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SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 FORTIETH DAY: MONDAY 4 NOVEMBER 2024

INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX

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EPSTEIN: Your Honour, before we commence with the first witness of the day, can I turn to an application your Honour has received on the behalf of the Commonwealth dated 1 November 2024 in respect of three documents in the Tender Bundle, Exhibits 9.1-107, 9.1-105 and 10.3-81.

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HIS HONOUR: Yes.

20

EPSTEIN: Your Honour has received some submissions from Counsel Assisting today that sets out Counsel Assisting's position. In brief, your Honour, whilst there is debate about the extent of the *Parliamentary Privileges Act* and section 16, in our submission the documents are of marginal relevance, and, therefore, might be removed from the Tender Bundle, lest there be any doubt as to the application of section 16.

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HIS HONOUR: Does anyone wish to be heard in relation to this application? No? All right. There's two alternative reasons why the documents should be removed. One is, if any party wished to make use of the documents, it would be of prohibited use pursuant section 16(3) of the *Parliamentary Privileges Act*. If nobody sought to make any use of it, the documents would be inadmissible because they're irrelevant. So on either

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basis, I authorise the removal of those three documents from the Tender Bundle.

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EPSTEIN: Thank you, your Honour. Could I hand up a copy of the application and ask that it be marked an MFI in the Inquiry. MFI 14.

MFI #14 APPLICATION FOR THE REMOVAL OF EXHIBITS 9.1-107, 9.1-105 AND 10.3-81 MADE ON BEHALF OF THE COMMONWEALTH

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AUDIO VISUAL LINK COMMENCED AT 11.37AM

<RICHARD ARTHUR ST JOHN, SWORN(11.37AM)

<EXAMINATION BY MS MELIS

5 Q. What is your full name?
A. Richard Arthur St John.

10 Q. Mr St John, you made a statement dated 30 October 2024 concerning your knowledge and role in the Croatian Six matter; is that correct?
A. Yes, I did.

Q. Have you recently read that statement?
A. Yes, I have.

15 Q. Are there any changes you wish to make?
A. No. No changes.

20 EXHIBIT #15.31 STATEMENT OF MR RICHARD ARTHUR ST JOHN DATED 30/10/24 TENDERED, ADMITTED WITHOUT OBJECTION

Q. Mr St John, you tell us in your statement at paragraph 4 that you spent some 20 years with the Commonwealth Government service between 1967 and 1988; is that correct?
A. Yes. That's correct.

25 Q. You took up a position as a First Assistant Secretary division Head with the Department of the Premier and Cabinet as at March 1979; is that correct?
A. Yes. The department of Prime Minister and Cabinet, that's correct.

30 Q. You were in that particular role until 1985; is that correct?
A. I believe so. Yes, that's correct.

35 Q. In that role, the Parliamentary Branch and the Government and Legal Branch reported to you; is that right?
A. That's correct. In the first years, 1979, 80, 81, certainly through that period. There was some change in arrangements at a later stage.

40 Q. Mr Ian Cunliffe was a person who reported to you in that period you've just described.
A. Yes, he was a member of the government and legal branch which reported to me.

45 Q. In turn, you reported to the Secretary of Prime Minister and Cabinet through one of three Deputy Secretaries, and you tell us at paragraph 8 that one of those Deputy Secretaries included John Enfield; is that correct?
A. Yes. That's correct.

50 Q. You say that John Enfield, his responsibilities included international and security. On that basis, Mr St John, do we take it that in respect of the Croatian Six matter, it was Mr Enfield you were reporting to?

A. Yes. I think that was the - certainly predominantly. I'm not sure. There may have been one or two other involvements, but it - the - that was the flow in relation to that matter.

5 Q. There's just one matter I wish to take you to, Mr St John, and ask for some further elaboration, if you can, and that is in respect of the Interdepartmental Committee meeting that you attended in part on 9 April 1980. Do you follow?
A. Yes.

10 Q. If I could just take you, please, to paragraph 28 of your statement.
A. May I refer to the statement?

Q. Excuse me. Yes, your statement. That's right. Paragraph 28. Just take a moment there to familiarise yourself with that paragraph.
15 A. Yes.

Q. You tell us there that you recall that after a good deal of discussion, the meeting concluded that the New South Wales Prosecution had been appropriately briefed and put on notice of the links between Mr Virkez and
20 Yugoslav authorities. "I recall obtaining clarification at some point during the meeting that communication to the New South Wales Prosecution included lawyers acting for the prosecution, as well as New South Wales Police." My question, Mr St John, is can you be any more specific about the nature of the links between Mr Virkez and Yugoslav authorities that you were appraised of
25 at that meeting on 9 April 1980?
A. No, I cannot recall.

Q. Mr St John, is the sum of what you can recall about your involvement about the Croatian Six and the status of Mr Virkez contained in your statement?
30 A. I'm sorry. I didn't - would you mind repeating that question?

Q. Is the total sum of what you can recall about your involvement in the Croatian Six matter and any other knowledge you came to know about Mr Virkez contained in your statement?
35 A. I don't have an independent recollection of the detail of the exchanges at the meeting. I have had reference in recent days to documents which provide some content, but I can't add to what I see.

40 <EXAMINATION BY MS GLEESON

Q. Mr St John, my name is Ms Gleeson. I appear for the New South Wales Commissioner of Police. Can you hear me?
A. Yes, I can, Ms Gleeson.

45 Q. I'm going to ask you some questions about your statement and some of the documents that are referred to in your statement. They will largely pick up on what Counsel Assisting has just asked you about your recollection, and whether or not the context of the documents assists your memory or otherwise allows you to make some conclusions about what occurred. Can I start, first,
50 with a document which should come up on the screen? If you have any

difficulties in seeing those documents or interpreting them, please let us know. The first document is Exhibit 5.6-9, page 671-47. We're just dealing with some technicalities, Mr St John. It should come up shortly.

5 HIS HONOUR: Is it just slow loading or is there some other problem?

GLEESON: Your Honour, I've just had a very helpful suggestion from Mr Melican. As I apprehend it from the logo at the back, he's in an AGS office. I have a list of the documents I want to take him to. We could stand
10 him down for a short period, and I could send a list of the documents, and they could be printed for him to look at in hard copy.

HIS HONOUR: Does it look like we're close to resolving this issue, or should I adjourn for a five minutes?
15

SHORT ADJOURNMENT

EXHIBIT 5.6-9, RED PAGE 671-47, SHOWN TO WITNESS

20 GLEESON

Q. Mr St John, can you now see the document that's appeared on the screen?

A. I can see it. I have trouble reading it but-

25 Q. Why don't we get started. If it looks like it's difficult - it appears that a bundle is going to be prepared for you in hard copy and maybe we can go down that road, but let's just see how we proceed. If you are having difficulty, though, please let us know. Now, the document that is on the screen now, is a memorandum from Mr Cunliffe. You can see on the top page on the left
30 addressed to you, a copy to Mr Cogan?

A. Yes.

Q. This is dated 2 April 1980. At paragraph 22 of your statement, you've accepted that your handwriting is in the notation, which is in the top front page
35 of the memorandum?

A. Yes. I believe that's so.

Q. I take it that having made this annotation and the inquiry of Mr Cunliffe obtained in it, you've read this memorandum?

40 A. Have I read the memorandum?

Q. Yes.

A. I expect I would have.

45 Q. You refer there, and you can see it in the highlighted portion on the document, you can see an inquiry to be made by Mr Cunliffe from the "Australian Federal Police" as to "whether the New South Wales authorities knew of Mr Virkez's status"?

A. Yes.

50

Q. Do you have an idea of what you meant by the word "status" in that note?

A. No. I don't have a recall of what I meant, but - I'm sorry.

Q. No. Please go on.

5 A. Well, "status" is relevant standing in relation to the Yugoslav authorities I would think, from looking at the memo.

Q. Do you have an idea of what you meant by the phrase, "New South Wales authorities" in that note?

10 A. No. I can't recall what I had in mind at that time, but I would think I would have in mind law enforcement authorities, prosecution.

Q. By "prosecution", does that mean a distinction between the New South Wales Police on the one hand and the lawyers conducting the prosecution on the other?

15 A. I don't think I would have had any particular distinction or prior meaning on that.

Q. Can I ask you just to go over the page to 671-48, and just to see whether this assists you. You can see at paragraph 5 the statement that, "Recently we were told by the AFP that it is satisfied Mr Virkez has been operating in Australia as an agent of the Yugoslav Government..."?

20 A. Yes. I see that.

Q. Does that assist you as to whether or not it's likely what you're referring to in relation to "status" was whether or not he was an agent of the Yugoslav Government?

25 A. Well, his status generally. His relationship to the Yugoslav Government. I have no independent recollection of precisely what I was referring to, but in the context, that's what I would have thought. It was a reference to the relationship, more generally.

Q. Would thought include whether or not there was a question as to whether or not Mr Virkez was an agent of the Yugoslav Government?

30 A. Well, yes. Presumably.

Q. Can I ask you now just to look at paragraph six, the next paragraph. It makes reference there to three things. The first is that information, "...that Mr Virkez wants 'to make a deal with the New South Wales Authorities'...". Then it refers a few lines down to, "The New South Wales Crown Law authorities are anxious to come to some form of arrangement with Mr Virkez...", and then it refers to, "The New South Wales Police are anxious to have some form of commitment by the Commonwealth...". Can you see all of those references?

40 A. I see them.

Q. There're differences obviously between there being authorities, Crown law authorities, and the police. Do you accept that?

45 A. So I missed the question.

50

Q. What's referred to in that paragraph makes a number of different references to New South Wales authorities, Crown law authorities, and the police.

A. It - yes--

5

Q. Do you agree with that?

A. --..(not transcribable)..

10 Q. You'll remember that Counsel Assisting took you to paragraph 28 of your statement, and in particular, that you had sought clarification at the interdepartmental meeting of 9 April--

A. Yes.

15 Q. --1980 as to whether or not the New South Wales Police and the lawyers acting for the prosecution were aware of Mr Virkez's links with the Yugoslav Government.

A. Yes.

20 Q. Does it follow from your note that what you were interested in was whether both of those entities had the information that the Commonwealth had in relation to Mr Virkez's links with the New South Wales Government?

HIS HONOUR: With the Yugoslav Government.

25 GLEESON

Q. I'm sorry. With the Yugoslav Government.

A. I'm not - I haven't understood the question.

30 Q. You've made a reference at paragraph 28 of your statement to--

A. Yes.

35 Q. --you obtaining clarification at the 9 April meeting that both the prosecution lawyers and the police had been put on notice of the links between Virkez and the Yugoslav authorities.

A. Yes. Yes.

40 Q. If you accept from me that as at 2 April 1980, the trial of the defendants to the prosecution was due to commence in just short of a fortnight, do you accept that it was important to you to be satisfied about whether both the police and the Crown Prosecutor were to be informed of what the Commonwealth knew about the links between Mr Virkez and the Yugoslav authorities?

45 A. I recall no more than I can - that I've stated. That's not - that - but my interest was in seeing - at the time, I thought it was relevant to see whether the prosecution, the legal side, as well as the police, not particularly one or the other, but - and I thought that was a matter of interest.

50 Q. Can I turn now to the parts of your statement where you refer to the preparation of the minutes of the 9 April interdepartmental meeting?

A. Yes.

Q. At paragraph 31 of your statement, you say you have no recollection of being involved in the preparation of the minutes of the meeting.

5 A. I have no independent recollection of the process.

Q. But you've reviewed some of the documents in relation to the preparation of those minutes, which suggests that you did have an involvement; is that right?

10 A. Yes, that's correct.

Q. You also say at paragraph 30 that you have no recollection of there being a formal practice or procedure in relation to the minutes of meetings involving the Department of Prime Minister and Cabinet.

15 A. Any practice and - well, not that I can recall.

Q. Do you recall, even if it's at a general level, that there was a process of preparing minutes at that time that involved circulating the minutes to the attendees so that if they did have issues with what was recorded in the minutes, they could be raised?

20 A. I think that was quite a common practice.

Q. Could we go--

A. Depending--

25

Q. I'm so sorry.

A. No. The practice probably varied between groups, and some would be quite formal. Others, more ad hoc, I would suggest, but I'm - it's a long time.

30 GLEESON: Can we now go to a note, which is at Exhibit 5.6-9, red page 671-27? This is a handwritten note.

EXHIBIT 5.6-9, RED PAGE 671-27, SHOWN TO WITNESS

35 Q. If you've got difficulty with it, please let me know, but just to orient you, it seems like in the middle of the page in the large writing, that's a note that you've identified as being from Mr Cunliffe; is that right?

A. Yes. I believe in my statement, I identified my own writing, and I believe that would be Mr Cunliffe.

40

Q. Your writing is in the top right-hand side of the page.

A. Is top right-hand side.

45 Q. Then on the top left-hand side, there's a small note, which you've identified as being from Mr Enfield.

A. Yes. I'm stretching a bit to see the screen, but that's as I recall it.

50 Q. I'll just recite some parts of it, but if you need to have a look just to clarify, please let me know. The first matter is that the note from Mr Cunliffe refers to providing some abbreviated minutes of the meeting.

A. Right.

Q. Your memory in the context was they were the minutes of the 9 April meeting.

5 A. I would think so.

Q. Then at paragraph 33 of your statement, you've referred to what's recorded next to the number one in your note, which is to request that Mr Enfield take a look at the meeting, and then you say that it was agreed at the meeting that a record would be circulated.

10

A. Yes, I can see that.

Q. That suggests that this was the process that was adopted for the minutes of the 9 April meeting, namely that it would go around to the attendees to see whether there are any difficulties with what was recorded; is that right?

15

A. That's what - as it appears, yes.

Q. Then in Mr Enfield's note, he says, firstly, "No need now for letters," which I won't worry about, and second says, "Some slight changes in minutes."

20

A. Yes.

Q. Can I lastly just ask you in this document to have a look just in the top right-hand corner, and can you see that there's a blue number 21 in the corner?

25

A. Yes, in the right-hand corner. Top right-hand.

GLEESON: Can we go over to page 671-28, and if we just, again, enhance up to the top right-hand corner of that document, and you can see that there's a blue number 22?

30

EXHIBIT 5.6-9, RED PAGE 671-28, SHOWN TO WITNESS

WITNESS: Yes.

35

Q. If these documents are bundled together and numbered in that way, does that suggest that this document, which you can see says that it's the minutes of the meeting held on 9 April 1980, are the minutes that are referred to by Mr Enfield as being those containing his slight changes?

40

A. I can't be certain of that, but it could well be if it's - I don't know what sequence, what file that comes on.

Q. Just to assist, could we just scroll down a little bit, and can you see on the left-hand side, there's a handwritten annotation?

45

A. Yes.

Q. Do you recognise the handwriting in that annotation?

A. I think I said in my statement that it may be Mr Enfield. I'm not certain in that.

50

Q. Would that assist in a conclusion that these were the minutes that

Mr Enfield had provided, together with his note on the handwritten note that we just looked at?

A. Well, that could well be. I can't recall or I can't independently recall what I saw at the time, but that's possible.

5

Q. You can see in both the first and second full paragraphs of that page that there are some parts which are struck out, and then some other replacement words written in in handwriting.

A. Yes.

10

Q. Do they also look like Mr Enfield's handwriting?

A. I'm not sure.

15

Q. It's likely, isn't it, that if he's made a handwritten annotation to the left, then he's probably made these handwritten annotations elsewhere?

A. It could be if he simply made it - made stages, but I--

20

Q. Can I just ask you to assume for the purposes of the next question that these documents do travel together in the way that I've just suggested?

A. Yes.

25

Q. I'm sorry. I'll just get the programmer to scroll out again. If we just scroll down a little bit to the third full paragraph on that page commencing with "Mr Cavanagh". You can see there that that paragraph said, "Mr Cavanagh said that the prosecutor, Mr Shillington, is fully informed on the background to the case. Mr Cavanagh indicated that Mr Shillington knows all about Virkez's YIS links." You can see that.

A. Yes, I can see that.

30

Q. I'm sorry. I will just take a step back. You can see there there's a reference to the prosecutor, Mr Shillington. Were you aware at that time that the Crown Prosecutor conducting the prosecution of the Croatian defendants was Mr Shillington QC?

35

A. I'm not sure. His name may have been mentioned at the April meeting. I'm not sure, but at some stage, his name was mentioned in communications.

40

Q. If these are minutes of the meeting on 9 April 1980, is it likely that this was the time at which Mr Shillington was mentioned?

A. That suggests it was, but I don't recall hearing Mr Shillington's name, but it's possible. It suggests that it was mentioned.

45

Q. Also, if you take your mind back to paragraph 28 of your statement where you refer to you having obtained clarification that both the prosecuting lawyers and the New South Wales Police were aware of Mr Virkez's Yugoslav links, do you accept that it's likely from these minutes that Mr Cavanagh told you at that meeting about these matters, and that satisfied your query?

A. I'm sorry. I didn't quite catch that.

50

Q. Do you accept, based on what you say at paragraph 28 of your statement, that you were the one who sought clarification of whether the prosecution

lawyers and the New South Wales Police were informed of Mr Virkez's Yugoslav links, that what is recorded here from Mr Cavanagh was the information that satisfied your query?

5 A. Well, I recall raising about it. I may not have been the only one, and my recollection is that I came away feeling that had been - had been answered. Looking at this draft, if that's what it is, that's - seems to address that point. Whether there was more said or - or more or less, I have no recollection.

10 Q. I'll just raise this, because it will come up in some questions I ask later. You can see on the third line of the paragraph I've just taken you to, that Mr Cavanagh said, "...that Mr Shillington knows all about", and it's recorded he used the phrase, "YIS links".

15 A. Yes.

EXHIBIT 10.1-6, RED PAGE 12, SHOWN TO WITNESS

Q. You can see here that there is an extract which states:

20 "On the 16 March 1979, officers of ASIO briefed Assistant Commissioner Whitelaw of the New South Wales police on VIRKEZ's activities on behalf of the Consulate-General."

Then the second sentence says:

25 "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."

30 There's then some writing underneath, and if we just pan out, so that the whole of the document can be seen, you can see that there's a line there which comes down to a note at the bottom of the page, which in paragraph 37 you said was a note that you had made on this document because it's in your handwriting?

35 A. Yes.

Q. That note said, "And it was explained that in providing the intelligence, ASIO was not...", it says, "assenting", and then it's crossed out and it says, "...suggesting that Virkez was an agent provocateur."

40 A. Yes. I see that.

Q. If you accept from me, and I can take you back to the draft minute, that the printed text at the top of the page relates to the part of the meeting at which Mr Boyle of ASIO was addressing communications with Assistant Commissioner Whitelaw.

45 A. Yes.

Q. In this document, you've made a suggestion as to the text that should be included about what was told to Mr Whitelaw.

50 A. Yes. I've suggested a--

Q. I assume you--

A. A more concise wording but addressing the point that was on the paper.

5 Q. I'm sorry, I didn't quite understand that answer. You were saying it was addressing the point that was on the paper?

A. Addressing the text that was before me.

10 Q. Is what you're saying there is that there's some text, which is in larger writing, and what you've sought to do is to summarise what is contained--

A. Yes.

15 Q. --in the longer text?

A. I think that's what I would say. That in doing that, I was summarising. I was stating it more shortly.

20 Q. I assume that in stating it more shortly, you wouldn't have done so unless you considered that what you suggested was an accurate record of what you recall--

A. Yes.

25 Q. --Mr Boyle telling the meeting?

A. Yes.

25 GLEESON: You observe at paragraph 39 of your statement that your note on this document is reflected in a later version of the minutes, which is at Exhibit 10.1-3. I'll just show you that document.

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

30 Q. You can see in the second full paragraph and in the last couple of lines it says, "...that there was no objection to the Head of the Police Prosecution Branch being given the information provided it was not attributed to ASIO", and this is the part that reflects your note, "...and that in providing the intelligence, ASIO was not suggesting that Virkez was an agent provocateur."

35 A. Yes.

40 Q. Those are changes that you've suggested to one paragraph in these draft minutes. Can I ask you to go to page 8 of this document, over the page. If we just scroll to the first paragraph. You can see there the paragraph that I took you to in the earlier version of the minutes; namely, that, "Mr Cavanagh said that the Prosecutor, Mr Shillington, is fully informed on the background to the case."

A. Yes.

45 Q. That hasn't changed from the last version?

A. Well, I'm not aware of any change. I can't see.

50 Q. I won't ask you to compare the two. If you accept from me--

A. Yes. Can I--

Q. --that it's a change--

A. I'm just reacting to the documents. I simply do not recall.

5 Q. These are just propositions I'm asking you to accept from the documentary record as what is likely to have transpired, and if they assist your memory, then that's very helpful.

A. Okay.

10 Q. If we can just jump back now to page seven of this document. You can see under the double line there that it's got, firstly, under the heading, "Paragraph 2 of my draft minutes". Then in the next paragraph, a heading, "The paragraph 2 preferred by ASIO read:". You can see that?

A. Yes, I see that.

15 Q. In the first of the suggested paragraphs two it states that, "Mr Boyle said that Virkez is an agent run by a Yugoslav Intelligence Service (YIS) officer from August 1978." And then that, "Virkez is himself suspected of being a YIS officer." You can see that?

A. I see those words.

20

Q. Then under the second version of this paragraph two it says, "Mr Boyle said that ASIO information indicated that Virkez had been reporting since August 1978, to a suspected Yugoslav Intelligence Service officer working in the Yugoslav Consulate-General."

25

A. Yes.

30 Q. There's a distinction there, isn't it, between Mr Virkez himself being, firstly, a, "suspected YIS officer" in the first version." In the second version, that he is simply reporting, "...to a suspected Yugoslav Intelligence Service officer...". Do you accept that that's a distinction between the role that Mr Virkez is said to have played in relation to information to the Yugoslav authorities?

A. I see it on the document. Again, this is not a document I think I had seen, other than refreshing my memory in recent days. So I don't know if I have any useful comment on it.

35

Q. The only conclusion that I want to obtain from you is that, firstly, I take it from what you've just said that you don't have any recollection of whether any issue around the competing paragraphs two of the minutes was resolved one way or other in a final version of the minutes?

40

A. No. And with the refreshing of my memory, I have seen it brought to recall some steps along the way to produce minutes, but it hasn't, to my mind, indicated whether or not there were minutes settled and settled and/or circulated.

45 GLEESON: In paragraph 39 of your statement, you make reference to a note that you made on a memorandum, which is at Exhibit 10.1-7.

EXHIBIT 10.1-7, RED PAGE 13, SHOWN TO WITNESS

50 Q. This is a memorandum, which you can see is from Mr Cunliffe, referring to

the meeting of 9 April 1980 and addressed to Mr Enfield but through you. You can see that what is referred to by Mr Cunliffe in this memorandum, to there being, "...a copy of draft minutes...", speaking of them being, "...cleared, as you instructed, with Mr Boyle." And then, "Mr Boyle's memorandum", which I'll
5 come to in a moment, "is attached." Then two issues: the first is, "A comparison of the old and the new paragraph 2 will reveal that Mr Boyle's paragraph makes references to the intelligence status of Virkez and his contact in the Yugoslav Consulate General more 'rubbery'." That appears to be a reference to the competing paragraphs 2 in the document that we've just
10 seen. Do you agree with that?

A. Yes.

Q. The second matter is that it says that, "...Mr Boyle also mentioned a second proviso: that the Police Prosecution Branch should be told in a way to avoid any allegations that Virkez was an agent provocateur."
15

A. Yes.

Q. That was the matter that you sought to summarise in the handwritten note that made its way into the minutes that we just recently looked at; is that right?
20

A. Yes. It appears so.

Q. The drafting change that you suggested in relation to this second matter, communications to the Prosecution Branch in such a way as to avoid allegations that Virkez was agent provocateur, don't have any bearing on the first issue, which is the nature of Mr Virkez's relationships with the Yugoslav Consulate-General and his intelligence status. Do you agree with that?
25

A. Yes. It does appear to address that.

Q. Does that suggest to you that in making a change, or suggesting a change, to the second part of that paragraph, that you didn't have any concerns with the accuracy of what Mr Boyle was saying about the first part of that paragraph?
30

A. No, I - I'm not sure if I got the question, but I'm not - let me go back. I don't have a recall, I've stated, of the process around the minutes. I'm reminded that
35 I was, at least in part, part of a sequence or a back and forth, but beyond that, I don't have particulars.

Q. Would you accept that it's likely that, presented with two issues with the paragraph suggested by Mr Boyle, if you suggested an amendment that addressed one of those issues, that you didn't have any issue with what was recorded that raised the first of the issues?
40

A. So I missed the question. That I--

MELIS: Your Honour, I object. This question is quite broad in its nature, and I think Mr St John is getting quite confused with it.
45

GLEESON: I'll put it in a different way.

Q. Can we go back to Exhibit 10.1-3? If we can just scroll up a little. You can see first in the paragraph at the bottom of where you're looking now that there
50

is the suggestion that you have made in relation to Mr Virkez being an agent provocateur.

A. Yes.

5 Q. That was the change that you had suggested to what was put forward by Mr Boyle that Mr Cunliffe had an issue with in his memorandum to Mr Enfield and you.

A. Yes.

10 Q. Can I ask you to scroll down now? You can see there that there's a suggestion that I took to you, firstly, in the first paragraphs, paragraph two, which is the version put forward by Mr Cunliffe in relation to Mr Virkez's links to the Yugoslav Intelligence Service as he has put it; that's right? Do you agree with that?

15 A. Again, you're taking me into a document which I have no recollection, and I'm not sure what I can helpfully or - say.

20 Q. I'm just asking you to accept a logical proposition that if Mr Cunliffe has come to you with two issues about Mr Boyle's proposed paragraph two, and you have suggested an amendment that addressed one of them. You did not have an issue with the accuracy of the other matter that was put forward by Mr Boyle in that paragraph?

25 MELICAN: Your Honour, I object to that question. The witness has said he has no recollection of seeing these documents or of these relevant events. I take the point that my learned friend is making, but it's really a matter for submission at this point, in my submission.

30 HIS HONOUR: I think so, in the absence of Mr Rose being able to recollect anything beyond what he can read, just as well as we can read.

GLEESON

35 Q. Can I turn now to a different matter, which is paragraphs 45 to 47 of your statement?

A. Yes.

40 Q. This is in relation to something you were shown that Mr Cunliffe had said in a statement to this Commission about an encounter that he says you told him you had with Mr Shillington at a beach on the New South Wales South Coast.

A. Yes.

45 Q. You say that you don't have any recollection of having a conversation with Cunliffe in those terms.

A. I have no recollection of such a conversation.

Q. You also say in paragraph 46 that you wouldn't have had such a conversation with Mr Shillington at the beach.

50 A. No conversation at all connected with the case. If I had, I believe I would've remembered. I did not, and I did not remember.

Q. Can I take you now to paragraph 47, which is the suggestion that you make that in small talk that you had with Mr Cunliffe, you may have made some light-hearted statement to the effect of, "Guess who I saw in the surf the other week", which I--

5 A. That's--

Q. --assume means Mr Shillington.

A. That's possible because at some point, and it was some point after - I believe, some point at least months after the April 1980 meeting, that it would've been the first opportunity in the January holidays, so at some point, I put Mr Shillington and the case we had some involvement in at the Canberra and together - I may have - I worked quite closely with Mr Cunliffe on various matters and could have, but I have no recollection, but could have said something like, "Guess who I ran into."

15

Q. Is it likely, if you're mentioning Mr Shillington to Mr Cunliffe, that the reason why Mr Cunliffe was aware of Mr Shillington, and it was of passing interest to both of you that you saw him in the surf one week, was because--

A. Yeah.

20

Q. --his name had been addressed as one of the prosecutors who was of relevance to your inquiries about what the New South Wales authorities knew about Mr Virkez's status?

A. Yeah. Well, I'm sorry. I had trouble catching all of your question, but if it was a matter of mutual interest or some passing interest, yes, that's why I could have mentioned it to Mr Cunliffe. I don't believe so, but it wouldn't surprise me if that had come up if - given Mr Cunliffe has a recollection.

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Q. Can you think of any other reason why Mr Cunliffe would have a passing interest in your having seen Mr Shillington?

30

A. No. No, I haven't. No, sorry. No idea.

NO EXAMINATION BY MR BUCHANAN, MR MELICAN, MR BROWN, MS BASHIR AND DR WOODS

35

<THE WITNESS WITHDREW

AUDIO VISUAL LINK CONCLUDED AT 12.45PM

40 MELIS: Your Honour, the next witness is Mr Brajkovic. May we please rise for an earlier lunch before he is called?

HIS HONOUR: Yes. How long will Mr Brajkovic's evidence take? Do we have any estimate?

45

WOODS: From my part, I'll be 15 minutes, 20 minutes.

HIS HONOUR: Will we comfortably finish him this afternoon?

50 MELIS: Yes, your Honour. The rough estimate is about an hour with

Mr Brajkovic.

HIS HONOUR: I'll adjourn until 2 o'clock.

5 BASHIR: Sorry, your Honour. I will also be questioning Mr Brajkovic, and we won't comfortably finish this afternoon, given those estimates.

HIS HONOUR: I'll still adjourn until two.

10 ADJOURNED PART HEARD TO TUESDAY 5 NOVEMBER 2024