input from Mr Cavanagh?

A. Yes.

30

Q. Here, you've got Mr Cavanagh saying his belief that Mr Virkez was a low-level agent?

A. Yes.

35 Q. Again, if you want to read this in full, please say so, but what then happens is that it really becomes a focus on the deportation issue?

A. (No verbal reply)

40 Q. We can keep on taking you down--

A. Yes.

Q. --the page.

A. Yes, there's a lot on deportation. I think we returned to something else towards the end of the--

45

Q. I'm going to take you to that now. Then if we go across to page 22--

A. Yes.

50 Q. --again, we're discussing deportation and there's an issue whether he could have renounced his citizenship--

A. Yes.

Q. --and whether he actually legally could be deported. There's all these niceties?

5 A. Yes.

Q. Then the paragraph where Mr Emerson-Elliott is referred to. He's a colleague of yours at Prime Minister and Cabinet?

10 A. Correct. He's junior to me in my section.

Q. Reported to you?

A. Yes.

Q. He then raises this issue of:

15

"The commonwealth was being drawn into a matter which could be characterised as an attempt to pervert the course of justice. The commonwealth had knowledge of his true role in the matter on an official basis, as the Consulate-General had alerted the Commonwealth Police of Virkez's tipoff."

20

Can I just pause there. I have been jumping over parts of letters and the meeting, but do you recall there was evidence that Virkez rang the Consulate, gave them a tipoff--

25 A. Yes.

Q. --and then the Consulate contacted the AFP--

A. Yes.

30 Q. --and told them, this person's arrived and told us this?

A. Yes.

Q. Then the next part is a question of Mr Cavanagh: anybody giving evidence at the trial?

35 A. Yes.

Q. Mr Cavanagh indicated he was going to give evidence, and then a question is asked how he intended to reply if asked whether Virkez was an informer. Either by Virkez's co-dependents or by Virkez himself, should he change his plea to not guilty. It's recorded here is Mr Cavanagh said that he would have to give evidence of what he knew officially. Then in brackets, "the implication was that he would not refer to Virkez's role as an informer."

40

A. Yes.

45 Q. Can I ask you there, Mr Cavanagh is saying, "I would have to give evidence of what I knew officially." Is that what he said?

A. Yes.

50 Q. The implication which is then recorded in brackets, is that something that came to your mind--



A. Yes.

Q. --when he said that?

A. Yes.

5

Q. Were you concerned by that implication that came to your mind in the meeting?

A. Very concerned.

10

Q. Why were you concerned?

A. Because it seemed to me to be suggesting that he was prepared to perjure himself and be privy to miscarriage of justice and perversion of the course of justice.

15

Q. Very serious allegations or concern by you?

A. Yes.

Q. Did you raise that in this meeting--

A. No.

20

Q. --with Mr Cavanagh?

A. No.

Q. Why not?

25

A. Well, I didn't see it as being my part in the context to tick him off, but to be a matter to take up with my superiors, which I subsequently did.

Q. It wouldn't necessarily be a matter of ticking him off. You could have raised your concern in a polite manner?

30

A. I think that he was conscious that I was concerned and that I think Emerson-Elliott was concerned about that approach.

Q. When you say you took it up with your superiors, when did you do that?

A. Oh, soon after that meeting.

35

Q. I know you've been shown a number of documents. Can you remember whether that was in either a letter or a file note or something like that?

A. I don't recall that, no.

40

Q. Which superior did you raise it with?

A. It would have been St John.

Q. You've answered, "Would have been St John." Do you have a recollection of raising it with Mr St John?

45

A. I don't have a clear recollection of that, no.

Q. Is your evidence that if a matter of concern was raised in this context, your practice would have been to raise it with your superior, who at this time was Mr St John?

50

A. Yes. He was my superior throughout my two-and-three-quarter years of

Prime Minister and Cabinet, and we had a very close relationship.

Q. Could we go further down the page, please, to the handwriting. This appears to be an addition to these typed notes?

5 A. Yes.

Q. Can you identify the handwriting?

A. No.

10 Q. It includes that both you and Mr Emerson-Elliott made the point that, "We should not get into a situation similar to the Greek social security case with secret inducements being made to a witness."

A. Yes.

15 Q. Was that a matter where somebody involved in the criminal conduct gave Queen's evidence or evidence for the Crown?

A. I don't recall that.

Q. You don't recall what that's referring to?

20 A. I recall that - no. No, I don't. I recall the Greek social security case. To me it stood out for other reasons than that secret inducements were made.

Q. We'll get to this. One of the comments that you've made I think on two occasions, during the early or mid-80s when you had left Prime Minister and Cabinet, but you still had an involvement because you may have given evidence at the appeal at the Court of Criminal Appeal et cetera?

25

A. I was summonsed to do so, yes.

Q. You make a comment that you were told documents were culled by Prime Minister and Cabinet. Do you recall saying that in your--

30

A. No. I feared that they might have been culled if the documents were produced.

Q. I'll come to that, but do you recall somebody suggesting or telling you that?

35

A. No, I don't, but it was for that reason that I was very ready to take up an invitation by Mr Sherman to go and have a look at the file - at the Prime Minister's file, and I feared either I was losing my mind, seriously, or that I would find a file which didn't contain many of the materials that are here, including Farmer's letter and the minutes of the meeting. I found the files that had those things.

40

Q. That was what I was leading to. You've referred to accepting that invitation to come back. I think this is when you were writing to Gareth Evans or the subsequent Attorney-General.

45

A. Lionel Bowen.

Q. Thank you. Also, as you understand, many documents have been declassified and produced to the Inquiry.

A. I don't know that.

50

Q. You've been shown them and they've been annexed to your statement.

A. Right, yes. Sorry, I thought you were talking about at that time I knew those things.

5 Q. I'm sorry.

A. No, I didn't. At that time I didn't know what had been produced, if anything.

Q. While you've been working on your statement, have you thought about where's that document, that document's missing, or anything like that?

10 A. No.

Q. The documents that you were shown during the time you were preparing your statement and which you've annexed, is it your recollection that they're - I won't say complete because there's probably some that have just disappeared or haven't been found, but the bulk of them reflect what was occurring in the Prime Minister and Cabinet Department around this time?

15

A. In the Legal Section and the Parliamentary and Government Division, which the Legal Section was within, very little there from the Security Branch, for example, and very little there from ASIO or the AFP.

20

Q. You may not have been shown documents--

A. I'm suggesting I should have been, but it struck me - you asked me what struck me, but I haven't seen those things, and indeed that there did seem to be communications both above me and probably through the Security Branch that I was not privy to at the time. There are good reasons why that might be.

25

Q. What I'm concentrating on is your knowledge of documents that you were either wrote, a party to, shown, et cetera. They seem to have all been included in your statement?

30

A. Yes. Sorry, the significant ones do. I mean there might be adjectival documents that have not been, but the significant ones I've seen just in the last - how long has it been, a month or two?

Q. Yes. That's the record of the first interdepartmental meeting. It seems to conclude with your undertaking to circulate a draft letter to Mr Virkez?

35

A. Yes.

Q. Reading the document, is that your recollection of how the matter was, in a sense, resolved; that you would write back to Mr Virkez, and upon writing back to him that, in a sense, was the end of the matter?

40

A. No.

Q. What else did you anticipate would occur?

A. I thought the important issues are of how the Commonwealth dealt with its situation that it was privy to, admittedly sensitive information, which went, I judged, to the heart of whether or not six people who were on trial should be found guilty or not, how that was going to be resolved.

45

Q. The way it would be resolved - at that time, it was primarily a matter for state authorities? I'm just going to put a series of propositions to you. They

50

were charged by the New South Wales Police, correct?

A. Yes.

Q. New South Wales charges, correct?

5 A. Yes.

Q. Committed by a New South Wales Court to stand trial?

A. Yes.

10 Q. Going to stand trial in the New South Wales Supreme Court?

A. Yes.

Q. If the Commonwealth had information that may be relevant for the trial,  
primarily that's a matter to raise with the relevant New South Wales  
authorities?

15

A. I agree.

Q. Primarily New South Wales Police?

A. Perhaps the New South Wales Police, who didn't have the highest  
reputation at that time.

20

Q. You would not anticipate that the Commonwealth would contact legal  
representatives of the defendants directly, would you?

A. No.

25

Q. Another way the Commonwealth could become involved if a subpoena was  
issued to the Commonwealth?

A. Yes.

30 Q. Again, if that occurred, that would be a matter of a state court issuing an  
order compelling the Commonwealth to produce documents?

A. Yes.

Q. And if there is any kind of privilege claim, whether legal professional  
privilege or public interest immunity or whatever, that's raised and dealt with by  
that New South Wales judge?

35

A. Correct. Subject to appeals.

Q. The concern that you've just expressed at this time, the primary way it's  
going to be dealt with in your mind was to make sure that relevant New South  
Wales authorities got relevant information. Is that fair to say that?

40

A. Yes. And include the Crown Prosecutors.

Q. That was going to be my next question. I raised with you the New South  
Wales Police?

45

A. Yep.

Q. With the New South Wales Police, it could be at a high level, like an  
Assistant Commissioner?

50

A. Yes.

Q. It could be with the actual officers in charge of building up the brief of evidence, et cetera?

A. Yes.

5 Q. Also, you've referred to Crown Prosecutors?

A. Yes.

Q. After the first interdepartmental meeting, you're still in communication with Roger Cavanagh?

10 A. I don't recall that I was, except to invite the AFP to the subsequent meeting.

EXHIBIT 10.1-8, RED PAGE 14, SHOWN TO WITNESS

Q. The handwriting, Mr Cunliffe, it's yours?

15 A. Yes, it is.

Q. It's one of these, I describe them as "file notes"?

A. Yes.

20 Q. Just at the top, is that, "NFF"?

A. "Note for file".

Q. Can you see there you've got, "Phoned by Roger Cavanagh"--

A. Yes.

25

Q. -- "returning my call." If we jump down to the bottom of the page, it's a little bit obscure, but I think it's 3 April 1980?

A. Yes. I can see the label.

30 Q. Go back to the top of the page. You can see there you're getting information about Virkez? "Should get 2 years - back dated."

A. Yes.

Q. "State police still", I think that's, "talking about"?

35 A. Yes.

Q. --"whether deportation can be done."

A. Yes.

40 Q. Then, "State police coming to Canberra. PM on 8 April - 9 April. AFP would like to be cooperative. Want officials to meet", what's the next word?

A. "New South Wales".

Q. Okay. "...officials to meet New South Wales Police. New South Wales Police aware that Virkez gave info to Lithgow Police."

45

A. Yes.

Q. Then, "They may suspect that V. is a Yugoslav agent but have not been told."

50 A. Yes.

Q. Then, "Cavanagh will phone me in AM of 8 April to see if we will meet New South Wales Police."

A. Yes.

5 Q. Can I just ask, at the top and the bottom of the page you've written "SECRET"?

A. Yes.

10 Q. Is that a particular kind of classification of the information contained in the document that then will dictate, in a sense, where it's kept and how it's treated?

A. Yes.

Q. At the time, why did you put, "Secret"? Why did you designate it "Secret"?

15 A. Because of the sensitivity of the information that Cavanagh said he had from - you've got the expression that he used. So my answer previously about not thinking that there was any subsequent contact with him is incorrect.

Q. Yes. Mr Cunliffe, it's not a memory test.

20 A. No. Thank goodness.

Q. The deportation is still an issue?

A. Yes.

25 Q. Then that highlighted section, "They may suspect that V. is a Yugoslav agent but have not been told."

A. Yes.

Q. That is from, I would suggest, Mr Cavanagh's perspective?

30 A. Yes. Yes.

Q. What he knows?

A. Yes.

Q. Now--

35 A. But he'd told me that in this conversation.

Q. Did you meet with these New South Wales Police officials who came on the 8th and 9th?

40 A. No.

Q. Was that pursued further with you?

A. There was discussion within Prime Minister and Cabinet, and there was agreement up the line that we shouldn't do that.

45 Q. Do you know why up the line they decided you shouldn't do it?

A. The notion, I think, of the Department of Prime Minister and Cabinet talking to the New South Wales Police was unappealing, just as it would be unappealing if the AFP went to the New South Wales Premier's Department and wanted to have a meeting with them. It wasn't the right way to do things. Premiers to prime ministers would have been more appropriate.

50

Q. You had information about Mr Virkez being a low-level agent?

A. Yes.

5 Q. In your mind, that was important information that should be given to New South Wales authorities--

A. Yeah.

Q. --including the Police?

10 A. That description, and various other descriptions, which put it somewhat higher than that. I thought, or implied something higher than that.

Q. We're taking it step-by-step. Sorry, I'll finish my questions on this particular point. You had information that at least suggested he was a low-level agent at this point?

15 A. At the lowest point, yes.

Q. You were concerned about that information being provided to New South Wales authorities?

20 A. That it should be, yes.

Q. Wasn't that a golden opportunity for the Commonwealth, through Prime Minister and Cabinet, with the information that you had, that you thought was important and should be given to the authorities, that you could have passed it on?

25 A. That's one meaning of the situation, yes.

Q. But you didn't do that?

A. No.

30 Q. I know you said your view was that those higher up didn't think it was appealing for Prime Minister and Cabinet to meet?

A. It wasn't the appropriate way to do things, yes.

35 Q. When you say, "not the appropriate way of doing things", is that, are you referring to how different a Commonwealth or a State entity exchange information or deal with each other?

A. Yes.

40 Q. So even though you were concerned about the information, thought it was important it get to the New South Wales authorities, you didn't recommend that this opportunity be taken for the provision of that information.

A. Correct. My recollection is that there were some fairly well-defined rules about how governments talked to one another.

45 Q. The second interdepartmental meeting--

A. Mm-hmm.

HIS HONOUR: Just before you go to that.

50 Q. Can I ask you this, Mr Cunliffe. It concerns what you say in paragraph 61

of your statement. You make reference to the note that's just been before you, the file note, which refers to you're being told by Mr Cavanagh, "They may suspect that V. is Yugoslav agent but have not been told", and you said this confirmed a general impression that you had, and that is that the information regarding Virkez's status as a Yugoslav instead of a Croat, let alone a Yugoslav agent, was being withheld from the defence at trial, and, therefore, "they" were intending to proceed with a course of action which could lead to a miscarriage of justice. The "they", who is that a reference to?

5

A. The New South Wales authorities generally, but I was talking about if - Cavanagh, and I think there are some other materials earlier that suggests that he had conveyed other information, and he seems to be retracting somewhat, or going back somewhat, on what he'd said previously about they may suspect this, but he's talking about the New South Wales authorities, but - for the Crown Prosecutor, for example, to know, he would have learned, presumably, through the police.

15

Q. So you saw his claim at this point, the subject of your file note, to be a retreat from what he had earlier disclosed that indicated that Virkez's status had been more--

20

A. Yes.

Q. --substantial than what he was making out now?

A. I did. I'm afraid I formed the view by this point that Cavanagh wasn't the person to be believed.

25

MCDONALD

Q. Before the second interdepartmental meeting, what you had been told was -- by Mr Cavanagh, that Virkez was a low-level agent, correct?

30

A. Yes.

Q. Then earlier in the letter from Assistant Commissioner Farmer he described I think that Commonwealth officers had formed the view that he was an agent of the Yugoslav Government?

35

A. Yes.

Q. At that point of time, what you had been told is either a low-level agent or officers had formed the belief that he was an agent--

40

A. Yes.

Q. --of the Yugoslav Government?

A. I thought there might have been something more than that, but - without going back and checking.

45

Q. I can't find it in your statement.

A. Not in my statement, sorry - the documents I mean.

Q. I'll take that on notice, Mr Cunliffe.

A. Thank you.

50



Q. This meeting, did you press for it to be held?

A. Yes.

Q. Would you describe it as a high-level meeting?

5 A. Yes.

Q. It was a high-level meeting because of some of the people who were attending?

A. Yes, and also the breadth of representation there.

10

EXHIBIT 10.4-1A, RED PAGE 352, SHOWN TO WITNESS

Q. We have a number of different versions of the minutes. I'm taking you to this one just to take you to initially those in attendance.

15

A. Yes.

Q. The chairman is Mr Enfield--

A. Yes.

20

Q. --and we have Mr St John, your superior, Mr Carrington and also yourself, all from Prime Minister and Cabinet?

A. Yes.

Q. What was Mr Enfield's role?

25

A. He was the Deputy Secretary and the government and - Parliamentary and Government Division came under his jurisdiction.

Q. Did you report to Mr St John and then he reported to Mr Enfield?

A. Yes.

30

Q. Then you mentioned the breadth of the attendees. We've got people from Department of Foreign Affairs, Department of Administrative Services, Attorney-General?

A. Yes.

35

Q. Again, those particular people were they relatively high up within their Departments?

A. I'm not entirely sure. I certainly - I mean Assistant Commissioner Farmer--

40

Q. I'm coming to him in a minute.

A. Sorry, yes.

Q. You also have Mr Boyle from ASIO?

A. Yes.

45

Q. Then you've got Mr Cavanagh again but this time you've got Assistant Commissioner Farmer from the AFP--

A. Yes.

50

Q. --who, as his title would suggest, is high up in the AFP?

A. Yes.

5 Q. I don't know whether we'll be able to do this easily, but can I put to you our understanding of how these documents, these various versions of the minutes work?

A. Yes.

10 Q. This document, which is Exhibit 10.4-1A, is it the first version?

A. I'm not sure without seeing the whole document.

15 Q. It goes for four pages. Could we just quickly--

A. Can you just stop there, please. I believe that that is the first version, yes.

15 Q. Also in your statement you expressed the opinion that this version was the most accurate?

A. Yes.

20 Q. That accords with your recollection?

A. Yes.

MCDONALD: Just working out how they all fit in together, we then have Exhibit 10.4-1B, commencing at red page 356.

25 EXHIBIT 10.4-1B, RED PAGE 356, SHOWN TO WITNESS

30 Q. This only goes for about one-and-a-quarter pages?

A. Yes, and the sidelined note on the first page says, "Check with Boyle" to -- "before there is any wider circulation." I suspect, my recollection is it only went to ASIO and maybe the AFP initially.

35 Q. Is that your handwriting?

A. No. I suspect it's Enfield's handwriting.

40 Q. Who sorry?

A. John Enfield.

45 Q. Mr Enfield, okay. I'm suggesting to you that's version number 2?

A. Mm-hmm.

40 Q. Then version number 3--

HIS HONOUR

45 Q. Even do you agree with that?

A. I think that that's correct.

MCDONALD

50 Q. When I show you the other versions, if suddenly you don't agree with the sequence I'm suggesting, please say so.

A. Yes.

MCDONALD: The next in time was Exhibit 10.4-1C, red page 358?

5 EXHIBIT 10.4-1C, RED PAGE 358, SHOWN TO WITNESS

WITNESS: Can I see some more of that, please?

MCDONALD

10

Q. Yes.

A. Yes.

Q. Then the next page, please.

15

A. Yes.

Q. I'm suggesting to you that is the third draft?

A. Yes, it could be. I can't say with certainty.

20

Q. At a minimum it came after the first draft?

A. Yes.

Q. I'll show you what I'm suggesting is the final version.

A. Yes.

25

EXHIBIT 10.1-3, RED PAGE 7, SHOWN TO WITNESS

Q. Could you please have a read of that while I just make an enquiry. I'm sorry, Mr Cunliffe, have you read that. We'll keep on going?

30

A. Mm-hmm.

MCDONALD: I'm sorry, your Honour, there's an issue about whether versions A, B and C have been downloaded onto the system. Your Honour, could I just read something out for the parties. I've been describing these drafts, for example, as Exhibit 10.4-1A. For the parties, if I can indicate that document appears at red pages 352 to 355. What I've described as "Exhibit 10.4-1(B)" appears red pages 356 to 357. Exhibit 10.4-1C is red pages 358 to 359, and then I've got Exhibit 10.1-3, red pages 7 and 8.

35

40

Q. Sorry, Mr Cunliffe.

A. That's all right.

Q. This particular screen if we keep on going down we've got, "The paragraph 2 preferred by ASIO read...". You've read that?

45

A. Yes.

Q. Then if we go to the next page, which commences with, "Mr Cavanagh--

A. Yes.

50

Q. --"said the prosecutor, Mr Shillington, is fully-informed...".

A. Yes.

Q. Then if we can just go down to the end of that page.

A. Yes.

5

Q. The version that is on the screen, which is Exhibit 10.1-3, is that your recollection that that's the final version?

10 A. I wouldn't describe it as final. There was that direction, which I think was from Mr Enfield, to make sure that - to consult Mr Boyle, and I did consult Mr Boyle, and basically what he came back with is reflected here, and I think in another document.

Q. We'll come to that in a minute.

15 A. As to "final", that's what he would have preferred as the final, but there wasn't any process such as there is in companies, and in clubs and so forth where minutes are--

Q. Circulated?

20 A. Circulated and subject to approval at a subsequent meeting saying, "Yes, these are the correct minutes", and then signed off by the chairman. Nothing like that happened. But they're different versions of the same thing.

25 Q. I'll take you back to it, but the initial draft, which was Exhibit 10.4-1A, red page 352 to 355, which you said was the most - I think your evidence was it accords with your recollection - the best kind of record in your mind?

A. Yes.

30 Q. When you compare it with either what I described as the second draft or the third draft, and you thought they might have been interchangeable, the second draft and third draft are a lot shorter?

A. Yes.

Q. Who edited it to cut back a lot of the information that you contained in your first draft?

35 A. I'm not sure.

Q. Did you do it?

A. No.

40 Q. The issue that you've referred to with Mr Boyle, were you directed by Mr Enfield to send your first draft to Mr Boyle to see if he had any issues or wanted to raise anything?

A. Yes.

45 Q. Once you had done that, there was obviously an issue that was arising?

A. Yes.

EXHIBIT 9.1-51, RED PAGE 71, SHOWN TO WITNESS

50 Q. You can see this is from ASIO addressed to the Secretary for your

attention.

A. Yes.

Q. Could we get the bulk of the letter up on the screen, please.

A. I believe that's done by Michael Boyle.

5

Q. Yes?

A. Yes.

10 Q. Can you see there, after referring to the draft copy of the minutes, it says, "Regarding the second paragraph of those minutes, I would prefer it to read", and then it sets out a particular account which deals with Mr Virkez?

A. Yes.

15 Q. Looking at that, it records that, "ASIO information indicated that Virkez had been reporting to a suspected Yugoslav Intelligence Service officer at the Consulate."

A. Yes.

20 Q. There's then a reference, then he added, "A copy of ASIO's SIDC-PAV Situation Report 1979 had been passed, at that time, to the New South Wales Police Special Branch"--

A. Yes.

25 Q. --and with some details of what was contained in it. Then there was a reference to:

30 "On 16 March 1979, officers of ASIO had briefed Assistant Commissioner Whitelaw of the New South Wales Police on Virkez's activities on behalf of the Consulate General. He was advised that there was no objection to the head of the Police Prosecution Branch being given the information provided it was not attributed to ASIO."

A. Yes.

35 Q. The preference of Mr Boyle for that to be included, did you ultimately agree with his suggestion?

A. No. I don't recall agreeing with it. I recorded it.

Q. I'm sorry?

A. I recorded it.

40

Q. So eventually you did accommodate his wish by recording it in that final version? What we think is the final version?

A. Yes. But I believe that the first version is the best reflection of what was actually said at the meeting.

45

MCDONALD: Can I take you to that now.

EXHIBIT 10.4-1A SHOWN TO WITNESS

50 Q. The first aspect that I want to take you to is the first comment that you

record, and you were taking the notes, weren't you?

A. Yes, I was.

Q. Attributed to Mr Enfield, who is from the Prime Minister and Cabinet.

5 A. The PMC, yes.

Q. Where you record, "spoke of the dangers involved, if the Commonwealth authorities stood by, and a miscarriage of justice occurred because of the part played by an agent provocateur."

10 A. Yes.

Q. Now, in the documents that are annexed to your statement, and seem to be the documents that either you saw or you knew about around this time, there's no reference to an "agent provocateur"? Do you know where Mr Enfield came up with that suggestion that an "agent provocateur" was involved?

15 A. No. Can I - you spoke about documents attached to my statement?

Q. Yes.

20 A. Which documents?

Q. Well, if you look at your statement, and I'm probably expressing it incorrectly, but in your statement you say things like, "I have been shown Inquiry Exhibit", blah, blah, blah.

25 A. Mm-hmm.

Q. So strictly not annexed, but I'm using a shorthand that in preparing your statement you were shown many documents--

A. Yes.

30

Q. --which are exhibits before his Honour.

A. Yes.

Q. The documents that you were shown don't pick up that terminology. As I said before, there's "low-level agent", or there's, "Agent of the Yugoslav Government". That term "agent provocateur" doesn't appear until Mr Enfield speaks of it right at the beginning of this meeting?

35 A. Yes.

Q. My question is: do you know where he discovered that term, or why he volunteered that at the beginning?

40 A. No.

Q. In your mind, as at 9 April 1980, what was meant by an "agent provocateur"?

45

A. Somebody who was purporting to be a baddie. Who, induced by one means or another, other people to come on an escapade in order that they put themselves on the wrong side of the law.

50 Q. So it goes beyond being an "agent" or a "low-level agent"?

A. Yes.

Q. Your--

5 A. It refers to him being acting in the interests of Yugoslavia, or the Yugoslavian Intelligence Service rather than him being a Yugoslav who got out of his depth or a Croat.

10 Q. If we continue, you then record that Mr Boyle said that, "Virkez is an agent run by Yugoslav Intelligence Service officer from August 1978", and that "Virkez is himself suspected of being a Yugoslav Intelligence Service officer."

A. Yes.

15 Q. This idea of being an agent run by a YIS officer from August 1978, did Mr Boyle indicate what he based that assertion on?

A. No.

20 Q. Was it your understanding that ASIO had their own material information about Vico Virkez?

A. Yes.

20

Q. Then he positively asserts that, but then says that there's a suspicion of him being - sorry. Virkez is suspected of being a YIS officer?

A. Himself.

25

Q. Yes.

A. He's not simply an agent of one.

Q. Yes.

A. Yes.

30

Q. But it's a suspected?

A. Yes.

35 Q. Then can we have a look at the next paragraph where Mr Boyle refers to this meeting--

A. Yep.

Q. --of ASIO's SIDC-PAV situation report.

A. Yes.

40

Q. Did you know at the time, the SIDC-PAV, what he was talking about?

A. No. Not specifically, but my - I guess it was a group of people who got together to consider whether there was a group devoted to Yugoslav / Croatian matters. Another one devoted to other groups of people. I don't know.

45

EXHIBIT 9.1-21, RED PAGE 30, SHOWN TO WITNESS

Q. Can you see at the top in handwriting, "Extract from ASIO SIDC-PAV report of 28 February 1979"?

50

A. Yes.

Q. Then a heading, "Arrest of extremists in New South Wales"?

A. (No verbal reply)

5 Q. Going through this document, there's a reference to nine Croats arrested on 8 February?

A. Yes.

10 Q. In paragraph 33, a reference to five of them being members of the Croatian Republican Party, et cetera? The HRS?

A. Right.

Q. Then paragraph 34:

15 "One of those arrested was to act as a driver for those involved in the proposed bombing operation. For a period of at least six months prior to the arrest, that person also acted as an informer on Croatian nationalist activities to a person suspected by ASIO of being an intelligence official attached to the Yugoslav Consulate in New South Wales. Some hours before his arrest, that person  
20 contacted officials at the Consulate General and passed them detailed information about the proposed bombings."

That reference in 34, reading it, do you understand that's a reference to Vico Virkez?

25 A. Yes.

Q. While, as you recorded in your notes, Mr Boyle talking about this particular ASIO SIDC-PAV situation report, were you shown this, or did he--

A. No.

30

Q. At the meeting?

A. No.

Q. Did he have it in his hand at the meeting?

35

A. No.

Q. Before you prepared your statement and you were shown a copy of this, had you seen this before?

40

A. No. I suspect that "SIDC" stands for "Special Interdepartmental Committee". What "PAV" means precisely, I don't know. But, "Politically Active", something like that. Probably to do with terrorism.

MCDONALD: If we can jump back to Exhibit 10.4-1A.

45 EXHIBIT 10.4-1A SHOWN TO WITNESS

Q. If we can go further down. "Mr Boyle told the meeting...". Can you see that?

A. Yes.

50



5 Q. Your detailed note records that that information in that report, which is then summarised, "that one of the people arrested over the bombing conspiracy had, for at least six months been informing the Yugoslav Consulate...". You can see there that the New South Wales Special Branch have got a copy of that?

A. Yes.

10 Q. Mr Boyle is telling you that Special Branch New South Wales has received some information about Mr Virkez, though it's been described as an "unnamed" person.

A. Yes.

Q. Then can you see the next part on that page.

15 "Mr Boyle said that on 16 March '79, ASIO officers visited Assistant Commissioner Whitelaw of the New South Wales Police and told him that Virkez was a Yugoslav agent. Whitelaw was told that he could inform the head of the Police Prosecutions Branch in a non-attributable manner, and in such a way as to avoid allegations  
20 that Virkez was an agent provocateur."

A. Yes.

Q. And you said, "Mr Boyle apparently quoted this from a Telex."

A. Yes.

25

Q. So he had a document in his hand?

A. Yes.

30 Q. That establishes that a Commonwealth entity had been in contact with an Assistant Commissioner of the New South Wales Police back in March 1979 and provided information about Mr Virkez being a Yugoslav agent.

A. That's what it says, yes.

35 Q. You had no reason at this stage to doubt what Mr Boyle was reporting to the group?

A. No reason to doubt it, no.

40 Q. Though it suggests a proviso that, "...in such a way as to avoid allegations that Virkez was an agent provocateur." If we then go across the page at 353, it continues with your record of:

45 "Mr Boyle said the tenor and thrust of the information given to Whitelaw was intended not to strengthen the defence case. It was intended as general background so New South Wales authorities would understand Virkez's motives. At the meeting with Whitelaw, ASIO talked over tactics, and it was decided on legal grounds that the briefing should be handled in a way as not to raise the defence of agent provocateur."

50 At this point, "agent provocateur" is being raised, according to your note, by

Mr Boyle, but in a way that the briefing that's going to be given to Police Prosecutors, et cetera, shouldn't raise the defence of an agent provocateur?

A. Yes.

5 Q. Was there any suggestion at this time that Vico Virkez actually was an agent provocateur?

A. No.

10 Q. If we still look at that stage, Mr St John raises some further questions about whether Whitelaw had briefed the prosecuting authorities. "ASIO had no objections to him doing so on a non-attributable basis and in such a way as not to raise the defence of agent provocateur." Then there's further questions about:

15 "Mr Boyle made the point the information passed to Whitelaw was passed on intelligence grounds. Whitelaw had raised the question of briefing the Police Prosecutions. ASIO said that this should be done on the basis of SITREP, which did not mention any names. Mr Boyle said the second rider did not indicate that any limitation was put on the information to be communicated to the Prosecutions Branch or the use to which it should be put. For  
20 example, whether it should be taken into account in decisions taken by prosecution authorities on the use that could be made of Virkez's evidence. It was really not a rider at all.

25 At this point, the information that you're recording from Mr Boyle indicates that ASIO officers had approached a high-level New South Wales Assistant Police Commissioner and had informed him that Virkez was an agent. Then not - in briefing prosecutions not to raise the defence of agent provocateur, and also other aspects such as the information should be passed on, I think it was  
30 described as a non-attributable basis.

A. Yes.

35 Q. Being given that information, is that, at this time, what you're being told at this meeting, resolving some of the concerns that you expressed earlier in your evidence that you've got this person who is being described as a "low-level agent" or "an agent of the Yugoslav Government". ASIO has knowledge of him and what he was doing, and they've gone to an Assistant Commissioner of the New South Wales Police, informed him, and given the green light for the information in one form to be passed on to prosecution authorities.

40 A. I'm sorry, what's your question again?

Q. Does that, in a sense, resolve some of the concerns that you were expressing before the 9 April meeting?

45 A. It alleviates it somewhat, but it is a lot of hair-splitting here, I think.

Q. I missed that last bit.

A. A lot of hair-splitting.

50 Q. Can we just then go on at the bottom of the page. Do you recall there was an identification of the Crown Prosecutor, a silk called "Mr Shillington"?

A. Yes.

Q. You can see there, Mr Cavanagh is then recorded as saying that, "Mr Shillington QC is fully informed on the background to the case."

5 A. Yes.

Q. Then if we can go across to the next page. "Mr Shillington knows all about Virkez's YIS links."

10 A. Yes.

Q. Again, that's a matter that you're being told, that at this point is alleviating at least some of your concerns, because it, according to Mr Cavanagh, the legal representatives of the Crown are being informed of some of this information about Mr Virkez?

15 A. Yes. If that was true, I'd be greatly relieved, and it brings some way to alleviating my concerns, yes.

Q. If I can just finish on that top paragraph. He raises one of the comments that I think you had recorded when you spoke to Mr Cavanagh over the phone that, "New South Wales authorities did not know that Virkez is a Yugoslav agent.", and Mr Cavanagh observes that there is a difference between "knowing" and "knowing", and that, "The New South Wales Police do not know for evidentiary purposes."

20 A. Yes.

25

Q. Did that raise some alarm bells in your mind?

A. Very much so.

Q. Did it bring back your recollection of a comment he made at the first meeting about when, I think - I forget the name of the person who reported to you. Mr Elliott, was it?

30 A. Emerson-Elliott, yes.

Q. Said something to Mr Cavanagh like, "Well, if you're in the witness box, how are you going to answer this?"

35 A. Yes.

Q. And he said, "I'll just refer to official information."

40 A. Yes.

Q. A similar alarm bell?

A. Yes.

Q. In this meeting, I know you're a note taker, but do you raise concern about that?

45 A. I did raise some concerns. I don't know that I specifically did about that.

Q. Right.

50 A. And I believed that Mr St John was also concerned.

Q. Do you record that in your minutes?

A. No.

Q. Is your recollection that Mr St John raised it in this meeting?

5 A. I have a recollection that he raised concerns in this meeting that evidence was to be withheld, and that Mr Cavanagh was privy to that plan.

Q. You didn't record it. You didn't think that was important enough to record in these minutes?

10 A. Not in those words, no.

<THE WITNESS WITHDREW

ADJOURNED PART HEARD TO THURSDAY 3 OCTOBER 2024 AT 9.30AM

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