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## SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 THIRTY-NINTH DAY: FRIDAY 4 OCTOBER 2024

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

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&lt;IAN GEORGE CUNLIFFE, ON FORMER OATH(9.32AM)

&lt;EXAMINATION BY MS GLEESON

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

Q. Mr Cunliffe, you may remember you were asked questions about this note by both Counsel Assisting and his Honour on Wednesday.

A. Yes.

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Q. This is a note that you had recorded of a phone call with Mr Cavanagh on 2 April 1980?

A. Yes. 3 April, I think.

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Q. 3 April, sorry, yes. You can see in about the middle of the page where there's an asterisk, "New South Wales Police are aware that VV gave info to Lithgow Police."

A. Yes.

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Q. And then a dash, "And they may suspect that V is Yugoslav agent, but have not", and "not" is underlined, "been told."

A. Yes.

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Q. When you say, "they" in that second section, you're referring there to the New South Wales Police?

A. Yes.

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Q. In your statement at paragraph 61, you said that this confirmed an impression you had of Mr Cavanagh and New South Wales Police, that the information regarding Virkez' status as a Yugoslav instead of a Croat, let alone a Yugoslav agent, was being held from the defence at trial.

A. Yes.

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Q. I just wanted to ask you, based on what is contained in this note, how would it follow that the New South Wales Police were withholding information about Mr Virkez's status as a Yugoslav agent, if they had not been told of that fact?

A. I don't know.

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Q. You'll remember that yesterday both I and Counsel Assisting were asking

you some questions about your evidence to the New South Wales Coroner's Court in relation to the Balibo Five?

A. Yes.

5 Q. You'll remember that both I and Counsel Assisting put to you a particular question about whether or not the minutes of the interdepartmental meeting recorded your recollection of what Mr Cavanagh had said about the records held by Lithgow police. Do you remember that?

A. Yes.

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Q. In fairness to you, can I take you to one of those minutes?

A. Yes.

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

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Q. If I can just take you to the third paragraph starting with, "Mr Cavanagh".

A. Yes.

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Q. It says in the second sentence, "Mr Virkez was, he believed, a low-level agent".

A. Yes.

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Q. Then in the following sentence it says, "He had tipped off the New South Wales Police at Lithgow Police Station - but station records did not now record the incident."

A. Yes.

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Q. Is that a record of what you recall Mr Cavanagh saying in reference to what was held by the police at Lithgow station?

A. Yes.

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Q. If you go to the second page of those minutes, you can see that these minutes are signed by Mr Emerson-Elliott. Does it follow that he prepared these minutes?

A. Probably.

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Q. Do you recall whether you reviewed and sent it to them before they were signed?

A. I would have done, yes.

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Q. You don't have any reason to believe, based on your knowledge of Mr Emerson-Elliott, that he wouldn't have recorded faithfully the words used in relation to important matters that arose at that meeting?

A. I believe that he would have.

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Q. In particular, because, as these minutes record, especially on this second page, Mr Emerson-Elliott shared some of your concerns about there being some attempt to pervert the course of justice or a miscarriage of justice or the like.

A. Yes.

Q. If we can just go back to the first page of these minutes, the words that are used there after the dash are, "but station records did not now record the incident".

A. Yes.

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Q. Do you see that? They're not the words that you used in your statement to the effect that if records were subpoenaed, they won't exist.

A. Yes.

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Q. And they don't record anything that would suggest that Mr Cavanagh had said that the police would deny their existence if they had been subpoenaed.

A. Yes.

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Q. In fact, there's no reference in those minutes to some discussion between you and he in which you raise the query of what would happen if the records were subpoenaed, is there?

A. Yes. I think that that was at the second interdepartmental committee meeting.

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Q. But you've accepted that it's the case that there's no record of that conversation having occurred at the second interdepartmental meeting, is there?

A. I'm sorry, repeat that?

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Q. You've agreed with me and with Counsel Assisting that there's no record of any exchange or discussion of records held by Lithgow police at the second interdepartmental meeting?

A. Right.

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Q. You'll remember also yesterday that both myself and Counsel Assisting suggested to you that because, by the time of these interdepartmental meetings, evidence had been given at the committal to the effect that Mr Virkez had made a report to Lithgow Police Station there was no reason for Mr Cavanagh to be raising the availability of records that might prove that fact?

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A. That might well be the case.

Q. That applies to this meeting?

A. But he seems to have said different things at different times.

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Q. Yes. Is it possible that you misunderstood or, perhaps, misinterpreted what it is that Mr Cavanagh said when he said that records did not now record the incident?

A. That's in this meeting?

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Q. Yes.

A. It's possible. I don't believe that that's the case. I've got a very clear recollection of him saying things to that effect.

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Q. You don't remember going to Mr Emerson-Elliott and saying, "These minutes have omitted an important matter about what was to become of the

records held by Lithgow Police Station."?

A. No.

5 Q. Is it possible that after a considerable lapse of time between first these events and the coronial inquest in 2007, and now the Inquiry that is occurring in 2024, that your memory of this may be defective or may have changed from what was the fact at the time?

10 A. That is possible as to details, but I've got a very clear recollection of Mr Cavanagh saying that records would not exist if a subpoena were issued for them. They were specifically records of Mr Virkez' visit to the Lithgow Police Station on the day before the bombing was to take place.

15 Q. Can I just go to one final matter? Can we turn now back to the second interdepartmental meeting?

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

20 Q. You've been asked questions by everyone about the account that was given by Mr Boyle in relation to the SIDC-PAV report.

A. Yes.

25 Q. Can I just take you to one small part of what you've recorded in these minutes? It's in the second paragraph attributed to Mr Boyle.

A. Yes.

30 Q. Where he's addressing the SIDC-PAV Situation Report and then you've said, "which said that one of the people (unnamed) arrested over the bombing conspiracy had for at least six months been informing the Yugoslav Consulate."

A. Yes.

35 Q. You've used the word "unnamed" there.

A. Yes.

40 Q. What did you mean when including the words "(unnamed)" in that part of the minute?

A. My recollection is that that was the expression that Mr Boyle used when talking about the contents of the Situation Report.

45 Q. To your mind, was there anything of significance about the fact that the person identified in the SIDC-PAV Report was unnamed?

A. It - Mr Boyle seemed to be putting forward the argument that, of course, the New South Wales Police know because they've been given a copy of this report. It seemed to me that Virkez, not having been named in that report, weakened that argument somewhat.

50 Q. You thought to record in the minutes a fact that might - that might bring to light that that was the case; is that right?

A. Yes.

Q. Can I ask you just to go in this document to page 354 which is the third page of the minutes?

A. Yes.

5 Q. You'll remember Counsel Assisting asking you some questions in relation to the account that was given by Mr Cavanagh about the evidence that was available to the New South Wales Police and the prosecutors in relation to the conspiracy?

A. Sorry, would you repeat that, please?

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Q. You remember in these last two paragraphs on this page, Counsel Assisting was asking you some questions about what's contained in them which is Mr Cavanagh giving an account to the meeting of the evidence that was available to the police and prosecutors in relation to the alleged conspiracy?

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A. Yes.

Q. You can see at the very bottom of the page, and this is in a paragraph discussing Virkez's role in comparison with Mr Bebic's role, in the bottom line it says, "Virkez was originally to be involved only as a driver."

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A. Yes.

GLEESON: Can I take you now just for convenience to what I think is now being called the fourth version of the minutes, and that's 10.1-3, page 7?

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

Q. This is convenient because you can see on the second half of the page, you've got the comparison between the second paragraph of your draft minute and the paragraph that was proposed by Mr Boyle?

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A. Yes.

Q. You can see in the Mr Boyle section, it begins on the fifth line by addressing the copy of ASIO's SIDC-PAV Situation Report?

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A. Yes.

Q. And that it had been passed to New South Wales Police Special Branch?

A. Yes.

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Q. Then it explains, "This report indicated that the driver in the proposed bombing operation had been reporting to a suspected intelligence officer."

A. Yes.

Q. You can see there the reference to the driver?

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A. Yes.

Q. Do you accept from me then, knowing as you did as at the time of the second interdepartmental meeting, that the police were of the view that Mr Virkez was originally going to be the driver for the proposed operation, and that the person identified as the driver was described in the SIDC-PAV Report

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as the person who had been reporting to Yugoslav authorities, that was enough information for the New South Wales Police to identify that Mr Virkez was the person?

A. They might well have deduced that from that information, yes.

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GLEESON: Thank you. Those are my questions.

WITNESS: Could I - your Honour, could I return to couple of matters that I gave evidence on yesterday, partly, in answer to Ms Gleeson?

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HIS HONOUR

Q. If you wish.

A. On two issues. One was the question of why the invitation to meet Inspector Turner wasn't taken up and, as I said, it wasn't ultimately my decision, although my recommendation was that it not be taken up. It seemed to me to be murky and to involve the danger of the Department of Prime Minister and Cabinet, the Government of Australia, representing the Government of Australia, being involved in a criminal investigation by the police, and to interfere with the investigative independence of the police. That was part of my thinking.

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The other thing I was wanting to return to was the note from Tom Sherman to the Attorney-General after I've inspected the documents. My attention was drawn to a particular paragraph of that note which I hadn't seen until very recent times now. I was very seriously worried by the suggestion that the files of Prime Minister and Cabinet had been culled before being made available to the Court. That worried me enormously because it - I hold my previous colleagues in pretty high regard, in particular, for their integrity, and I saw that if it had been the case, has been a very serious breach of integrity.

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The other possibility that I saw going into that meeting, as I think I've said previously, is that I had taken some leave of my senses, and I was remembering things that just didn't exist, which is worrying. So I was greatly relieved when I sat down and went through the file to see that neither of those was the case; that the file that I looked at coincided, to the best of my recollection, with the file that I expected to see based on the file that I'd been working on, and that my recollection wasn't faulty.

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And in the final - penultimate paragraph of the note from Mr Sherman to the Attorney-General, which I think is page 168, it says, "Mr Cunliffe was very appreciative of the opportunity to peruse the relevant documents", and that was the case and I probably expressed that to him maybe only quite profusely, because of this concern that I'd had on two possible counts. One that there'd been serious malpractice, and second was that I was losing my marbles.

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My attention was drawn to the second-last and last sentences of the first paragraph of that document: "After having perused the documents Mr Cunliffe said to me that he was satisfied all material documents were produced to the Court." I think that that should have been expressed as "all material

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documents were on the file." As to exactly what the Court had seen I didn't know. And the last sentence, "I specifically asked Mr Cunliffe whether there was any further investigative action for me to take in this matter. He said, 'No'." The key word in that sentence for me - and as I say, I've only seen it in very recent times. I didn't see it at the time - is "investigative". I didn't see a need for any further investigative work to be done.

Later on in the same document - the memo to the Attorney from Tom Sherman, page 168 - a couple of reservations of mine are recorded in paragraph 2 and paragraph 3, and I could read them out for you or just leave it as said. That there was a need for further things to be done. It's not that the book was closed and, indeed, Mr Sherman completes his memo with the sentence, "I will keep you advised of further developments." So there were to be further developments was the way I understood it. Not that everything had been cleared up.

<EXAMINATION BY MR BROWN

Q. Mr Cunliffe, my name's Mr Brown. I appear for the Director of Public Prosecutions, which is the successor agency to those which conducted the initial trial and appeal proceedings in these matters.

A. The New South Wales Director of Public Prosecutions?

Q. Correct, yes. I just want to briefly step you through some of the events and focus in on a few different areas. Your involvement in this matter came about as a result of the letter written by Mr Virkez to the then Prime Minister?

A. Yes.

Q. You asked Mr Carrington of the Security Branch of DPC to request information from the Australian Federal Police in connection with that letter?

A. The Department of Prime Minister and Cabinet. I'm not sure if that was what you said. Yes, we discussed it and we - it was agreed that we should seek further information from the AFP, and that it should go through the Security Branch as - yes, rather than my branch.

BROWN: If I could just take you to the terms of that request as sent by Mr Carrington.

EXHIBIT 5.6-10, RED PAGE 671-131, SHOWN TO WITNESS

Q. If you just look at the bottom of the letter on the page, you can see it's sent from Mr Carrington, and there's, below the text on the left-hand side, a date in December 1979?

A. Yes.

Q. The operative request in that letter, I'd suggest, is the middle paragraph there: "To enable preparation of a suitable reply, I should be grateful for your comments, particularly in regard to Mr Virkez's assertion that the Federal Police can help him."

A. Yes.

Q. Quite general in its terms, the request that was made of the Australian Federal Police?

A. It's fairly general. I would have made it more general if I'd written the letter but, yes.

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Q. You were taken by Counsel Assisting to the terms of Mr Virkez's letter itself?

A. Yes.

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Q. You agree that the matters raised in it were primarily matters for New South Wales authorities?

A. In one sense they were, but there's a matter of a major averted terrorist incident. The Commonwealth also had an interest. Whether or not Virkez could have been charged with Commonwealth offences I don't know.

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Q. I think you agreed with Counsel Assisting that the matters that were the immediate province of the Commonwealth, were really the request for deportation on the one hand?

A. Yes. In terms of immediate action, yes.

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Q. The claim that the Federal Police could assist Mr Virkez in some way?

A. Yes.

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Q. You received or the Department of Prime Minister and Cabinet received a response from Assistant Commissioner Farmer on 7 January 1980, and you've been taken to the terms of that response?

A. Yes.

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BROWN: That's at Exhibit 10.1-14. If I can just take you now, please, to the terms of your statement at paragraph 106.

EXHIBIT 15.18, RED PAGE 96, SHOWN TO WITNESS

WITNESS: Yes.

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BROWN

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Q. There's been some attention paid to the last part of the quote that's included at paragraph 106, but just focusing on the initial part of your response there--

A. Yes.

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Q. --"I was in the Department of Prime Minister and Cabinet. The matter came to my attention and I asked questions as to what had happened, and first of all was given a whitewash answer by the Commonwealth Police." That reference there to having been given a whitewash answer by the Commonwealth Police, was that a reference to the response that was received on 7 January 1980 from Assistant Commissioner Farmer?

A. Largely, yes.

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Q. By "a whitewash answer", did you mean to imply an answer that sought to intentionally bury or conceal some kind of unpleasant truth?

A. That it was unspecific and pretty much unhelpful.

5 Q. Having been taken to the documents, and bearing in mind the terms of the request that was made by Mr Carrington, and the limited extent to which the letter from Mr Virkez raised matters of immediate relevance to the Commonwealth, do you still maintain now that the response you received, or  
10 the response that the Department received from Assistant Commissioner Farmer, constituted a whitewash answer?

A. I think "whitewash" was not an appropriate term to have used. I think it was an answer which was nowhere near as helpful and as complete as it should have been in the circumstances.

15 Q. Subsequent to the letter of 7 January from Assistant Commissioner Farmer, Mr Cavanagh contacted you?

A. Yes.

20 Q. It appears from a file note you made of that conversation that that was on 15 February 1980?

A. Yes.

BROWN: If we can bring that file note up, please.

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

Q. We see down the bottom, is that your signature with the date of 15/2?

A. Yes, it is.

30 Q. If you'll accept from me, who's accepting from a Google search, that 15 February 1980 was a Friday?

A. I do accept that.

35 Q. You've recorded there Mr Cavanagh telling you he was going to interview Mr Virkez on Thursday the following week, which would have been 21 February 1980?

A. Yes.

40 Q. Did you understand from your conversation with Mr Cavanagh at that time or otherwise, that this interview between Mr Cavanagh and Mr Virkez came about as a result of the letter from Mr Virkez to the Prime Minister?

A. Yes.

45 Q. It was in the context of this proposed interview that Mr Cavanagh requested a copy of the original letter that had been sent by Mr Virkez?

A. Yes.

50 Q. It's recorded there that Mr Cavanagh told you that he was travelling to Sydney, for the purposes of this interview?

A. Yes.

Q. To your recollection was Mr Cavanagh based in Canberra at the time of these events?

A. It was my understanding at all relevant times that he was in Canberra - based in Canberra.

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Q. The original letter from Mr Virkez that Mr Cavanagh requested, was that provided to him?

A. Yes.

10 EXHIBIT 19.5, RED PAGE 5, SHOWN TO WITNESS

Q. This appears to be another file note of yours dated 19 February 1980?

A. Yes.

15 Q. Just focusing on that last paragraph, Mr Cogan agrees, "We should try to prevent Mr V's letter to PM being used in court proceedings"?

A. Yes.

20 Q. Why were you concerned to prevent Mr Virkez's letter to the Prime Minister being used in court proceedings?

A. Because it seemed to be dragging the Prime Minister into matters that he wouldn't have wanted to be dragged into.

25 Q. Following on from this, you understand that two interviews, in fact, took place between Mr Cavanagh and Mr Virkez?

A. I now understand that.

30 Q. The Department of Prime Minister and Cabinet were advised of at least some of what was said to have taken place in those meetings, in the letter from the AFP on 11 March 1980 from Assistant Commissioner Farmer, which Counsel Assisting took you to?

A. Yes.

35 BROWN: And if we can just have that brought up now, please. It's Exhibit 9.1-38, and if you can go to red page 55, please.

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

40 Q. And just focusing on the second paragraph, the second full sentence there, Mr Cunliffe. Federal Police had communicated that "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".

A. Yes.

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Q. You say at paragraph 35 of your statement that you believe the specialist assistance requested by the New South Wales Police may have related to giving expert evidence regarding the activities of Croats in Australia?

A. Yes.

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Q. And is it your recollection that it was proposed that Mr Cavanagh may give that specialist assistance?

A. Yes.

5 Q. Just moving ahead in time; you were taken by Counsel Assisting, and by Ms Gleeson this morning to a further conversation you had with Mr Cavanagh on 3 April 1980?

A. Yes.

10 Q. And you gave some evidence to Counsel Assisting that at the time of that conversation with Mr Cavanagh on 3 April 1980, you'd formed the view by that point that Mr Cavanagh wasn't a person to be believed?

A. I don't put it as high as saying that he was not to be believed, but that things that he said may or may not be true, completely true.

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Q. So that was at a point prior to the second interdepartmental meeting on 9 April 1980?

A. That's my recollection, yes.

20 Q. So moving forwards to that second interdepartmental meeting; when Mr Cavanagh said words to the effect that "the prosecutor Mr Shillington QC is fully informed on the background to the case and knows all about Virkez YIS links", by that time Mr Cavanagh was already someone who you regarded with some level of scepticism?

25 A. Yes. In particular it struck me in the various contacts that I had with Mr Cavanagh that he was inclined to big note himself and to present himself as having a role with the New South Wales Police, which I doubted he had.

30 Q. Did you or anyone else present ask what the foundation was for Mr Cavanagh's asserted belief that Mr Shillington "knows all about Virkez YIS links"?

A. No.

35 Q. Did you or anyone present ask what exactly it was that Mr Shillington was said to know about Virkez YIS links?

A. No.

40 Q. You'd already to that point been provided with what you considered to be varying accounts by the Commonwealth Police of what Virkez's relationship with the Yugoslav government was?

A. Yes.

45 Q. In the letter of 11 March 1980 from Assistant Commissioner Farmer, Exhibit 9.1-38 red page 55, it had been communicated that, "Virkez in the opinion of interviewing officers has been operating in Australia as an agent of the Yugoslav government", do you recall that?

A. Yes.

50 Q. So the opinion was expressed by reference to the Yugoslav government, not YIS specifically?

A. Yes, in some places that was said, yes.

5 Q. Then on 12 March, at the first interdepartmental meeting Mr Cavanagh had described Virkez as "a low level agent for the Yugoslav government who had got out of his depth when he became involved in the bombing conspiracy", do you recall--

A. Yes.

10 Q. --being taken to that? So again expressed by reference to the Yugoslav government, not by--

A. Yes.

15 Q. --reference to the YIS?

A. Yes.

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Q. Then on 3 April, which Ms Gleeson took you to this morning, you recorded in the file note "they", in context New South Wales Police, "may suspect Virkez is Yugoslav agent, but have not been told".

A. Yes.

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Q. So again no description of a relationship with the YIS specifically?

A. Correct.

25 Q. And no suggestion that New South Wales authorities, let alone Mr Shillington, had been told of any links between Mr Virkez and the YIS?

A. Correct.

30 Q. And indeed one of the purposes of the second interdepartmental meeting was to discuss the implications of informing New South Wales authorities of what the Commonwealth knew of Virkez, wasn't it?

A. It was.

35 Q. So what Mr Cavanagh said at the meeting was contrary to anything that you had understood previously?

A. It wasn't contrary, did you say?

40 Q. It was contrary to anything you had understood previously from what had been communicated to you?

A. What did - what are you referring to there, what he said?

40

Q. What Mr Cavanagh said at the meeting regarding Mr Shillington's state of knowledge was contrary to anything that had previously been communicated to you?

45 A. Wasn't contrary, no, because the descriptions had been pretty vague. As you said, talking about, got some links with the Yugoslav government.

50 Q. The most recent communication was on 3 April when Mr Cavanagh told you that "they may suspect Virkez is Yugoslav agent but have not been told", by reference to New South Wales authorities?

A. Yes.

Q. So it was at the least contrary to that, do you agree?

A. Contrary, Mr - at that stage, Mr Cavanagh wasn't saying he was an agent of the Yugoslav government, but apart from that I agree, yes.

5 Q. Did you or anyone else ask when Mr Shillington had supposedly been made aware of Mr--

A. No.

10 Q. --Virkez's YIS links? The members of the interdepartmental committee appear to have been heavily dependent on what Mr Cavanagh had to say in relation to what New South Wales authorities knew at the time, do you agree?

A. Yes.

15 Q. And as I think you indicated in your evidence to Counsel Assisting yesterday, you don't actually know what - if anything - Mr Cavanagh had in fact passed on to Mr Shillington--

A. Correct.

20 Q. --by New South Wales authorities more generally. What Mr Cavanagh said at that meeting was, as you said yesterday, hearsay; it was really just an assertion by Cavanagh of a belief about someone else's state of mind, wasn't it?

A. Yes, largely so.

25 Q. Entirely so, wasn't it?

A. That somebody else's state of mind, no, so it's more about their state of mind; they've been told certain things. It's hearsay, I agree.

30 Q. Did he say that he'd been told certain things?

A. That the New South Wales authorities--

Q. No, sorry. Focusing on Mr Shillington, did Mr Cavanagh say that Mr Shillington had been told certain things?

35 A. You were talking before about New South Wales authorities. Mr Shillington, no, I agree with you.

BROWN: Could I take you to another example of what I would suggest is hearsay at paragraph 57 of your statement, it's Exhibit 15.18 at red page 90.

40 EXHIBIT 15.18, RED PAGE 90, SHOWN TO WITNESS

WITNESS: This is nearly all hearsay; whether it's business records is an issue, if we're talking about the laws of evidence.

45 Q. You may recall you were taken to this paragraph by Mr De Brennan yesterday. You recount there an event that culminated in a conversation between yourself and Mr St John.

A. What paragraph are we looking at?

50 Q. Paragraph 57.

A. Yes.

Q. And you record there that you, "Recall Mr St John telling me about this interaction with Mr Shillington QC before the start of the trial".

5 A. Yes.

Q. What makes you place this event that you recount as being before the start of the trial?

10 A. Because it was still a live issue in our minds.

Q. When before the trial?

A. I don't know.

15 Q. Well, do you say it was before the second interdepartmental meeting, or after the second interdepartmental meeting?

A. I think it was after the second.

Q. So the second interdepartmental meeting was on 9 April 1980.

20 A. Yes.

Q. And the trial commenced on 14 April--

A. Yes.

25 Q. --1980. So was it your recollection that Mr St John encountered Mr Shillington on a beach on the South Coast at some point between 9 April 1980 and 14 April 1980?

A. Presumably.

30 Q. Did that strike you as unlikely that Mr Shillington would have been on a New South Wales South Coast beach in the days immediately preceding a trial that was scheduled to run for many months?

A. I don't know. It does seem quite coincidental, and maybe I do have the dates wrong; maybe it was earlier.

35 Q. So is it possible that you're mistaken that an event of this type in which Mr St John told you of having run into Mr Shillington on a beach on the South Coast of New South Wales took place prior to the trial of the Croatian Six?

A. No.

40 Q. It's not possible that you're mistaken about that?

A. No.

Q. It's not possible that you're mistaken about the timing of this event?

45 A. I don't believe it is possible, no.

HIS HONOUR: Well there's two events, one is the contact between Mr St John and the Crown Prosecutor, and there's a question of when that occurred, if it occurred. The second one is when Mr St John told Mr Cunliffe about it, so there's two events here. So when you're talking about when something happened which one are you talking about?

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BROWN: Yes, your Honour.

WITNESS: My - my clear recollection was that these were still live matters within the Department, which meant that it was before the trial.

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Q. Well, you regarded these as ongoing matters well beyond the time of the trial though, didn't you Mr Cunliffe?

A. I did, but with a big break in between, in between - beginning of the trial and the outcome of that trial.

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Q. They record at paragraph 57 in the final sentence that, "St John told me that Mr Shillington QC indicated to him that he knew about Virkez's Yugoslav intelligent links". Did Mr St John tell you how this topic of conversation came up?

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A. He did not.

Q. Did you ask Mr St John how the topic of conversation came up?

A. No, I didn't.

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Q. Did Mr St John tell you what it was that Mr Shillington indicated he knew of Mr Virkez's Yugoslav intelligence link?

A. No.

Q. Did you ask Mr St John that question?

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A. No, I didn't.

Q. So he may have been indicating that to his knowledge there were no Yugoslav intelligence links?

A. The way it was put to me by Mr St John I don't - I discount that possibility.

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Q. How was it put to you by Mr St John, what did he say?

A. Just as I've expressed it then.

Q. No, what did he say?

35

A. He had met Mr Shillington and Mr Shillington had indicated that he was aware of Mr Virkez's Yugoslav intelligence links.

Q. Is that the extent of the conversation that took place?

A. Extent of the conversation with me, yes.

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Q. You, at the time, took your duty as an officer of the Court very seriously, didn't you, Mr Cunliffe?

A. Yes.

45

Q. Mr Shillington was himself an officer of the Court and had specific obligations as a prosecutor?

A. Yes.

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Q. Does it not strike you as improbable that Mr Shillington would have been broadcasting the state of his knowledge of Mr Virkez's YIS links to Mr St John

on the beach, if he, depending upon the timing of this event, was either intending to turn around and mislead a jury on that very subject or had already actively misled a jury on that subject?

A. I would be disappointed and surprised.

5

Q. Would you be surprised that someone would so brazenly communicate that fact to someone else?

A. Not that fact. I mean, you're referring to a number of facts there, but that he knew of the YIS links. Mr St John, I think, was also concerned about all of these matters. He was, perhaps, more disciplined than me, but he was - he was also quite worried about them.

10

Q. Did you understand Mr St John to have any prior relationship with Shillington?

15

A. I presumed that he had had.

Q. Did you ask him whether he had any prior relationship with Mr Shillington?

A. No, I didn't.

20

Q. When you wrote to Mr St John in late January 1981, this is after you've read the article in the Sydney Morning Herald?

A. Yes.

25

EXHIBIT 10.1, RED PAGE 11, SHOWN TO WITNESS

Q. You made no mention of this meeting between Mr St John and Mr Shillington QC, did you?

A. No, I did not.

30

Q. Is it possible that the reason you didn't refer to any such conversation is because no such conversation between yourself and Mr St John had, in fact, taken place prior to your letter--

A. No.

35

Q. --of January 1981?

A. No, that's not possible.

Q. Did you tell Mr Sumner-Potts about this event when you met with him prior to the Court of Criminal Appeal proceedings in 1982?

40

A. No, I didn't.

Q. Why not?

A. I didn't see it as appropriate.

45

Q. Why didn't you see it as appropriate?

A. I was keen that justice be done and I didn't see that plainly hearsay fact to be relevant to trying to get justice done.

50

Q. If you regarded Mr Shillington as having known the state of Mr Virkez's links with the YIS, then you would have considered that to be relevant to the



question of whether there was a miscarriage of justice, wouldn't you?

A. If you did know, yes, I think it would be relevant.

5 Q. You considered this information which was consistent with him having known, didn't you?

A. Yes, it was consistent with him having known. It was also hearsay.

10 Q. If you, in fact, had this knowledge of this conversation, as at the time you spoke with Mr Sumner-Potts prior to the Court of Criminal Appeal proceedings in 1982, I suggest you would have raised it with Mr Sumner-Potts when you spoke to him?

A. You're incorrect.

15 Q. When did you first recount this conversation between yourself and Mr St John to anyone else?

A. I think probably only when I made my statement to this Inquiry.

20 Q. So the first time you've ever cast your mind back specifically to this event for the purposes of informing someone else about it was some 45 years after the event took place?

A. 44 years, but, yes. I've thought about it, but, yes.

25 Q. Is it possible you have, over the intervening years, become mistaken as to either the timing or the content of this conversation?

A. I don't believe so.

Q. You don't--

A. Certainly not as to the content of the conversation.

30 Q. --entertain the possibility that you may inadvertently have confused matters?

A. No, I don't think that that's the case.

35 BROWN: Just moving back to the second interdepartmental meeting and the lead-up to it, can I take you, please, to Exhibit 5.6-9, red page 671-42?

EXHIBIT 5.6-9, RED PAGE 671-42, SHOWN TO WITNESS

40 WITNESS: Can I make the point that what Mr St John told me was just what I've set out. It wasn't any more detailed than that. It - it could be a conversation where there was some reference to Yugoslav links of Mr Virkez, but they, depending - like, I don't know what the content of the conversation was, but those links could have ranged from those few words to something much more elaborate. I don't know.

45

Q. Thank you, Mr Cunliffe. Just focusing on the document in front of you.

A. Yes.

50 Q. If we can zoom in on the bottom paragraph there.

A. Yep.

Q. See there, "Mr ", and there's an obliterated name which I assume is the name of an ASIO officer?

A. Yes.

5 Q. "Is very busy and Mr Boyle is likely to attend", I think, underneath, "National Archives of Australia", it might say, "in his absence"?

A. Mm.

Q. Do you recall that?

10 A. "In his place", I think it might say.

Q. Do you recall that being the case, that it was initially proposed that another ASIO officer would attend the second interdepartmental meeting and that Mr Boyle stepped in?

15 A. Only from having recently re-read this.

BROWN: If we can go, please, to 10.4-1A, red page 352. This is your preferred version of the minutes of the--

20 WITNESS: Yes.

BROWN: --second interdepartmental meeting.

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

25

Q. Just scroll down, please. The bottom full photograph, you can see there starting with, "Mr Boyle", you've been taken to this a few times before, Mr Cunliffe. I'm just trying to get to the bottom of the telex Mr Boyle may have been referring to. You see there the content of that paragraph prior to, "Mr Boyle apparently quoted this from a telex"?

30

A. Yes.

BROWN: It's to do with Whitelaw of the New South Wales Police telling him that Virkez was a Yugoslav agent and so on. I can now take you to Exhibit 9.1-80, red page 114.

35

EXHIBIT 9.1-80, RED PAGE 114, SHOWN TO WITNESS

Q. If you can look at paragraph (b) there, there's a reference to - and this is a document prepared by Mr Boyle:

40

"The contribution I made to the meeting was in keeping with headquarters brief contained in HQ telex 4368 of 9 April 1980 which confirmed oral advice given by headquarters."

45

A. Yes.

BROWN: If you can just remember that number, 4368 of 9 April 1980. If I take you now to Exhibit 9.1-46 red page 64 which Mr Melican took you to yesterday.

50

EXHIBIT 9.1-46, RED PAGE 64, SHOWN TO WITNESS

Q. Do you see at the top left of that document, there's a reference to "HQS 4368" and a date of 9 April 1980?

A. Yes.

5 BROWN: If we can just scroll down a little bit on that document, please, to the following page so we get para 5?

Q. Can you see there the content of that paragraph:

10 "Mr R Whitelaw was advised on 16 March 79 that ASIO had no objection to him informing the head of the Police Prosecutions Branch on the import of the information expressed in the SIDC-PAV of 28 Feb 1979, but in a non-attributable manner in such a way as to avoid any allegations of Yugoslav provocateur actions."

15

Similar in terms to what is recorded in the paragraph of the minutes prior to Mr Boyle appearing to read from the telex?

A. Yes.

20 Q. Just on a final topic, Mr Cunliffe, Mr De Brennan took you to a number of ASIO documents yesterday, documents that you had not seen previously?

A. Yes.

25 BROWN: If I can take you, please, to another document you may not have seen previously, Exhibit 9.1-81? If we can start at red page 16, but then scroll down to 117, just to identify the author of the document. If we can scroll down to 117, please?

30 EXHIBIT 9.1-81, RED PAGE 117, SHOWN TO WITNESS

Q. Do you see there, Mr Cunliffe, the document is dated 18 May 1982 at the bottom left?

A. Yes.

35 Q. It's signed by TH Barnett?

A. Harvey Barnett.

Q. Title of Director-General?

A. Yes.

40

Q. That would be Tudor Harvey Barnett?

A. Yes.

45 Q. Who was the Director-General of Security of Australia in 1982?

A. Yes.

Q. And the head of ASIO?

A. Yes.

50 Q. If we can scroll back up, please, to page 116 and paragraph 2, you can see

there's some underlined text there. It relates to a meeting that took place between the persons identified at the top of the page, but I just want to draw your attention to that portion:

5 "I spoke on Virkez, noting that whereas ASIO had originally  
considered him to be a YIS agent, later evidence led us to hold the  
view that he was an informant of the Yugoslav Consulate in Sydney  
and that his actions on reporting in advance the proposed bombing  
10 operation and the Yugoslav reaction to this information indicated  
that the Yugoslavs were not masterminding the plot, therefore, any  
suggestion that Virkez's role was provocation on behalf of the YIS  
was unfounded and equally the risk of any miscarriage of justice in  
relation to the appellants was drastically reduced."

15 Had you seen that document previously, Mr Cunliffe?  
A. No, I have not.

Q. Does that statement from the head of ASIO in 1982 in any way alleviate  
any concerns that you hold that there may have been a miscarriage of justice  
20 based on this material--  
A. Not greatly, no.

Q. --not having been disclosed? Why is that, Mr Cunliffe?  
A. Well, in the words of somebody who achieved fame back in the 1960s, they  
25 would say that, wouldn't they?

Q. You doubt what Mr Barnett communicated in that meeting, do you?  
A. I take it with a grain of salt.

30 Q. Why is that?  
A. Because I - my experience of dealing with ASIO leads me to conclude that  
they're not always reliable. I do know Mr Barnett and I - he's not with us  
anymore, but I like and admire him, but - but the propensity to put things in a  
way which is most convenient for ASIO is strong.

35 Q. You seem rather willing to assume that people in senior positions will  
behave in a morally questionable manner, if I can say that?  
A. Some--

40 Q. Do you agree?  
A. Some will, yes.

Q. Do you allow for the possibility that what Mr Barnett was communicating in  
that meeting, in fact, represented the considered position of ASIO as at May  
45 1982?  
A. I do. I do, but it's also interesting that the passage - and I haven't read the  
whole document you draw to my attention - says that ASIO had originally  
considered him to be a YIS agent, and this is what, two years after the trial,  
two years after the events in question?

50

Q. It's on the second day of the CCA hearing that this meeting took place, just to place it in time for you.

A. Mm.

5 HIS HONOUR: Mr Brown, when you put to him whether he allowed for the possibility that this reflected the considered position of ASIO, I'm not sure what that means. Does that mean a reflection of events and situations accurately, or does it mean whether or not accurate this was a considered decision of ASIO to advance this view of things?

10

BROWN: No. I meant the genuine position that ASIO had arrived at based on the information available to them, as communicated by the head of ASIO in that meeting.

15

HIS HONOUR

Q. When you answered that question, referring to the considered position of ASIO, did you understand Mr Brown to be meaning what he just said?

20

A. I did, yes, but as I say, it also includes the statement that ASIO originally considered Virkez to be a YIS agent. It doesn't say when that was, but presumably other material points to ASIO not having become aware of Virkez until shortly before the events of - well, the events of March and April of 1980. So presumably - I mean, well, it's a real possibility, probably more likely than not, that at that time they did regard him as a YIS agent.

25

NO EXAMINATION BY MS BASHIR

<EXAMINATION BY DR WOODS

30

Q. You'd be pleased to learn that I won't be taking you to any documents. I hope I will be relatively brief. I appear for a number of the police officers involved in this case, all of whom are below commissioned rank. You were asked some questions about Mr Barnett's letter that you'd never previously seen. Given your knowledge of intelligence matters, your involvement with Justice Hope in that inquiry about intelligence, or the two inquiries with Justice Hope, does it seem to you a possibility that ASIO had been tapping the phone of the Yugoslav Embassy or Consulate, for some considerable time?

35

A. Yes.

40

Q. You couldn't say how far in time that went back as an estimate?

A. No, tapping the phone or otherwise bugging the consulate.

Q. I see Mr Boyle's name mentioned in documents you've been shown a few minutes ago. He was an officer, was he, of ASIO?

45

A. Yes.

Q. Do I take it from the non-redaction of his name, that he is unfortunately deceased? Is that the case?

50

A. I don't know whether he is or not, I'm afraid, but I agree it's surprising his name is used repeatedly, that some of the names are blanked out.

Q. In any event, you referred to Mr Enfield. Do you know whether he's still alive?

A. No, he dead, I believe.

5 Q. You made the suggestion that - correct me if I'm wrong - he had DSD links and had a community connection with people in the intelligence field?

A. Yes.

10 Q. You were asked a question by Mr De Brennan, who's in front of me here--  
A. Yes.

Q. --which made reference to events at Geelong possibly concerning Virkez. Had you ever heard anything about Virkez at Geelong?

15 A. No.

Q. In your affidavit at various points you refer to the hierarchical nature of the public service of which you were a part?

A. Yes.

20 Q. You used the term "career-limiting move" at one point--  
A. Yes.

Q. --to refer to the suggestion that you should have been more decisive in bringing matters to the attention of others?

25 A. Yes, and more assertive.

Q. Is it a correct assessment of your evidence, that you regarded Mr Cavanagh as being, to use another well-known phrase from decades ago, "economical with the truth", or would you go further?

30 A. I'm reluctant to describe him quite in that way, but my dealings with him led me to the conclusion that, at least on the matters that I was talking with him about, he was rather economical with the truth, yes. And I have to acknowledge that we're dealing here with some very sensitive things, unusually sensitive in most people's experience, including most police  
35 experience, and quite how people react to that. I think one of the things was that he tended to react to that by being just economical with spelling out what he knew. He divulged as a little as he thought he could get away with.

40 Q. From your knowledge of the intelligence services, would you agree that there is a tendency to be secretive and to compartmentalise information?

A. Yes, very much so.

45 Q. Would you be confident that Mr Cavanagh's communications in your absence, but with New South Wales authorities, were accurately relayed to you by him?

A. No, I wouldn't be, and I recall at that time in the early days of the AFP, there was some animosity - might be putting it too high - but certainly--

50 Q. Tension?

A. Tension between state forces, and in particular, I knew about the New

South Wales Police Force more than, say, the South Australian Police Force and the AFP, that they - there was tension between them.

5 Q. You made reference to the summons that you got or the subpoena to attend at the CCA and to give evidence?

A. Yes.

10 Q. You referred to speaking to Justice Hope about that?

A. Yes.

10

Q. I'm sure that everybody in this room whose business it is to ask questions is very conscious of the stress and strain that being a witness involves, but was it the case that as at the time of the Court of Criminal Appeal hearing, you were having second thoughts about the matters you'd raised?

15

A. No.

Q. One of the questions before the Inquiry is the scope of the requirement of disclosure of material to the defence?

A. Yes.

20

Q. You've told us that you have, in your early career, some experience of conducting criminal matters in the Petty Sessions, but you certainly weren't and you don't claim to be an experienced trial advocate or lawyer in the crime field?

25

A. Correct.

Q. In the 1970s it was the case that there were two parts of the trial process, the committal and then the trial itself?

A. Yes.

30

MCDONALD: I object. I can't see the relevance, your Honour. Mr Cunliffe, at the relevant time, wasn't practising as a solicitor. His evidence was--

WOODS: I'll withdraw the question.

35

Q. Were you aware at any stage of a report by the New South Wales Law Reform Commission, a comment paper, which dealt with the law on the scope of disclosure to the defence? Did you come across a document of that kind?

A. Yes. I don't recall when but, yes, I--

40

Q. Were you aware that that report by the New South Wales Law Reform Commission, which was interim only, involved the conduct of asking questions of Crown Prosecutors about what they would reveal to the defence if called upon?

45

MCDONALD: I object. Again, relevance, your Honour.

WOODS: Your Honour, this is central to the case.

50 MCDONALD: It may be central to the case. The document my learned friend

is referring to I anticipate will be before the Inquiry. What this witness, who other than in 1974 when he was appearing in Canberra Petty Sessions or courts dealing with criminal matters, can comment about disclosure, in my submission will not assist your Honour.

5

HIS HONOUR: I find it hard to understand how it could, Dr Woods.

WOODS: Your Honour, I'll be brief.

10

HIS HONOUR: It doesn't matter. If it's not relevant it's not relevant.

WOODS: Your Honour, in our respectful submission it is relevant because it goes to the understanding by this witness, which lies behind the evidence he's given today.

15

HIS HONOUR: No, I can't see it, Dr Woods, I'm afraid.

WOODS: Very well. In any event I foreshadow that we'll tender the relevant parts of the document in due course before the Inquiry.

20

Q. Just one final matter, sir. You've told us this morning that the people you worked with within the Department were people many of whom or most of whom you regarded as people of high integrity?

A. Yes.

25

Q. You've told us that the meetings which generated the multiple minutes, or versions of minutes were involving unusual situation of some importance?

A. Yes.

30

Q. Now there was a difference of opinion clearly explained by you in the answers you've given about those various versions of the minutes. What do you say to the proposition that your colleagues who disagreed with you in these meetings were merely expressing a different but legitimate viewpoint than the viewpoint you expressed?

35

A. By colleagues, do you mean colleagues from the Department of Prime Minister and Cabinet, or other attendees of the meeting?

Q. Well first of all, your colleagues in PM and C?

40

A. I sensed that Mr Enfield had a different view of matters, and we've discussed - I've given evidence about Mr Boyle who I believed clearly said some things that later he - he sought to retract from.

Q. Well do you accept that the dispute that occurred in the meeting and following the meeting was a matter about which intelligent people in good faith might disagree?

45

A. I think they were really questions of fact.

GLEESON: Your Honour, just before Counsel Assisting gets up could I have leave to ask just two further questions?

50



HIS HONOUR: Yes, certainly.

<EXAMINATION BY MS GLEESON

5 Q. Mr Cunliffe, you were asked by Mr Brown on my left about what Mr Cavanagh had said at the second interdepartmental meeting about Mr Shillington being fully informed on the background of the case.  
A. Yes.

10 Q. Do you remember whether at the meeting Mr Cavanagh ever indicated that he had met with Mr Shillington?  
A. He did not.

HIS HONOUR: Mr De Brennan.

15 DE BRENNAN: Your Honour, could I seek your Honour's leave to ask two short questions?

HIS HONOUR: Yes.

20 DE BRENNAN: Thank you.

<EXAMINATION BY MR DE BRENNAN

25 Q. Mr Cunliffe, Ms Gleeson of Senior Counsel asked you some questions in relation to document 10.1-8 red page 14, and could I ask please that that be brought up.

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

30 Q. If you go down, Mr Cunliffe to just below halfway on that page you'll see there that you have made a note "New South Wales Police aware that VV" Vico Virkez "gave info to Lithgow Police", do you see that?  
A. Yes.

35 Q. As you sit here now do you think that where you have put "Lithgow Police" that you meant to put "Consulate"?  
A. No.

40 Q. Can I ask you this: you say there "that New South Wales Police are aware that Vic Virkez gave info to Lithgow Police", it's a bit circular--  
A. It's a bit of a nonsense in one sense because Lithgow Police is part of a New South Wales Police--

45 Q. Yes, it's almost redundant and so--  
A. Yes.

50 Q. --could I just ask you to look at it again and just consider whether it's possible you meant to refer to "Consulate" there?  
A. That is possible.

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

5 Q. And you were asked some questions about this: there's a portion there where in the third paragraph there's a reference in inverted commas to "did not now record the incident".

A. Sorry, where are we?

10 Q. If you go to that third paragraph--

A. It opens "Mr Cavanagh".

15 Q. Yes.

A. Yes.

15 Q. It says, "He had tipped off the New South Wales Police at Lithgow Police Station--

A. Yes.

20 Q. --but station records did not now record the incident".

A. Yes.

20 Q. Just with reference to that, in terms of not recording an incident could that be referable to the information about the Consulate?

A. No.

25 EXHIBIT 9.1-46, RED PAGE 64, SHOWN TO WITNESS

30 Q. Mr Cunliffe, you might recall that my learned friend Mr Melican was asking you some questions yesterday that went to the similarity or not between certain documents, namely that the minutes of the interdepartmental meeting, as well as the SIDC-PAV report, do you remember those questions?

A. Yes.

35 Q. And you were taken to paragraph 4(a) and asked to consider that. I just want you to read paragraph (b) if you could.

A. Yes. Yes.

40 Q. You'll agree with me, Mr Cunliffe, that there in that paragraph it refers to "how Virkez was recruited", do you see that word?

A. Yes.

45 Q. So there's this issue of recruitment. And then if you go down to the final sentence you will see that it reads, "Virkez joined the HRS on behalf of the YIS", do you see that?

A. Yes.

MCDONALD: "It seems probable, but not certain".

WITNESS: Yes.

50 DE BRENNAN

Q. Yes, it says, "It seems probable, but not certain that Virkez joined the HRS on behalf of the YIS".

A. Yes.

5 Q. Just returning to the minutes at 10.1-3, red page 7, and I should indicate that this is version 4 or the final iteration--

A. Yes.

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

10

Q. --of these minutes. If you could go to the bottom of the page, which is "paragraph 2 preferred by ASIO".

A. Yes.

15 Q. You would agree with me that there is no reference to this issue of recruitment?

A. Yes.

20 MCDONALD: Your Honour, I object. At the moment we're comparing documents. The document before Mr Cunliffe's never seen before until he arrived here. Anybody can do an exercise of looking at what is recorded there and what was recorded in that document, and what was in the first document isn't recorded there.

25 HIS HONOUR: Yes, what are you trying to get from him, apart from doing what we can do?

30 DE BRENNAN: Your Honour, yesterday it was put to this witness, and this is at transcript 2988 line 45, "Can I suggest to you here in this version of the document it's saying that Mr Virkez is first recorded by this organisation informing", no suggestion of recruitment, "on Croatian activities to the Yugoslav Consulate", so this document was directly questioned upon.

35 HIS HONOUR: It doesn't necessarily mean it was relevant. Anyway.

40 DE BRENNAN: In my respectful submission to have taken the witness to the first paragraph of this document yesterday without giving him the opportunity to consider the second paragraph, which in my respectful submission deals more fully with the relationship between Mr Virkez and the Consulate.

HIS HONOUR: Mr De Brennan, just do so quickly then.

DE BRENNAN: Yes, thank your Honour.

45 Q. You'd agree with me that there is no reference in that paragraph 2 preferred by ASIO to "recruitment"?

A. Yes, I'd agree.

50 Q. And nor is there any reference in that paragraph to Mr Virkez having joined the HRS on behalf of the YIS, or that being probable?

A. That's correct.

5 Q. And finally, you were asked some questions about the SIDC-PAV report, you'd agree with me that in this paragraph 2 nothing is said about the depth of penetration of Croatian extremist groups by YIS in Australia?

A. Yes.

10 Q. And that is an expression you'd accept from me was used in the SID-PAV report?

A. Yes.

WITNESS: Your Honour, could I come back on something, a question that was asked by Counsel for the individual police?

15 HIS HONOUR: Yes.

20 WITNESS: He asked me about whether it could be a matter of honest difference of opinion about things we were talking about which were a bit vaguely defined. I took the question to be about whether the minutes were correct or not and I think that that's - well, I think that they were - the vision - the version as I wrote them were correct. I totally accept that other questions surrounding how this matter should be handled could be matters of difference of opinion between people acting properly.

25 <EXAMINATION BY MS MCDONALD

30 Q. You were asked some questions yesterday about the interdepartmental meeting on 9 April 1980 and you gave evidence that your recollection is it lasted for about an hour?

A. Yes.

Q. Was the meeting held in the morning or the afternoon?

A. The afternoon.

35 Q. Do you recall roughly what time it started?

A. 3 o'clock.

40 Q. You've been asked about the various versions of the minutes. You also gave evidence yesterday where you compared the task of preparing minutes of such a meeting with minutes that may be prepared, for example, as a result of a board meeting of a company where a draft is prepared, they're circulated, input as to whether there's any changes and then formally adopted?

A. As to process, yes, differences.

45 Q. You distinguish that process with the process that was current at the time within Prime Minister and Cabinet?

A. I don't know that I'd put it as broadly as that, but in this case.

50 Q. Yes. My understanding of your evidence was that the process current at that time wasn't the same as the process with a company.

A. In this case, it wasn't the same as with a company. I think the whole thing is coloured by the fact that this was pretty delicate, sensitive stuff.

Q. You drafted the first version?

5 A. Yes.

Q. Your evidence was that that probably was shown, at least, to Mr St John?

A. Yes.

10 Q. Then there is the second version and I can take you to this, but do you recall on the second version, what we suspect to be the second version, you identified Mr Enfield's writing something along the lines of, "Does Mr Boyle agree with this?"?

A. Yes, that it shouldn't be more widely distributed until Mr Boyle had seen it.

15

Q. It was then - something then was circulated to Mr Boyle because you then get this letter where he proposes his version of paragraph number 2?

A. Yes, I think we had a discussion and the letter.

20 Q. Was any version of those minutes, so we've got one, two, three and four, ever, to your knowledge, circulated to any other of the people who attended the meeting other than Mr Boyle and Prime Minister and Cabinet officers?

A. I don't recall that it was.

25 Q. You were asked some questions yesterday about whether you had knowledge around this time, starting with Mr Virkez' letter arriving at Prime Minister and Cabinet, as to whether he was a Serb?

A. Yes.

30 Q. Can you recall an officer of Prime Minister and Cabinet called Mr Woodlock?

A. No.

35 Q. Was it the procedure at December 1979, within Prime Minister and Cabinet, that if something like Mr Virkez's letter arrived there, a more junior officer would read it, prepare a brief summary and then it would be given to a more senior officer like you to read the letter, review the summary by the junior officer, and then decide what to do?

40 A. I don't know about the stage of the review by the junior officer, but apart from that, yes, that broadly was the procedure, as I recall.

45 Q. But, no, what I'm emphasising is that there was a review by an initial junior officer to help you, it's probably as AI is functioning at the moment, it kind of summarises the letter, and then it cuts down on the amount of work you've got to do.

A. That could be. Certainly, it was the case that a great deal of correspondence came in to the Prime Minister and the Department and somebody had to decide where it went.

50 EXHIBIT 5.6-10, RED PAGE 671-136 AND 137, SHOWN TO WITNESS

5 Q. While it's coming up, Mr Cunliffe, to give you some background, Orders for Production of documents has been made by the Inquiry. Documents from Prime Minister and Cabinet have been produced by National Archives which include many of the documents you have been shown over the past three days. This is one of the documents that was produced pursuant to the notice seeking documents from Prime Minister and Cabinet.

A. Yes.

10 Q. I'll just orientate you to the document. It's handwriting and something, "is in Parramatta gaol, He thinks he is innocent."

A. Yes.

15 Q. Could we just go to page 137? There is - our interpretation of it is it's somebody Woodlock.

A. Yes.

Q. I don't know if the initial is J?

A. It looks like, yes.

20 Q. Immediately above that, is it "mark and comment", or - can you interpret the handwriting or--

A. Starting at the top, he says--

25 Q. No, no, no, no sorry. I'm still just at the point of the signature. There's a sign-off immediately before the signature.

A. It looks like Marko.

Q. Marko?

30 A. To me, and maybe a question mark and "comment" maybe, but I'm not absolutely confident of that.

Q. If we go back to page 136, please. If you read through the document, it appears to be referring to the letter and summarising it.

A. Yes.

35

Q. But I note in the second - sorry - the third paragraph, "Reported Croat bomb plan to police", do you see that? Then this is what I wanted to--

A. Yes.

40 Q. --draw your attention to, "Says he's not Croatian - he is a Serb."

A. Yes.

45 Q. Now, this document is undated, but as I said, it appears to be, putting to one side that statement, a summary of some of the assertions being made by Mr Virkez in his letter?

A. I agree.

Q. Do you want an opportunity just to read through both pages?

50 A. I - no, that's fine.

Q. All right. It's not your document?

A. No.

5 Q. But reading through it, do you recall seeing it before or can you assist the Inquiry in any way as to how or why it was generated?

A. I don't. I note it appears to have page number 4 at the top of it. It's a document that I've been shown in the last month or so, but, no, I don't. I don't recall seeing it at the time.

10 Q. Don't and can't remember a Mr Woodlock?

A. No. I have no knowledge of Mr Woodlock, but Prime Minister's probably had 500 people, and people came and people went.

15 Q. You've been asked many questions about, if I can describe it, the beach conversation that was reported to you by Mr St John?

A. Yes.

Q. You were taken to about one or two of subsequent documents that you created about your concern about the conviction of the Croatian Six.

20 A. Yes.

Q. In none of those do you refer to the beach conversation?

A. Correct.

25 Q. I don't want to take you to them particularly now, but do you agree in none of the communications that are attached to your statement that you made when you were still in the Department, do you refer to the beach conversation?

A. I think that's correct, yes.

30 Q. In your letters to Gareth Evans and then in your correspondence with Lionel Bowen, again, you do not refer to the beach conversation?

A. Yes.

35 Q. The first time that you have referred to the beach conversation was when you were writing your statement?

A. Yes.

40 Q. When you gave that evidence, does that refer to any discussions you have had with colleagues, other people leading up to the preparation of your statement, you've never referred to it?

A. No.

Q. You never referred to it when you were interviewed by Hamish McDonald in 2012?

45 A. I don't recall.

Q. And also, I think if there was--

A. That's probably right, yes.

50 Q. --a subsequent interview which led to the publication of his book in 2019,

again, you did not tell Mr McDonald about it?

A. Yes.

5 Q. Does that support the proposition that was put to you by Mr Brown that you are mistaken, 44 years later about this conversation with Mr St John at Prime Minister and Cabinet?

A. I concede that it gives some aid to that argument, but I am very certain that I had that conversation with Mr St John and that that was what he had to say.

10 MCDONALD: Would your Honour just excuse me, please? No further questions, your Honour.

15 HIS HONOUR: Mr Cunliffe, thank you very much for your preparation and cooperation with the Inquiry. That's the conclusion and you're free to go. I'm not formally excusing any of the witnesses. If it is necessary for you to be recalled, you'll be notified.

WITNESS: Thank you, your Honour.

20 HIS HONOUR: Thank you.

<THE WITNESS WITHDREW

25 We are concluded for the day.

MCDONALD: Yes, your Honour, and for this tranche of evidence. We're returning--

30 HIS HONOUR: 1 November, I think.

MCDONALD: Yes. My recollection is that's a Friday.

HIS HONOUR: Yes.

35 MCDONALD: And then we have the - at least most of the next week to conclude the evidence in the Inquiry.

HIS HONOUR: Yes. It has to conclude in that time.

40 MCDONALD: Yes.

HIS HONOUR: The evidence must complete in that time. The room will be in use by others in the intervening period, so everyone will need to take away what they wish. I'll adjourn.

45 ADJOURNED PART HEARD TO FRIDAY 1 NOVEMBER 2024