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Parliamentary Commission of Inquiry
G.P.O. Box 5218,
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FILE No. C2 /

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FILE No. C2

MEMORANDUM RE MATTERS NUMBERED 4, 5, 7, 8, 9, 10, 12, 17, 19, 21, 22, 28, 29, 30, 31, 32, 34, 35, 37, 38, 41.

Matters Raised with Counsel Assisting but not Drawn as Specific Allegations in Precise Terms.

This memorandum deals with 21 matters which in the opinion of those assisting the Commission could not or, after investigation, did not give rise to a prima facie case of misbehaviour within the meaning of Section 72 of the Constitution. It is therefore proposed that these matters not be drawn as specific allegations in precise terms and that there be no further inquiry into them.

Matter No.4 - Sala

This matter involves an allegation that the Judge, whilst Attorney-General, wrongfully or improperly ordered the return to one Ramon Sala of a passport and his release from custody.

All the relevant Departmental files have been examined as also has been the official report of Mr A.C. Menzies.

The available evidence supports the conclusion of Mr Menzies that there was no evidence of any impropriety on the Judge's part. While it is true to say that there was room for disagreement about the directions given by the Judge and that the Australian Federal Police objected to the course taken, the action by the Judge could not constitute misbehaviour within the meaning of Section 72 of the Constitution. We recommend that the matter be taken no further.

Matter No.5 - Saffron surveillance

This matter consisted of an allegation that the Judge, whilst Attorney-General and Minister for Customs and Excise, directed that Customs surveillance of Mr A.G. Saffron be downgraded. The gravamen of the complaint was that the Judge had exercised his Ministerial powers for an improper purpose.

This matter was the subject of a Report of Permanent Heads on Allegations in the National Times of 10 August 1984. That Report pointed out, as an examination of the files of the relevant agencies confirms to be the case, that apart from one document entitled "Note for File" prepared by a Sergeant Martin

on 30 January 1975 there was no record of any Ministerial direction or involvement in the matter. That note for file attributed to a Kevin Wilson the statement that the A-G had directed that Saffron was not to receive a baggage search. When interviewed by the Permanent Heads Committee, Mr Wilson said that in all his dealings with the matter he believed that the direction came from the Comptroller-General. The conclusions of the Report of Permanent Heads appear at paras 45 and 46. Those conclusions were that the decision to reduce the Customs surveillance of Saffron to providing advice and travel details was reasonable and appropriate and that it was more probable than not that the decision to vary the surveillance of Saffron was made by the then Comptroller-General. This, it was concluded, did not rule out the possibility that the Minister spoke to the Comptroller-General who may have reflected the Minister's views when speaking to a Mr O'Connor, the officer in the Department who passed on the directions to the police.

It is recommended that the Commission proceed in accordance with Section 5(3) of the Parliamentary Commission of Inquiry Act and, having regard to the conclusions of the Permanent Heads Inquiry, take the matter no further.

Matter No.7 - Ethiopian Airlines

This matter was the subject of questions in the Senate in late 1974 and 1975. The contention was that the Judge, whilst Attorney-General, behaved improperly by accepting free or discounted overseas air travel as a result of his wife's employment with Ethiopian Airlines. Investigation revealed nothing improper in the appointment of Mrs. Murphy as a public relations consultant nor in the fact that in lieu of salary she acquired and exercised entitlements to free or discounted travel for herself and her family.

Whatever view one may take as to the propriety of a law officer accepting free or discounted travel in the circumstances set out above, the facts disclosed could not, in our view, amount to misbehaviour within the meaning of Section 72 of the Constitution and accordingly we recommend the matter be taken no further.

Matters No.8 and 30 Mrs Murphy's diamond; Quartermaine - Moll tax evasion.

These matters were the subject, in late 1984, of questions in

the Senate. It was alleged that the Judge had been involved, at some stage during or prior to 1979, in a tax avoidance scheme in Western Australia involving one Christo Moll, Murray Quartermaine and others and that Mrs Murphy had either purchased or been given a diamond by Moll.

Material was provided to the Commission in support of these claims and consisted of two diamond valuation certificates, a cheque butt of Moll's with the name Mrs L Murphy and a letter dated 18 June 1979 allegedly written by a Dr Tiller, one of the participants in the scheme, to Quartermaine, implicating the Judge in their activities.

These matters were investigated by the Commission and those investigations confirmed the conclusion to which the Australian Federal Police had earlier come that the documentation provided in relation to the alleged diamond was unreliable and in all likelihood false and that the letter from Dr Tiller was probably false and possibly written by Moll to discredit Quartermaine.

In the light of these circumstances it is in our view impossible to conclude that there is any prima facie evidence

of misbehaviour within the meaning of Section 72 of the Constitution and we recommend that the matters be taken no further.

Matter No.9 - Soviet espionage

Two individuals jointly made the claim that the Judge was a Soviet spy and a member of a Soviet spy ring operating in Canberra. This allegation was supported by no evidence whatever and rested in mere assertion of a purely speculative kind.

We recommend that the Commission should make no inquiry into this matter.

Matter No.10 - Stephen Bazley

Information was given to those assisting the Commission that Stephen Bazley had alleged criminal conduct on the part of the Judge. The allegation was made in a taped interview with a member of the Australian Federal Police and was that the Judge wanted Bazley to "knock out" George Freeman. Bazley said that the request had been passed on to him by a named barrister on an occasion when, according to Bazley, he and the barrister went to the Judge's home in Sydney.

The New South Wales Police had investigated this allegation in 1985 and the staff of the Commission was given access to the relevant New South Wales Police records.

Those records showed that the conclusion of the police investigation was that the allegation was 'a complete fabrication' and that further enquiries would be a 'complete waste of time'. These conclusions were based on Bazley's lack of credibility, his refusal to assist the New South Wales Police in their inquiry into this allegation, his refusal to adopt the statement he had made to the Australian Federal Police and the clear and comprehensive denial by the barrister in a signed statement that he had or would have spoken to Bazley in the terms alleged. Indeed the barrister said that he had met Bazley only twice, once when he had acted for him and once when Bazley had approached him in public and the barrister had walked away.

There being no material which might amount to prima facie evidence of misbehaviour within the meaning of Section 72 of the Constitution we recommend the matter be taken no further.

Matter No.12 - Illegal immigration

It was alleged that the Judge had been involved in an organisation for the illegal immigration into Australia of Filipinos and Koreans. It was not made clear in the allegation whether the conduct was said to have taken place before or after the Judge's appointment to the High Court. No evidence was provided in support of the allegation.

Those assisting the Commission asked the Department of Immigration for all its files relevant to the allegation. Examination of the files provided to the Commission revealed nothing to support the allegation; neither did inquiries made of the New South Wales Police which had made some investigations into the question of the involvement of Ryan or Saffron in such a scheme.

There being no material which might amount to prima facie evidence of misbehaviour within the meaning of Section 72 of the Constitution we recommend the matter be taken no further.

Matter No.17 - Non-disclosure of dinner party

This matter involved an assertion that the Judge should have come forward to reveal the fact that he had been present at a dinner attended by Messrs Ryan, Farquhar and Wood once it was alleged that there was a conspiracy between Ryan, Farquhar and Wood. It was not suggested that what occurred at the dinner was connected with the alleged conspiracy; neither was there evidence of a public denial by any of Messrs Ryan, Farquhar and Wood of the fact that they knew each other.

In the absence of such suggestion or denial there would be no impropriety in the Judge not coming forward to disclose the knowledge that he had of such an association. The absence of action by the Judge could not constitute misbehaviour within the meaning of Section 72 and we recommend that the Commission should do no more than note that the claim was made.

Matter No.19 - Paris Theatre reference, Matter No.21 - Lusher reference, Matter No.22 - Pinball machines reference

These matters came to the notice of the Commission by way of

the so-called Age Tapes transcripts (Volume T1A, p.22 - 20 March 1979, Volume T1B, pps. 107-108, 7 February 1980). On the hypothesis that the transcripts could be proved, there were several conversations between the Judge and Morgan Ryan which included observations by the Judge first, that there was something in the newspaper about the Paris Theatre and that Ryan should know "what's bloody well on"; second, a conversation in which a discussion occurs about "every little breeze" and "the Lush or is it going to be the three board of ..."; and, third, a conversation where Ryan asked the Judge not to forget those " pinball machines ... ".

These three matters, to the extent they suggest a continuing and close relationship between the Judge and Ryan are covered by Allegation No.40.

These conversations could also lead to the inference that the Judge was involved in various kinds of sinister activities with Ryan. However, since they consist only of cryptic references not capable of investigation as allegations of substance, it is recommended that, except as part of Allegation No.40, these matters should merely be noted by the Commission but not investigated further.

Matter No.28 - Statement after trial

This matter was referred to in the House of Representatives (see pages 3447-8 of House of Representatives Hansard of 8 May 1986).

It was suggested that the Judge's comments, made immediately after his acquittal, that the trial was politically motivated constituted misbehaviour.

We submit that the conduct alleged could not on any view constitute misbehaviour within the meaning of Section 72 of the Constitution and that the Commission should merely note that the matter was brought to its attention.

Matter No.29 - Stewart letter

This matter was referred to in the House of Representatives (see p. 3448 of the House of Representatives Hansard of 8 May 1986).

Mr. Justice Stewart, in the course of the Royal Commission of

Inquiry into Alleged Telephone Interceptions, sent a letter to the Judge which contained seven questions. The letter was sent to the Judge in March 1986 shortly before the Judge was due to be re-tried. It was suggested that the Judge's failure to respond to that letter constituted misbehaviour.

The view has been expressed (Shetreet, Judges on Trial, p 371) that the invocation by a judge of the right to remain silent "was an indication that his conscience was not clear and he had something to conceal. Such a judge could not properly continue to perform his judicial functions without a cloud of suspicion." Nevertheless, we submit that in the particular circumstances of this case the conduct alleged did not constitute misbehaviour within the meaning of Section 72 of the Constitution and that the Commission should merely note that the matter was brought to its attention.

Matter No.31 - Public Housing for Miss Morosi

It was alleged that in 1974 the Judge requested the Minister for the Capital Territory to arrange for Miss Morosi to be given priority in the provision of public housing.

We submit that the conduct alleged could not on any view constitute misbehaviour within the meaning of Section 72 of the Constitution and that the Commission should merely note that the matter was brought to its attention.

Matter No.32 - Connor view of the Briese matter

(See attached memorandum of M. Weinberg and A. Robertson dated 16 July 1986).

Matter No.34 - Wood shares

This matter consisted of an allegation that in the late 1960s the Judge, whilst a Senator, was given a large parcel of shares by another Senator, Senator Wood. The inference the Commission was asked to draw was that there was something improper in the transaction.

The allegation was supported by no evidence whatever. As the former Senator who allegedly gave the Judge the shares is now dead and the shares cannot be identified, we recommend that the Commission should do no more than note that the claim was made.

Matter No.35 - Soliciting a bribe

It was alleged that in 1972 or 1973 the Judge, whilst Minister for Customs and Excise, solicited a bribe from Trevor Reginald Williams. Williams was at the time involved in defending a customs prosecution and he asserted that the Judge offered to "fix up" the charges in return for the payment of $2000.00.

Williams was interviewed but the facts as related by him did not, in the view of those assisting the Commission, provide any evidence to support the claim.

There being no material which might amount to prima facie evidence of misbehaviour within the meaning of Section 72 of the Constitution we recommend the matter be taken no further.

Matter No.37 - Direction concerning importation of pornography

There were two allegations concerning the same conduct of the Judge whilst he was Attorney-General and Minister for Customs and Excise.

The allegations were that in 1973 the Judge had issued a direction that Regulation 4A of the Customs (Prohibited Imports) Regulations, as they then stood, should be ignored with the result that pornography was imported without any written permission and thereby contrary to the regulations.

Investigations showed that the direction emanated from a meeting in June 1973 between the then Senator Murphy and senior officials of his Departments, the Attorney-General's Department and the Department of Customs and Excise. The direction given was under the hand of a G E Sheen for the Comptroller-General and was in terms that "customs resources engaged in screening imported goods should be primarily concerned with the detection of prohibited imports other than material which offends Regulation 4A ... For the time being there are to be no prosecutions under the Customs Act for offences involving pornography."

The direction resulted from the Attorney-General agreeing with proposals in a departmental paper on censorship policy. At that time it was proposed by the Government that the regulations be amended to correspond with Government policy.

It was noted in the Minutes of the meeting in June 1973 that the Attorney-General agreed that it would be necessary to compromise in the implementation of policy in order to meet the requirements of the current law.

The direction was continued until the amendments to the legislation were made in February 1984.

We submit that there is no conduct disclosed which could amount to misbehaviour within the meaning of Section 72 of the Constitution. We recommend that the matter be taken no further.

Matter No.38 - Dissenting judgments

A citizen alleged that the Judge through "continued persistence in dissenting for whatever reason, can engender towards him such disrespect as to rank his performance to be that of proved misbehaviour".

We submit that the conduct alleged could not on any view constitute misbehaviour within the meaning of Section 72 of the Constitution and that the Commission make no inquiry into this matter.

Matter No.41 - Comment of Judge concerning Chamberlain committal

In answer to questions put to him in cross-examination during the Judge's second trial, Mr Briese SM gave evidence that the Judge had commented on the Chamberlain case. The context of the comment was that a second coroner had, that day or recently, decided to commit Mr and Mrs Chamberlain for trial on charges relating to the death of their daughter. The Judge's remark was to the effect that the decision by the Coroner was astonishing.

It was suggested that this conduct by the Judge might amount to misbehaviour in that it was a comment upon a matter which might, as it did, come before the Judge in his judicial capacity: it was therefore, so it was said, improper for the Judge to make known to Mr Briese his view of the decision to commit for trial.

We submit that the Chamberlain case was a matter of general notoriety and discussion, that the Judge's comments were very

general in their terms and that therefore the Judge's conduct could not amount to misbehaviour within the meaning of Section 72. We recommend that the matter be taken no further.

S.Charles

M. Weinberg

A. Robertson

D. Durack

P. Sharp

A. Phelan

21 August 1986

MEMORANDUM RE ALLEGATION NO 32

We have been invited to draft an allegation based upon the views of Mr Xavier Connor in his report to the second Senate Committee in 1984. In that report, Mr Connor suggested that even if it could not be shown that the Judge intended that Briese approach Jones with a view to inducing Jones to act otherwise than in accordance with his duty, the mere act of inviting Briese to make enquiry of Jones as to how the case against Morgan Ryan was progressing might amount to misbehavour within the meaning of Section 72 of the Constitution. The difficulty which we have in drafting an allegation along those lines arises from Section 5 (4) of the Parliamentary Commission of Inquiry Act 1986. That sub section provides the Commission shall not consider -

a) the issues dealt with in the trials leading to the acquittal of the Honourable Lionel Keith Murphy of certain criminal charges on 5 July 1985 and 28 April 1986 and, in particular, the issue of the Honourable Lionel Keith Murphy's guilt or innocence of those charges; or

b) whether the conduct to which those charges related was such as to constitute proved misbehaviour within the meaning of Section 72 of the Constitution except to the extent that the Commission considers necessary for the proper examination of other issues arising in the course of the Commission's inquiry.

It is plain that there is a difference between the version given by Briese of the relevant conversation and that given by the Judge. That difference was fully explored during the course of the Judge's trials. It is impossible to know whether the jury which acquitted the Judge at his second trial did so merely because they were not satisfied that he had the requisite intent to pervert the course of justice, or because they were not satisfied that Briese's version of the conversation was correct. On any view the content of that conversation is central to the charge as laid against the Judge and ultimately disposed of by his acquittal. It seems to us that to raise this matter as a specific allegation in precise terms is to breach Section 5 (4) in that the matter in question is "an issue dealt with in the trial leading to the acquittal" of the Judge in the relevant sense, and to consider it would be

to consider "whether the conduct to which those charges related" was misbehaviour. We consider that the Commission is not empowered to consider the Connor view of the Briese matter except to the extent that it considers it necessary to do so for the proper examination of other issues arising in the course of the inquiry. We recommend that Allegation No 32 not proceed.

M Weinberg

A Robertson

16 July 1986

MEMORANDUM RE ALLEGATION NO 32

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to consider "whether the conduct to which those charges related" was misbehaviour. We consider that the Commission is not empowered to consider the Connor view of the Briese matter except to the extent that it considers it necessary to do so for the proper examination of other issues arising in the course of the inquiry. We recommend that Allegation No 32 not proceed.

M Weinberg

A Robertson

16 July 1986

MEMORANDUM RE MATTERS NUMBERED 6 AND 36

Matters Raised With Counsel Assisting But Where No Decision Had Been Made Whether To Draw Allegations

Allegation No.6 - Safety deposit boxes and overseas shares

It was alleged that in 1975 the Judge had had allotted to him a parcel of shares in a Swiss bank, the shares being of considerable value. It was also alleged that he had in 1975 become the holder, with others, of safety deposit boxes in Switzerland. Photocopies of documents were provided in support of the allegation.

At the relevant time it was not unlawful under the Banking (Foreign Exchange) Regulations for a resident of Australia to hold a safety deposit box in Switzerland but it was unlawful to own, without approval, foreign securities.

The provenance of the photocopies provided was such that there was some ground, based on a report to the Attorney-General by J T Howard in 1976, for suspecting that they may have been forgeries. Nonetheless those assisting the Commission did not feel able to disregard entirely the possibility that the documents were genuine. The documents had not been referred to or dealt with in the report by Mr Howard.

It was decided to ask the Commonwealth Government to approach the Swiss Government with a view to establishing whether or not the documents were authentic, and this step was duly taken on 17 July 1986.

Before any approach was made, it became clear that the Parliamentary Commission of Inquiry would not proceed to finality and was likely to be terminated. Therefore no further action was taken.

Allegation No.36 - Extra-curial intervention concerning submissions of litigant before the High Court

It was alleged that the Judge, whilst a Justice of the High Court, and during the course of a case upon which he was sitting, had communicated improperly with the Premier of a State, that State being a party or intervener in the case before the High Court. The purpose of the communication, it was alleged, was to persuade the Premier to direct counsel appearing for the State to alter the submissions being put to the Court.

Upon preliminary investigation, the person who was alleged to have been told of this incident by the Judge denied that he had been so informed by the Judge and gave a version of events which suggested that a remark of his own had been misinterpreted and ascribed to the Judge.

Those assisting the Commission proposed to interview the Premier of the State and counsel allegedly involved. Before those steps were taken it became clear that the Parliamentary Commission of Inquiry would not proceed to finality. Therefore no further action was taken.

S Charles

M Weinberg

A Robertson

D Durack

P Sharp

A Phelan

21 August 1986

MEMORANDUM RE UNSWORN STATEMENT

TO: S. CHARLES
D. DURACK
F. THOMSON
A. PHELAN
A. ROBERTSON
P. SHARP

FROM: M. WEINBERG

DATE: 6 AUGUST, 1986

THE Crimes Act 1900, Section 405 (1) permits every accused person to make an unsworn statement at the close of the case for the prosecution. This provision is based upon the old common law rule that accused persons could not testify on oath. Nor were they entitled to be represented by counsel on charges other than misdemeanours until 1695 in treason cases, and 1836 in felony cases.

The harshness of these rules was softened very slightly by permitting all unrepresented accused persons to answer the charge in their own words. A practice arose of permitting the accused to make a statement, not on oath, from the dock, rather than from the witness box. The rationale for this practice was the need to make some inroad into the rule that the accused could not testify. In England, the Criminal Evidence Act 1898 (U.K.) conferred on the accused for the first time the right to give sworn evidence. It might have been thought that the necessity of the unsworn statement would have eased from then on. However, the right to make an unsworn statement was expressly retained in the legislation. In New South Wales, the right to testify was granted to persons charged with indictable offences in 1891. The right to make an unsworn statement was retained.

Section 405 (1) provides that an unsworn statement is to be made at the close of the prosecution case, and before any defence witness is called. The statement must be oral, and there is conflicting authority on the question whether it may be read. It is open to an accused person in New South Wales both to make an unsworn statement, and give sworn evidence in the one proceeding.

It seems plain that in New South Wales the unsworn statement is deemed to have evidentiary value, at any rate on behalf of the accused who makes it. It is part of the material before the jury, and can be used to prove facts in issue.

While it is true that in practice considerable latitude is allowed to accused persons in making statements from the dock, this is no doubt due to practical considerations. The Judge is not aware of what is to be included within the statement. There is a practical difficulty about exercising control over the content of any statement. When an unsworn statement substantially breaches an important rule of evidence, the Judge may intervene. On occasion, an accused has been prevented from reading to the jury a document which contained hearsay. Matters totally irrelevant may also be excluded.

The fact that an accused can not be cross-examined regarding the contents of his statement means that it can not be used against a co-accused person. Nor can it be used as evidence in favour of another co-accused.

It seems that prior to the abolition of unsworn statements in England in 1983, the practice of making them had declined. In New South Wales their use is much more common. It may be that in those States where the making of unsworn statements has declined in Australia, this situation may be attributed to the strength of judicial disapproval of such statements in those States, and the forceful comments made by Judges to juries expressing such disapproval.

The main arguments in favour of retention of unsworn statements may be summarised as follows:

(a) There is no evidence that guilty persons are escaping by use of these statements.

(b) Many accused persons are so incapable of expressing themselves adequately that, whilst they can repeat a prepared statement from the dock, they can not withstand skilled cross-examination without creating the false impression that they are lying.

(c) Cross-examination of an accused, no matter how properly conducted, could without offending as an attack on character, raise as going to credit matters personal to the accused and to his detriment but having nothing to do with the charge.

The main arguments in favour of abolition of unsworn statements may be summarised as follows:

(a) The right is an historical anachronism.

(b) It is a significant departure, and the only one, from a system based on the principles of evidence, and examination and cross-examination.

(c) It allows the professional criminal to lie without the appropriate test applied to other witnesses, to introduce irrelevancies, and in other ways to obscure the court's search for the truth.

(d) The incompetent or incapable accused is unlikely to be prejudiced by giving sworn testimony. A jury will make an assessment of him, and will make due allowance for his incapacities.

For many years, judicial complaints have been expressed regarding the use, or abuse, of the dock statement. Certainly a substantial body of respectable legal opinion would hold that the right to make an unsworn statement has so often been abused in practice that it should be abolished. A recent example of strong judicial criticism being levelled at the unsworn statement is to be found in R. v. Lane [1983] 2 V.R.449, per Fullagar J. In Lane, there was gross abuse of an unsworn

statement in that it was cleverly contrived to skate over a great many matters which required precise elucidation.

A more recent example of judicial criticism of the abuses emanating from unsworn statements is to be found in the decision of the Victorian Court of Criminal Appeal in R. v. Sorby (unreported, 1986). In that case the accused had spoken for almost four days during the course of a meandering unsworn statement which contained much that was irrelevant and inadmissible.

Whatever the merits or demerits of unsworn statements, the question whether it is appropriate for a Justice of the High Court of Australia to make use of such a facility during the course of a criminal trial is one which must be considered as a separate matter. What inferences would the ordinary member of the community draw from this judge's refusal to give sworn evidence at his second trial? What lesson would be learned from the fact that his giving sworn evidence at the first trial lead to a conviction, while the unsworn statement lead to an acquittal?

The right to make an unsworn statement does not exist in Western Australia. It was abolished in New Zealand. It has been abolished in England. It has been recommended that it be abolished in South Australia. It has been significantly modified in Victoria. It never existed in the United States, nor in Canada. It does not exist in Scotland. There are numerous examples of strong judicial criticism of the existence of the right.

There are some judges who support its rention, but they would be few indeed. In these circumstances, can it be said that the judge is guilty of misbehaviour (in the relevant constitutional sense) because he availed himself of this right?

The fundamental question is whether the community expects, and is entitled to expect, higher standards of behaviour from

its judicial officers than from all other persons. Is conduct which would not be regarded as improper if carried out by ordinary members of the community to be regarded as improper if performed by a Judge? And if the answer to that question is yes, at what point does such conduct move from the area of imprudence or impropriety into the realm of constitutional misbehaviour justifying removal from office.

Some Judges hold that their conduct must always be like that of Caesar's wife, above any reproach. They will not, for example, be seen drinking in pubs. They will be scrupulous about paying their debts long before they fall due in order to ensure that no breath of scandal touches them. Some years ago a number of Victorian Supreme Court Judges expressed strong views to the effect that one of their brethren who had married the divorced wife of another sitting Judge should resign. It may be apocryphal, but it is said that English Judges formerly declined to travel on buses!

Times change, and so do perceptions and appropriate standards of behaviour. Today homosexual conduct (if consensual, and conducted in private) is not seen by many to be a factor which would necessitate a Judge's resignation from a Court. Nor is adultery, or fornication. These are regarded as being within the realm of private morality, rather than in the public domain.

By making an unsworn statement at his second trial, the Judge brought into question his motivation in electing to take that course. Was he apprehensive that his story could not withstand cross-examination? Was he concerned about the consequences of putting his character in issue, and being cross-examined as to matters of character? Should a High Court Justice be so concerned?

While it is impermissible in law to draw adverse inferences against a person for making an unsworn statement, the Judge must

have been aware that as a matter of ordinary common sense such inferences are regularly drawn. His action in making an unsworn statement in response to a prima facie case of guilt brought him into disrepute in the eyes of many of his professional brethren. The Judge might reply that he acted on legal advice. The decision was his own. From the perspective of what was in his own best interest as regards the outcome of the trial, the Judge plainly made the correct decision. From the perspective of the interests of the High Court, his decision was one which lessened the respect in which one of its Justices was held in the community, and therefore diminished the court itself.

On the other hand, what the Judge did was neither more nor less than what the law entitled him to do. Section 405 draws no distinction between Judges of the High Court and other members of the community. It requires one to move a long way in the direction of an extraordinarily wide definition of misbehaviour to describe the Judge's conduct as falling within this description.

Mark Weinberg
6.8.86

MEMORANDUM

TO: S. CHARLES
D. DURACK
A. PHELAN
M. WEINBERG
F. THOMSON

FROM: A. ROBERTSON
P. SHARP

DATE: 5 AUGUST, 1986

This memorandum deals with the question of which rules of evidence, including statutory provisions, apply to proceedings before the Parliamentary Commission of Inquiry.

Section 6 of the Parliamentary Commission of Inquiry Act 1986 is as follows:

> 6. (1) The Honourable Lionel Keith Murphy shall not be required to give evidence on a matter before the Commission unless the Commission is of the opinion that there is before the Commission evidence of misbehaviour within the meaning of section 72 of the Constitution sufficient to require an answer and the Commission has given to the Honourable Lionel Keith Murphy particulars in writing of that evidence.
>
> (2) In the conduct of its inquiry, the Commission shall not make a finding except upon evidence that would be admissible in proceedings in a court.

In our view this means that both the prima facie case and any ultimate conclusion has to be assessed upon evidence that would be admissible in a court. What is required of the Commission is an anticipation of the form any proceedings might take, the jurisdiction in which those proceedings might be brought (whether Federal or State), and the location of that court (whether the court would be sitting in a State or a Territory and, if so, which).

We turn first to the Evidence Act 1905 (Cth) as amended. For present purposes that Act falls into three parts. First, Part IIIB dealing with the examination of witnesses abroad; secondly, Part IIIA which provides for the admissibility of business records and thirdly, the general provisions of the Act dealing with judicial notice, proof of Commonwealth instruments and of other documents.

As to the first of these, Part IIIB has not yet been proclaimed to come into operation: see section 2 of Act No. 198 of 1985. In any event it is improbable that a question would arise requiring the Commission to decide whether a court would make an order for the examination of a person outside Australia. It should perhaps be noted that section 7Y provides that Part IIIB is not intended to exclude or limit the operation of any law of the Commonwealth or of a State or Territory or of any rule or regulation made under or in pursuance of such a law that makes provision for the examination of witnesses outside Australia for the purpose of a proceeding in, or in a part, of Australia.

Turning to the second matter, Part IIIA of the Commonwealth Act deals with the admissibility of business records in a proceeding. The word "proceeding" is defined in section 7A(1) to mean:

> a proceeding before the High Court or any court (not being a court of a Territory other than the Australian Capital Territory) created by or under an Act.

There would not appear to us to be any allegation that would arise in proceedings before the High Court, the Federal Court, the Family Court or the Supreme Court or the Magistrate's Court of the Australian Capital Territory.

If this conclusion be wrong, then the result would be, assuming that a question of the admissibility of business records arose, the Commonwealth Evidence Act would prevail over corresponding provisions in the State Evidence Acts: for example Part IIC of the Evidence Act, 1898 (NSW).

The third part of the Commonwealth Evidence Act, the general provisions, could be relevant if a specific Commonwealth instrument or other document was to be proved. In this application the word "Courts" is defined in section 2 as follows:

> "Courts" includes the High Court, the Commonwealth Court of Conciliation and Arbitration, the Commonwealth Industrial Court, all Courts exercising federal jurisdiction and all Courts of the several States and parts of the Commonwealth, and all Judges and justices and all arbitrators under any law of the Commonwealth or of a State, and all persons authorized by the law of the Commonwealth or of a State or by consent of parties to hear, receive and examine evidence.

For example, section 7 of the Act which provides for the admissibility on production of a document purporting to be a copy of the Proceedings of either House of the Parliament if purporting to be printed by the Government Printer would apply if that question arose before a Court of a State and would therefore apply in proceedings before the Commission.

It goes without saying that, where a particular provision of the Commonwealth Evidence Act applies, for example to Commonwealth Proclamations, then it would prevail over any general provisions in a State Evidence Act covering the same subject matter. Similarly, specific provisions of the Parliamentary Commission of Inquiry Act, such as those dealing with self-incrimination, would apply to the exclusion of the State Acts.

We turn then to consider the question of the State Courts.

First, by virtue of section 79 of the Judiciary Act, for present purposes it is immaterial whether the court is anticipated to be exercising federal jurisdiction or the jurisdiction that belongs to it. Section 79 of the Judiciary Act is as follows:

> The laws of each State or Territory, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases to which they are applicable.

This means that except where the Commonwealth Evidence Act might apply then the laws of the relevant State relating to evidence apply whether or not the court of the State is exercising federal jurisdiction.

Where courts of territories exercise federal jurisdiction then, similarly, the ordinary territory laws of evidence apply.

It remains then to consider the rules which would apply in a State or Territory Court.

It seems to us that there are two difficulties which may be involved in the process of anticipation which section 6 of the Parliamentary Commission of Inquiry Act requires. First, it may be that more than one jurisdiction is involved. For example, on further facts becoming available, the probabilities may appear to be that a particular arrangement arrived at by telephone was concluded in the Australian Capital Territory. If such facts become apparent then it is the laws of evidence of that Territory which would need to be applied..

The second difficulty would arise where a particular allegation might constitute an allegation of criminal behaviour, such as perjury. There are a number of aspects to this question. First, it would seem that those parts of a State Evidence Act which are restricted to criminal trials would apply to the admissibility of evidence upon such an allegation. This would be because, on the hypothesis which the Commission is bound by section 6 to make, such a question would only arise in criminal proceedings and therefore the rules of admissibility governing such proceedings should govern the adminissibility of evidence on that question. Section 42A of the Evidence Act of New South Wales would be an example of such a provision.

This principle would also be applicable when dealing with questions of the admissibility of evidence where those questions are governed not by a statute but by the common law. For example, if a question of the admissibility of similar fact

evidence arose and the allegation under consideration could constitute a criminal offence then it would seem to be required by section 6 of the Parliamentary Commission of Inquiry Act that the rules which would govern the admissibility of that evidence in a criminal trial should be applied before the Commission.

A second aspect is whether the criminal standard of proof is required in relation to allegations which might otherwise constitute a criminal offence. In our view such a conclusion is not required by the Parliamentary Commission of Inquiry Act. The standard of proof is a separate topic to the admissibility of evidence. This is not to say that a higher standard of proof would not be required bearing in mind the seriousness of the allegation: see Briginshaw v Briginshaw (1938) 60 C.L.R.336.

Finally, we should say something about whether or not the definition of "legal proceeding" in the Evidence Act of New South Wales would operate so as to require the Commission directly to apply the rules of evidence. In that Act the relevant definition is as follows:

> "Legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration.

This definition is in narrower terms than the corresponding provision in the Evidence Act 1958 of Victoria which is discussed in Hallett's Royal Commissions and Board of Inquiry (1982) at page 166. In that State it would appear that "Legal proceeding" in the Evidence Act includes a person "acting judicially".

We are of the view that the Evidence Act, 1898 (NSW) does not apply directly to the present Commission. As a matter of language it may well be that the Commission is a legal proceeding for the purposes of that Act: see In Re An Application by the Companies Auditors' Board (1981) 27 SASR 196.

However, as a matter of constitutional power, the legislature of New South Wales could not prescribe whether or not a federal Commission of Inquiry should apply the rules of evidence and, if so, what those rules of evidence should be. That result would follow only from federal law and there is no federal law which so requires.

Our conclusion is that it is the law of evidence of New South Wales which, speaking generally, will apply but it will apply only by virtue of section 6(2) of the Parliamentary Commission of Inquiry Act.

A Robertson
5.8.86

P Sharp

0177M

MEMORANDUM

TO: Mr Charles
Mr Weinberg
Mr Robertson
Mr Phelan
Mrs Sharp
Mr Thomson

FROM: Mr Durack

DATE: 5 August 1986

RE: MATTERS TO BE DEALT WITH PRIOR TO PARLIAMENT SITTING ON 19 AUGUST 1986. (discussed at conference - 10.45 a.m. 5 August 1986.

From the discussions referred to above 5 categories of work emerged that could be dealt with prior to the 19 August 1986. They are as follows :

1. Continued Investigations

(i) interviewing of police officers re verification of Age Tape material (approx. 50 police involved).

(ii) Steven Bazley interview.

(iii) Chief Inspector Dixon and A Watson re SALA.

(iv) Briese Diaries - interview with Briese's solicitor.

(v) D Rofe QC interview.

(vi) Immigration rackets.

NOTE: A Phelan and his team to continue investigations re the above matters save for D Rofe QC who will be interviewed by M Weinberg and D Durack.

2. Briefs be prepared in following matters in anticipation that Commission may continue its work after 19 August 1986:

(i) D Thomas - Allegation 1.

(ii) Unsworn statement - Allegation 14.

(iii) Greek conspiracy case comment - Allegation 39.

(iv) Perjury re Staunton - Allegation 16.

NOTE:

A Phelan	preparing	(i)
M Weinberg	"	(ii)
A Robertson	"	(iii)
D Durack	"	(iv)

3. Memorandum to be completed on all matters that have not been drafted as allegations or do not require further investigation i.e.

5. Saffron - surveillance

7 Ethiopian Airlines

8 Diamonds for Ingrid

9 Soviet Espionage

17 Dinner Party - non disclosure

19 Paris Theatre

21 Lusher and the Board of three

22. Pinball machines

28 Outburst after trial

29 Stewart's letter

30 Quartermaine -Moll tax evasion

31 Junie Morosi

32 Connor view of the Briese matter

34 Wood shares

36 Staples J - "Dams" case?

35 Trevor Williams

37 Pornography direction

38 Dissenting judgments

41 Chamberlain comment

NOTE: Draft of D Durack being added to by A Robertson and P Sharp

4. Preparation of a statement as to what has been done by the Commission including the 14 allegations drawn and served on the Judge.

NOTE; A Phelan has commenced this task and he will circulate his draft for perusal and contribution.

5. Memorandum on 14 Allegations

This memorandum will be drawn following a perusal of the Commissioners' reasons (following the ruling today) on the meaning of the words "proved misbehaviour" in section 72 of the Constitution. The task contemplated is to see if the allegations (assuming they are proved) come within the meaning of "proved misbehaviour" adopted by the Commissioners.

NOTE: The allegations have been broken up for this purpose as follows: (some require nothing to be done as indicated).

Allegation 1.	Thomas –		nothing required as a crime is alleged.
2	Lewington –		nothing required as a crime is alleged
11	Sankey –		contempt of Court alleged
14	unsworn statement)		
20	Rofe)	– M Weinberg	
39	Greek conspiracy)		
23	Milton Morris)	– A Robertson	
24	Smelling like a Rose)	(Parliamentary privilege)	

25	Central Railway)	D Durack
27	Luna Park)	P Sharp (tradition of judicial intervention in public contracts etc)
18	Jegorow (Intervention in appointments)	
33	Staunton approach	S Charles

D N Durack
Instructing Solicitor

5 August 1986

2869A

MEMORANDUM

TO: A Phelan

FROM: D Durack

RE: THOMAS LUNCH

D Thomas has stated that the lunch he attended with the Judge was in the first instance arranged by the Judge's Associate (a female). I have made inquiries of the High Court through the Clerk of the Court, Mr Gordon Shannon, and have been advised that the Judge's Associates during 1979 and 1980 were:

(I) ELIZABETH JAMES (now a solicitor in Tasmania -

and

(II) ANGELA BOWNE (Sydney barrister)

D Durack

18 July 1986

MEMORANDUM

TO: Patricia Sharp

FROM: David Durack

RE: Summonses to be served

DATE: 18 July 1986

I refer to our discussiions with Mark Weinberg today re the persons to whom a summons should be delivered once the Regulation prescribing a mode of service and the form of the summons is finalized (this should be today - see F Thomson).

From those discussions I now list by allegation the persons to whom a summons should be delivered as soon as possible:

ALLEGATION (1) (THOMAS)	- D Thomas - M Ryan - J D Davies - Judge's Associate (either E James or A Bowne
ALLEGATION (2) (LEWINGTON)	- Peter John Lamb - Robert Allan Jones
ALLEGATION (11) (SANKEY)	- Danny Sankey - Abe Saffron - J M Anderson (Anderson's wife and foster son but not yet)
ALLEGATION (14) (UNSWORN STATEMENT ETC)	- we will need to write to Masselos - and seek formal admission re passages in unsworn statement - formal admission to whole of unsworn statement (DD to write letter next week) - also re Brown v Dunn point - will need to extract Barkers disavowal of recent fabrication and have that admitted

ALLEGATION (18)	- Wadim Jegarow - N Wran (but not yet)
ALLEGATION (20) (ROFE)	- D Rofe (but will speak to first)
ALLEGATION (23) (MORRIS)	- M Morris) - J Mason) (will speak to both first)
ALLEGATION (24) (ROSE)	- Dorothy Ryan
ALLEGATION (25) (CENTRAL RAILWAY)	- A Saffron (previous) - J Andrews - W Colbron - Sir A George - D Hill (will speak to first)
ALLEGATION (27) (LUNA PARK)	- M Edgley - Goldsteins? - S Cowper - E Jury
ALLEGATION (STAUNTON)	- Staunton - McClelland (we will speak to them first)
ALLEGATION (39) (BRIESE - GREEK CONSPIRACY CASE)	- need again to get admission by the Judge that what he told Briese is accurately recorded in transcript (DD to do letter next week)

It would be advisable for our investigative staff to identify addresses etc for the persons to be served and the summonses prepared as soon as possible.

After discussions with the Presiding Member it has ben decided that the summonses will have a return date of 30 July 1986 but a letter will accompany each summons requesting the recipient to advise the Commission of a phone number that they can readily be contacted on in order that they may be advised of a date other than 30 July 1986 that they will be required (the exception to this procedure will be A Saffron)

Please proceed as above and discuss with me on Monday or Tuesday next week.

D N Durack

MEMORANDUM RE POSSIBLE ALLEGATION OF PERJURY ARISING OUT OF EVIDENCE RE MORGAN RYAN

I have carefully examined the transcript of the Judge's testimony at his first trial with a view to determining whether there is a basis for making an allegation that the Judge deliberately and wilfully perjured himself in the course of that testimony. It has been suggested that the Judge set out to mislead the jury as to the extent of his association and involvement with Morgan Ryan over the years.

The relevant passages in the transcript as as follows:
At page 422 the Judge was asked what degree of social activity there had been with Morgan Ryan during the 1960's leading up to 1972. The Judge answered "Yes, in the middle 60's I went out with him a few times, had some meals out and so forth. From then on I saw very little of him. I think there might have been a period of two or three or four years when I had absolutely no contact with him at all." On the same page the Judge is asked what was the state of interchange of any social activity between himself and Morgan Ryan immediately before 1972. His answer was "Well as I say, I think I hadn't seem him for I think it may have been two or three years, no contact at all.

At page 423 the Judge was asked about the period between 1972 and his appointment to the High Court in February 1975. He was asked whether he had had any further association with Morgan Ryan during that period. His answer was no.

At page 426 he was again asked whether he had seen any of Morgan Ryan throughout the period 1972 to 1975. He answered "I can't recall seeing him at all during that period."

At page 427 the Judge said that there had been contact with Morgan Ryan during 1976 because Ryan was acting for Dr Cairns in the Sankey case. He then said that contact revived with Morgan Ryan early in 1979 when the Sankey proceedings revived.

On the same page the Judge said that it was in the course of the Queanbeyan Court proceedings that he did have contact with Morgan Ryan. He said at the bottom of page 427 that his recollection is that Ryan was there on one or two days.

At page 429 the Judge summarized his contact with Morgan Ryan throughtout the 1950's and 60's in the following terms "Yes we went out for a few meals in the 50's and in the 60's and I have been to his place for a Christmas party with my wife and on odd few occasions like that." Throughtout page 429 the Judge attempted to distance himself from Morgan Ryan by pointing out that he had never invited Morgan Ryan to come and inspect the High Court or to be shown around it.

At page 439 the Judge said that he had first become aware that Morgan Ryan had been charged, a day or so after he was in court when it was reported in the newspapers. This seems to be about the 6th or 7th August 1981. The Judge said that upon finding out he did not ring Morgan Ryan. He said that sometime before he went to China in September or early October 1981, Ryan rang him. He set out the nature of that conversation at the bottom of page 439.

At page 507 the Judge described a meeting which had occurred in early April 1982 with Morgan Ryan at Martin Place. He set out the conversation in which Ryan told him that he would not be able to get a trial for some eighteen months. This of course let to the communication with Chief Judge Staunton regarding the possibility of getting an early trial for Ryan. In cross-examination, the Judge was asked about the number of discussions he had had with Morgan Ryan concerning the possibility of bringing an action for malicious prosection against those responsible for the Sankey proceedings. His answer was "there may have been some but the substantial discussions about that were following the discharge which was at the beginning of 1979 and actually the proceedings dragged on

on the question of costs well into 1980 and there were quite substantial discussions about the question of bringing proceedings during 1979."

Half way down page 527 the Judge said such discussions would have continued on into 1980. He estimated that in the course of 1979 there would have been up to about ten discussions and in 1980 less than that.

At page 529 the Judge said that there might have been discussions on four or five occasions in the first part of 1980 concerning the malicious prosecution proceedings. He was asked "Were they discussed on the telephone," answer "yes" and then this question appears "Did you have any other contact with Morgan Ryan from time to time during 1980? Not that I can recall."

This was immediately followed by "Did he ever telephone you to discuss matters of topical interest. Answer: I think all the conversations I had with him were related to those proceedings."

"You would have discussed other matters too, wouldn't you an old friend? Answer: Perhaps so but they were related. Any conversations were related to the proceedings in some way." The Judge then asserted that he could not rememer any occasion during which he had spoken to Morgan Ryan in the last six months of 1980. He was then asked whether in the first half of 1981 he had had a discussion with Morgan Ryan. His answer was "None that I can recall"

At page 527 the Judge reiterated that he had no contact with Morgan Ryan between 1972 and 1975. He said "I can't remember meeting him at all during that period, it is possible but I don't remember it."

At page 593 the Judge repeated that in 1979 there were discussions between himself and Morgan Ryan on some eight or ten occasions which would have included the proposal to take action against Sankey for malicious prosecution. The Judge was then asked this question "Well, did you ever discuss other matters with Morgan Ryan? Answer: I think they were all related to either this question of the costs or the action for malicious prosecution in all that time." The Judge went on to say that the discussions were on the telephone, though it might have been occasionally that Ryan had called cross to his unit.

Towards the bottom of page 593 the Judge was asked again "Did you ever discuss other matters with him? Answer: Not that I can recall." This was followed by "Are saying that you never discussed anything at all with him except the proceedings? Answer: I suppose one would, Mr Callahan but I can't recall anything specific."

At page 594 the Judge was pressed about the extent of his contacts with Morgan Ryan. He conceded that he and Ryan had some mutual friends, and said when asked whether they had ever discussed these friends "I suppose so." He was then asked whether they had ever discussed events of public and legal interest. His answer was "I suppose that would happen but I don't really recall anything in particular." The next question was whether he had ever had a meal with Morgan Ryan after the commencement of the Sankey proceedings. His answer was "Yes I suppose I would have over the ... I can't really recall but over those years it is quite possible that we had a meal or two or three together."

At 595 the Judge said that he thought that during the first part of 1980 there may have been three or four or five contacts with Ryan by telephone. The Judge had not returned the hospitality of May 1979.

It is plain that at no stage does the Judge mention any contact between himself and Morgan Ryan for the purpose of seeking to have Saffron interfere to settle the Sankey matter in 1976. Nor does the Judge concede that he spoke to Ryan in 1979 and 1980 on a variety of topics other than the action for malicious prosecution - see the Age tapes. Nor does the Judge concede that he and Ryan were business associates of Saffron prior to 1975 (assuming they were both silent partners in the Venus Room and or other Saffron ventures).

It goes without saying that if it could be shown that the Judge did have an extensive range of social contacts with Ryan prior to 1975 through the Saffron connection the Judge has conveyed a totally false and misleading impression to the jury, and has arguably committed Perjury. We need to find out precisely how extensive the Judges contacts with Ryan were prior to 1975.

It is also worth noting that the Judge made no mention whatever of the Thomas luncheon (which Ryan attended) towards the end of 1979 among the list of contacts that he had with Ryan throughout that period. It is questionable whether the Judge could rely upon his faulty memory if he did make it a practice to have lunch with Ryan regularly when he was in Sydney.

M. Weinberg

O139M

MEMORANDUM

ALLEGATION NO. 15 - THE BRIESE DIARIES

In my memorandum dated 28 July, 1986 I set out Cowdery's recollection of the events surrounding the Briese diaries.

His view was that the only opportunity for copying the diaries was at the committal when the diaries were produced. He thought that there had been no opportunity at the first trial since the diaries were inspected at Court. Further, he said that the Magistrate made it clear that the diaries were not to be taken out of Court and were not to be copied.

It is true that at page 53 of the transcript of the committal proceedings, dated 25 March, 1985, the following appears:

Mr Shand: There is still the question of access to the documents.

Bench: I'm sorry, I didn't deliberately overlook that. Any problems in Mr Shand having access to those documents produced by Mr Briese? Mr Briese seemed to have no objections even to the ones which said it might claim privilege. Allright, well, you might make those available. You will no doubt remain here while you're looking at them.

On the face of it, it might appear that it was therefore an order by the Magistrate that the diaries not be taken from Court and, by inference, not be photocopied. However it is apparent from later passages in the transcript that Mr Briese's diaries were neither the subject of a subpoena nor were then (25 March, 1985) in Court. This conclusion follows from what is said at page 82 of the transcript (26 March, 1985):

Q: Well, where is your diary, do you still have it?

A: I have both diaries in my office.

Q: Would it be possible for somebody to get them or what would be the best way...

Witness: I brought both diaries to my office this morning, that's the situation.

There is then a luncheon adjournment and at page 84 of the transcript (26 March, 1985), the following appears:

Q: Mr Briese, do you have your diaries there?

A: Yes I do.

It would follow that if it is the case that:

i. the diaries were not copied during the course of the first trial but were copied during the course of the commital;

ii. the diaries were not produced in answer to a subpoena; and

iii. no order was made by the Court in relation to access to the diaries.

then it is impossible to see how any dealings with the diaries could constitute contempt of court.

The possibility would remain that there was some arrangement between either Mr Briese or his Solicitors on the one hand, and the Judge or his Solicitors on the other hand. It may also be that that arrangement was breached. It seems to me that whether or not there was any such arrangement and, if so, the facts and circumstances surrounding it should be ascertained.

I am told by Mrs Sharp that both the Solicitors at the office of the DPP who were involved in the commital are overseas and will not return until late September, 1986. Mr Rowe of the DPP suggests that Mr Wells of the AFP should be asked for his recollection as perhaps also should Peter Clarke of Counsel.

A Robertson
30.7.86
0161M

MEMORANDUM

To

S. Charles QC

M. Weinberg

D. Durack

P. Sharp

From

A. Robertson

This memorandum addresses the question of the role, if any, before the High Court on 5 and 6 August, 1986 or counsel assisting the Parliamentary Commission.

It seems to me that any attempt to appear for the Parliamentary Commission or for its members will be met with the same strictures as were directed to Mr Hughes in The Queen v Australian Broadcasting Tribunal; ex parte Hardiman (1980) 144 CLR 13 at 35. No doubt there are differences between the functions and powers of the Australian Broadcasting Tribunal and those of the Parliamentary Commission and (possibly) care could be taken to put the arguments with less vigour than they were put by Mr Hughes. Nevertheless, it would appear to be most inadvisable for the

Commission itself or its members to seek to put any view. The prospect of bias or apparent bias would be clear.

I think it would be preferable if junior counsel for the Attorney-General for the Commonwealth appeared for the first, second and third defendants and submitted to any order the Court might make apart from any costs order. I understand that this is what Mr Gummow did in Brisbane.

However in the absence of intervention by any of the Attorneys-General for the States under section 78A of the Judiciary Act the arguments put to the High Court as to the meaning of the words "proved misbehaviour" within section 72 of the Constitution will be, in all likelihood, very narrow. In other words, the likely submissions on behalf of the plaintiff, Mr Justice Murphy, and of the fourth defendant, the Attorney-General for the Commonwealth, will both be that misbehaviour in matters unconnected with the discharge of the office of a justice of the High Court can only be constituted by a serious criminal offence. There would be a slight divergence of views but only on the question of whether a conviction is necessary, the plaintiff saying that it is and the Commonwealth Attorney-General denying it.

In that context it might well be said that there would be no proper contradictor and that the High Court might see some

benefit in counsel appearing to argue a broader view of the meaning of "proved misbehaviour".

A recent example of a similar course being adopted by the High Court is to be found in Victoria v Australian Building Construction Employees' and Builders Labourers' Federation (No. 2) (1982) 152 CLR 179. In that case none of the parties wished to argue that the Federal Proceedings (Costs) Act 1981 (Cth) was invalid. The point having been raised by Mr Justice Brennan the High Court invited the Attorney-General to brief counsel as amici curiae so that the proposition could be properly tested. This is the background to the appearance of D.M.J. Bennett QC and J.D. Heydon as amici curiae. Their presence was solicited by the Court and the Court's request was, with some reluctance as I recall, acceded to by the Commonwealth Attorney-General.

The most recent discussion of the proper role and function of counsel appearing as amici curiae appears in the decision of Mr Justice Hunt in R v Murphy (1986) 64 ALR 498. There Mr Simos QC and Mr Biscoe, acting on instructions from the President of the Senate, sought leave to appear as amici curiae for the purpose of making submissions relating to the law of parliamentary privilege. At page 503 of the report it appears that Hunt J permitted those counsel to appear as amici curiae and also:

> In so far as that leave to appear as such might be determined by others to go beyond the principles applicable to that procedure (but because of the absence of any other contradictor), I formally invited Mr Simos and Mr Biscoe as bystanders to appear to assist me upon the argument as to parliamentary privilege.

In his judgment, Hunt J referred to the decision of the New South Wales Court of Appeal in Corporate Affairs Commission v Bradley [1974] 1 NSWLR 391 where the Commonwealth (by its counsel D.G. McGregor QC and R.V. Gyles) was the unsuccessful respondent to an appeal on the question of whether the Commonwealth should have been admitted by the primary judge as an intervener. I would not recommend such an attempt by the Parliament in the present circumstances even allowing for the fact that it is ultimately the powers of the Parliament, amongst others, which will be affected by any decision of the High Court on the meaning of "proved misbehaviour".

It seems to me that, instead, (and this is a matter referred to by Hunt J at page 502) counsel assisting should seek the invitation of the High Court to appear in their own right. The basis of seeking the invitation would be the purely pragmatic one of the absence of any other contradictor. I do not think there is any need to be apologetic about the basis being pragmatic, it appears that the whole concept of amici curiae is one based in pragmatism.

However although counsel seek leave to appear as amici curiae in their own right, it is not a course to embark upon without instructions.

The most attractive course would be for the Australian Government Solicitor, as solicitor for the Parliament or for the Speaker of the House of Representatives and for the President of the Senate, to seek instructions which would allow counsel assisting the Parliamentary Commission to put before the High Court the argument that those counsel assisting would ultimately propose to put before the Parliamentary Commission as to the meaning of "proved misbehaviour". It could be intimated to the Speaker of the House of Representatives and to the President of the Senate that the submissions proposed to be put before the Parliamentary Commission and, if leave were granted, before the High Court on 5 and 6 August, 1986, would be that "misbehaviour" within the meaning of section 72, leaving aside behaviour in the performance of judicial duties, is not limited to conduct which constitutes a serious criminal offence whether consequent upon a conviction or not.

My recommendation is therefore that letters be written now to the Speaker and to the President seeking instructions to seek leave to appear before the High Court as amici curiae to present argument only on the meaning of "proved misbehaviour". If those instructions were forthcoming and if

the High Court were to grant leave on the basis of there being no other contradictor, then I would suggest that the arguments be propounded as arguments proposed to be put before the Parliamentary Commission. It will, of course, be a matter for the High Court as to whether it wishes to hear such argument from counsel assisting or, indeed, whether it wishes to hear argument on the meaning of "misbehaviour" at this stage at all.

A. ROBERTSON

7 July, 1986

MEMORANDUM

TO: S. CHARLES QC
M. WEINBERG
A. ROBERTSON
D. DURACK
A. PHELAN
F. THOMSON

FROM: P. SHARP

RE: (1) ALLEGED ACQUISITION BY MURPHY OF A SAFETY DEPOSIT BOX IN SWITZERLAND ON 11 MARCH 1975

(2) ALLEGED ACQUISITION OF 400 SHARES IN THE UNION BANK OF SWITZERLAND ON 27 FEBRUARY 1975 (WORTH APPROXIMATELY $700,000 IF STILL HELD TODAY).

Legislation: The Banking Act 1959

Exchange control in Australia, including inter-alia, the control of certain payments, transactions and foreign securities is administered by the Reserve Bank under the Banking (Foreign Exchange) Regulations made under section 39(1) of the Banking Act 1959 which states: -

" where the Governor General considers it expedient to do so for purposes related to -

(a) foreign exchange or the foreign exchange resources of Australia;

(b) the protection of the currency or the protection of the public credit or revenue of Australia; or

(c) foreign investment in Australia, Australian investment outside Australia, foreign ownership or control of property in Australia or of Australian property outside Australia, or Australian ownership or control of property outside Australia, or of foreign property in Australia.

Section 39(2) specifies the regulations authorised to be made by the Section including:

(i) "the control or prohibition of the taking, sending or transfer of any securities to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia), and of the bringing, sending or transfer of any securities to Australia from a place outside Australia (including the transfer of securities from a register outside Australia to a register in Australia);

(q) provides for penalties in relation to offences under the regulations;

Section 39(8) defines "foreign securities" as securities or other property included in a class of securities or property specified in the regulations as foreign securites; and "securities" as including shares.

Section 39A provides, that the Act shall have extra-territorial application.

Section 39B provides that a taxation clearance issued under Section 14C of the Taxation Administration Act must be produced before the Reserve Bank may give an exchange control authority in certain circumstances, including where a notice in writing is published pursuant to Section 39(B)(2).

Banking (Foreign Exchange) Regulations

Due to various amendments to the regulations, including exemptions gazetted pursuant to reg.38 which were not operative at the relevant time, I have set out the relevant provisions as they appeared in 1975:

r4(2) For the purposes of the definition of "foreign securities" in subsection 39(8) of the act, the following classes of securities or property are foreign securities:

(a) securities the principle of or interest from which is repayable or payable in any country outside Australia or in any money other than Australian money;

(b) securities the funds necessary for the repayment or payment of the principal of or interest from which are provided from any country outside Australia;

(c) securities that are registered outside Australia;

(d) securities that are situated outside Australia;

(e) debts or moneys due or accruing due to a person in Australia by a person in a country outside Australia;

(f) rights to receive payment of moneys in a country outside Australia; and

(g) rights to receive payment of moneys of (sic) a country outside Australia.

Control of certain payments and transactions;

r8(1) subject to this regulation, a person shall not, except with the authority of the bank -

(a) .....;

(c) draw, issue, or negotiate any bill of exchange or promissory note, enter into any contract or agreement (not being a contract or agreement for the purchase of goods), allot or transfer any security, or acknowledge any debt, so that a right (whether actual or contingent) -

(i) to receive a payment, or any valuable consideration; or

(ii) to the performance of any service,

whether in Australia or elsewhere, is created or transfered in favour of a person who is not a resident;

(Reg 8 was further amended by SR222 of 1975 gazetted 23 December 1975 but the amendment is not relevant for present purposes).

Control of Foreign Securities

Regulation 34 was inserted by S.R. 265 of 1974 and provides:

34(i) subject to sub-regulation (2), except with the authority of the bank -

(a)....

(b) a resident, or a person acting on behalf of a resident, shall not buy, borrow, sell, lend or exchange, or otherwise deal with, foreign securities that are outside Australia.

(2) Sub regulation (1) does not apply to the acquisition of foreign securities otherwise than for valuable consideration.

Regulation 42 provides that it is an offence to contravene or attempt to contravene any of the provisions of the Regulations.

QUESTION (1) - Whether at the time of acquisition, 11 March 1975, it was illegal for an Australian citizen to own a safety deposit box in Switzerland.

It seems that regulation 8(1) would not apply to a contract entered into between Murphy and the Swiss bank, as, even if it could be said to be a contract for the performance of a service, it does not create a right to the performance of that service in favour a person who is not a resident. The right to the service if the provision of a safety deposit box could be said to be such, would appear to reside, in the honourable L.K. Murphy.

On 23 December 1974 a Notice pursuant to section 39B of the Banking Act was published in the special Commonwealth Gazette which provided, interalia, that;

> "The Treasurer, in pursuance of sub-section 39B(2) of the Banking Act 1959-1974, directed that the following acts or things are acts or things to which section 39B of the Act applies:
>
> (1) the entry by a person into a contract agreement or arrangement to which a person who is in, or is a resident of, or a person on behalf of a person who is in, or is a resident of, a place specified in the Schedule is a party, being a contract agreement or arrangement for or in relation to -
>
> (a) ....

(b) the sale, purchase (including the granting of an option to purchase) acquisition or disposition of securities, land or other property, or of any interest in securities land or other property, other than the sale or purchase through a member of the Australian stock exchange of securities listed on an Australian stock exchange;

(c) ....

(d) the performance of any service;

The schedule to that notice included Switzerland.

Unlike reg 8 the notice did not require that the right to the performance of the service be created or transferred in favour of a person who is not a resident.

In view of that notice it may be arguable that between 23.12.74 and 12.12.83, when parts of 8(1)(c) were exempted, any person wishing to acquire a safety deposit box had to comply with the provisions of section 39B which required that a taxation clearance must be produced before the Reserve Bank may give an exchange control authority. However it seems to me that the objectives of the Legislation governing exchange control are directed to regulating capital flows by restricting the transfer of money, assets and rights into and out of Australia. To argue that the provision of a safety deposit box involves a transaction of that nature, requiring the issue of a certificate, would seem to be stretching the intention of the legislation.

QUESTION (2) - Whether an acquisition of shares in an overseas bank in February 1975 constituted an offence at that time.

Regulation 34 governs the control by the Reserve Bank of foreign securities owned or to be acquired by Australian residents.

The regulation must be read in light of pronounced government policy at the time. This general policy, up until approximately December 1983 and the floating of the dollar was one which I am informed by an officer of the Reserve Bank did not permit investment in overseas banks. This is confirmed to some extent in a booklet dated June 1980 published by the Reserve Bank entitled "Exchange Control" which states 'This general policy towards direct investment overseas does not apply to investment in purely financial enterprises'.

Prior to 1972 portfolio investment overseas was not permitted at all. From September 1972 some modest portfolio investments overseas were permitted. (Parliamentary Debates 26.9.1972) subject to certain conditions. The conditions were that residents apply for Reserve Bank approval, and applications by individuals were limited to $10,000 in any period of twelve months (although applications in excess of this amount would be considered in special circumstances). In addition the Notice of 23.12.74 would require compliance with S39B if the transaction was one falling within the Notice, which would include a purchase of securities in Switzerland.

These conditions continued until 1980 when in his statement on 31 March 1980 the Treasurer Mr Howard increased the limit for overseas investment from $10,000 to $40,000 for individuals.

In view of the stated Government policy applicable to shares in overseas banks and the annual limitations on overseas investments by Australian residents it would seem highly unlikely that approval under reg 34, if sought, would have been

granted by the Reserve Bank, given that the investment was in an institution excluded from direct investment overseas and that the amount involved at the time would have been approximately twenty-five times the individual limit on such investment.

It would therefore appear that if no such approval was sought or granted the Honourable Lionel Keith Murphy may have committed an offence under regulation 42, assuming that he purchased the Shares and assuming the validity of the Share certificate.

MEMORANDUM

TO: S. CHARLES
M. WEINBERG
A. PHELAN
P. SHARP
F. THOMSON

FROM: A. ROBERTSON

RE: ALLEGED DIRECTION BY MURPHY J. AS ATTORNEY-GENERAL THAT SURVEILLANCE OF SAFFRON BE DOWNGRADED

The material supplied by A includes numerous documents from the Australian Federal Police and its predecessor the Commonwealth Police Force.

On the assumption that all the relevant papers are included the following facts emerge.

Saffron had been the subject of 100 percent baggage searches by Customs on arrival at Australian airports since at least 1972. He was suspected of being a drug trafficker. The Departmental alert contains a notation:

"100 percent baggage search only. Notify executive officer northern region on arrival. Every effort to be made to make baggage search appear normal. Advise CIIB."

Later this was changed to:

"If detected leaving Australia, notify Executive Officer Northern Region immediately - no other action. If detected on arrival in Australia - 100 percent baggage search only. Make every effort to make baggage search normal. Notify executive officer narcotics, northern and (illegible)".

The papers show 100 percent baggage search with nil result on 2nd July 1973 at Perth Airport again at Perth Airport on 12th August 1973. The notation was 100 percent baggage examination, nil result, nil unaccompanied baggage.

Against this background on 11 June 1974 Commissioner J.M. Davis sent a minute to the Officer-in-Charge, District of New South Wales to the effect that on 10 June 1974 Mr Morgan Ryan approached Deputy Commissioner J.D. Davies in Canberra and asked for Mr Saffron to be interviewed by Commonwealth Police in order to enable the force to be fully acquainted with his antecedents and, "to allow us the opportunity to ask him any questions we desired". It was said that the reason for this was stated to be because Commonwealth Police had been making enquiries concerning him. Mr Ryan said he was very perturbed by the allegations in the NSW Royal Commission on Crime in Clubs that Saffron was engaged in prostitution rackets and he believed Commonwealth Police were watching every movement he made.

In the result, Saffron attended district headquarters on 29 July 1974 in company with Messrs Bruce Miles and Morgan Ryan. They spoke to Inspector Farmer and Sergeant Wheatley. A transcript of the meeting is amongst the documents contained in the file. During the course of the interview Mr Saffron said:

> "the second thing is that each time that I arrive back in Australia from an overseas trip I am always examined by the Customs. I thought originally that this was possibly a co-incidence but on one visit, I think in Perth, it was early in the morning and people lined up and they opened a loose leaf book and there was clearly the name Saffron".

Later he said:

> "the other point I feel that I should have clarified is that each time I arrive back I am subject to scrutiny and in one case even a body search".

As I have said, the date of that interview was 29 July 1974. By a letter dated 1 August 1974 Messrs Morgan Ryan and Brock (B.R. Miles) wrote to Senator Murphy, the Attorney-General for the Commonwealth. The full text of the letter is as follows:

Re: Mr Abe Saffron

We act for the abovenamed. We believe that he has been the victim of a severe injustice, and on present appearances at the hands of the Australian Police.

Recently there have been proceedings before a Royal Commission in NSW upon crime in licensed clubs. Our client was called as a witness therein; suffered financial cost and endured considerable and unfavourable publicity; all due, it would seem, to a report given the Commission by the Australian Police.

Before Mr Saffron was called as a witness, neither he nor his Counsel had seen the report. However, the evidence he gave certainly seemed to refute the report's allegations.

The Australian Police were represented at the hearing and Counsel did not ask Mr Saffron a question or challenge him in any way.

Since the hearing Mr Saffron has sought and been granted a conference with senior officers of the Australian Police in Sydney and has been assured that no offence nor matter within their jurisdiction adversely affects him.

It would seem fair to us that, if, as we believe the police report is ill founded or unjustified it should be immediately destroyed - and more, the Department should, even at this late stage and before the Commission's judgement delivered, appropriately inform the Royal Commissioner.

In passing it should be noted that the statement,
"Mr Saffron ... has been assured that no offence nor matter within their jurisdiction adversely affects him", was not an accurate summary of what appears at page six of the transcription of the meeting of 29 July 1974.

The copy of the letter to Senator Murphy in the files of the Australian Federal Police would of course have been sent for the purpose of the police assisting in the preparation of a reply. It is really the original copy of the Ministerial representation which will be contained in the files of the Attorney-General's Department that would or might show how the representation was dealt with.

Nevertheless a further interesting matter is that at the interview on 29 July 1974 it was pointed out to Messrs Ryan, Miles and Saffron that the examination at airport terminals was carried out by Customs officers rather than Commonwealth police. There is however, no inconsistency between that information and the fact that Messrs Morgan, Ryan and Brock wrote to the Attorney-General as the letter of August 1 1974 contained no complaint about the activities of Customs officers. That letter to the Attorney complained solely about the activities of the Commonwealth Police. It has nothing to do with surveillance at airports.

Also on the files of the Commonwealth Police is a memorandum from the Attorney-General's Department dated 13 August 1974 seeking the comments of the Commonwealth Police on the letter dated 1 August 1974 to the Attorney-General from Messrs Morgan Ryan and Brock. In passing one might note that a period of almost two weeks between the date of the letter and the referral of it to the Commonwealth Police for comment does not suggest any favourable treatment of the representation.

In the result by minute dated 29 August 1974 the Commissioner replied to the Secretary of the Attorney-General's Department stating in part that it was not the intention of the the Force to either attempt to withdraw or retract any statement made about Mr Saffron or to offer any apology for the emergence of such statement before a Royal Commission. It is not known what reply was sent by the Attorney-General's Department to Mr Saffron's solicitors.

The next relevant document that appears in the papers is of a further 100 percent baggage search by Customs with negative results on Saffron's arrival from Noumea on 7 October 1974. There is a further note that Mr Saffron was not approached by the Commonwealth Police. Again, on 21 November 1974 Saffron arrived at Perth Airport where there was a 100 percent baggage search 'nil result, nil unaccompanied baggage.'

By letter dated 14 January 1975 Messrs Morgan Ryan and Brock wrote to the Comptroller-General of Customs in the following terms:

"We act for Abraham Gilbert Saffron of , Company Director.

We bring to your attention an interview at the Commonwealth Police Sydney Headquarters on the 29th July 1974 at which Mr Saffron, his solicitors and Commonwealth Police Officers attended".

It was clear then and more so now that Mr Saffron believes that he is being needlessly embarrassed and harrassed by the Commonwealth Authorities. In Mr Saffron's words an incident occurred like this:

" I left for overseas on Qantas flight to Hong Kong scheduled departure 12 noon delayed until 3pm.

Filled departure card in normal way and waited in the departure lounge to emplane. There was a further delay and all the passengers including myself were then asked to board. I then noticed a man and woman questioning all the men as they passed asking them if they were Mr Abe Saffron. They eventually came to me and asked me to step over to a counter.

They told me that they were Federal Officers and that they wished to question me about currency regulations. They then asked me how much money in travellers cheques I had on me of which I immediately told them and after several other questions they allowed me to board.

The whole incident was most embarrassing and quite uneccessary. No further incidents occurred until I returned to Australia on Wednesday 20th November 1974 at 2.30am at Perth International Airport. There I noticed that the Customs Officer checked his book and after this gave me the same thorough search that I had been receiving in the past, going through all my luggage and searching me personally. After this I was allowed to leave".

> Clearly one course of action for Mr Saffron is take proceedings for arbitrary use of a power designed only for reasonable and proper use.
>
> Mr Saffron does not wish to take this action but respectfully asks that such embarrassment and harrassment will not occur again.
>
> We believe this to be a reasonable request particularly as apart from these incidents Mr Saffron has enjoyed respect and courtesy from Commonwealth Officers of both Departments.

A letter of the same date in identical terms was also sent to the Commissioner, Commonwealth Police (and, apparently to the Attorney-General or Minister for Customs and Excise)

The next documents show investigation by the Commonwealth Police of the origins of the various instructions in relation to Saffron. It is suggested that the Sydney office gave instructions to search Saffron for currency on 12 November 1974 on his departure from Sydney.

Next, there is a telex dated 30 January 1975 to the Assistant Collector, Air Services (Sydney) and Sub-Collectors at other airports and others amending the SAA on Saffron. The telex reads:

> " Alleged harrassment of Saffron by Customs and CPF has been subject of ministerial representations.
>
> Believe that Saffron may travel within a matter of hours.
>
> Comptroller-General has directed that under no circumstances is he to be given a baggage (or body) search.
>
> If, at a later stage, information is received which warrants upgrading this alert to include baggage search, it will be amended for the duration of specific journeys only".

There is then a further telex of the same date to the following effect:

> " Please amend suspect alert advice so that 'action' reads as follows:
>
> advise all travel details to Executive Officer, Northern Region/Commonwealth Police HQ/and CIIB.

Next there is the note for file of Sgt M. Martin. This reads:

" 30 January 1975 saw Kevin Wilson of Customs who told me that both the department and the Minister have received letters from Saffron's solicitor complaining about certain events in Sydney and Perth airports. I stated we have received similar correspondence.

Wilson stated the A.G. has directed that Saffron is NOT to receive a baggage search on future travel unless there is specific information on which to base same. He continued that as a result their CPCL entry is to be downgraded immediately to recording of travel details only and asked our view. I replied that the existing alert only calls for travel details on our behalf and that that has always been our position. We have never requested a search. Consequently advice with travel details is all that we require now".

It is believed that Saffron will go overseas 31 January 1975 Wilson is contacting Sydney airport to ensure Customs Officers give him a clear run.

Next, on 25 February 1975 the Attorney-General's Department again wrote to the police referring to the letters that Messrs Morgan Ryan and Brock wrote to the Attorney-General, to the Comptroller-General of Customs and to the Commissioner of Commonwealth Police. The Attorney-General's Department asked for comments and views upon the matter and a copy of any replies sent to Mr Saffron's solicitors. There is a notation in handwriting by, I assume, the Commissioner " I believe I issued certain instructions after Mr Ryan's visit." It does not appear whether the Commissioner is referring to the visit of 29 July 1984.

A draft reply, which was not sent, to the Attorney-General's Department said, in substance,

" as part of their duties at the International terminal Sydney, my officers enforce the provisions of the Banking (Foreign Exchange) Regulations. Mr Saffron was spoken to on 12 November 1974 but no offence was disclosed.

The papers then contain a minute to the Director, Prevention, Detection Services from Chief Inspector Wilson, dated March

1975. Mr Wilson, was the author of the telex dated 30 January 1975 which contained the sentence "Comptroller-General has directed that under no circumstances is he (Saffron) to be given a baggage (or body) search.

The minute is largely illegible but it appears that it takes the form of an answer to a complaint in relation to the "incident" at Sydney Airport on 12th November 1974. This was, of course, the matter raised in the letter by Messrs Morgan, Ryan & Brock dated 14 January 1975. The relevant part of the minute for present purposes is that which begins at the foot of page 2. Chief Inspector Wilson writes:

> " Late in January I was advised by Mr D.K. O'Connor that representations had been received on behalf of Mr Saffron and that the Comptroller-General had directed a review of Saffron's Alert. I informed Mr O'Connor verbally of the history of the Alert and the present wording. I consulted with Director (Narcotics Beaureau) as the Alert had been raised by the Bureau's Northern Region and requested him to advise me whether the bureau's requirements could still be met by an Alert which directed that they be advised of travel movements only, and which contained no instructions regarding baggage search. I was advised within about a day that this arrangement would be satisfactory and on 30 January 1975 I telexed all States advising them that the "action" section of the Alert was to read as follows" Advise all travel details to Executive Officer, Northern Region, Commonwealth Police Headquarters and CIIB. I also sent another telex to all States and to the two major airports advising them of the representations that had been made and of a direction given by the Comptroller-General to Mr O'Connor that under no circumstances was Saffron to be given a baggage or body search when next he traveled.

Mr O'Connor was spoken to by the Committee of Permanent Heads into this matter. He said, amongst other things, that he had no communications with Senator Murphy in the matter and, to the best of his knowledge, Senator Murphy had no part in the decision. Mr O'Connor further recalled that after consultation with the Comptroller-General Mr Alan Carmody (now deceased), or the First Assistant Comptroller-General, Mr Ortlepp, also now deceased, he instructed Mr Wilson to draw the attention of Collectors to the downgrading of the Alert on Mr Saffron.

Returning to the papers, in the Commonwealth Police File there then follow a number of documents dealing with what actually happened at Sydney airport in November 1974. The investigations continued throughout March 1975 and April 1975. By a memorandum dated 27 May 1975 Mr J.M. Davis the Chief Commissioner, informed the Secretary that the incident to which Messrs Morgan Ryan & Brock referred was the departure of Mr Saffron on 12 November 1974 when he was spoken to by Commonwealth Police Officers with a view to detecting any breach of the (Banking Foreign Exchange) Regulations. It was suggested that the Secretary, Attorney-General's Department could be appraised of that information.

In the light of these documents it appears that the conclusion at paragraph 41 of the Report of the Permanent Heads on Allegations in the National Times of 10 August 1984 is, subject to one error, correct. That paragraph reads as follows:

> " Apart from one document entitled 'note for file' prepared by Sergeant First Class Martin on 30 July 1975 discussed below, there is no record in Commonwealth Police records of any Ministerial direction or involvement in discussions to vary Customs surveillance of Saffron".

The reference to 30 July 1975 should of course, be to 30 January 1975.

At paragraph 43 of the Permanent Heads' report the statement is made that the note for file is "the only reference in the official papers of any Department or Force to any Ministerial involvement or direction in this matter". It is not of course possible to verify that conclusion without access to the full records of the Attorney-General's Department, the Customs Department and the Australian Federal Police. Nevertheless there is nothing to suggest that that conclusion is not accurate.

It will be recalled that Martin's note attributes to Kevin Wilson the statement that the AG had directed that Saffron was not to receive a baggage search. When interviewed by the Permanent Heads' Committee Mr Wilson said that while it was possible that the Attorney-General was the source of the direction, in all his dealings with the matter Mr Wilson believed that the direction came from the Comptroller-General.

For that reason and for the further reasons that appear in paragraphs 45 and 46 of the Report of the Permanent Heads I would recommend that the Parliamentary Commission, while treating the matter as an allegation, proceed in the manner suggested by section 5(3) of the Parliamentary Commission of Inquiry Act, that is, to have regard to the outcome of the Permanent Heads' inquiry into the allegation and report that it considers the conclusions reached by that Committee to be the right conclusions. Those conclusions were that the decision to reduce the customs surveillance of Saffron to providing advice and travel details was reasonable and appropriate; furthermore, that it was more probable than not that the decision to vary the surveillance of Saffron was made by the then Comptroller-General and, lastly, that that conclusion did not rule out the possibility that the Minister spoke to the Comptroller-General who may have reflected the Minister's views when speaking to Mr O'Connor.

In short, my recommendation is that the conduct to which the allegation goes is not conduct which could constitute misbehaviour. Further, and alternatively, there could appear to be no possibility of admissible evidence being brought to prove that the then Attorney-General's involvement in the matter was greater than that suggested by the Committee of Permanent Heads.

A. ROBERTSON

MEMORANDUM

TO: S. CHARLES
M. WEINBERG
A. PHELAN
P. SHARP
F. THOMSON
A. PHELAN

FROM: A. ROBERTSON

RE: ALLEGED DIRECTION TO CUSTOM OFFICERS BY MURPHY J. AS MINISTER FOR CUSTOMS AND EXCISE AND ATTORNEY-GENERAL

On file number C7 there are two allegations going to the same conduct of the Judge when he was Attorney-General and Minister for Customs and Excise.

One allegation is from Mrs Cains who is a member of the House of Assembly of the Australian Capital Territory. She expresses her allegation to be whether Mr Justice Murphy issued a direction that the law of the land was to be ignored. The law of the land in question is regulation 4A of the Customs (Prohibited Imports) Regulations as they stood until amended on 1 February 1984.

The second allegation is from a Mr B.A. Peachey. It is that Murphy J:

(a) caused and authorised a Ministerial direction to be made to the Department of Customs and Excise that its officers should not enforce the provisions of Regulation 4A in relation to the importation of pornography in full knowledge that officers of the department were being instructed not to enforce statutory regulations;

(b) that the Ministerial direction was contrary to the Minister's duty and oath as a Minister of the Crown to uphold the law of the Commonwealth.

Mr Peachey annexes a number of documents to his statutory declaration chief amongst which is a memorandum from a Mr Sheen for the then Comptroller-General of the then Department of Customs and Excise to each of the Collectors. That memorandum set out the Government's announced policy in relation to censorship and then refers to proposed amendments to regulation 4A. The memorandum goes on to say:

> "for the time being at least Customs resources engaged in screening imported goods should be primarily concerned with the detection of prohibited imports other than material which offends Regulation 4A. However, Customs will continue to sieze privately imported pornography: –
>
> . if it comes to notice because a passenger blatantly but unsuccessfully attempts to conceal it;
>
> . if it is deliberately brought to the attention of an officer;
>
> . if it comes to notice in the course of examination for other Customs purposes; and
>
> . if imported by first class mail, the material is known before examination to be unsolicited.
>
> For the time being there are to be no prosecutions under the Customs Act for offences involving pornography."

At the relevant time regulation 4A read as follows:

4A(1) this regulation applies to goods that, whether of their own nature or having regard to any literary or other work or matter that is embodied, recorded or reproduced in, or can be reproduced from, the goods –

(a) are blasphemous, indecent or obscene; or
(b) unduly emphasise matters of sex, horror, violence or crime, or are likely to encourage depravity,

and to advertising matter relating to such goods.

(2) The importation of goods to which this regulation applies is prohibited unless a permission, in writing, to import the goods has, after the Attorney-General has obtained a report from the person or persons for the time being authorised by the Attorney-General to give such a report for the purposes of this regulation, been granted by the Attorney-General.

It appears that the application of regulation 4A by the officers of Department of Customs was in accordance with instructions issued nationally (i.e. the Comptroller-General's memorandum) following a Ministerial direction in 1973. It also appears that the Ministerial direction emanated from a meeting between the then Senator Murphy and senior officials from his departments, the Attorney-Generals Department and the Department of Customs and Excise. Enquiries are being made so as to obtain a copy of the note of that meeting. A request has also been made for any submissions which directly preceded the meeting in the first half of 1973 and any instructions which directly followed it. Inquiries are being made both with the Attorney-Generals Department and the Australian Customs Service.

In the meantime, the following observations may be made.

First, it cannot be said that the importation of goods falling within the regulation 4A(1) were all subject to a permission. No permissions appear to have been either asked for or given in terms of sub-regulation 4A(2). It does appear that the direction given was a direction to allow the importation of prohibited imports falling within regulation 4A(1).

Secondly, one may assume that this direction was given in anticipation of an amendment to the regulations.

Thirdly, although the direction was subject to some modification by memoranda dated 5 April 1977 and 3 May 1980, the basic policy of non-enforcement of regulation 4A was continued by various Ministers until the regulations were amended on 1 February 1984.

Fourthly, it is not accurate to say as Mrs Cains does in paragraph 3 of her letter that "as the Mahoney report made in 1983 found, it was quite improper for the direction to have continued in force without action being taken to introduce validating legislation". What Mr Mahoney in fact said at paragraph 5.75 of his report was:

> "in my view it is quite improper that the responsibility placed on Customs Officers by the direction should continue. I recommend that the conflict between regulation 4A and the Customs direction be resolved without delay."

These allegations may be analysed further when material from the Attorney-General's Department and the Australian Customs Service is obtained. At that stage, if then considered desirable, it should be possible to formulate a specific allegation in terms either of the Crimes Act or of common law offences relating to misconduct in public office.

On present information the most that could be said about Murphy J. is that, assuming a relationship between him and Saffron and assuming that at that time Saffron had an interest, known to Murphy J. in importing pornographic material, his motive in directing that the regulation not be enforced was improper.

A. ROBERTSON
Doc. 0018M

To: Director of Research

ALLEGATIONS NOS. 8 (ALLEGED DIAMOND FOR MRS MURPHY) AND NO. 30 (TILLER LETTER TO QUARTERMAINE)

The purpose of this paper is to report the results of enquiries made in relation to the abovementioned allegations and to recommend that these matters not be pursued further on the basis that no reliable evidence is available.

During the course of our enquiries, a number of Australian Federal Police officers in Perth were interviewed and the relevant police files were examined. The following people were also interviewed concerning these allegations:

- Wilson Tuckey M.P. (Re. Tiller/Quartermaine letter)
- Dr Tiller (Re. Tiller/Quartermaine letter and alleged diamond for Mrs Murphy)
- Mrs McKenzie (Nee Mrs Quartermaine - Re. Tiller Quartermaine letter and alleged diamond for Mrs Murphy)

Set out below under each allegation is the information gathered from the abovementioned sources;

Allegation No. 8 (Alleged Diamond for Mrs Murphy)

Background

On 13 September, 1984 an article appeared in The Age newspaper which contended that the words "diamond purchases - Mrs L Murphy 7,800" appeared on the reverse side of a cheque stub. The cheque book was recovered by The Age from Christo Moll. Moll claimed that the Mrs L Murphy referred to was the wife of Mr Justice Murphy. (A copy of a newspaper article on the matter is attached (Attachment A)).

On the same day as the newspaper article appeared, the matter was raised in the Senate by Senator Chaney. In response, Gareth Evans read the following statement in the Senate on behalf of Mr Justice Murphy:-

> "The Age story is a continuation of a disgraceful campaign of defamation by The Age now directed against my wife. My wife never has purchased a diamond in her life. There have been no dealings ever with Christo Moll of any kind. There is not an atom of truth in The Age story. I request that there be a full and prompt investigation of the allegations and of the role of The Age in this affair."

(Copy of Hansard references attached - Attachment B).

Mr Justice Murphy then lodged a complaint in relation to the article with the Australia Federal Police (AFP).

AFP Enquiries re Christo Moll

The AFP in Perth then commenced an investigation of this material. However, the activities of Christo Moll and his business dealings were already the subject of AFP investigation (and had been for some years).

Moll allegedly involved Perth doctors and others in Commodity Trading Agreements and other agreements dating back to 1972 which were in effect tax avoidance schemes. The first transactions were for Doctors, Wald, McKenzie and Tiller involving diamonds, silver and works of art. The early commodity trading contracts with C T Moll and Co. provided for 10% commission on profit as the only fee.

Later in the life of the schemes, when more doctors were availing themselves of Moll's services, fairly large sums of up to $100,000 per doctor were being raised on a promissory note system. The amount was decided apparently at Moll's suggestion depending on the estimated taxable income of the dollar.

Moll would arrange for the various doctor's auditor (always Yarwood Vane and Co. later known as Deloitte Haskins & Sells) to

receive invoices to support the trading activities supposed by being conducted - all duly authorised by the doctors.

The AFP commissioned a firm of Chartered Accountants (Hungerford Hancock and Offner) to enquire into the commodity trading activities and in its report dated 22 February, 1984 it said in relation to the invoices:-

> "It is clear that these invoices, used in or to give substance to the alleged transactions, were totally false - in most cases having been "manufactured" after initial investigations were made by the ATO." (Australian Taxation Office)

The subsequent ATO enquiries resulted in the recovery of significant sums from the doctors in taxes evaded and with some doctors ultimately going into bankruptcy. Christo Moll on the other hand left the country having misled the doctors as to the nature of the financial transactions. There are a number of current AFP warrants for the arrest of Christo Moll relating to conspiracy to defraud the ATO.

Investigation of the Diamond for Mrs Murphy Allegation

Following the appearance of the allegation concerning the diamond purchases for Mrs Murphy, further documents were provided to the AFP by The Age journalists. These were two valuations for a diamond of .74 carat, one from a Hendrina Boef in Amsterdam dated 24 January, 1979 headed:

> "Valuation for Insurance Purposes Mrs Ingrid Murphy." (Attachment C)

and the other from Robert Levinson of West Perth addressed:

> "To whom it may concern." (Attachment D)

These two valuations, in addition to the earlier mentioned cheque stub, became the subject of AFP enquiries.

Inspector Roley Sellers (AFP Perth)

Inspector Sellers was interviewed in Perth over three days (21, 22, 23 July, 1986) by Jordan and Howard in relation to the Moll enquiries and in relation to the enquiries in respect of the specific allegation of the purchase of the diamond for Mrs Murphy. The interview with Inspector Sellers summarising the nature of the enquiries and his conclusions was recorded and this tape is being transcribed. However in summary, his conclusions (for reasons set out below) are:—

i) the valuation certificate from Boef is false;

ii) the information on the back of the cheque butt which shows the name Mrs L Murphy 7,800 is, in all likelihood, also falsely stated and;

iii) the valuation from Levinson for a diamond of .74 carats cannot in any way be associated with the valuation referred to in i) above.

It should be noted that the material referred to in i), ii) and iii) above were all provided to The Age journalists by Christo Moll.

In relation to the Boef valuation (i) above), it has been established by the AFP in Perth, that Mrs Boef is in some way related to Moll and has at times been known as Hendrina Moll. It has also been established by the AFP that Mrs Boef at some point sent a signed, blank copy of her letterhead to Moll. The signature at the bottom of the Boef valuation (of which the original cannot be traced) is a photocopied reproduction of the signature appearing as photocopies on approximately 40 diamond purchase invoices on Mrs Boef's letterhead which are all described in the chartered accounts reports as false (several samples of these documents are attached behind Attachment E). The invoices were examined by a member of the AFP

"Document Examination Section and he concludes in his report that:-

> "the documents bear photocopied signatures on each which very strong consistencies would indicate that they are reproductions of one signature."

The same officer examined the signature on the document purporting to value a diamond for a Mrs Murphy and described it as a reproduction of the signature on the invoices. (Attachment E).

Mrs Boef was interviewed on 30 August, 1985 by Dutch Police at the request of the International Criminal Police Organisation in Canberra. In part, her statement says:-

> "I have also sent Moll some of my private notepaper (with my name on it) at Moll's request I had placed my signature on the notepaper before I sent it to him." (Attachment F)

Mrs Boef, in relation to some documents which Moll asked her to sign, says in her statement:-

> "The documents I had to sign were in English and I did not understand them..... . At the time I did not question the contents of the documents because I trusted Moll completely when I signed the documents."

In relation to ii) above (ie. the information on the back of a cheque butt), enquiries were conducted by Inspector Sellers and his report is attached. (Attachment G)

Inspector Sellers sought to

a) locate the relevant cheque,

b) to trace it through banking records,

c) to identify accounts that the money passed through and,

d) locate any person named Murphy mentioned in the "Moll" enquiry.

Briefly, these enquiries show that on 23 February, 1978 a courier for Moll attended at the National Bank in North Perth wich cheque no. 408542 in the sum of $83,055.83 and obtained a bank cheque in favour of the ANZ Bank. The bank cheque was then returned to Moll. An application for foreign currency dated 23 February, 1978 (the same date as the cheque) for the sum of Pounds 48,072 in the form of a draft in favour of Mobitt Ltd, Hong Kong was made, which states the reasons as "accommodation and tour arrangements, various clients." (Mobitt is one of a number of "Moll" companies).

The cheque butt was examined by an officer of the W.A. Police Scientific Branch. He is of the opinion that the date and amount written on the front of the cheque butt and the writing on the cheque itself were made by a similar type of felt pen. He then points out the overwriting has taken place and that altogether it is probable that five different writing instruments were used. (Attachment H)

In relation to the endeavour to locate any other Murphy mentioned in the Moll material, three were identified. One, Mrs E M Murphy of West Perth is deceased, and second, Mrs B Murphy claimed to have no dealings whatsoever with Moll and the third, Mrs E J Murphy could not be located. It is also understood by Inspector Sellers that a Mrs Murphy occupied an office next to Moll's office in London. However this Mrs Murphy has not been located.

In relation to the diamond valuation from Levinson, (a Perth jeweller dated 26 February, 1979, (iii) above) this document merely says 1 loose diamond .74 carat, $2,830. Enquiries were made by the AFP in relation to this document, however it was determined that Mr Levinson died some years ago and no information could be obtained which might link this diamond in any way with any diamond mentioned in the Boef valuation (or on the Moll cheque butt). In any event (as mentioned above) there is substantial doubt as to the authenticity of the Boef

valuation. Further the amount shown on the cheque butt is 7,806 and the Levinson valuation shows 2,830. This significant discrepency suggests in any event that they may well relate to different diamonds.

Conclusion

In conclusion it could be said that the enquiries undertaken by the AFP in relation to this matter were thorough and apparently properly conducted. Further, the issue of a diamond purchase for Mrs Murphy was raised by us with a number of people associated with the Moll schemes (Mrs McKenzie (Re. Quartermaine and Dr and Mrs Tiller). None of those spoken to was aware of any diamond bought for or given to a Mrs Murphy.

Clearly the available documentation is unreliable and would not support any conclusion that a Mrs Murphy either purchased (or received by way of gift) any diamond. Indeed there must be considerable doubt in the light of information provided concerning the character of Christo Moll, whether the relevant diamond ever existed.

Allegation No. 30 - The Tiller Quartermaine Letter

The alleged letter from Dr Tiller to Mr Quartermaine (Attachment I) was raised by Wilson Tuckey, MP in the Federal Parliament on 15 October, 1985. The letter dated Perth 18 June, 1979, in part says:-

> "Can you arrange another meeting with Lionel Murphy as promised as you may be able to obtain his support or his advice. We require solid backing to favourably influence the outcome of our present problems."

This matter was also investigated by the AFP in Perth. Dr Tiller was interviewed on 5 April, 1985 by Detective Sellers and a copy of the record of conversation is attached. (Attachment J)

Dr Tiller identified the signature at the bottom of the letter

as being similar to the signature he used in 1978-1979. He stated that on 18 June, 1979 (the date of the letter) he was in Canada and he showed Detective Sellers his passport which verified that fact. Tiller stated that:-

> "I have never seen this letter before, I didn't write this letter, it's all bullshit."

Dr Tiller said that he had met Ron Woss (referred to in the letter) sometime in 1978 but never in his surgery. In relation to the tax investigation, Dr Tiller said that he made no inducements to officers in the Tax Department and said;

> "What he describes is corruption and I don't agree with corruption at all."

The letter also refers to a solicitor named John Gillett; Dr Tiller said that Gillett was not his solicitor and:

> "the letter is dated 11 June, 1979 (sic) and the meeting all the doctors had with Gillett was in July, 1979. The meeting took place after the letter. I went to the meeting and I was disgusted with the man, he talked a load of bullshit, I wouldn't have him as my solicitor."

In relation to the style of the letter Dr Tiller said ..

> "It's not my language, I'd have no reason to write to Murray ... if I wanted to discuss anything with him I would go and see him."

During the course of the interview Dr Tiller stated that it looked to him as though:-

> "he (Moll) has taken a blank letter of mine with my signature on it and typed in the letter...Moll asked me to give him blank letterheads when he was my manager. He said it would assist his trading on behalf of Lee Trading. That struck me as being strange, it's like giving someone a blank cheque, but that's what it looks like he has done, I trusted the man."

Dr Tiller was interviewed by us on Tuesday 22 July, 1986 and his recollection was consistent with the abovementioned interview report.

Jordan and Howard also interviewed Mrs McKenzie (nee Quartermaine) concerning her knowledge of any association or friendship between her ex husband (Quartermaine) and Mr Justice Murphy. Mrs McKenzie said that she knew of no association between the two men. She said that for quite some years before their separation there had been little communication between herself and her ex husband and she knew little of her husband's business affairs or social associations.

It should also be mentioned that in a taped conversation between the ex Age journalist Marshall Wilson and Mr Quartermaine which was provided to the Commission of Inquiry on Sunday 13 July 1986, Quartermaine says that he met Justice Murphy only once (and briefly) for drinks at a social gathering at the Judge's office in Sydney when he was a Senator.

Conclusion

In conclusion, there seems to be no further possible sources of information to establish conclusively, the identity of the author of the letter. The AFP appear to be convinced by Dr Tiller's explanation and therefore have taken the matter no further. Also from the enquiries we have made there seems to be no information available which links Quartermaine and Mr Justice Murphy in any close sense.

The general consensus (AFP & Dr Tiller) is that Moll is the author of both the Tiller/Quartermaine letter, the Boef diamond valuation and the notations on the back of the cheque butt.

As to a motive for Moll's preparation of this material, it is put by the AFP and Dr Tiller that Moll and Quartermaine who were once close business associates and friends had serious commercial disputes which culminated in a protracted Supreme Court action brought by Quartermaine against Moll in South Africa in 1982 for money Quartermaine alleged that he had lent to Moll over a number of years.

The action resulted in an award of $420,000 dollars plus $100,000 cost to Quartermaine. However, this amount seems not have been received by Quartermaine as Moll, (according to Dr Tiller) left the country under an assumed name the day before the judgement was delivered.

The AFP and Dr Tiller are of the view that Moll bears a great deal of animosity towards Quartermaine and has taken the opportunity to cause the greatest possible mischief for him through the creation of false documents. Dr Tiller also says that Moll appears to him to be paranoid in relation to doctors and envies their social status and would seek to discredit him (Tiller) and his doctor colleagues in any way possible. No theory has been advanced by any of the parties interviewed as to why Mr Justice Murphy and his wife may have been included in these possibly false documents other than the suggestion that he was a prominent public figure at that time.

Recommendation re. Allegations No. 8 and 30

In the light of the investigations undertaken by the AFP (coupled with our own enquiries) which have not produced any conclusive evidence to establish that:-

a) Mrs Murphy either bought or received a diamond or that;

b) Mr Justice Murphy had any close association with Mr Quartermaine or provided favours to Quartermaine and/or his Doctor colleagues,

it is recommended that no further enquiries be made in these matters.

Ned Jordan Mark Howard

Memo to: Mr. S. Charles QC
Mr. M. Weinberg
Mr. D. Durack
Ms. Sharp
Mr. A. Phelan
Mr. F. Thomson

From: Mr. A. Robertson

Allegation that Murphy J. as Attorney-General wrongfully or improperly ordered the return to one Ramon Sala of his passport and his release from custody.

The original of the Attorney-General's Department file dealing with this matter has now been obtained. The originals of various files from the Commonwealth Police Force, the Australian Federal Police and the Department of Immigration have been provided by the Office of the Director of Public Prosecutions.

I propose to start with the Attorney-General's Department file, since it is the actions of the then Attorney-General which are important.

His state of knowledge was, of course, not necessarily the same as that of the policemen investigating Mr Sala.

The Attorney-General's Department file shows that on 27 May 1974 a telegram from Morgan Ryan and Brock, Solicitors, was received presumably in the Attorney-General's Office in Parliament House. The text of the telegram was as follows:

> Urgent...Honourable L.K. Murphy Atorney General, Commonwealth of Australia, Parliamnent House, Canberra ACT.
>
> Sir, urgent attention please direct immediate release nd deportation of Ramon Sala held in Long Bay Gaol fines having been paid and the Courts orders of 24/5/74 otherwise fulfilled... Morgan Ryan and Brock Solicitors.

The telegram is marked to the Secretary for "Advice to Minister

- urgent". It was received in the Attorney-General's Department itself at 10.00 am on 20 May 1974. It was marked to Mr Watson.

The next folio on the file contains notes, perhaps by one of Mr Watson's officers, of inquiries that were made. These notes read:-

> Ramon Sala Darlinghurst Court Tuesday and Wednesday and Thursday 22, 23, 24 May. Judge ordered payment of heavy fine and deportation. Charges. 4.15 pm Judge Leslie 24 May (Friday) breach of banking and For Exch Regs and two section 233 of the Customs Act. Fined $6,000. Actually four charges $150.00 each charge. 2 oz cannabis. Paid $6,600 H 23879 Sherriff's Office King St. Deportation order made by judge, Forfeiture of currency $36,000 Pol. outcast

The next folios appear to be in the handwriting of Mr A. Watson. The first document is headed S/C Boyle and its text is :-

> There was no charge of false passport laid. CPF and (?) Fr thought that passport false and RS agreed that it was - was prepared to plead guilty.
>
> Donald asked to lay charge under Migration Act Section 42, but said that Deportation order made on 10 May and so no further charges should be laid.

The next document, also undated, is headed A-G. The text is as follows

> His passport is to be returned. Instructions were given to Mahoney who agreed that this be done.
>
> Sala is to be deported forthwith - he is not to be held any longer. He should have gone Monday and is to spend no more time in jail.
>
> FM = Armstrong was informed of AG's views and AG told that Immigration had the matter in hand - <u>that's all</u>.
>
> Tell REA of what transpired this morning and let the AG know. We are not to have a head - on with Immigration. It's their business.
>
> Arrested 28 April when attempting to leave Australia. In custody throughout. Bail not sought.

The next document, also undated but in the same hand is as follows:-

> Big time drug runner. Spanish papers - not his probably his (?) courier.
> Miles and Morgan Ryan
> Deliberately forfeited $36,000
> Desperate to get to Bombay ? drug storage there
> Charge drafted - Donald of Immigration declined because deportation order had issued 10 May 1974 - allegedly at Commonwealth Police request was withdrawn - CPF deny
> So no prison sentence S/C Brodie and S/C Boyle
> Policy is not to put in Immigration charges when deportation.
> Sala originally said no objection to Spain - changed?
> Passport (?) with Brodie - drawn to attention of French.

The next document also apparently in the same handwriting has a number of notes dealing with other matters and then continues:-

> Ramon Sala Tuesday, Wednesday and Thursday, Friday, Order for deportation. Deportation order - will be implemented as soon as travel documents are in order. $36,000 cannabis in luggage at Mascot. District Court $6,000 taking currency out $150 x 2 attempting export 2 possession of prohibited substance. French passport (born in Spain) as substituted pages? Returned to France? Visitors visa. Getting documents from Spaniards. Inspector Dixon - Bert Treloar: large sum of money offering for his early departure: before trial. Political exile from Spain - info given to Immigration.

The next document on the file is a typescript of a telex message which reads as follows:-

> I confirm our oral advice that the Attorney-General has directed that Sala's passport be returned to him and that Sala be allowed to leave Australia as soon as practicable.
>
> Understand that Sala's solicitors have booked a flight for him tomorrow.
>
> Would be grateful for advice in due course of result of Interpol inquiries.

The telex was sent on 29 May 1974.
Chronologically the next document is a memorandum dated 29 May 1974 from A.R. Watson for the Secretary of the Attorney-General's Department to the Secretary to the Department of Immigration. That memorandum is as follows:-

Ramon Sala

1. I refer to my discussions with Mr McGinness of your Department concerning the proposed deportation of Sala.

2. I understand that Sala was arrested on 28 April 1974 and remained in custody until the conclusion of the proceedings against him in the District Court on 24 May 1974. On that day he was fined $6000 for an offence against the Banking (Foreign Exchange) Regulations and ordered to forfeit the $36,000 which he was detected in the act of taking out of Australia. In addition he was fined $150 on each of four charges relating to the possession of cannabis. All of the fines have been paid.

3. It appears that an order was made for his deportation on 10 May 1974 and that consideration is now being given to the execution of that order. I understand that you propose to effect the deportation when Sala's travel documents are in order. The passport on which Sala entered Australia has, I am informed, been discovered to be a forgery. Although Sala is Spanish the passport was French. Contrary to the statements Sala made last week he does not now, it appears, desire to return to Spain. It is now alleged that he is a political exile from Spain.

4. I discussed this matter with the Attorney-General this morning and he stated his firm view that Sala's passport ought to be returned to him forthwith. The Attorney-General is of the view that Sala should leave the country today.

5. The Attorney-General considers that if necessary Sala should be escorted to the airport and allowed to buy his own ticket out. In his view Sala has already been unnecessarily detained for two nights and he should not be held in custody any longer. Sala's passport is, I am informed, at present held by the Commonwealth Police who are conducting enquiries from Interpol for the purpose of establishing Sala's identity. In the course of those inquiries the attention of the French authorities in Australia has been drawn to the fact that the passport is a forgery.

6. I note the view expressed by Mr McGinness that the French would be extremely concerned if in these circumstances we were to return the passport to Sala and allow him to depart from Australia with it in his possession. Mr McGinness considered that it would be highly desirable that the Department of Foreign Affairs be informed of the return of the passport. I understand, however, that that Department sees no difficulties arising from the action contemplated.

> 7. I have conveyed the Attorney-General's views to the Commonwealth Police and will be glad if you will take all possible steps to expedite the conclusion of this matter.

The next document in chronological order is a note in handwriting dated 26 June as follows:

> Deportation order: Bert Treloar (733448) 10 May 1974 - based on decision by the Minister that day to cancel temporary entry permit. Section 7 of Migration Act. Order taken out because of possibility that he might not be convicted or only fined. Sort of insurance. Fairly common practice. Order in obeyance till 23 May 1974 when custody imposed after proceedings completed. Regarded his departure as voluntary. Release arranged 30 May 1974. Do not see this sort of departure as pursuant to the order - i.e. not deported (though order invoked for purposes of custody). Think Immigration has not got advice from AG's but that's the way it is regarded by Immigration. 21/6 Ryan solicitor approached Immigration about a document which had been impounded. Was informed that S would not be permitted to re-enter Australia.

Finally, there is a note, in response to a request of Mr Mahoney's that Sala left Sydney for Singapore on 30 May 1974 on Qantas flight QF1 on French passport No 25-168.

Those, it appears, were the only contemporaneous documents on the file of the Attorney-General's Department. There are now to be found on the file documents from the Australian Federal Police including a report by Inspector Dixon to the Commissioner together with attachments to that report. There is no great dispute as to the facts. It is clear that the Commonwealth Police were then of the view that Sala should not be released from custody. That view became more strongly held once Interpol had confirmed that the passport was false and once further investigations had been done by the Commonwealth Police which indicated the existence of a narcotic trafficking ring involving Sala. There is no indication that the Commonwealth Police or Australian Federal Police documents and reports were available to the Attorney-General's Department on or about 29 May 1974.

A fresh light on the allegation is cast by the statement of Senior Constable Gannell who on various occasions between late 1972 until 1975 was detailed to be a bodyguard for the then Senator Murphy. He says in his statement, which came from the Director of Public Prosecutions Office, as follows:-

> I am able to recall a discussion at which I was present during the time Senator Murphy was Attorney-General in relation to a man called Ramon Sala. This meeting took place in a room called the Members Lounge in Senator Murphy's Parliament House Office. The lounge was a room adjacent to the Member's or Senator's Office and formed part of his suite of rooms. During that period I was stationed in the lounge area. I recall that Senator Murphy, Commonwealth Assistant Police Commissioner John Donnelly Davies and Alan Carmody from the Department of Customs was there. I cannot recall whether there were other persons present although I have some recollection that the head of the Attorney-General's Department, Clarrie Harders may have been present. The people I have mentioned came out of Senator Murphy's private office and sat around in the lounge area discussing the Sala matter. They appeared to be debating whether Sala should be deported or charged. During the course of the meeting I was asked for my view by Senator Murphy. I said that I was unaware of the matter and was then given a brief outline of the facts by Senator Murphy. My recollection is that the Customs Department wanted Sala deported because of the cost of keeping him in gaol. My recollection is that the Commonwealth Police wanted Sala detained in Australia because he was a suspected drug trafficker and the police had been unable to prove his correct identity because the passport on which he had been travelling was false. I think that Mr Carmody put forward additional reasons for having Sala deported but I cannot recall them. At that time the body responsible for the investigation of narcotics offences was the Narcotics Bureau, which was part of the Customs Department.
>
> As stated earlier, I cannot recall whether Mr Harders attended this meeting. My recollection is that the Attorney-General's Department expressed a view in relation to Sala: I am unable to say whether it was at this meeting or in a subsequent minute to the Attorney. However my recollection is that the Attorney-General's view was that the charges were of a minor nature or that they could not be substantiated. I cannot recall how I became aware of this.

> My recollection is that I agreed with the Commonwealth Police view expressed by Davies that Sala should be kept in Australia. I also recollect that the matter was resolved by Senator Murphy agreeing to give the Commonwealth Police a specified period, perhaps about a week to pursue their inquiries in relation to Sala's identity and any evidence of him being involved in drug trafficking.
>
> Within about a fortnight of the conversation detailed above, I recall seeing a document from the Commonwealth Police Commissioner's Office setting out in about 4 or 5 pages a reply to representations made in respect of Sala by Morgan Ryan and Brock and annexing a copy of the solicitor's letter. I am uncertain, as I said earlier, whether Mr Harders was present at the meeting mentioned above. If he was not then my recollection of the Attorney-General's Department's views about the Sala matter are that they were expressed in an internal minute to the Attorney from that Department which I saw again within about a period of about 2 weeks of that meeting.

That part of the statement which refers to the Attorney giving the police more time is unsupported by the facts; Plainly there was insufficient time, as events happened, for such a course.

From the file of the Department of Immigration, Sydney, it appears that on 29 May 1974 Patricia Mullens, secretary to Senator Murphy, rang Mr B. Donald of the Department of Immigration in Sydney wanting to know what arrangements had been made for Sala's departure. Mr Donald advised her that Sala was to depart on 30 May and advised Mr Treloar of the conversation. Later that day, Morgan Ryan rang Mr Donald and told Mr Donald that he would arrange a booking (for Sala's departure)for the night of 30 May 1974.

Before turning to the report of Mr A.C. Menzies, it is probably worth setting out the relevant provisions of the Migration Act as that Act stood in May 1974.

> 7 (1) The Minister may, in his absolute discretion, cancel a temporary entry permit at any time by writing under his hand.
> 7 (3) Upon the ...cancellation of a temporary entry permit, the person who was the holder of the permit becomes a prohibited immigrant unless a further entry permit applicable to him comes into force upon that ... cancellation.
>
> 18 The Minister may order the deportation of a person who is a prohibited immigrant under any provision of this Act.

> 39(1) Where an order for the deportation of a person is in force, an officer may, without warrant, arrest a person whom he reasonably supposes to be that person, and a person so arrested may, subject to this section, be kept in custody as a deportee in accordance with sub-section (6)of this section.
>
> (6) A deportee may be kept in such custody as the Minister or an officer directs –
> (a) pending deportation, until he is placed on board a vessel for deportation;

Deportee" is defined in section 5(1) of the Act to mean a person in respect of whom a deportation order is in force. Section 27 of the Migration Act provided:

> 27(1) An immigrant who:
>
> (a)...
>
> (b)...
>
> (c) enters Australia after having produced to an officer, for the purpose of securing entry into Australia, a permit, certificate, passport, visa, identification card or other document which was not issued to him or was forged or was obtained by false representations,
>
> shall be deemed to be guilty of an offence against this Act punishable upon conviction by imprisonment for a period not exceeding six months.

In Part IV of the Migration Act the miscellaneous provisions are collected. Section 66 provides:

> A prosecution for an offence against this Act or the regulations, other than an offence under Part III of this Act, shall not instituted except by an authorized officer.

Part III of the Act deals with the immigration of certain children. Authorized officer is defined in section 5(1) "in relation to the exercise of any power or the discharge of any duty or function under this Act, to mean an officer authorized by the Minister to exercise that power or discharge that duty or function.

Turning now to the report of Mr A.C. Menzies, it seems to me that the salient paragraphs are 16 to 21. Those paragraphs show that Mr Mahony had no recollection of the matter at all while Mr Watson had a limited recollection of his discussions of the case with Senator Murphy. Mr Watson did recall that the discussion was very short and he added that Senator Murphy's attitude to the case was consistent with that he had displayed in a number of other cases, namely a strong concern that a person should not be kept in prison for any longer than was absolutely necessary. Mr Watson's attitude to the decision to return Sala's passport and to have him deported or allow him to leave the country was that while he disagreed with it, he recognised that it was within the Attorney-General's discretion and he saw no impropriety in it.

In my view, subject to what follows, there is little point in pursuing this allegation since Mr Callinan QC cross-examined Murphy J. about it at length at the first trial without, to my mind, making any progress whatsoever.

Again, subject to what follows, I would recommend that the Commission deal with this allegation by having regard to Mr Menzies' official report as envisaged by section 5(3) of the Parliamentary Commission of Inquiry Act.

Before coming to that position as a matter of finality, it would be worth asking both Mr Mahony and Mr Arthur Watson whether they have any further recollection of the matter beyond what they described to Mr Menzies in early 1984. For example, as Mr Menzies notes at paragraph 19 of his report, there must have been representations by the solicitors additional to the telegram of 27 May because that telegram did not refer to the return of the passport which was a significant feature of the ultimate decision.

The only other matter which I find unusual is the steps taken by Patricia Mullens, Senator Murphy's private secretary, to find out from Mr Donald of the Department of Immigration in Sydney, what arrangements had been made or were to be made for Sala's departure. Patricia Mullens does not seem to have been a person spoken to by Mr Menzies for the purposes of his report.

I see little point in talking to any of the Commonwealth Police involved in the investigations since, of course, what they knew was not necessarily known by either the Attorney-General's Department or the Attorney-General. But it seems that Inspector Dixon, at least, has things he wishes to say and he should be given an opportunity to say them to investigators.

As to what this allegation might, if proved, amount to, the connection with Mr Saffron seems, to my mind, remote. I should have thought that, at its highest, the allegation would be one that Murphy J. as Attorney-General, wrongfully (because of his association with Morgan Ryan) ordered the return of the passport and the release from custody.

If nothing more is forthcoming from Messrs Mahony, Watson or from Patricia Mullens there will be no evidence of any impropriety or misbehaviour.

A. Robertson

MEMORANDUM

TO: Sir George Lush
Sir Richard Blackburn
The Hon Andrew Wells

F Thomson
C Charles
M Weinberg
A Robertson
A Phelan
P Sharp

FROM: D Durack

HIGH COURT PROCEEDINGS 26/27 JUNE 1986

Attached hereto the following documents re the recent High Court challenge by Murphy J:

1. Copy Section 78B Judiciary Act Notice
2. Notice of Motion
3. Writ of Summons
4. Affidavits of Steve Masselos sworn 25 June 1986
5. Outline of submissions to be put on behalf of the Attorney-General (not handed up):
    A. Construction of the Act
    B. Validity of the Act
    C. Apprehended Bias
6. Submissions on behalf of the Plaintiff (Murphy J):
    A. Proved misbehaviour - Section 72
    B. Submissions concerning disqualification of Mr Commissiioner Wells.

[redacted]

D Durack

1 July 1986.

M E M O R A N D U M

TO: S. Charles
A. Robertson
D. Durack
P. Sharp
F. Thomson

FROM: M. Weinberg
A. Phelan

DATE: 3rd July, 1986

We are circulating the rough product of a day's meanderings through the allegations as they seem to us to stand at present. We have followed the same numbering pattern as was used in the original memorandum headed Summary of Allegations (dated 15th June, 1986). This is for convenience only. We suggest that in future any work dealing with any allegation, adopt the same numbering scheme.

This memorandum merely attempts to focus with a little more precision upon the allegations originally outlined on 15th June. It is no sense a draft of specific allegations in precise terms. It omits reference to allegations 4 and 5 (Sala and Saffron - Customs). Alan Robertson has taken those on board.

In the next day or so, a flow of third draft allegations will commence. These will be in the form of specific allegations in precise terms. Please let us have your comments (oral or written) if anything seems to warrant immediate attention.

ALLEGATION NO. 1

Statement of Offence

In or about December 1979, the Judge attempted to bribe a Commonwealth Officer contrary to the provisions of Section 73 sub-section (2) of the Crimes Act 1914.

Particulars of Offence

In or about December 1979, Donald William Thomas, a Detective Chief Inspector of the then Commonwealth Police in charge of the Criminal Investigation Branch for the New South Wales region, attended a luncheon at the Arirang Restaurant in Kings Cross Sydney at the invitation of His Honour Mr Justice Murphy. Also present at that lunch were John Donnelly Davies, the Assistant Commissioner, Crime of the Commonwealth Police in Canberra, and Mr Morgan Ryan, Solicitor. During the course of the luncheon, the Judge spoke to Thomas regarding a Social Security conspiracy case in which he had been involved. Particulars of that conversation are set out in the attached statement of Thomas dated 3rd of December 1985. Further particulars of this conversation are set out in the confidential transcript of the Testimony given by Thomas before the Stewart Royal Commission on 3rd of December 1985 pages 3279 to 3296 inclusive copies of which are attached. There was also discussion between the Judge and Thomas about the possibility of Thomas fulfilling a particular role within the soon to be created Australian Federal Police. The Judge said to Thomas "We need somebody inside to tell us what is going on". He followed that with the suggestion that in return for fulfilling this role, the Judge would arrange for Thomas to be promoted to the rank of Assistant Commissioner. Details of that conversation are also set out in the statement and transcript referred to earlier.

Manner in which the case is put

Section 73 (3) provides: "In this Section; "bribe" includes the giving, conferring or procuring of any property or benefit of any kind in respect of any act done or to be done, or any forebearance observed or to be observed, or any favour or disfavour shown or to be shown in relation to a matter arising under a Law of Commonwealth or of a Territory or otherwise arising in relation to the affairs or business of the Commonwealth or of a Territory;

"Commonwealth Officer" includes a person who performs services for or on behalf of the Commonwealth, a Territory or Public Authority under the Commonwealth."

It is alleged that the Judge offered Thomas at least two benefits within the meaning of Section 73 sub-section 3:

a. an invitation to meet his parliamentary critic in order to allay his concern about the constant attacks to which he was being subjected in relation to the Greek conspiracy; and

b. the position of Assistant Commissioner in the soon to be formed Australian Federal Police. In return, it is suggested, the Judge made it clear to Thomas that he would be expected to keep the Judge's associates (presumably the Labor Party) informed of what was going on in the Australian Federal Police in a way which could not be done through proper avenues of communication.

Evidence to be obtained

The following witnesses will be called:

1. Thomas

2. Davies

3. Morgan Ryan

It will also be necessary to consider whether any evidence is to be led of the subsequent meeting between Thomas and Morgan Ryan in February 1980. If that evidence is thought relevant to the allegation against the Judge, a transcript of the tape recording between Ryan and Thomas should be supplied to the Judge. In addition, a statement should be obtained from Inspector Lamb. Any summons which is issued to these witnesses should include in its terms the requirement that they produce any diaries, notebooks, or memoranda which might contain matters relevant to these incidents. A separate summons should be directed to the Australian Federal Police in respect of any such documents which might have been handed to them by any of these police officers (in particular Davies) at the end of his period of office.

It appears that the Australian Federal Police are currently investigating the possibility of charging Morgan Ryan in relation to the events of February 1980. It would be desirable to obtain any file notes or other working documents which the Australian Federal Police have raised in relation to that investigation. A statement should also be obtained from His Honour's associate at the relevant time to see whether the account given by Thomas can be corroborated, at least as to the invitation. In addition one should examine the evidence given by Thomas during the course of the second Murphy trial, and the unsworn statement of His Honour dealing with that point. We should also put into this file the statement that has been

obtained by the DPP from Davies which seeks to explain the events from his point of view. Finally, it is understood that Morgan Ryan was questioned about the Thomas luncheon or luncheons before the NCA. The transcript of that evidence should be put into this file as well. It appears that the NCA have photocopies of certain diary entries in Morgan Ryan's diaries (which Ryan claims to have since lost). We must obtain the copies of those entries.

ALLEGATION NO. 2

The Lewington Allegation Statement of Offence

It appears to us that even if everything set out in Lewington's record of interview (answer 28 page 9 of that document) could be authenticated, it could not be said to amount to a criminal offence. Taken at its highest, it appears that on a previous occasion, Ryan had asked the Judge to make inquiries about the police officers who were conducting the investigation into Ryan's possible criminal conduct. Lewington recalls a conversation whereby Ryan said something to the effect of "have you been able to find out about those two fellows who are doing the investigation; are they approachable?". The Judge indicates that he has made some enquiries and that the answer was definitely no, the two police officers were both very straight. It seems to us that a request that another person make enquiries as to whether someone is corruptible falls short of a conspiracy to corrupt, and certainly falls short of an attempted bribe. Rather, it seems to be a preparatory act leading up to the commission of an offence which is too distant from the actual commission of the offence to be criminal when considered in isolation. It follows therefore that the Lewington allegation will have to be considered upon the footing that it demonstrates "misbehaviour" in a broader sense than that which was accepted as lying at the heart of that concept by the Solicitor General in his memorandum of 1984.

It would be argued that for a Justice of the High Court to provide assistance to a person who was interested in finding out whether two police officers could be bribed (whatever that assistance might be - either answering the question in the affirmative, thereby facilitating the offer of a bribe, or answering the question in the negative, thereby enabling the would be offeror to avoid putting himself at risk) constitutes very serious and improper behaviour. It may amount to misfeasance in a public office - this will depend upon our analysis of the law relating to that tort-misdemeanour.

Material to be examined

Two records of interview conducted between Detective Superintendent A. Brown and Station Sergeant David James Lewington dated 22nd February 1984 and 23rd February 1984. In addition, one should examine the findings of the First Senate Enquiry into the Lewington allegation - paragraph 61 of the First Senate Report August 1984.

Witnesses to be spoken to

1. Lewington

2. Jones

3. Lamb, - Detective Sergeant Carter, Detectives Harten, Harrison and Craig

4. [redacted]

5. Deputy Commissioner Farmer

6. Charles Kilduff

In addition to speaking to these witnesses, we should examine carefully:

a. The Senate proceedings (first enquiry) and the Stewart Royal Commission investigation into this matter. It may be that if Hawthorn is prepared to speak to us, he would be in a position to tell us who carried out the actual taping of the conversation.

It must be recalled that shortly after this incident, Lewington and Lamb were approached by two other officers of the New South Wales Police Force who attempted to bribe them. Apparently the two officers who made those bribe offers were Detective

Sergeant Shaw and Detective Sergeant Lowe. We should examine the New South Wales Police files relating to this matter and the AFP files as well.

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ALLEGATION NO. 3 - ASSOCIATION WITH ABE SAFFRON

It is alleged that the Judge has had a long-standing association with Abe Saffron, a person of notoriously low repute. It is asserted that the Judge has been seen in Saffron's company on a number of occasions, and in a variety of different establishments. These include Lodge 44 (Saffron's headquarters) and the Venus Room.

A second allegation is made that the Judge was a silent partner in the ownership of the Venus Room to the extent of owning 5% of the shares in the managing company.

It is further alleged that there is a long history of the Judge receiving sexual favours from woman supplied by Saffron, or a known associate of Saffron',s one Eric Jury.

As to the suggestion of long association, it may be necessary to consider the status of the law of consorting in NSW. It seems inherently unlikely that the Judge's conduct, even if proved, would amount to consorting. It may be that one of the elements of this offence is that the person with whom one consorts must be a reputed thief. If this is a requirement, then plainly the offence of consorting could not be made out. As regards the second allegation (joint ownership of the Venus Room) it is likely that NSW law makes it an offence to be a part owner of a brothel knowing that the premises are being used for the purposes of prostetution. We should also examine the possibility of there being an offence of controlling a disorderly house (common law offence).

A final matter is the provision of women for sexual favours for the Judge. It is debatable whether this would amount to misbehaviour within the meaning of section 72. For what it is worth, our view is that it would fall short of such

misbehaviour. Such conduct could be regarded in some quarters as being scandalous or otherwise improper. But we believe that as a matter of law it could not amount to "misbehaviour" within the meaning of Section 72. The counter argument would be that the Judge's conduct is, in a sense, not "private". The Judge is putting himself in a situation where he might be subjected to threats of blackmail. In addition a number of people would know about his sexual conduct, and this would tend to bring the court into disrepute.

It is clear that even if these allegations do not amount to misbehaviour in themselves, they should be used as the basis for cross-examination of the Judge if he is required to give evidence. The allegations may also, of course, give colour to other allegations which might depend upon there being demonstrated an association between the Judge and Saffron in order to constitute misbehaviour. The witnesses to be spoken to in this regard are set out in the original memorandum prepared by M. Weinberg dated 15 June 1986 at page 7.

ALLEGATION 6 SAFE DEPOSIT BOXES AND SHARES

If no money left the country, and no money or assets were smuggled into the country, there would appear to be no offence committed under the Banking (Foreign Exchange) Regulations. We are unaware of any statute which requires a declaration of assets acquired overseas except pursuant to the provisions of the Income Tax Assessment Act. Even that may be limited to certain specific purposes such as income derived from overseas. There does not appear to have been any register of pecuniary interests in existence at the time that these alleged documents came into existence.

A number of questions have to be asked. What if anything was put into these safe deposit boxes? What was intended to be put into these safe deposit boxes? Is there something sinister about the fact that the Judge was to have such a box at around the time of the loans affair? What is in the boxes today?

Perhaps more serious is the document which suggests that the Judge had alloted to him a parcel of shares of very considerable value. How did he acquire the money to pay for these shares? Did he pay for them? Did someone make a gift of the shares to him? Who was that? If such a gift was made, why was it made? Was the Judge expected to perform some service in exchange for the gift? Was the Judge aware that a parcel of shares had been made over to him? This allegation could lead anywhere. The question arises what should be done at this stage?

It is plain that there is not sufficient basis at the moment to formulate a specific allegation in precise terms arising out the existence of these documents. The first thing to be done is to asertain whether they are genuine. If they are genuine, can it

be determined whether the Judge was a party to their coming into existence? If so, what has happened to the shares? Would it be possible to determine whether any monies that were used for the purchase of the shares were the proceeds of illegal sources, or alternatively monies upon which tax was not paid? Would it be possible to examine the Judge's tax records?

It seems necessary to interview the two journalists who drew these documents to our attention. This should be done as a matter of some priority. In the end, either the journalists are able to give us some additional information which will allow meaningful investigations to be continued, or the matter will have to simply be left as an allegation which is reported to the Commissioners, but upon which no admissible evidence can be obtained.

ALLEGATION NO. 7 - FREE OR DISCOUNTED AIR TRAVEL

One inference which could be drawn from the fact that the Judge's wife worked for Ethiopian Airlines for a nominal fee of $1 per year (that Airline being run by David Ditchburn in Australia) is that the Judge received a secret commission contrary to the provisions of the New South Wales or Commonwealth Legislation governing secret commissions. There might also be an offence of fraud on the Commonwealth in the non-economic sense (conspiracy to defraud in its broader aspect). The likelihood is that Mrs Murphy performed no services of any value to Ethiopian Airlines, but received this nominal fee and the right to travel overseas as a favour supplied to herself and the Attorney General in the expectation or hope that award would follow to Ditchburn and Morosi. It is plain that some reward did follow. Ditchburn was appointed to certain government positions, as was Morosi. It may be a long bow at this stage, but a permissible inference would be that the Judge thereby received a secret commission in exchange for rewards to Ditchburn and Morosi.

Persons to be interviewed

1. Ditchburn

2. Morosi

We should also examine the lengthy Hansard debate which occurred in relation to this matter. In addition, the Judge was cross-examined about it in his action against Mirror Newspapers in 1976. We would also need to know what ultimately happened to Ethiopian Airlines business in Australia. The Department of Aviation might be able to help. We should indicate that we do not regard this allegation as being one which should take high priority.

ALLEGATION NO. 8 - THE DIAMOND PURCHASES

Questions were raised in Parliament regarding certain diamond purchases worth $7,800 allegedly made on Ingrid Murphy's behalf by a company associated with Perth tax fugitive Christo Moll. In 1984, The Age reported that notes on a cheque butt drawn on a company owned by Christo Moll indicated that money had been used for diamond purchases worth $7,800 for Ingrid Murphy. A statement was read in the Senate on behalf of the Judge denying this.

There is a proof article obtained from The Age which discusses this matter and which also contains some photocopy documents. At this stage it is unclear precisely when this occurred. The newspaper article should identify that point. If it occurred while the Judge was Attorney-General, it might give rise to a suspicion that he had received a secret commission. Such a commission might relate to prosecution for tax fraud. We also have in our possession a valuation certificate prepared by a jeweller in Perth for a diamond apparently in the name of Ingrid Murphy. The authenticity of that certificate should be checked. One would have to find the original documents if possible, and of course speak to Christo Moll. Once again we believe that this matter should take low priority in terms of any allegations that are made. It is our belief that unless investigations throw up supporting material, it should be a matter that is simply drawn to the attention of the Commissioners but not proceeded with as an allegation.

ALLEGATION NO. 9 - SOVIET ESPIONAGE

This matter has not come to us as an allegation from the two reporters who are said to be responsible for originating it. We propose to speak to those reporters. If they are unprepared to make the allegation to us without prompting, it seems to us that its present status is such that it should not be proceeded with. Once again the Commissioners must be told that the allegation has been made. However, we do not believe that the resources of the Commission should be stretched to investigate a matter which is so inherently improbable in the absence of a complaint from those who are said to have first brought it to light.

ALLEGATION NO. 10 - THE STEPHEN BAZLEY APPROACH

We have been told that if asked, a gentlemen named Stephen Bazley will say that he was approached by Mr Justice Murphy in June 1983 with a view to enquiring whether he would be prepared to kill somebody for the Judge. It is thought that this Bazley was mistaken by the Judge for James Frederick Bazley, recently convicted of conspiracy to murder in Victoria. If this allegation is supported by Bazley, it would certainly amount to "misbehaviour" in our view though it might not amount to a criminal offence. It seems to fall short of any offence of conspiracy. It may be that Bazley would be in a position to add some specificity to it. For example, he might indicate who the alleged victim was to be. In that event, there might be a charge of incitement brought. We firmly believe that the odds against there being any substance to this allegation are enormous. Nonetheless, it seems to us that Bazley must be invited to speak to us. If he declines to do so, or does not make the allegation along these lines, then he should not be prompted. The matter should simply be referred to the Commissioners and again not proceed as an allegation. We understand that Bazley has a number of convictions which demonstrate that he would be a person of no credibility whatever.

ALLEGATION NO. 11 – STATEMENT OF OFFENCE ATTEMPTING TO PERVERT THE COURSE OF JUSTICE CONTRARY TO SECTION 43 OF THE CRIMES ACT 1914 (COMMONWEALTH)

Particulars of Offence

In or about 1976, the Judge asked Abe Saffron to intercede on his behalf with Danny Sankey who had brought a private prosecution against the Judge and others for an alleged conspiracy contrary to Section 86 of the Crimes Act 1914. It must be contended that the Judge well knew that Saffron could apply considerable pressure of an impermissible kind to Sankey with a veiw to persuading him to withdraw the prosecution. It certainly appears that Saffron had no connection whatever with the matters that gave rise to the private prosecution brought by Sankey against the Judge. One would need to ask why a Justice of the High Court would ask a reputed criminal to make representations on his behalf to a person who had launched a private prosecution against him. It would be open to a court to conclude that this was an attempt by the Judge to place an implied threat at the head of Sankey. Such conduct might well amount to an attempt to pervert the course of justice. It might also amount to a conspiracy to pervert the course of justice. Wherever possible, it has been thought appropriate to charge a substantive offence rather than a conspiracy.

ALLEGATION NO.11 - SANKEY MATTER

His Honour Mr Justice Murphy in about 1976 alleged by asking Abe Saffron to intercede on his behalf with Danny Sankey (presumably to persuade him to withdraw the prosecution).

Material Enclosed

1) Brief details of allegations
2) Minutes of meeting between B. Rawe, S. Rushton and D. Sankey (Meeting 2.3.86)
3) Information from Anderson re the abovementioned matter in question, answer form.

Witnesses to be interviewed

1. James McCartney Anderson
2. Danny Sankey
3. Abe Saffron
4. Morgan Ryan
5. Rofe Q.C.
6. Christie
7. McHugh (currently Justice of the Court of Appeal)
8. Leo S.M.
9. Murray Farquhar

ALLEGATION NO. 12 - ILLEGAL IMMIGRATION RACKETS

We've been told that the Judge was involved in an illegal immigration racket regarding Philipino immigrants (particularly women). Irrespective of whether this occurred while he was Attorney General, or a Judge of the High Court, such conduct would constitute a criminal offence, and would amount to misbehaviour. It would amount to a conspiracy contrary to Section 86 (1) of the Commonwealth Crimes Act (conspiracy to defeat the execution of a law of the Commonwealth).

Matters to be investigated

The following witnesses should be interviewed:

1. Morgan Ryan

2. [redacted]

We do not at this stage recommend any further, or other investigations apart from speaking to [redacted] and raising the matter with Morgan Ryan if he is prepared to speak with us (which seems highly unlikely).

ALLEGATION NO. 13 - THE MOROSI BREAK-IN

(Break-in of Morosi's premises at [redacted] on 17 January 1975).

Attached Material:

(a) Statement and particulars of Offence.
(b) A statement given by [redacted] on 4 April 1986.
(c) A report to the Attorney-General from the then Assistant Commissiooner (Crime) J.D. Davies dated 17 January 1975.
(d) A supplementary modus operandi report from Detective Inspector Tolmie then of the Commonwealth Police.
(e) A note to the Officer in Charge of the Commonwealth Police Force dated 30 January 1975 from an officer within the office of the Deputy Crown Solicitor, Sydney.
(f) A note dated 4 March 1975 from Seargeant Lamb to the Officer in Charge New South Wales District of the Commonwealth Police concerning an approach to him from Mr David Ditchburn.
(g) A note dated 7 March 1975 from Detective Inspector Tolmie to the Officer in Charge New South Wales District, concerning certain enquiries of neighbours of the Morosi's.
(h) A note dated 28 February 1975 to the Officer in Charge New South Wales District, from Constable First Class Jacobsen, concerning allegations re antecedents of Juni Morosi.
(i) A statement by William Alexander Tolmie undated and unsigned concerning the arrest of Felton and Wigglesworth at the Morosi premises, and
(j) A statement signed this time but undated by Sergeant Lamb in the same matter.
(k) A note of an interview by A.C. Wells, dated 22 April 1986 with Richard Wigglesworth.

(l) A file note in relation to contact of Wigglesworth.

(m) File note dated 13 April 1986 by A.C. Wells concerning the interview of Alan Felton.

Witnesses to be Interviewed

1. [redacted]
2. Wrigglesworth
3. Felton
4. Morgan Ryan
5. Bill Waterhouse
6. Assistant Commissioner Davies
7. Lamb
8. Farmer
9. Another Investigating Officer (name to be supplied)
10. Don Marshall at A.S.I.O.
11. Lewer S.M.
12. Farquhar
13. Judge Foord
14. Harkins (Deputy Crown Solicitor for NSW) at the relevant time.

Statement of Offence

Conspiracy to pervert the course of justice.
Misprision of felony.

Particulars of Offence

It is suggested that the Judge behaved in an improper fashion in arranging for Commonwealth police to be located at the premises belonging to Ms. Morosi when he learned that those premises were to be burgled. This conduct does not constitute any criminal offence. It might however constitute an overt act in relation to the conspiracy charged.

The manner in which the conspiracy would be alleged is as follows. It is said that the Judge (who was then Attorney General) was responsible for ensuring that two of the persons who participated in the burglary were not prosecuted. No motive can be ascribed to the then Attorney's conduct in this regard. It is impossible to understand why he would have intervened to ensure that two persons who were caught "red handed" committing a burglary would not be the subject of normal prosecution. It appears that Federal police released one of the burglars who was caught in the act. The proper charges to have been brought were state charges. Indeed, state charges, were brought against one of the three persons responsible for the burglary. It appears that the one person who was subjected to State charges was charged with an entirely inappropriate offence. He was charged with larceny rather than with the more serious offence of break, enter and steal. The documentation suggests an involvement by the Attorney in the entire course of what occurred after the break-in.

Material to be obtained

Commonwealth police files and Attorney General's files relating to this incident. If a transcript is available of the plea made on behalf of Felton, and the sentence imposed it should be obtained. If A.S.I.O. has a file which we can somehow obtain, we should make efforts to do so. It may be that Mr Ditchburn and Ms. Morosi could be spoken to as well - this is subject to further consideration. Finally, a negative search should be conducted of NSW police files to see whether the matter had been reported to the NSW police or not.

ALLEGATION NO. 14 – THE UNSWORN STATEMENT

There is no investigation required of this allegation. It seems to us that it cannot properly be regarded as a basis for a finding of proved misbehaviour. Accordingly we would recommend that the attention of the Commissioners be drawn to the fact that some have argued that the fact that the Judge made an unsworn statement warrants his removal but that Counsel assisting do not regard this as being an appropriate matter for further consideration.

ALLEGATION 15 – THE DIARY INCIDENT

Statement of Offence

Contempt of Court

Particulars of Offence

During the course of the committal hearing, certain diaries belonging to Mr Briese SM which had been supoenaed for production were released into the custody of the firm of Freehill, Hollingdale and Page (Solicitors) who were acting for the Judge at his committal. The diaries were released to the Judge's legal advisors for the purpose of enabling them to be perused. We are not at this stage aware of the precise terms of any order that might have accompanied the release of the diaries. It seems to be an implied term of the release of any documents obtained pursuant to any form of court discovery that the documents will not be used for any purposes other than the specific purpose of the conduct of the proceedings then before the court. It would be implicit in any such release of documents that they were not to be photocopied, bearing in mind that they were released for a specific period of time only. Somehow, copies of relevant diary extracts came into existence, and found their way into the possession of Mr Rodney Groux. Mr Groux says that he was provided with these copies by the Judge. The firm of Freehill, Hollingdale and Page asserts that it was not responsible for any copies being produced of the diaries, through Clarrie Harders may concede that he caused this to be done.

Witnesses to be interviewed

1. Relevant persons at Freehill Holingdale and Page
2. The Judge's Counsel at his Committal
3. Rodney Groux

4. Murray Gleeson QC (if he was not Counsel for the Judge at the Committal Hearing).
5. A secretary who is said to have made further copies of the diaries - Miss Whitty
6. The Minister, Mr Brown
7. Mr Luchetti (Employed by Brown)
8. Neville Wran
9. Briese's Solicitor

It should be noted that Groux alleges that the Judge asked him to participate in an investigation into the background of Briese and other prosecution witnesses in order to find dicreditable material againt them. In so far as Briese was concerned, there would be nothing wrong or improper in the Judge seeking to investigate the background of the main prosecution witness against him with a view to using that material for the purpose of attacking his credit. Had the Judge employed a private investigator to do this, no one could have levelled any criticism at him at all. Does the fact that the Judge has made use of a public servant to perform duties unconnected with his public service obligations (with the apparent approval of the Minister in charge) constitute an offence or otherwise discreditable conduct on the part of the Judge? Was Groux employed under the Public Service Act? Would the Minister have had authority to release Groux to perform duties that were non-public service related? If not, would the Judge have known this?

The Judge may have committed a different form of contempt of court if Groux's evidence is accepted. It appears that the Judge at one stage asked Groux to tape record proceedings which were being held in the Banco court - this was probably the trial. It would clearly be a contempt of court to switch on a tape recording device in the court precincts and secretly tape what is being said in court. If the Judge asked Groux to do this, he would have incited the commission of an offence - to wit contempt of court.

ALLEGATION 16 PERJURY

Statement of Offence-Perjury contrary to the provisions of the Commonwealth Crimes Act Section 35

We have carefully examined the evidence which the Judge gave on oath during the course of his first trial, and compared it with;

a) the accounts he gave to the Attorney General in February 1984 when first called upon to explain certain passages in the Age Tapes;

b) the 28 page letter which the Judge sent to the first Senate Inquiry in answer to its request for an explanation from him;

c) his unsworn statement at his second trial.

We have been particularly mindful of the suggestion that the Judge may have committed perjury by attempting to understate the level of contact which he had with Morgan Ryan. We have concluded, however, that it is impossible to spell out any allegation of perjury in respect of this matter. The Judge was always extremely cautious in the manner in which he answered questions. He generally indicated that he was answering only to the best of his recollection.

It has been suggested to us, however, that the Judge may have committed perjury in a different respect. The Judge gave a detailed explanation of his approach to Judge Staunton with a view to getting an early trial for Morgan Ryan. The Judge said that this approach had taken place in about April of 1982. His evidence was that when he saw Judge Staunton (in person) Judge Staunton told him that he had already received a similar approach from Mr Justice McLelland. The Judge said at page 507 of the trial transcript that he had met Morgan Ryan at

Martin Place. Ryan had told him how upset he was about having being committed for trial. Ryan had also told him that he would not be able to get a trial for some 18 months. The Judge testified that he had approached Chief Judge Staunton in his chambers at an effort to get an early trial for Morgan Ryan. Judge Staunton told the Judge that Jim McClelland had already spoken to him about it. The Judge said that this conversation between himself and Staunton had been a person to person conversation. At page 508, the Judge denied having had any other conversation with Judge Staunton about that topic. It will be recalled that Judge Staunton was of the view that this conversation had been conducted over the telephone. The Judge testified that he spoke to Mr. Justice McClelland a day or so after his conversation with Judge Staunton in the Judge's chambers.

It appears that Mr. Justice McClelland has been expressing to a number of persons his remorse at having perjured himself during the course of the first (and second?) Murphy trials. It appears that Mr. Justice McClelland is saying that he himself committed perjury in two respects. The first is that it was quite common for Mr. Justice Murphy to refer to friends of his as mates. The second is that there was a conversation between Mr. Justice Murphy and Mr. Justice McClelland before the Judge ever approached Judge Staunton. During the course of that conversation, Mr. Justice Murphy attempted to persuade Mr. Justice McClelland to intervene on Ryan's behalf with Judge Staunton. The question arises whether the account given by Mr. Justice Murphy during his first trial in any way conflicts with this additional statement of events. It is certainly clear that Mr Justice Murphy has not told the "whole" truth, but it may be difficult to spell out a charge of perjury against him (even if Mr. Justice McClelland has perjured himself).

It should be noted that if Mr. Justice McClelland's "confession" is true, that may be used in a different way against Mr. Justice Murphy. This would be linked to Allegation No. 33 - the approach to Judge Staunton (see the original summary of allegations). If it was improper for Mr. Justice Murphy to approach Judge Staunton in an effort to get an early trial for Morgan Ryan, that impropriety can only be magnified by his having approached a Judge of the New South Wales Supreme Court with a view to getting him also to make such an approach. On one reading of the alleged conversation between McClelland and Murphy, it might be thought that the Judge was asking McClelland to do more than simply get an early trial for Morgan Ryan.

Witnesses to be interviewed

1. Mr. Justice McClelland

2. Judge Staunton of the District Court

3. Judge Foord

4. Morgan Ryan

If Mr. Justice Murphy went beyond simply attempting to gain an early trial for Morgan Ryan, plainly his conduct would amount to an attempt to pervert the course of justice.

ALLEGATION NO. 17

We have considered this matter, but we do not think that it is possible to spell out any allegation against the Judge which could amount to misbehaviour in the relevant sense. It is suggested that the Judge acted improperly in not coming forward to tell the authorities about the dinner he had attended at Morgan Ryan's house at which Farquar had been present together with Commissioner Wood after it emerged that there was an alleged conspiracy between Ryan, Farquar and Commissioner Wood. It the absence of any evidence which suggests that what occurred at the house was connected to that alleged conspiracy, it is impossible to say that the Judge has committed any offence or breach of propriety in failing to volunteer this information to the Police. At its highest, the matter might be the subject of cross-examination of the Judge if he is called upon to give evidence. In our view, Allegation No. 17 should be abandoned, save for an acknowledgement of the fact that it has been considered, and rejected.

ALLEGATION 18 THE JEGOROW APPROACH

Statement of Offence

Misconduct by an officer of Justice - Common Law Misdemeanor. Particulars of offence. The Judge, at the request of Morgan Ryan, approached the Premier of New South Wales on behalf of a Mr. Jegorow who had sought appointment as Deputy Chairman of the Ethnic Affairs Commission of New South Wales. In so doing, the Judge misused his position of office, and acted without proper motives.

Witnesses to be interviewed

1. Morgan Ryan

2. Bill Jegorow

3. Relevant police officers who would be in a position to authenticate the accuracy of the transcript containing the alleged Jegorow conversation. Note this occurred in March 1979 - it is to be found in transcript 1 a. at pages 22, and 47 to 49,

4. Neville Wran

5. Garry Boyd

Material to be examined

Public Service Board files pertaining to appointment and the creation of the position (New South Wales Public Service Board). Also Premier's Department files relevant to the

appointment. Also we should speak to the Public Service Association to see what records they have relating to the matter. See Sydney Morning Herald 25 October 1980. See also Ethnic Affairs Commission files pertaining to this matter. In addition we should speak to Doctor Peponis to see whether any pressure was placed upon him to terminate his position early.

ALLEGATION NO. 19 - THE PARIS THEATRE

It appears to us at this stage that it is impossible to spell any allegation of criminal behaviour or other misconduct which would be capable of amounting to misbehaviour out of the alleged conversation between the Judge and Morgan Ryan pertaining to the application by the Paris Theatre to the Sydney City Council and the reference to what is obviously Gandali Holdings Pty. Limited. We need to examine the Sydney Morning Herald of the 20th March 1979 page 2 (referred to in the conversation) and an issue of the National Times dated 20th September 1985 in which Brian Toohey discussed this matter.

Action Required

It would be appropriate to find out all that we can about Gandali Holdings Pty. Limited. Certainly a company search should be undertaken. It would be worth considering whether the company itself appears in any of The Age material pertaining to Saffron. Enquiries may be made from the Corporate Affairs Commission as well. Even if this does not emerge as a specific allegation, it may be that it would provide useful material for cross-examination.

As regards the application by The Paris Theatre to the Sydney City Council, an approach should be made to the Sydney City Council for information pertaining to that application.

ALLEGATION NO. 20 - THE ROFE MATTER

Statement of Offence

Contempt of Court

Particulars of Offence

On or about the 31st March 1979, the Judge attempted to take or threaten revenge upon David Rofe QC, a person who had conducted a private prosecution against the Judge on behalf of one Danny Sankey, for what Rofe had done in the discharge of his duty, in the administration of justice, with intent to punish Rofe QC for his conduct. It is further alleged that on the 7th February 1980 the Judge again attempted to arrange for Rofe QC to be punished for his conduct of the prosecution against the Judge.

Witnesses to be Interviewed

1. David Rofe QC

2. Morgan Ryan

3. Mr. Bilinsky - Solicitor

4. the police officers who can authenticate the passages in The Age tapes dealing with these two conversations. See also the one tape recording of the Judge's voice that we actually have in our possession to determine whether there is a relevant reference to Rofe in that conversation. See also the Judge's explanation of his comments on the Rofe matter in answer to questions put by The Attorney General in February 1984 - see the aide memoire dealing with this.

ALLEGATION NO. 21 - THE LUSHER - BRIESE CONVERSATION

We are both convinced that if the Judge did have this conversation there is something quite sinister about it. At the same time, it is very difficult to pin down any allegation that can be made from a conversation of this type. Why was the Judge involving himself in the Lusher Board of Enquiry's activities into the legalisation of casinos in New South Wales? Why was he doing so at Morgan Ryan's request? What was the Judge supposed to do? What does it all mean? We do not, at present, see any way in which this conversation can be turned into an allegation. It may, however, form the basis of useful cross-examination. To that end, we need to obtain background information pertaining to the Lusher inquiry. It must be borne in mind, of course that Morgan Ryan was plainly involved in illegal casinos in New South Wales. And this whole topic cross references to the alleged involvement of the Judge on behalf of Robert Yuen in relation to a casino in Dixon Street.

ALLEGATION NO. 22 – PINBALL MACHINES

It seems to us that this conversation falls into the same category as the conversation discussed under allegation 21. Why was the Judge involving himself in representations to be made regarding the importation of illegal pinball machines which were not being subjected to lawful tax. To whom was the Judge to address his complaints? To whom was Morgan Ryan to give his information? If the conversation is accurately recorded, once again it bears a sinister connotation. This is accentuated by the fact that it is known that Abe Saffron (through his son Allan) was at this time actively seeking to obtain the exclusive rights to import a particular type of "pinball" machine. Was the Judge acting on behalf of Saffron or his interests? The only investigative step which should be taken is to raise the matter with Morgan Ryan. We are not optimistic that this will produce any worthwhile result.

ALLEGATION NO. 23 – THE MILTON MORRIS BLACKMAIL MATTER

We have considered this matter, and we take the view that even if the conversation set out in the transcript accurately records what the Judge says, his conduct cannot amount to any criminal offence. It is plain that the Judge has not aided and abetted counselled or procured the commission of the offence of blackmail. Nor has he entered into any conspiracy with Morgan Ryan in relation to it.

The question then arises whether the Judge's conduct in (apparently) taking no action once he has been informed by Morgan Ryan of his intent to blackmail Milton Morris is capable of amounting to "misbehaviour".

It appears however that Mr. Egge has been given an account of matters pertaining to Milton Morris and Morgan Ryan which, if accepted, would implicate the Judge in some form of conspiracy to commit blackmail, or at the least put him in the position of being an aider and abetter. See the transcript of the Stewart Royal Commission at page 850. It should be borne in mind that Commissioner Stewart determined that there was nothing whatever to blackmail Milton Morris about. It appears that he also drew an adverse inference against the veracity of Egge in regard to this matter.

Matters to be investigated

We should speak to the following witnesses:

1. Egge
2. [redacted]
3. Lamb

4. Milton Morris

5. Morgan Ryan

6. John Mason

We should also examine carefully the running sheets prepared by the Federal Police. Note: It seems to us that unless Egge can give evidence to substantiate his allegations of what he overheard on the tapes, the particular form in which this matter appears in the summaries does not reveal any misbehaviour on the part of the Judge capable of sustaining his removal. Once again, however, it would at the very least constitute a basis for cross-examination. Note: We should also speak to Bruce Miles regarding this matter. We should speak to "Reg" the Jeweller (whoever he might be). See the summary - 11 March 1980. We must also speak to McVicar who prepared the summary.

ALLEGATION NO. 24 – "SMELLING LIKE A ROSE"

There is a summary of this conversation which, even if it accurately records the substance of what occurred between the Judge and Mrs. Ryan does not seem to us to be capable of amounting to misbehaviour in the relevant sense. It is possible, for example, that the conversation amounted to no more than a joke. It could conceivably be the subject of cross-examination. The only person who might be spoken to regarding this matter is Mrs. Ryan.

ALLEGATION NO. 25 – CENTRAL RAILWAY COMPLEX

We should examine carefully the document headed "The Central Railway Complex" which was prepared by The Age. This assembles from The Age tapes all conversations which relate to that matter. These start with a conversation between Morgan Ryan and Eric Jury on March 31st 1980. In that conversation Ryan and Jury discuss the complex, and a solicitor doing the submission. The solicitor's name is Colbron. It is said that Morgan will help get it through for a fee. There is also discussion about Sir Peter Abeles trying to get in on the act. On April 3rd 1980, Lionel Murphy rings Morgan. They discuss the new complex. It is said the Judge is very guarded with his talk, and during the talk Commuter Terminals Pty. Limited is mentioned together with the word "champagne". The summary notes "worth reading in full".

The significance of the solicitor being Colbron is that he was formerly an Articled Clerk with the firm Morgan Ryan and Brock. He was also the solicitor to whom [redacted] turned after the Morosi breakin.

Investigative Steps Required

Persons to be spoken to:

1. Egge
2. McVicar
3. [redacted]
4. Eric Jury
5. Morgan Ryan

6. Colbron

7. Wran

8. David Hill

9. A Property Developer John Andrews

10. John Johnston State MLA

11. Stanley Edwards – Director of Commuter Terminals

It appears that files relating to the Central Railway Development are in the possession of the Stewart Enquiry – these should be examined. The documents are now probably with the NCA. There should be a further search done of Commuter Terminals. This may be a case where a search warrant would be justified. The company records relating to Commuter Terminals could be seized and examined. If investigations demonstrate that the Judge has involved himself on behalf of a company with links to Saffron, (even in the absence of any clear evidence of bribery or corruption) it may be argued that such conduct could amount to misbehaviour in a broad sense.

ALLEGATION NO. 26 – THE ILLEGAL CASINOS IN DIXON STREET

It is plain that if the Judge has assisted Robert Yuen in the manner suggested in The Age tapes, he has joined in a conspiracy of one sort or another. It is plain that there is a significant discrepancy in the records of the taped conversations. There is no record at all of an incoming call from the Judge to Morgan Ryan which Ryan refers to in his conversation with Saffron. It may be that Ryan was doing nothing more than big noting. It seems to us that there is no way that we will ever get any admissable evidence against the Judge regarding this matter unless Robert Yuen is prepared to come forward and substantiate the matters in the summary. Alternatively, Morgan Ryan could conceivably do so. Saffron might be spoken in this regard as well. It is really a question of what resources, if any, one would be justified in allocating to this matter bearing in mind that the reference in The Age tapes is not to a direct conversation between the Judge and Ryan at all. It may be a matter that would arise in cross examination. It may be that Andrew Wells, or the NCA have done some investigations into this matter. One would need to confirm that Robert Yuen was indeed living at the same address as the Judge. It is best to reserve judgement on this matter for the moment.

ALLEGATION NO. 27 - LUNA PARK - LEASE FOR SAFFRON

This matter arises in the course of the Stewart Royal Commission pages 854 to 855. Mr. Egge is giving evidence regarding the contents of a telephone conversation which he says was reduced to transcript, and which he claims to have read. We have not been able to find any reference to any such conversaton in the actual Age tape transcripts themselves. There is further reference to this matter in Egge's supplementary statement dated 7th of August, 1985. Egge basically asserts that Morgan Ryan arranged for the Judge to intervene on behalf of Saffron in order to gain the lease for Luna Park in place of the Reg Grundy organisation which had been awarded that lease. It is said that a Saffron related entity ultimately acquired the lease.

Matters to be Investigated

The Corporate Affairs Commission should be approached regarding any investigations which have been conducted into this affair. In addition, it appears that the NCA may have information about the matter. It is clear that Egge must be interviewed, and obviously Morgan Ryan and Saffron would also be candidates for interview regarding this matter. It may be that the State Rail Authority is involved in this as well (Mr. Hill) and it is possible that Colbron might have some information also. If the owner of the land was the State Rail Authority, there should be files available. It is plain that the Reg Grundy organisation should be contacted as well. If Egge's evidence is true, it would appear that he would had seen a transcript which suggested that a conversation of this type had occurred. That transcript is not presently available to us. Where has it gone? Who prepared it? Who would be able to give evidence (direct evidence) of having heard the telephone conversation involving the Judge and Ryan?

ALLEGATION NO. 28 – THE MURPHY ALLEGATIONS RE. POLITICAL NATURE OF HIS TRIAL

It appears that the Judge engaged in an emotional outburst at the conclusion of his trial alleging that the proceedings brought against him had been politically motivated. It was suggested in Parliament that this conduct on the part of the Judge might amount to misbehaviour. We have considered the matter, but we do not believe that this matter can give rise to an allegation against the Judge of conduct which could amount to misbehaviour in the relevant sense. The Judge has not attacked anything done by the Judge who presided over his trial. Nor has he attacked the Jury. He has merely suggested that the Director of Public Prosecutions brought these proceedings for political purposes. There would be many in the community who would agree, at least in the light of the DPP's own guidelines as regards prosecuting public figures. There seems to be nothing whatever improper (in the necessary sense) about the Judge's outburst.

ALLEGATION NO. 29 – FAILURE TO RESPOND TO MR JUSTICE STEWART'S LETTER

It has been suggested that the Judge's failure to respond to Mr Justice Stewart's letter could amount to proved misbehaviour. This suggestion emerges in Hansard. We do not see any basis at all for the suggestion that the Judge's decision not to respond to the 7 matters raised in Mr Justice Stewart's letter could amount to misbehaviour in the relevant sense. We recommend that this not proceed as an allegation, other than to note the fact that it was made.

ALLEGATION NO. 30 – THE WILSON TUCKEY ALLEGATIONS

Wilson Tuckey alleged in Parliament that the Judge was involved in a tax scandal. Both The Sydney Morning Herald and The Age reported these allegations. Tuckey suggested that the Judge had assisted a Doctor Tiller and a Murray Quartermaine to avoid difficulties arising out of their tax evasion activities. The allegation apparently emanated from a letter which was said to have been written by Tiller. That letter came into the possession of The Age via Christo Moll. Tiller immediately denounced the letter as a forgery.

Action to be taken

1. Obtain copy of letter (or original if possible)

2. Interview Tiller

3. Interview Quartermaine (if possible)

4. Speak to Wilson Tuckey

5. Speak to Christo Moll?

6. Speak to Bob Bottom and David Wilson at Age.

We should initially obtain the Hansard reference so as to get a precise account of what Mr Tuckey said about this matter in Parliament. If the original of the letter can be obtained, it may be possible to determine whether Tiller is telling the truth when he claims it to be a forgery. There is no other action that is warranted at this stage.

ALLEGATION NO. 31 – THE JUDGE'S CONDUCT IN RELATION TO JUNIE MOROSI

It has been asserted that the Judge's conduct in seeking to have preferential public housing made available for Miss Junie Morosi in 1974 was an impropriety of such magnitude as to justify removing the Judge for misbehaviour. We take the view that this is a matter which is (a) stale and (b) not of sufficient gravity to warrant investigation at this stage. We do not believe that, even if proved, it is capable of amounting to misbehaviour in the relevant sense. It seems to us to be markedly different from the Sala matter, particularly if a connection can be shown between the Judge and Saffron in that affair.

ALLEGATION NO. 32 - THE CONNOR VIEW OF MURPHY'S CONDUCT

Mr Connor took the view that even an enquiry by the Judge as to what was likely to happen to Morgan Ryan made to Briese with knowledge that Briese might seek that information (and no more) from the Magistrate conducting the committal, could amount to misbehaviour. This takes us into the realm of some of the matters that were the subject of determination during the course of the first and second Murphy trials. We believe that we ought to tread cautiously here, and it does not seem to us that this version of events would be sufficiently serious to amount to misbehaviour in the relevant sense. It must be common for Judges to ask questions of other judicial officers as to how a case is proceeding. If no more than that occurs, and no more is intended than that, it seems impossible to describe such conduct as amounting to misbehaviour sufficient to justify removal. We recommend that this allegation be not proceeded with other than to draw the attention of the Commissioners to the fact that it was made and suggested for a basis for removal.

ALLEGATION NO. 33 – THE APPROACH TO JUDGE STAUNTON

It seems to be common ground that the Judge approached Judge Staunton of the New South Wales District Court in an effort to get an early trial for Morgan Ryan. The Judge has given his version of that event in his evidence at the first trial. The Judge asserts that when he saw Staunton (on a face to face basis) Staunton told him that Mr Justice McClelland had already spoken to Staunton about the same matter. The Judge went on to say in his testimony at the first trial that he spoke to Justice McClelland a day or two after his conversation with Judge Staunton.

We have already examined the possibility of a charge of perjury being bought against Mr Justice Murphy in the light of the fact that Mr Justice McClelland may now be prepared to come forward and say that he, McClelland, had been telephoned by Murphy and asked to approach Judge Staunton on behalf of Morgan Ryan. It may be difficult to demonstrate a precise conflict between the account given by Mr Justice Murphy and this version of events if Mr Justice McClelland swears up to it. Rather, it would seem, Mr Justice Murphy's account of the matter is seriously flawed either through lack of recollection, or is misleading in a significant way.

Even if no allegation of perjury or other untruthfulness can be made against Mr Justice Murphy in respect of his evidence, it may be said that it was improper conduct on the part of a High Court Justice to approach a District Court Judge in an effort to get a speedy trial for a friend. There are many who would think that this was sufficiently grave conduct to amount to misbehaviour. It does not appear that Judge Staunton was offered any benefit in exchange for organising an early trial for Morgan Ryan. Nor was any pressure placed upon him to do so. It would follow that no criminal offence of any kind was committed, though one might give consideration to the question

whether there was an attempt to pervert the course of Justice. The argument against such a charge would be that it cannot amount to an attempt to pervert the course of Justice to bring on a trial sooner that might otherwise have taken place. One would need to examine carefully the judgement of the Court of Appeal (and of the High Court) in the Murphy matters and the law pertaining to attempting to pervert the course of Justice in order to see whether such conduct is capable of meeting that definition.

Persons to be interviewed

Judge Staunton and Mr Justice McClelland. In addition Morgan Ryan should be spoken to, and it appears, Judge Foord.

ALLEGATION NO. 34 - THE WOOD SHARES

This matter has been drawn to our attention. We believe it would be impossible to investigate it at this time. We understand that there would be nothing on any public register that could confirm the allegation. Companies would no longer be required to retain records of any shareholding of this nature. We recommend that the Commissioners have it drawn to their attention, but that we indicate that we are unable to adduce any evidence in support of it. We should add that no company was identified in the allegation, and Senator Wood is now dead.

ALLEGATION NO. 35 - THE WILLIAMS BRIBERY ALLEGATIONS

Statement of Offence

Soliciting a bribe whether at Common Law or pursuant to Legislation.

Particulars of Allegation

We have been told that a Trevor Williams may be prepared to come forward and give evidence of a demand made to him by the Judge of a bribe of $1,000 in exchange for assistance in relation to difficulties that Williams was having with customs matters during the time that the Judge was Minister for Customs.

Matters to be investigated

1. Trevor Williams should be interviewed.

2. There may be departmental records of some problem that Williams was having with the Customs Department at the relevant time which may go part of the way towards confirming his allegation. If Williams is not prepared to assist us, or indicates that he would not support this story, we would recommend that the matter simply be drawn to the attention of the Commissioners and that they be told that there is no evidence which we would be in a position to call to support the allegation and it should not be proceeded with.

ALLEGATION NO. 36 – THE DAMS CASE ALLEGATIONS

This may not refer to the Dams case at all. If the Judge personally intervened with the Premier of New South Wales in order to have instructions given to the Solicitor-General to conduct the case for New South Wales in a different fashion, the Judge would have committed the Common Law misdemeanor of misconduct by an officer of Justice – see paragraph 24/29 of Archbold. Even if his conduct did not amount to this common law misdemeanor, it would almost certainly be regarded as misbehaviour within the meaning of Section 72 arising out of conduct pertaining to his office.

Matters to be investigated

1. Judge Staples to be interviewed

2. Brian Toohey to be spoken to

3. David Williamson to be spoken to

4. The Solicitor General for New South Wales to be spoken to

5. Neville Wran

When the name of the case has been discovered (if it can be discovered) the transcript of argument addressed by the New South Wales Solicitor General to the High Court should be obtained. It should be ascertained whether that argument changed tack between the first day, and the next day of argument.

ALLEGATION NO. 37 – INSTRUCTIONS TO CUSTOMS OFFICERS RE. PORNOGRAPHY

We have been told that a decision was taken by the Judge when Attorney-General to instruct customs officers to decline to enforce the law pertaining to the importation of pornographic material. If the Judge did do this whilst Attorney General, he might be guilty of the misdemeanor of misconduct by an executive or administrative official of the Crown. This Common Law offence is set out at paragraph 21 – 205 of Archbold. There it is suggested that wilful neglect to perform a duty which an executive official of the Crown is bound to perform constitutes a Common Law Misdemeanor. We should obtain Customs files which might support the suggestion that such a direction was given by the Attorney General. There may also be documentation in the Attorney-General's Department relating to this matter. The Customs Officers Association might also have some record of any such directive if it had been issued. It appears that the Family Team have obtained certain documents by FOI. These should be examined, and the members of that Team spoken to.

MEMORANDUM

TO: Mr Charles
Mr Robertson
Mr Durack
Ms Sharp

SUMMARY OF AGE TAPES - VOLUME T1

Prepared by M Weinberg

Volume T1A

18.3.79 - Page 14	Murphy rings Morgan Ryan's home. Asks Ryan to phone him when he returns.
	Murphy indicates he will be at Darling Point the next day.
20.3.79 - Page 22	A call is made to [redacted] (presumably Murphy's number). Morgan Ryan urges Murphy to get on with an approach to Wran on behalf of Jegarow. Murphy says he will see to it. Murphy draws Ryan's attention to something in the newspaper about the Paris theatre. Murphy tells Ryan that he should know what's bloody well on. Murphy refers to a company called Ken Darley Holdings Pty Ltd. The newspaper is the Herald and the reference is to Page 2 of that date
31.3.79 - Pages 47-49	Murphy rings Morgan Ryan. Ryan has just got off the plane. Murphy talks about having spoken to a solicitor named Bilinsky. Murphy refers to

the old La Bodega. That has been closed for a while but it has now turned into a new restaurant called Pegroms. Murphy describes it as a gay restaurant. Murphy says that Rofe visits there regularly. Murphy asks: "Does he drive himself". Ryan replies: "I don't know but look we can do something now because I am back here now and I'm going to have that...I'm going to have that dinner one night O.K.". Murphy then tells Ryan that Jegarow is to get the appointment. Murphy then raises the question of the "bloke that is replacing Murray". Murphy asks: "Is he the right fellow?" Ryan replies that Murphy is going to dine with him. Murphy asks: "He's a good fellow, is he?" Ryan replies: "You're going to find out yourself, we'd better not talk about it now had we?"

31.3.79 – Page 49

Morgan Ryan rings Jegarow and says: "The trump rang me"

9.4.79 – Pages 91–93

Ryan rings Abe Saffron. Ryan tells Saffron that he had received a telephone call at half past seven that morning. The reference is to "Phil Kaye" This is obviously a reference to Murphy. Morgan Ryan recounts a conversation which he had with Murphy regarding a Dixon Street illegal casino. It is suggested that Murphy had asked questions about a man named Watson who was apparently a head of the gaming squad. There is a long discussion between Ryan and Saffron regarding the consequences of this call. The implication is that Murphy is making efforts on behalf of one Robert Yuen who is a neighbour of his at Darling Point. It should be noted that

there is no record of any such prior call between Murphy and Ryan at 7.30 on that morning.

10.4.79 – Pages 100-101 — Ryan receives a telephone call from Garry Boyd. Ryan indicates to Boyd that Murphy wishes to see him in connection with Robert Yuen and his involvement in an illegal casino. Ryan indicates that they have got to be careful of the judge taking any action against Watson. It is put that if Watson rolls "they will all probably roll down the hill together".

11.4.79 – Pages 101-102 — Ryan telephones Saffron. He refers to his previous conversation with Saffron about "L. K". Ryan then says: "You know we ought to put in a good bit of work on him in the next 12 months if somebody else has got to come up there". There follows a criptic concersation about somebody who is "very strong".

T1B

7.2.80 – Pages 107-108 — This is apparently a call from Ryan to Murphy. There is a discussion about "every little breeze". Ryan also asks Murphy not to forget "those pinball machines".

Page 108 — A second call is made that day between Ryan and Murphy. Ryan says: "Did you see this filthy Rofe is now on the Woollahra Council". Murphy says: "He's been on there for some time, you've done nothing about him". Ryan replies: "Oh, we'll go for that we will certainly go to that luncheon, we're going to do something now, this will be a beauty coming home from the functions there".

Page 128-129 There is a reference to Murphy at Page 128 in a conversation between Ryan and some officer of the Australian Federal Police. At Page 129 Ryan says: "Good news first.... Lionel and I had lunch with Murray and he had lunch with Brieze. I only spoke to them and left. And Lionel said: "Tell that mate of yours that Don introduced us to, that he's got friends in the right places if necessary".

Volume T1C - Summaries Prepared by McVicar

See Page 156 for McVicar's summary of the relations between Ryan and Lionel Murphy.

7.2.80 - Page 159 The McVicar summaries corroborate in part the actual transcripts of the conversations between Morgan Ryan and Murphy on the 7.2.80.

22.2.80 - Page 165 The summary records a call from Murphy to Ryan. They discuss Ellicot and some malicious prosecution. (This seems to be the summary of the one tape recording of Murphy's voice which actually exists).

10.3.80 - Page 168 Ryan rings Murphy but there is no answer.

11.3.80 - Page 170 Ryan rings Murphy. Talk about an article in a newspaper. Murphy praises it. Ryan raises the Milton Morris matter and suggests that Morris can be compelled to pull Mason into line. Murphy warns Morgan about what he says over the telephone.

12.3.80 – Page 171 — Incoming call from Murphy to Ryan.

13.3.80 – Page 172 — Incoming call to Ryan from Murphy.

14.3.80 – Page 172 — Two incoming calls from Murphy for Ryan.

15.3.80 – Page 173 — Incoming call from Murphy to Ryan who is not at home.

24.3.80 – Page 176 — Murphy rings Ryan.

2.4.80 – Page 181 — Murphy rings Ryan. Speaks to Ryan's wife. The "smelling like a rose" conversation takes place.

2.4.80 – Page 182 — Ryan rings Murphy and discusses having a meeting. Ryan says he has something important to tell Murphy. Further talk about a Government inquiry.

3.4.80 – Page 182 — Murphy rings Ryan. Discussion re new Central railway complex. Murphy is guarded with his talk. During that talk Commuter Terminals Pty Ltd is mentioned together with the word "champagne".

5.4.80 – Page 183 — Eric Jory rings Ryan. Discussion re new Central railway complex. Discussion about a girl being arranged for Lionel Murphy.

12.4.80 – Page 187 — Murphy rings Ryan.

13.4.80 – Page 187	Murphy rings Ryan. Ryan mentions that he has spoken to N. Murphy that he has spoken to J then mentions M. Murphy also mentions that he has spoken to McHugh. Murphy agrees to speak to Ryan the next day as he does not want to speak on the phone.
21.4.80 – Page 191	Murphy rings and asks Ryan to contact him.
24.4.80 – Page 191	Ryan speaks to Murphy about starting the malicious prosecution case. Talk about what fund is going to guarantee costs etc.
30.4.80 – Page 193	Ryan talks to Murphy more about malicious prosecution matter. Murphy refuses to discuss on phone.
5.5.80 –	Murphy rings Ryan.
6.5.80 – Page 196	Call to Ryan from male who could be Murphy. There is conversation re Judge Staples and another judge Mary Gaudron.
6.5.80 – Page 198	Ryan rings Murphy and mentions Billy Lee case. Murphy gets cranky about Ryan mentioning that to him.
10.5.80 – Page 199	Morgan complains to someone at Terry Christie's office regarding "the Sankey reprisal" and wants male to talk to Murphy.

Volume T1D AFP Transcripts of Conversations

In a conversation between Ryan and Farquhar Murphy's name is mentioned at Page 205.

Pages 299-304 set out the transcript of the one tape recording that we have of Murphy's voice in conversation with Morgan Ryan.

June 1986

Melissa
CD please
Daryl

MEMORANDUM

This memorandum deals with the expression "proved misbehaviour" in Section 72 of the Constitution. In particular, it summarizes the three principal views which have hitherto been expressed regarding that expression, and sets out a number of criticisms which may be made of at least two of those views. The analysis takes the form of a consideration of a number of hypothetical examples of behaviour which might give rise to a suggestion that there has been "misbehaviour" tested by each of the views referred to.

(a) The Bennett View

In a memorandum dated 4 July 1984, and included in the Report to the Senate by the Senate Select Committee on the Conduct of a Judge (August 1984), Dr Bennett suggests that insofar as one is dealing with the conduct of a judge (other than the manner in which he exercises or has exercised his judicial functions), the only type of behaviour which can give rise to "proved misbehaviour" is conduct which has led to a criminal conviction. Parliament's role under Section 72 is said to be confined to considering whether the circumstances of the conviction and the nature of the offence are such that the conviction constitutes "proved misbehaviour". Not all convictions would be sufficiently grave to warrant this description eg. traffic violations.

Bennett suggests that any broader view would be untenable. He says it would be astonishing if the Parliament were to conduct what would amount to a trial for a serious criminal offence.

He does not indicate whether a conviction for a sufficiently grave offence sustained before the judge assumes judicial office (but not disclosed by him) could amount to "proved misbehaviour". The tenor of his advice, however, is that pre-appointment conduct would be irrelevant.

I do not set out in this memorandum the full range of arguments which Bennett draws upon to sustain his conclusion. It is plain, however, that he takes the view that the words "proved misbehaviour" had acquired a technical meaning in the last decade of the nineteenth century, and that his meaning is reflected in Section 72 as it is to be construed today.

(b) The Solicitor-General's View

In a memorandum dated 24 February 1984 the Solicitor-General considers the term "proved misbehaviour" within the meaning of Section 72. He concludes that it is limited to matters pertaining to:

(i) "judicial office, including non-attendance, neglect of or refusal to perform duties; and

(ii) the commission of an offence against the general law of such a quality as to indicate that the incumbent is unfit to exercise the office".

Dr Griffith does not distinguish between conduct under (ii) which occurred pre-appointment, and similar conduct post-appointment. It may be inferred, however, that since the conduct set out in (i) can only occur post-appointment, and since no distinction is drawn in the language preceding (ii), that the Solicitor-General would take the view that pre-appointment conduct cannot, as a matter of law, amount to "proved misbehaviour".

The distinction between pre-appointment and post-appointment conduct was never discussed during the course of the Convention Debates. The strongest argument for excluding pre-appointment conduct from consideration is the threat that extensive scrutiny of such conduct would pose to the independence of the judiciary. The temptation to roam back through the life of a judge looking for criminal conduct (no matter how isolated, or remote from the time of appointment) would always be present to a Government dissatisfied with the rulings given by that Judge in matters affecting Government programmes.

(¢) The Pincus View

This view finds expression in a memorandum dated the 14 May 1984. Mr Pincus contends that whether any conduct alleged against a judge (not pertaining directly to his judicial office) constitutes misbehaviour is a matter for Parliament. There is no "technical" or fixed meaning of misbehaviour. It is not necessary in order to invoke the jurisdiction under Section 72 that an offence against the general law be proved. There may be other discreditable conduct on the part of a Judge which may demonstrate that he is unfit to hold judicial office. This will be a matter for Parliament to determine.

Once again Mr Pincus does not, in terms, distinguish between pre-appointment conduct, and post-appointment conduct. The tenor of his advice seems to be that it is entirely a matter for Parliament as to whether any such discreditable behaviour (no matter when it occurred) renders the Judge unfit to hold judicial office.

Criticisms of the Bennett View

Dr Bennett suggests that his view is supported by an analysis of the Convention Debates and the relevant statements of legal principle which are set out in the authorities dating back to the eighteenth century. This memorandum does not deal with that argument. Rather, it seeks to demonstrate that the Bennett view would give rise to some absurd consequences by testing that view in the light of some concrete examples.

Each of the following situations would plainly be thought to render a Judge unfit to hold judicial office. The Bennett view would dictate that no steps could be taken to remove the Judge even if the facts set out were clearly proved - beyond reasonable doubt, if necessary, or openly admitted by the Judge.

1. The Judge has, post-appointment, committed murder while on an overseas trip in a country to which he cannot be extradited.

2. The Judge has, post-appointment, been tried for murder in Australia, and found not guilty by reason of insanity. He is no longer insane, however, and therefore not suffering from any incapacity.

3. The Judge has, post-appointment, been tried for murder in Australia, and acquitted. The Judge then openly boasts that he was, in fact, guilty of the offence. Because he did not give sworn evidence at his trial, he cannot be charged with perjury.

4. The Judge has, post-appointment, been tried for a serious offence in Australia, and convicted. The conviction is quashed on appeal because (a) a necessary consent to prosecute had not been obtained from a duly authorised officer
or (b) a limitation period had expired, which fact had gone unnoticed.

5. The Judge has, post-appointment, been tried for a serious offence involving dishonesty in Australia. The Magistrate finds him guilty but determines to grant an adjourned bond without proceeding to conviction.

Criticisms of the Griffith View

Each of the following situations would be thought by many to render a Judge unfit to hold judicial office. The Griffith view would lead to the conclusion that no steps could be taken to remove the Judge even if the facts set out were clearly proved.

1. The Judge has, post-appointment endorsed a particular political party, and publicly campaigned for its election to office.

2. The Judge has, post-appointment, engaged in discussions with others which fall short of establishing a conspiracy to commit a crime, but are clearly preparatory to such a conspiracy. For example, the Judge is overheard to be discussing with another person the possibility of hiring someone to commit a murder. Alternatively, the Judge is overheard discussing with another the possibility of importing some heroin from overseas.

3. The Judge has, post-appointment, set in train a course

of conduct which, if completed, will amount to a serious criminal offence. All that has happened thus far, however, falls short of an attempt to commit that offence. For example, the Judge tells another that he proposes to burn down his premises and claim the insurance. He is found with a container of kerosene as he approaches those premises, and makes full admissions as to his intent. He cannot be convicted of attempted arson, or attempting to defraud his insurance company because his acts are not sufficiently proximate to the completed offence to amount to an attempt.

4. The Judge has, post-appointment, attempted to do something which is "impossible", and therefore has committed no crime. For example, the Judge has attempted to manufacture amphetamines by a process which cannot bring about that result (unknown to him). See DPP v Nock (1978) A.C. 979

5. The Judge has, post-appointment, habitually consorted with known criminals, and engaged in joint business ventures with them. The offence of consorting has been abolished in the jurisdiction in which these acts take place. To take an analogy, assume that a Justice of the United States Supreme Court was constantly seen in the company of Al Capone. Would such conduct not tend to bring the administration of justice into disrepute?

6. The Judge has, post-appointment, been a partner in the ownership of a brothel. The jurisdiction in which that occurs has legalized prostitution, and it is no offence to own a brothel there either.

7. The Judge has, post-appointment, habitually used marijuana and other drugs in a jurisdiction which has decriminalised such use, but treats these as "regulatory" offences.

8. The Judge has, post-appointment, frequently been sued for non-payment of his debts. He deliberately avoids paying his creditors until proceedings are taken against him.

9. The Judge has, post-appointment, frequently been sued for defamation, and has been required to pay damages each time.

10. The Judge has, post-appointment, conducted a number of enterprises through a corporate structure. His actions have led to prosecution under the Trade Practices Act for false or misleading statements. Both he, and his companies have been fined.

Pre-Appointment Conduct

It is arguable that discreditable conduct on the part of the Judge pre-appointment may amount to "proved misbehaviour", or, at least, be relevant to post-appointment conduct. If the point of a conviction is that it demonstrates unfitness for

office because it may establish a propensity to commit that type of conduct again (or other criminal conduct) why is it relevant that the initial criminal behaviour occurred pre-appointment? The test is whether it allows the necessary inference to be drawn. A criminal act committed one week prior to appointment is no different to a criminal act committed one week after appointment. The same applies to discreditable conduct.

It follows that criminal conduct or discreditable conduct which is so remote in time from the time of appointment as to render it improper to infer that such conduct is likely to be repeated may be excluded from consideration. For example, an isolated assault committed while the Judge was a youth would plainly fit this description. Some conduct is so serious, however, that irrespective of when it was committed, great harm would be done to the integrity of the judicial system if it became known that a Judge of the highest Court had been responsible for it. These are questions of degree, in the first instance, for Parliament to determine.

Mark Weinberg
24 June 1986

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MEMORANDUM

This memorandum deals with the word "misbehaviour" in section 72 of the Constitution. It traces first the history of the view which has been expressed that the word had in 1900 a technical meaning which was adopted by the framers of the Constitution. Thereafter an alternative view is suggested.

In questions of constitutional history the orthodox starting point is Quick and Garran. In their Annotated Constitution of the Australian Commonwealth (1901) they deal with the word "misbehaviour" in section 72 as follows

> Misbehaviour means misbehaviour in the grantee's official capacity. "Quamdiu se bene gesserit must be intended in matters concerning his office, and is no more than the law would have implied, if the office had been granted for life". (Coke, 4 Inst. 117.) "Misbehaviour includes, firstly, the improper exercise of judicial functions; secondly, wilful neglect of duty, or non-attendance; and thirdly, a conviction for any infamous offence, by which, although it be not connected with the duties of his office, the offender is rendered unfit to exercise any office or public franchise." (Todd, Parl. Gov. in Eng., ii. 857, and authorities cited.)

This passage was quoted by Mr Isaacs (as he then was) at page 948 of the Convention Debates at Adelaide in 1897. Mr Isaacs also quoted the continuation of the extract from Todd as follows -

> "In the case of official misconduct, the decision of the question whether there be a misbehaviour rests with the grantor, subject, of course, to any proceedings on the part of the removed officer. In the case of misconduct outside the duties of his office the misbehaviour must be established by a previous conviction by a jury."

The passage in Todd (which I have set out as it appears at page 858 of the second edition) was in fact reproduced from an opinion dated 22 August, 1864 of the Victorian Attorney-General Mr Higinbotham and the Minister for Justice Mr Michie:

> The legal effect of the grant of an office during good behaviour is the creation of an estate for life in the office (Co. Lit. 42 v.). Such an estate, however, is conditional upon the good behaviour of the grantee, and like any other conditional estate may be forfeited by a breach of the condition annexed to it; that is to say, by misbehaviour. Behaviour means behaviour in the grantee's official capacity (4 Inst. 117). Misbehaviour includes, firstly, the improper exercise of judicial functions; secondly, wilful neglect of duty or non-attendance (9 Reports 50); and thirdly, a conviction for any infamous offence, by which, although it be not connected with the duties of his office, the offender is rendered unfit to exercise any office or public franchise Rex v Richardson (1 Burr. 539). In the case of official misconduct, the decision of the question whether there be misbehaviour, rests with the grantor, subject, of course, to any proceedings on the part of the removed officer. In the case of misconduct outside the duties of his office, the misbehaviour must be established by a previous conviction by a jury. (1b).

This opinion was given in relation to section 38 of the Constitution Act of Victoria which is in the following terms:

> "The Commissions of the present judges of the Supreme Court and all future judges thereof shall be continue and remain in force during their good behaviour notwithstanding the demise of Her Majesty or Her heirs and successors any law and usage or practice to the contrary thereof in anywise notwithstanding: provided always that it may be lawful for the Governor to remove any such judge or judges upon the address of both Houses of the Legislature."

A number of observations can therefore be made about the contention that misbehaviour in a person's unofficial capacity means a conviction for any infamous offence by which the offender is rendered unfit to exercise any office or public franchise.

First, it can be said that Messrs Higinbotham and Michie did not use the word "means" but the word "includes". It is not apparent that they attempted an exhaustive enumeration of the circumstances of misbehaviour.

Secondly, Messrs Higinbotham and Michie rely on the authority of Rex v Richardson.

Thirdly, the contention involves the proposition that judges appointed under Chapter III of the Constitution hold office during good behaviour.

Fourthly, the contention assumes that the decision in Rex v Richardson delimits what may constitute misbehaviour in an unofficial capacity in respect of all officers.

Fifthly, it is assumed by the proponents of the contention that the new procedure provided in section 72 of the Constitution does not affect the question.

In examining these matters it is convenient first to set out a further passage from the opinion of Messrs Higinbotham and Michie. With the omission of one sentence the passage earlier set out continues

> "These principles apply to all offices, whether judicial or ministerial, that are held during good behaviour (v. 4. Inst. 117). But in addition to these incidents, the tenure of the judicial office has two peculiarities: 1st. It is not determined, as until recently other public offices were determined, by the death of the reigning monarch. 2ndly. It is determinable upon an address to the Crown by both Houses of Parliament. The presentation of such an address is an event upon which the estate in his office of the judge in respect of whom the address is presented, may be defeated. The Crown is not bound to act upon that address; but if it think fit so to do it is thereby empowered, (notwithstanding that the Judge has a freehold estate in his office from which he can only be removed for misconduct, and although there may be no allegation of official misbehaviour) to remove the Judge without any further inquiry, or without any other cause assigned than the request of the two Houses. There has been no judicial decision upon this subject; but the nature of the law which regulates the tenure of the judicial office has been explained by Mr Hallam in the following words:- (Const. Hist. Vol. 3, p.192) "No Judge can be dismissed from office except in consequence of a conviction for some offence, OR the address of both Houses of

> Parliament, which is tantamount to an Act of the Legislature)."

It can be observed that Hallam's statement of the effect of the Act of Settlement takes no account of removal for misbehaviour in the course of judicial duties.

In similar vein, Todd, having set out the passage from the opinion of Higinbotham and Michie referred to what Mr Denman stated at the bar of the House of Commons when appearing as counsel on behalf of Sir Jonah Barrington. Mr Denman said that

> "Independently of a parliamentary address or impeachment for the removal of the judge, there were two other courses upon for such a purpose. These were (I) a writ of scire facias to repeal the patent by which the office had been conferred; and (2) a criminal information [in the court of kings bench] at the suit of the attorney-general."

Todd explains (at page 859)

> "Elsewhere, the peculiar circumstances under which each of the courses above enumerated would be specially applicable have been thus explained: "First, in cases of misconduct not extending to a legal misdemeanour, the appropriate course appears to be by scire facias to repeal his patent, "good behaviour" being the condition precedent of the judges tenure; secondly, when the conduct amounts to what a court might consider a misdemeanour, then by information; thirdly, if it amounts to actual crime, then by impeachment; fourthly, and in all cases, at the discretion of Parliament, "by the joint exercise of the inquisitorial and judicial jurisdiction" conferred upon both Houses by statute, when they proceed to consider of the expediency of addressing the Crown for the removal of a judge."

The passage in quotations is from the Lords Journal (1830) v.62 page 602. It totally contradicts the proposition that misbehaviour had a technical meaning limited to an infamous offence the subject of a conviction. Barrington is the only judge to have been removed by the Crown upon an address by both Houses.

Todd (at page 860) then goes on to explain that the two Houses of Parliament had had conferred upon them:

> a right to appeal to the Crown for the removal of a judge who has, in their opinion, proved himself unfit for the proper exercise of his judicial office. This power is not, in a strict sense, judicial; it may be invoked upon occasions when the misbehaviour complained of would not constitute a legal breach of the conditions on which the office is held. The liability to this kind of removal is, in fact, a qualification of, or exception from, the words creating a tenure during good behaviour, and not an incident or legal consequence thereof.

This passage is also inconsistent with the excerpt from the Lords Journal reproduced by Todd on the preceding page of his book. Further, it contains a use of the word misbehaviour which suggests that it did not, to Todd, have a technical meaning.

It will of course be necessary to return to the question of whether section 72 of the Constitution limits the Parliament to those matters which are said by Todd to go to the breach of the conditions upon which an office is granted. But

first, a perspective on the conclusions of Messrs Higinbotham and Michie and upon the historical meaning of misbehaviour is afforded by considering the facts and the judgment of Lord Mansfield for the Court in Rex v Richardson (1758) 1 Burr 517; 97 ER 426.

The question in Richardson's case was whether Richardson had good title to the office of a portman of the town of Ipswich. The answer to that question depended on whether there was a vacancy duly made, that is, whether the Corporation of Ipswich had power to amove Richardson's predecessors for not attending the great Court.

Lord Mansfield (at page 437) began by referring to the second resolution in Bagg's case, 11 Co. 99 "that no freeman of any corporation can be disfranchised by the corporation; unless they have authority to do it either by the express words of the charter, or by prescription".

At page 439 of the report of Richardson's case this proposition was said to be wrong and the correct law was that "from the reason of the thing, from the nature of corporations, and for the sake of order and government" the power of amotion was incident, as much as the power of making bye-laws.

It was therefore decided first that the Corporation had an incidental power to amove. The second question was whether the cause was sufficient. It was held that the absences from the great Court by Richardson's predecessors was not sufficient to be a cause of forfeiture.

It was however in relation to the first point, the question of whether the Corporation had power to amove, that the following appears

> "There are three sorts of offences for which an officer or corporator may be discharged.
>
> 1st. Such as have no immediate relation to his office; but are in themselves of so infamous a nature, as to render the offender unfit to execute any public franchise.
>
> 2nd. Such as are only against his oath, and the duty of his office as a corporator; and amount to breaches of the tacit condition annexed to his franchise or office.
>
> 3rd. The third sort of offence for which an officer or corporator may be displaced, is of a mixed nature; as being an offence not only against the duty of his office, but also a matter indictable at common law.

The Court overruled the decision in Bagg's case to the extent that it stood for the proposition that a corporation did not have authority, apart from by charter or prescription, to disfranchise a freeman of a corporation unless he was convicted by course of law. That part of the decision turned on a corporation's power of trial rather than the power of amotion. The decision of the Court was that the power of trial as well as amotion for the second

sort of offences was incident to every corporation. Those offences, it will be recalled, are those against the officer's oath and the duty of his office as a corporator.

It is in this context that Lord Mansfield said, at page 439:

> "Although the corporation has a power of amotion by charter or prescription, yet, as to the first kind of misbehaviours, which have no immediate relation to the duty of an office, but only make the party infamous and unfit to execute any public franchise: these ought to be established by a previous conviction by a jury, according to the law of the land; (as in cases of general perjury, forgery, or libelling, etc)."

It is this notion which finds its way into each edition of Halsbury's Laws of England. In the 4th Edition, Volume 8 at paragraph 1107 the law is stated as follows:

> Judges of the High Court and of the Court of Appeal, with the exception of the Lord Chancellor, the Comptroller and Auditor General, and the Parliamentary Commissioner for Administration hold their offices during good behaviour, subject to a power of removal upon an address to the Crown by both Houses of Parliament. Such offices may, it is said, be determined for want of good behaviour without an address to the Crown either by criminal information or impeachment, or by the exercise of the inquisitorial and judicial jurisdiction vested in the House of Lords. The grant of an office during good behaviour creates an office for life determinable upon breach of the condition.
>
> "Behaviour" means behaviour in matters concerning the office, except in the case of conviction upon an indictment for any infamous offence of such a nature as to render the person unfit to exercise the office, which amounts legally to misbehaviour though not committed in connection with the office. "Misbehaviour" as to the office itself means improper exercise of the functions appertaining to the office, or non-attendance, or

> neglect of or refusal to perform the duties of the office.

The authorities given for the propositions contained in the second paragraph above quoted are 4 Co. Inst. 117, R v Richardson and the Earl of Shrewsbury's case (1610) 9 Co. Rep. 42a at 50a. This last reference is to the statement (77 ER at 804) "there are three causes of forfeiture or seisure of offices for matter in fact, as for abusing, not using or refusing".

The same propositions are repeated in Hearn's Government of England (1886) at pages 83 and 84, Ansons' Law and Custom of the Constitution, (1907) Volume 2 Part 1 pages 222 to 223 and, most recently, in Shetreet's Judges on Trial (1976) at pages 88 to 89. The relevant paragraph in that book is as follows

> "Conviction involving moral turpitude for an offence of such a nature as would render the person unfit to exercise the office also amounts to misbehaviour which terminates the office, even though the offence was committed outside the line of duty. In Professor R.M. Jackson's opinion, at common law "scandalous behaviour in [a] private capacity" also constituted breach of good behaviour. It is respectfully submitted that this statement, for which no authoriy is cited, cannot be sustained. It clearly appears from the authorities that except for criminal conviction no other acts outside the line of duty form grounds for removal from office held during good behaviour."

The authorities for the proposition contained in the first sentence and in the last sentence are Richardson's case, Anson, Halsbury and Hearn.

In other words, the sole authority relied on is the decision of Lord Mansfield in Richardson's case which centred on the implied powers of corporations to remove officers. There has been no judicial decision upon the provisions of the Act of Settlement providing for the tenure by which judges hold their office. Richardson's case appears to have been referred to judicially only once and that was in R v Lyme Regis (1779) 1 Doug KB 149; 99 ER 149, another decision of Lord Mansfield dealing with the implied powers of municipal corporations. Uninstructed by the opinions of learned authors, one would have thought that the nature of the office must have a large bearing on the type of conduct which would render an incumbent unfit to continue to hold it. It is impossible to equate the position of a judge with that of an alderman of a municipal corporation: behaviour which might make a judge "infamous" might not have the same result for an alderman.

There can be no doubt that judges appointed under Chapter III of the Constitution hold office during good behaviour: the High Court so decided in Waterside Workers' Federation of Australia v J.W. Alexander Limited (1918) 25 CLR 434, 447, 457, 469-470, 486. Neither can there be any doubt that

there is only one method of removal, that being by the Governor-General in council (the executive) on an address from both Houses of Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity. Where opinions diverge is as to what misbehaviour means. One view, shared by Mr D. Bennett QC and the Solicitor-General, is that in 1900 the word had a technical meaning and it is that meaning which was, and was intended to be, adopted in section 72 of the Constitution.

As to this, there are a number of observations to be made. Firstly, the sole judicial authority relied on is Richardson's case; secondly, that case did not concern judges; thirdly, it was not expressed to contain a definition of "misbehaviour"; fourthly, it concerned the powers of a corporation, in particular its power to amove and its power to try offences having no immediate relation to the duties of an office; fifthly, it is not clear that Lord Mansfield used the word "offence" as meaning other than a breach of law rather than a crime; sixthly, Todd's adoption of the apparently limited scope of the word is directly contradicted by the passage he quotes at page 859 of his work from the Lords Journal as follows:

> First, in cases of misconduct not extending to a legal misdemeanour, the appropriate course appears to be by scire facias to repeal his patent, "good behaviour" being the condition precedent of the judges tenure.

Seventhly, it appears from Bacon's Abridgement (7th ed.) VI p41 and Hawkins Treatise of the Pleas of the Crown 1. Ch 66 at least that misbehaviour having immediate relation to the duty of an office was not defined and had no technical meaning; it would be illogical to attribute a technical meaning to one aspect of the term.

It therefore seems unlikely that "misbehaviour" had a technical meaning in relation to the tenure of judges. If that be so then it is improbable that the delegates at the Constitutional Convention intended such a meaning. Indeed a concern of the delegates was to elide all formerly available procedures into one where the tribunal of fact was to be the Parliament. That in itself would seem to render less persuasive the view that a conviction for an offence was to be a necessary pre-condition of removal.

It is permissible to have regard to the debates at the Constitutional Conventions at least for the purpose of seeing what was the evil to be remedied: Municipal Council of Sydney v Commonwealth (1904) 1 CLR 208, 213-214; The Queen v Pearson; Ex parte Sipka (1983) 152 CLR 254, 262. It would not appear to be permissible to consider the speeches of individual delegates so as to count heads for or against a particular view. What is clear from a consideration of the various drafts of the Constitution and from the debates is that the Parliament was not intended to be at large in

making its address to the Governor-General. The practice in the United Kingdom was to be departed from having regard to the position of the Federal Courts, and in particular the High Court, in a federation. Secondly, for the better protection of the judges, it was intended by the word "proved" to impose some formality upon the conduct of the proceedings before the Parliament which was to be the tribunal of fact.

Before suggesting what the relevant test of misbehaviour might be, the question should be addressed of whether or not the proceedings in Parliament could be the subject of curial review. In my opinion it is clear that the High Court would intervene to correct any denial of natural justice and also to correct any attempt to give the word "misbehaviour" a meaning more extensive than it can legitimately bear. The Court might also intervene were there to be a total absence of evidence of misbehaviour. The proceedings are not internal to Parliament nor do they concern the privileges of the Houses. The matters referred to in Reg v Richards; ex parte Fitzpatrick and Browne (1955) 92 CLR 157 and in Osborne v The Commonwealth (1911) 12 CLR 321 would not therefore lead the Court to stay its hand.

It may be also that the High Court would decide that any facts upon which the Houses proposed to make an address

would need to be established in appropriate court proceedings.

Assuming then that misbehaviour has no technical meaning, what test is to be applied in respect of conduct off the bench? Having regard to the necessary preservation of the independence of the judiciary from interference, it would seem clear that conduct off the bench which would be described merely as unwise or unconventional would not constitute misbehaviour.

The lack of any readily apparent definition confirms the unwisdom of attempting to substitute other words for those which appear in the Constitution and of attempting an abstract exercise in the absence of facts. It would however seem simplistic to attempt to deal with the question on the basis of whether or not there was a conviction or whether or not a criminal offence had been committed by the Judge. It is by no means true to say that criminal offences are constituted only by conduct which destroys public confidence in the holder of high judicial office; some offences would not have that result. At the same time it would be the case that that confidence could be destroyed by conduct which, although not criminal, would generally be regarded as morally reprehensible. One manner of framing the question is to ask "is the conduct so serious as to render the person no longer fit to be a judge?" with that question being tested

by reference to public confidence in the office holder. It would appear to be unnecessarily restrictive, as well as leading to arbitrary distinctions, to demand that the conduct must be unlawful. Additionally that result or intention sits oddly with vesting a part of the power in the Parliament without reference to any anterior proceedings.

These notions are not, of course, of clear denotation and connotation. But that would seem to be a necessary consequence of the question in hand which, in relation to particular conduct, must have different answers in different times. It is a matter of fitness for office; all the facts and circumstances of alleged misbehaviour must be considered so as to weigh its seriousness and moral quality. Wrong doing must be a necessary requirement: legal wrong doing within the purview of the civil or criminal law would seem to be less important than the moral quality of the act.

I turn finally to the two related quesitons of whether or not misbehaviour within the meaning of section 72 may be an aggregation of incidents and whether behavour before appointment might of itself constitute misbehaviour.

As to the first of these questions I see no reason why the moral quality of the behaviour should not be arrived at upon a consideration of a sequence of events. This is not to say that a series of peccadillos might constitute misbehaviour

where one would not, but a series of events over a number of years could go to prove the quality of a particular act or acts.

Similarly, leaving aside questions of non-disclosure (see New South Wales Bar Association v Davis (1963) 109 CLR 428) there would appear to be no reason why facts and circumstances before a person's appointment as a judge could not be considered in determining the quality of an act or of acts after appointment. It would seem however that acts which took place before appointment, which were not of a continuing nature and which cast no light on behaviour after appointment, could not constitute misbehaviour in office.

[redacted]

A. ROBERTSON

Wentworth Chambers

23 June, 1986

PARLIAMENTARY COMMISSION
OF INQUIRY

MEMORANDUM

AUSTRALIAN GOVERNMENT
SOLICITOR
200 Queen Street
MELBOURNE VIC

DX 50 MELBOURNE

Memorandum to: Mr Charles
Mr Robertson
Mr Durack
Mrs Sharp
Mr Phelan

From: Mr Weinberg

SUMMARY OF STATEMENTS MADE BY MURPHY J.

(a) The Aide-Memoirs.

1. The first occasion that the Judge was asked for any comment regarding the "Age" tapes was 15 February 1984. There is an aide-memoire in existence which relates to the discussions between the Judge and the Attorney-General on each of those dates. If one goes to the document relating to 15th February, it is noted that there had been an interim report prepared by the Australian Federal Police for the Special Minister of State on 13th February which had concluded that the materials did not disclose any evidence of criminality and did not indicate any further lines of investigation to be undertaken. This conclusion was apparently reached by the DPP designate (Mr Temby). We should obtain a copy of Mr. Temby's report to the Attorney handed over on 15th February 1984. It appears that Mr Tenby had also considered whether the material showed "misbehaviour" within the meaning of section 72 of the constitution. It is said that the conclusion was negative on this aspect also. Mr Temby did however apparently indicate that the tapes disclosed "injudicious" behaviour.

2. The immediate response made by the Judge was to query the status and authenticity of the material. He suggested they might be forgeries. The Judge indicated that there was no way of knowing from the documents whether or not they were a complete and accurate record of the conversations they purported to cover. The Attorney-General noted these points and took the discussion to three main issues. These were:
(1) The Rofe/Ellicott references
(2) The reference to Jegorow's appointment
(3) The references to obtaining girls for sex.

3. The Attorney-General said that a further issue that arose out of this was the Judge's relationship with Morgan Ryan, the solicitor.

4. As to the Rofe/Ellicott materials, the Judge noted that these conversations had to be related to his concern with the criminal proceedings brought by Sankey against himself and others. It should be remembered that the defendents in the criminal proceedings were discharged by the magistrate on 16th February 1979. The Judge indicated that he believed the proceedings had been conducted maliciously. He also indicated

that he believed that Mr Rofe's part in the prosecution had been more than that of counsel. He said the then Attorney-General, Mr Ellicott, was giving assistance to the prosecution. The Judge indicated that he had heard that a senior counsel had expressed the view that it was a clear case of malicious prosecution. The Judge conceded that he had opposed Ellicott's appointment as Chief Justice of the High Court. The Judge conceded that he might have made the references to Rofe and male homosexual bars.

5. The Jegorow appointment - the Judge said he might have spoken to Morgan Ryan about the appointment. He indicated that he had understood that Jegerow was well qualified. He said that his role would have been no more than was common in relation to pending appointments. He rejected the allegation of any special favours.

6. Obtaining girls - the Attorney-General referred to a purported summary of a conversation between Ryan and Jury on 5 April 1980 in which it was stated that "a girl has to be arranged for Lionel Murphy". The Judge said he did not know Jury and had no recollection of ever meeting him. He indicated that the statements in the summary and in his profile in this regard were untrue and totally without foundation.

7. Association with Ryan - the Judge said that he had known Ryan for many years. When it was suggested to the Judge that there might be possible adverse inferences drawn against him arising out of Ryan's association with Saffron, the Judge expressed the view that this represented guilt by association, and he rejected the concept.
NOTE - it appears that the Judge did not expressly deny any knowledge that Ryan had an association with Saffron, nor did the Judge expressly state that he had no association with Saffron himself. When asked about the "furtive" nature of a number of the conversations between himself and Ryan, the Judge did not deny the accuracy of those summaries, but rather said that he had always been circumspect in telephone conversations.

8. The Attorney-General also referred the Judge to the "Toorak Times" references to Ramon Sala and to allegations that the Judge, as Attorney-General had ordered the return of Sala's passport which enabled him to leave Australia. The Judge said he had no personal recollection of the Sala matter. He felt there would have been good reason for any action he had taken.
NOTE - it seems rather surprising that the Judge would say that he had no personal recollection of the matter when it appears to have been something of a cause-celebre in 1975.

9. A second meeting took place between the Attorney-General and the Judge on 24th February 1984. There is an aide memoire in existence of that meeting as well. The Judge indicated that he would object to the Temby opinion being tabled in Parliament, and said that this would amount to an invasion of his privacy. The Attorney then asked a number of questions of

the Judge concerning his association with Morgan Ryan. The Attorney-General asked the Judge whether he was aware of Morgan Ryan's association with Abe Saffron. The Judge said he was unaware of any such connection.

(b) The First Senate Inquiry

10. By letter dated 12 June 1984, the Judge was invited to appear before the Committee. The three matters which the committee desired to raise with the Judge were as follows:-

(a) Alleged conversations in which he was a participant in the "Age" transcripts and summaries.

(b) A statement by the Chief Stipendary Magistrate of New South Wales concerning conversations he claimed to have had with the Judge.

(c) The Lewington allegation.

11. By letter dated 2nd July 1984, the Judge wrote to Senator Tate, and enclosed a 28 page response. He commenced by dealing with the alleged conversations in the purported transcripts and summary. The Judge commenced with the one conversation in which his voice appeared on an actual tape. He noted that there was a vast difference between what was on the committee's transcript of the copy tape, and the version prepared by the police. The Judge pointed out that the "Age" transcript was full of inaccuracies and gross distortions when compared with the committee's version of the tape. The Judge went on to say that in his view neither version were presented a genuine and accurate record of any conversation in which he had participated. He indicated that it represented the putting together of selected pieces of conversations to make an amalgam. He referred to an expert report which his solicitors had obtained on the tape. The expert had advised the Judge orally that it was possible to alter a tape so that the change could not be detected even with electronic equipment. He indicated that it was possible that what appeared to be his voice was not in fact his voice.

12. The Judge went on to apply the same criticisms to the other purported transcripts. He indicated his belief that these were not authentic and genuine records of any conversation in which he had participated. He said that they were manufactured. He concedes that he did know of the Paris Theatre. He denied having heard of any company known as Ken Darley Holdings Pty Ltd. He pointed out that he could not have said at the time of the purported conversation on 31 March 1979 which referred to the resignation of Mr Justice Jacobs "He's resigned". Mr Justice Jacobs did not resign until 6th April 1979. He said that it was possible he had been asked to make an enquiry whether it had been decided to appoint a Mr Jegarow to some position, and that he had made such an enquiry. The

Judge said he had no actual recollection of doing this. He said that if he had done so, it would not have have been improper.

13. As to the "smelling like a rose" conversation, the Judge treats this as a summary which does not reflect any conversation he had with Mrs Ryan.

14. The Judge then goes on to deal in detail with the account given by Mr Briese concerning conversations he claimed to have had with the Judge, and which gave rise to the charge brought against the Judge. When dealing with the dinner party on 10th May 1979, the Judge described the persons who attended.

15. At page 10 of the Judge's statement, he described his version of the events of January 1982 (being the dinner at Mr Briese's home). The Judge said that Briese had told him that he would be having some other couples on that night, or would invite some other couples. At page 11, the Judge spoke of what occurred just before dinner. He described a conversation. He said "the other dinner guests arrived during the course of the conversation".

16. Finally, the Judge deals with the Lewington allegation. His response is a complete denial of having had the alleged conversation in 1981, or at any other time.

17. Finally, annexed to the Judge's statement, there is an annexure marked "A". This compares the two versions of the actual tape recording on which the Judge's voice appears. The differences between the police version, and the version prepared for the committee are brought out very clearly. It should be remembered that the Judge denies the accuracy of both versions. The Judge's criticism of the quality of the transcription appears to be well-founded. The version prepared for the committee is infinitely better than that prepared by the police officer who made the initial "Age" transcript.

18. In an annexure "B" to this document the Judge speaks of his association with Morgan Ryan. In the course of that statement, the Judge indicates that he had spoken to Morgan Ryan on a number of occasions after February 1975 in connection with the Sankey prosecutions, in which he was solicitor for Dr Cairns. After those cases were dismissed, the Judge said that consideration was given to instituting malicious prosecution action. The Judge went on to say that he spoke about this to Morgan Ryan on a number of occasions. This was because, in the view of the defendants, Dr Cairns had the strongest case for damages, and any action should be instituted by him in the first instance. After the High Court had moved to Canberra, and the proposed actions for malicious prosecution were not pursued, the Judge said he did not have very much contact with Morgan Ryan. In the last paragraph on that page, the Judge said that Morgan Ryan's absorbing interest has always been in

racing. The Judge said that he was not personally interested in racing. He said "while I was on quite friendly terms with Morgan Ryan, he was not a close friend".

(c) The Judge's Testimony at his first Trial.

19. The evidence commences at page 419 of the transcript. At page 422, the Judge gives an account of the amount of contact that he had with Morgan Ryan during the middle 60's and up until 1972. He said that he went out with him a few times, had some meals and so forth, and from then on saw very little of him.

20. At page 423, the Judge said that between 1972 and 1975 (his appointment to the High Court) he had no further association with Morgan Ryan.

21. At page 426 the Judge repeats that he did not see (to his recollection) Morgan Ryan between 1972 and 1975. He is then asked about contacts with Ryan from 1975 until 1980 approximately. He says that he did have contact with Ryan during that period.

22. At page 427, the Judge describes the nature of that contact. The Judge indicated that he did attend the 10 days of hearing of evidence at the Queanbeyan Court concerning the Sankey matter in 1979. His recollection was that Ryan attended also on one or two days. He said that he had contact with Ryan during that period. He said that they had discussed the case. At page 428 the Judge said that Ryan never attended any celebrations marking any of the high points of his life.

23. At page 429 the Judge indicated that he did not share any interests with Morgan Ryan. The Judge pointed out that Ryan's major interest appeared to have been racing - and he did not share that interest at all. The Judge described his social contact with Ryan as being "We went out for a few meals in the 50's and in the 60's went out a few times". The Judge said that he had been to Ryan's place for a Christmas party with his wife and on odd few occasions like that. The Judge said that he had never invited Morgan Ryan to come and inspect the High Court or to be shown around it. Nor had he invited Ryan to the opening of the High Court.

24. At page 439 the Judge is asked when he first became aware that Morgan had been charged. He answered that he had only become aware of this fact when it was reported in the newspapers. Presumably, this would have been shortly after the 6th or 7th August 1981. The Judge said that upon finding out, he did not ring Morgan Ryan. He said that shortly before going to China in October 1981, Ryan rang him. Ryan had told him that he had been charged. Ryan had asserted his innocence. The Judge asked Ryan who was appearing for him, and was told Bruce Miles. The Judge told him that this was foolish. The

Judge indicated that Ryan should get himself a really expert person to handle his defence. The Judge indicated that he had no further contact with Ryan up to 6th January 1982.

25. At page 441, the Judge indicates that in the course of his conversation with Briese, he told Briese that he was not interested in shares. The Judge said "I made up my mind long ago not to have anything to do with them". It should be noted that the Judge makes no mention during the course of his examination in chief of any other persons being present at the dinner party on 6th January 1982. At page 506, the Judge is asked whether, some time later than March 1982, he had had a meeting with Morgan Ryan. He answered Yes. At 507, the Judge said the meeting had occurred at Martin Place. He thought it was early April 1982. He said the meeting was accidental. The Judge said that Ryan had told him how upset he was about having been committed. Ryan had told him that he would not be able to get a trial for some 18 months. The Judge then went on to say that he approached Chief Judge Staunton in his chambers in an effort to get him an early trial. Judge Staunton told Murphy that Jim McClelland had already spoken to him about it. The Judge said that this conversation between himself and Staunton had been a person-to-person conversation. it appears that Chief Judge Staunton was of the view that it had been a telephone conversation.

26. At page 508, the Judge denied having had any other conversation with Judge Staunton about that topic. He was vague about whether there had been a telephone conversation. He then indicated that perhaps there had been a telephone conversation but that he had not gone into any details about the matter over the telephone. The Judge also indicated that he had spoken to Mr Justice McClelland a day or so after his conversation with Chief Judge Staunton in chambers.

27. At page 526, in cross examination, the Judge said that he had approached Chief Judge Staunton on behalf of Morgan Ryan because "he had been an old friend of mine and we were on quite friendly terms". It was put to the Judge that he and Ryan had been very good friends. He answered "We were friends, I would not say very good friends but we were friends and friends enough and old association enough for me to do that for him". The Judge was then asked "You have not given any evidence at all have you of any contacts with Morgan Ryan after the conclusion of the Sankey proceedings which resulted in you and the others being discharged - now have you?" The Judge answered, "Yes, I have". When pressed on the matter, the Judge indicated that he had given that evidence "this morning".

28. At the bottom of page 526, the Judge was invited to accept the proposition that there were a lot of other discussions between himself and Morgan Ryan after the conclusion of the Sankey proceedings and with respect to the possibility of bringing proceedings himself.

29. The Judge asked, "you mean after the discharge?" and on page 527, the Judge said "There may have been some but the substantial discussions about that were following the discharge which was at the beginning of 1979 and actually the proceedings dragged on on the question of costs well into 1980 and there were quite substantial discussions about the question of bringing proceedings during 1979". The Judge said that he had discussed the matter with Morgan Ryan because Ryan was acting for Dr Cairns, and the discussions were on Dr Cairn's instructions. Towards the bottom of page 527, the Judge said that there would have been somewhere up to about 10 discussions with Ryan in relation to these matters. He went on to say that in 1980 there may have been less than that.

30. At page 528, the Judge was asked whether in 1981 his interest in suing for malicious prosecution had revived. He denied communicating that interest in any way to Morgan Ryan in 1981.

31. At page 529, the Judge said that he might have discussed the possibility of malicious prosecution proceedings with Morgan Ryan four or five times during the first part of 1980. He was then asked, "Did you have any other contacts with Morgan Ryan from time to time during 1980?" Answer, "Not that I can recall". The next question was, "Did he ever telephone you to discuss matters of topical interest? Answer, "I think all the conversations I had with him were related to those proceedings"

32. The next question was, "You would have discussed other matters too, wouldn't you an old friend?" Answer, "Perhaps so, but they were related - I think any conversations were related to the proceedings in some way."

33. The next question was, "Are you prepared to tell the Court that you did not speak to Morgan Ryan that is on any topic in the last six months of 1980?" Answer, "I can't recall any occasion Mr Callinan."

34. The next question, "Are you prepared to deny it?" Answer, "Yes, I will deny it because in my belief I didn't talk to him. If you have an occasion to remind me, would you do so."

35. The next question was "In the first half of 1981 did you have any discussion with Morgan Ryan at all?" Answer, "None that I can recall."

36. At page 554C the Judge indicated that he retained his interest in finding out what was happening to Morgan Ryan throughout, but that he made no inquiry of Ryan about it.

37. At page 555 onwards, the Judge is questioned about his relationship with Morgan Ryan.

38. At page 556, the Judge concedes that he has been on first name terms with Morgan Ryan for some considerable time. He has been to one Christmas party at Ryan's house. He says that there were no other parties that he could recall.

39. At page 557, the Judge says that the work that he received from Morgan Ryan diminished in the latter half of the 1950s. He received some work from Morgan Ryan's firm in the decade between 1960 to 1970. The Judge repeats that between 1972 to 1975 he could not remember meeting Morgan Ryan during that period. He concedes that it is possible, but asserts that he does not remember any such meeting. The Judge indicates that there were communications from Ryan's firm to the Attorney-General's Department and to the Minister for Customs along with hundreds of other firms. The Judge does not think that there were very many such representations. He said that he acted responsibly and on advice.

40. Reference is made at 561 to Hansard of 6th March 1984 at page 440. There is a second reference to Hansard Senate 6th September 1984 at page 564.

41. At page 566 the detailed cross-examination regarding the Sala matter commences.

42. Pages 566 onwards should be read very closely. Reference is made to Mr Watson, the First Assistant Secretary of the Attorney-General's Department. He appears to have been third in seniority in the Department. Watson had apparently recommended to the Judge on the advice of Inspector Dixon that Sala's passport was overtly false and that Sala was a major drug trafficker and his passport ought not to be returned to him. The Judge indicated that he could recall that Watson took the view that the passport should not be returned to Sala. The Judge did not recollect having been told that Sala was probably a major drug offender. He said that because he had no recollection of that matter, he was prepared to deny that he had been so informed. The Judge had also been told by Mr Watson that the French Government would take the view that the passport ought not to be returned to Sala. The Judge said that that was contrary to the advice which had been given by the Department of Foreign Affairs. The Judge asserted that his understanding had been that the Department of Foreign Affairs saw no problem in the return of the passport.

43. At page 570, the Judge admits that he ordered that the passport be returned. He concedes that he made that order after representations were made by the firm of Morgan Ryan and Brock and after considering the position and getting the views of other persons. The Judge conceded that there had been conflict between departmental officers as to what should be done. The Judge says that he received advice from Mr Mahoney which conflicted with the advice given by Mr Watson. Mr Mahoney was the Deputy Secretary of the Department. It appears

that Mr Mahoney's advice is not recorded anywhere in the file which is being shown to the Judge. The Judge says that there will be nothing unusual about that. The Judge said that he was not responsible for the keeping of the files and there was nothing irregular about the fact that there was no diary note on the file recording Mr Mahoney's advice.

44. At page 571, it is put to the Judge that he was aware at the time (1974) that responsible police officers entertained the view that Sala was involved in a considerable illegal drug enterprise. The Judge replies, "Well, I don't recall that. The matters that were put to me, the consideration that was in my mind I will tell you if you wish." It appears to have been recorded on the official file that responsible police officers or a responsible police officer regarded Sala as a major drug trafficker. The Judge simply says that he has no recollection of this at all.

45. At page 572, it is noted that the representation was made by the firm of Morgan Ryan and Brock on the 27th May 1974. The Judge concedes that he made a decision that Sala's passport would be returned to him on 29th May – two days later. The Judge concedes that certain officials had a belief that Sala's passport was forged. The Judge said he had no belief of that nature and that was one of the matters on which he sought advice.

46. At page 573, the Judge said that he had an interest in whether or not the passport was forged. He said that he resolved this question by asking whether any police officer was prepared to lay a charge against the man for having a forged passport and the answer was "no". The Judge concedes that the passport was in official possession. He says it had been in official possession for some weeks. He concedes that he never suggested that it should be shown to French authorities so they might pass judgment on it. He concedes that the investigation into this matter was proceeding. The Judge said the issue so far as he was concerned was whether a man could be detained without a charge. The Department of Immigration wished him to go and he wished to leave the country and the Deputy Crown Solicitor had said there were no charges outstanding against him and none contemplated. The Judge said he could see no justificatioon for keeping that man one instant in jail if no one was prepared to charge him. The Judge also said that other factors that had weighed with him were that the man had complained that he had been dealt with for political reasons in Spain, that he had been convicted of issuing propoganda contrary to the Franco regime and that he had been subjected to torture. The Judge conceded that he was unaware whether any checks had been undertaken as to the truth of these assertions by Sala.

47. At page 574, it is put to the Judge that the French Vice Consul had expressed a view about the validity of the passport. The Judge was then asked whether anybody had said

the passport was genuine. The Judge answered "no". Indeed, the only information which he had before him of an official kind questioned the validity of the passport. The Judge conceded that it was an offence against the laws of this country to travel on a forged passport. The Judge conceded that between the 27th May and 29th May he did not tell any police officer or communicate to any police officer that unless Sala were charged he would be released shortly and allowed to fly out of the country. The Judge said that he communicated with Mr Mahoney of the Department. The Judge conceded that this advice to Mahoney was not recorded in the file shown to him. He did not know whether it would be recorded in any other file.

48. At page 581, the Judge identifies a handwritten note on the file which suggests that rather than having received advice from Mahoney, Mahoney had agreed with what the Attorney-General had proposed to be done.

49. At page 582, the Judge denied that it was extraordinary that he had acted on the matter on the basis of a four or five line telegram from Morgan Ryan and Brock. He said there was nothing extraordinary about it at all.

50. At page 584, the Judge corrects Callinan and points out that the police could not launch a prosecution in respect of a forged passport. It seems the Migration Act does not allow the institution of prosecution in respect of these matters except by authorised officer of the Immigration Department. The Judge also said that the Deputy Crown Solicitor had said that there was no other proceeding contemplated against Mr Sala. That would be the Deputy Crown Solicitor of New South Wales at the relevant time. The Judge referred to section 27 of the Migration Act. At page 584, towards the bottom of the page the Judge gives a detailed explanation of why he allowed Sala to be released. He also explains why the passport was returned to Sala.

51. At page 585, the Judge is handed a different file relating to a man named Lasic and others. This also involved a representation from Morgan Ryan and Brock. It appears to have been made on 5th November 1974. This involved a deportation order on some Yugoslavs who were serving time in prison and who where to be deported after the expiration of their prison terms. The manner in which the Judge handled this matter was not the subject of criticism. Rather it was used by way of contrast with the way he had handled the Sala matter.

52. At page 586, a matter of Winfield was raised with the Judge. Once again this involved representations made on behalf of this man by Morgan Ryan on 19th February 1973. On that occasion the Judge advised that there was simply no power to do what was being requested of him in the matter. The Judge indicated that he had no recollection of this affair at all. It appeared to involve a bankruptcy.

53. Towards the bottom of page 586, the matter of Hatcher is taken up with the Judge. This involved representations being made by the Judge to the Treasurer to have costs for an action paid to Hatcher because of an action of the Commonwealth Government in having a double dissolution which had rendered his own litigation against the State of Queensland otiose. It appears that Mr Crean had declined the Attorney's request. Dr Cairns subsequently acceded to it. The Judge is unaware whether he put matters differently to Mr Cairns than had been put to Mr Crean initially. A payment of $2,774 ex gratia was made to Dr Hatcher.

54. At the bottom of page 589, reference is made to a file of Chappel. Once again the Judge acted on the basis of proper advice given within his department.

55. At page 590, it appears that this summarises all the contacts that the Judge had with Morgan Ryan whilst he was Attorney-General. The Judge indicates that he could not recall having any contact with Ryan between 10th February 1975 (the date of his appointment) and the commencement of the prosecution against him by Sankey after 11th November 1975. The Judge did not think that he had referred Dr Cairns to Morgan Ryan as a solicitor. He had no knowledge of how Morgan Ryan started to act for Dr Cairns.

56. The Judge said that general matters in relation to the Sankey proceedings were referred to him for his consideration, see page 592. The Judge said there there was a flurrie of activity during 1976.

57. At page 593, the Judge repeats that he would have spoken to Morgan Ryan some 8 or 10 times during 1979. He says that would have included a discussion about the proposal to take action against Sankey for malicious prosecution. He was again asked whether he ever discussed other matters with Morgan Ryan. He says "I think they were all related to either this question of the costs or the action for malicious prosecution in all that time." The Judge concedes that Morgan Ryan might have called at his unit two or three times. Otherwise the communications were over the telephone. The Judge says that he thought that Ryan mentioned that he knew somebody else in the Judge's building. At the bottom of page 593, the Judge says that he could not recall discussing anything with Ryan except the proceedings.

58. At page 594, the Judge conceded that he had mutual friends with Ryan. He agreed that he had on occasions probably discussed these friends. At 594, bottom of the page, the Judge concedes that Morgan Ryan may have visited him when he was in the Senate in Canberra.

59. At page 602, the Judge is cross-examined regarding the dinner party at Mr Briese's house. It is put to him that there were no other guests present. The Judge recalls that there were. The Judge says that there were a number of other guests. He says he thought there were two other couples there. The Judge says he cannot recollect those other couples. One was a professional man who came a little later than his wife. The Judge has no recollection of who the other couple were. Neither couple participated in the conversation that had been related by the Judge to the Court. The Judge did not mention any other couples present at the Briese house on the evening of the dinner in the course of his examination in chief. Further, it was never put to Mr Briese that other couples were present.

60. The Judges then questioned in detail about the two couples on page 603. He says that the discussion concerning Morgan Ryan took place before the other couples arrived.

61. At page 612, the Judge is asked what was his practice with respect to the use of the telephone - did he prefer not to discuss sensitive matters on the telephone at that time. He answered that he was prepared to discuss matters freely on the telephone.

62. At page 622, the Judge is cross-examined about matters that he included in his statement of July 1984 to the Senate. It is plain that in that statement, when dealing with the Briese dinner, the Judge had indicated that there had been other dinner guests who had arrived during the course of the conversation.

63. At page 624, the Judge concedes that there is a difference between his account of the meeting with Chief Judge Staunton and that given by the Chief Judge. The Chief Judge said that the entire conversation had occurred on the telephone.

64. At page 634, the Judge is re-examined re the Sala matters. In particular at page 634, the Judge said that it was his view at the time that he did not have any power as Attorney-General to prevent the execution of the deportation order of the Minister for Immigration.

65. If one goes to page 664 (the evidence in chief of Ingrid Murphy) she also recounts the presence of four additional guests at the Briese dinner. She is unable to remember their names. She gives some description of them towards the bottom of page 664. She is cross-examined about this at page 676. There is further examination at page 679.

(d) <u>The Unsworn Statement at his Second Trial</u>

66. The next matter to consider is the unsworn statement made by the Judge at his second trial. Towards the bottom of

page 236, he refers to the lunch that Don Thomas spoke of. He says that he does not recall the remark that Thomas attributed to him, that is that he tried to have lunch with Morgan Ryan whenever he was in Sydney. He said he could not recall any other lunch apart from that one although it was possible that there were.

67. At page 237, the Judge said that Ryan had never had a meal at his home. He said that he was on quite friendly terms with him, but that they were not close friends. The Judge said that Ryan moved in different circles from him and his impression was that all of his close friends were race-goers. The Judge said that he no longer has any association with Ryan and as of now had not spoken to him for several years.

68. At the bottom of page 247, the Judge repeats that he spoke to Chief Judge Staunton about whether Ryan could get an early trial. He says, "To my mind this was perfectly proper, all that it would mean was that he would be dealt with according to law as soon as possible."

20 June 1986
2666A

Memo to: Mr.Charles
Mr.Weinberg
Mr.Robertson
Mr.Durack
Ms.Sharp
Mr.Thomson

From: Mr.Phelan

BRIEF ANALYSIS OF CERTAIN DOCUMENTS RECEIVED FROM THE OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS ON 19 JUNE 1986

1. The documents received are briefly described in the receipt given by David Durack on 19 June 1986 (copy attached). The following is a more detailed description of certain of those documents together with a brief analysis of what they contain in terms of the allegations so far identified.

The Morosi break-in allegation

2. Relevant to this allegation are two manilla folders. The first is marked [redacted] and contains the following documents:-

(a) A statement given by [redacted] on 4 April 1986.

(b) A report to the Attorney-General from the then Assistant Commissioner (Crime) J.D. Davies dated 17 January 1975.

(c) A supplementary modus operandi report from Detective Inspector Tolmie then of the Commonwealth Police.

(d) A note to the Officer in Charge of the Commonwealth Police Force dated 30 January 1975 from an officer within the Office of the Deputy Crown Solicitor, Sydney.

(e) A note dated 4 March 1975 from Sergeant Lamb to the Officer in Charge New South Wales District of the Commonwealth Police concerning an approach to him from Mr David Ditchburn.

(f) A note dated 7 March 1975 from Detective Inspector Tolmie to the Officer in Charge New South Wales District, concerning certain enquiries of neighbours of the Morosi's.

(g) A note dated 28 February 1975 to the Officer in Charge New South Wales District, from Constable First Class Jacobsen, concerning allegations re antecedents of Juni Morosi.

(h) A statement by William Alexander Tolmie undated and unsigned concerning the arrest of Felton and Wigglesworth at the Morosi premises, and

(i) A statement signed this time but undated by Sergeant Lamb in the same matter.

The second manilla folder is headed simply Felton/Wigglesworth and contains the following documents:-

(a) A note of a interview by A.C. Wells, dated 22 April 1986 with Richard Wigglesworth.

(b) A file note in relation to contact of Wigglesworth.

(c) File note dated 13 April 1986 by A.C. Wells concerning the interview of Alan Felton.

3. The most interesting document is undoubtedly the statement by [redacted]. He said that in the early 70's he was hired by Alan Felton to break in to a townhouse occupied by Juni Morosi at Gladesville. He described Felton as a member of a committee of persons including W.C. Wentworth and Ivor Greenwood, a group which he later described as being anxious to get informatiion on Lionel Murphy. The purpose of the break-in was to obtain documents providing details of Lionel Murphy's activities overseas and his relationship and

business dealings with Juni Morosi. Such documents were supposed to be located in the garage in a room used as an office. On his instructions, an unnamed agent and a locksmith called Richard Wigglesworth broke into the property but came back empty-handed. He reported this to Alan Felton but he did not believe [redacted] and insisted that [redacted], Wigglesworth and he personally break back into the property. There was a period of approximately 2 weeks between the first attempt and the second break-in. During this period [redacted] had a conversation with Bill Waterhouse. During that conversation (which [redacted] recalls with some clarity), [redacted] disclosed the nature of his enterprise and the time and date upon which the second "raid" would take place.

4. [redacted] described the second break-in attempt as follows. He accompanied Alan Felton and Richard Wigglesworth to the property in Batemans Road, Gladesville. He parked his car away from the property and drove the remaining distance in a van with the other two people. When he got to the property he did not go in but remained in the van. Wigglesworth and Felton entered the property, Wigglesworth using a key he had made up from the previous break-in. The door was left open. They emerged after a few minutes and came towards the van. [redacted] got out to move a bicycle that was on the ground when suddenly a number of police and police cars came up Batemans Road. [redacted] started running and jumped over a few fences, got back into his car and apparently escaped.

5. [redacted] said he was furious and drove his car straight to Bill Waterhouse's office on the Pacific Highway at North Sydney. [redacted] had told Waterhouse that he had just come from Batemans Road and that there were police everywhere. He said, "What have you done, I think they have arrested my man Wigglesworth." Waterhouse laughed and said "I'm sorry [redacted] I'll look after it" and thereupon telephoned Morgan Ryan's office. [redacted] claims he knew he had telephoned Morgan Ryan's office

because he watched him dial the number – a number with which he was familiar because of prior dealings with Morgan Ryan. Waterhouse said to the person on the other end of the phone (he presumed it was Morgan Ryan) "The big fellow is upset, [redacted] here. His man's been arrested, I'll put him on". He then handed the phone to [redacted]. [redacted] then spoke to a person whose voice he recognised as Ryan's and told him what had happened. Ryan laughed and the conversation continued in the following terms. Ryan said, "Don't worry, we'll have it fixed. My mate's here and I'll put him on". [redacted] said, "This fellow Wigglesworth is a good friend of mine and a good fellow. It's an embarrassment to me and I believe he's now been taken into custody." [redacted] then spoke to a person whose voice he recognised as Lionel Murphy's (he recognised Murphy's voice because he had heard him speak on a number of occasions). Murphy said, "Thanks very much [redacted]. I'm sorry about this but it will be attended to." [redacted] said, "You've put me into a lot of hot water here because you've made a mess of the thing and I don't think you've gained anything from it. I want it attended to otherwise I will go to Press. How did this come about.?" Murphy said, "Bill told me". [redacted] then handed the phone back to Waterhouse who said to the person on the other end of the phone ([redacted] assumed at that stage that it was still Lionel Murphy), "You'll definitely look after [redacted] man." Waterhouse then hung up the phone and said to [redacted], "I will ring Bob Askin." Waterhouse then telephoned another number and a conversation took place between Waterhouse and the person on the other end of the phone ([redacted] assumed it was Askin). Waterhouse hung up and said to [redacted], "He'll look after it. He'll contact Murray Farquhar."

6. [redacted] then left Waterhouse's office and went to Wynyard House in the city and spoke to Warwick Colbron of the firm Colbron Hutchinson and Dwyer, solicitors. (Note: Colbron is a player in the Central Railway development story) [redacted] wanted to speak to Colbron because he had been Morgan Ryan's

articled clerk and knew him well. [redacted] told Colbron what had happened and Colbron said. "It's just like Morgan." [redacted] said, "I hope they stand up. If they don't then I'll drop the bucket on the lot of them", and then left the office.

7. The next day [redacted] rang Morgan Ryan at his office and told him of his annoyance at what had occurred. [redacted] said, "Thank's for your assistance. I hope there won't be any repercussions to me as a result of this", and Ryan said, "There won't be. It's sweet."

8. I observe at this juncture that [redacted] recollection of events seems remarkably clear, notwithstanding that those events occurred more than 11 years prior to the date of his statement. Did he refresh his memory from some contemporary note? If not, he might well be asked how his recollection is so clear.

9. The Report dated 17 January 1975 from Davies to the Attorney-General purports to contain a detailed description of the action taken by Commonwealth Police following the receipt by Davies from Murphy of information relating to the proposed break-in at the Morosi residence. The most remarkable feature of the report is that it contains no reference whatsoever to the role of [redacted], and no reference to his being sighted at the scene of the crime. It is possible that Waterhouse did not tell Murphy about [redacted] or that if he did that Murphy did not pass on the names of the star players to Davies. However, I find it unusual that police who had presumably staked out the scene of the potential crime did not notice [redacted] rapid departure from the scene, or observe him at the time of his arrival at the townhouse in the van. The theory that [redacted] name has somehow been suppressed in official reports may be reinforced by the subsequent memoranda appearing in this file. It would appear that Ditchburn received information from neighbours that [redacted] was sighted at the scene of the crime

at about the time of the break-in. Police later confirmed this by speaking with the neighbours concerned. Yet it would appear police took no action to follow the matter up with [redacted].

10. The report to Murphy from Davies also contains the interesting observation: "The charges were signed by Sergeant Lamb, and as they were laid under State laws they would normally be presented to the court by New South Wales prosecutors. You might care to consider whether this course would be satisfactory in the present circumstances." What this last sentence means is anyone's guess. Other documents on the file reveal that Felton (the only one charged, as Wigglesworth was allowed to leave police custody shortly after his arrest following the intervention of Bruce Miles) was charged with offences under the New South Wales Crimes Act and the New South Wales Motor Traffic Act. Notwithstanding the fact that no Federal offence ever seems to have been contemplated in relation to the break-in, the prosecution of Felton was handled by the Commonwealth Deputy Crown Solicitor in Sydney, who briefed Mr Foord of counsel in the matter. According to the supplementary modus operandi report prepared by Detective Inspector Tolmie, the matter was heard before Mr Farquhar who after hearing the facts of the matter from Mr Foord found the charges proved but without proceeding to conviction bound Felton over in his own recognisance in the sum of two hundred dollars to be of good behaviour for two years.

11. Should the Commission decide to pursue this allegation, the question will need to be asked why the New South Wales Police were not informed of the break-in either prior to, or after, its occurrence. Why were the Commonwealth Police there at all? And why did the Commonwealth Crown Law authorities bring the prosecution? Why were inquiries not made of [redacted] by the Commonwealth Police? It may be useful to speak to Waterhouse, and Deputy Commissioner Farmer (as he now is) who was then the link between investigating police and Davies. Davies, Tolmie and Lamb should also be interviewed..

12. Turning now to the contents of the other manilla folder relevant to this allegation, of some interest is the note by A.C. Wells of his interview of Richard Wigglesworth. Wigglesworth apparently gave Wells his version of what happened at the break-in, which differs in some respects from the version offered by [redacted]. Importantly, Wigglesworth stated that he stayed in the van and not [redacted]; he alleges that [redacted] entered the premises with Felton. Wigglesworth was unable to say how Bruce Miles came to represent him at the police station on the night of the break-in. Of some further interest (I put it no stronger than that) is the fact that after the break-in Wigglesworth's premises were apparently raided by State police who had a warrant to search for materials suspected of having been used in letter bombs. Nothing was found and Wigglesworth was sure it was simply a put up job. Wigglesworth said that he shortly afterwards spoke to [redacted] about the matter and was told by the latter that he believed Morgan Ryan was the source of the information relating to the State Police search warrants and that it was an act of malice to get back at Wigglesworth for having the temerity to interfere with the Morosi/Cairns business.

13 The final document is the note of a conversation between A.C. Wells and Alan Felton. It would appear that this was a fairly brief conversation which occurred whilst Felton was being driven from the airport to Railway Square. Felton denied any knowledge of there being two raids as alleged by [redacted]. Of more interest is his version of what subsequently happened. He recounted how he was arrested and charged with break and enter. He first appeared before Mr Lewer S.M. who he felt was likely to send him to jail. He was represented by David Marks and later Reynolds, now on the Bench. He recollected that he appeared before Lewer a second time. However, on a third occasion by some arrangement, the mechanics of which he cannot recollect or may not even have known, the matter was finally

heard by Mr Farquhar S.M. and he received a bond. He claims he knows the name Morgan Ryan but not in connection with his case and does not know Bruce Miles. Mr Lewer may have an interesting story to tell.

The Sankey Prosecution Allegation

14. Inside a manilla folder marked 'Sankey' is a two page document described as "minutes of a meeting 3 March 1986" those present being listed as "B. Rowe, S. Rushton and D. Sankey." Minute describes two matters relevant to the Sankey prosecution, the approach to settle proceedings and secondly the disqualificatiion of Mr Leo S.M. In relation to the former, Mr Sankey apparently told those at the meeting that just after the first appeal hearing, (that is 'June and October 1976'), Sankey received a telephone call from Mr Anderson at the Capri Restaurant at Rose Bay. Sankey was a part owner of the restaurant. Anderson informed Sankey that he had something to discuss and made an appointment. Apparently Sankey had known Anderson for quite some time, but had had very little contact with him recently. However, Anderson approached Sankey as an 'old mate'. At the meeting between Sankey and Anderson, Anderson said there had been a meeting at which the case had been discussed; Anderson apparently did not identify those present at the previous meeting but Sankey recollects that Morgan Ryan might have been mentioned. Anderson asked Sankey what he was after, that is what did he want and Sankey informed him that all he wanted was an admission of wrong doing but not necessarily an admission of guilt. Subsequently, Anderson telephoned on another two occasions and the same matter was discussed.(the contents of those discussions are not mentioned).

15. Shortly thereafter, person whom Sankey recognised as being Saffron telephoned and asked what it would take to settle the matter. Sankey repeated was that all he wanted was an admission of wrong doing. Saffron said that if that was all then there would be no problem. Sankey believed that the legal

representatives, particularly Rofe and Christie had subsequently got together and drafted heads of agreement based upon the terms of settlement discussed and mutual release for all parties. Sankey recalls that he and Saffron spoke about the matter on a couple of occasions (no details of these discussions provided either).

16. Sankey advised that the disqualification of Leo took him by surprise. He thought that Rofe had spoken to Farquhar in Farquhar's chambers and Farquhar said that he was very much in favour of Sankey's case. Sankey suggested that this was one reason why he did not want Farquhar sitting on the matter. Sankey mentioned other matters which apparently were not borne out upon inquiry.

17. Sankey's reported comments are very vague, but tantalising. His story so far tends to support the story that Anderson is alleged to be able to give. Clearly Sankey should be interviewed and his version of events explored in some detail.

Perjury Allegation

18. The DPP have provided a number of folders containing various pieces of information about the association between the Judge and Morgan Ryan. The file marked, 'Francisco' consists of a photocopy of a page of a transcript of the Tapes Commission where Mr Francisco made passing reference to having sighted Mr Justice Murphy in the presence of Ryan on one or two occasions. Another folder described as Bird/McMahon contains an unusual letter from one David Fletcher together with a quite bizarre treatise apparently written by one Anna McMahon (described by Mr Fletcher as the 'very beautiful and talented socialite'). I could not begin to summarise either of those documents. Another folder styled Minter contains a proforma questionaire together with certain handwritten notes apparently

notes of interview between some unidentified investigator and a former assistant private secretary of Murphy's between the period 1972 and 1975. The information contained in it is very general and in my view quite useless. A further folder marked Halpin contains an article by David Halpin on 'Life with Lionel' in Matilda together with a five page unsigned statement. Whilst containing some very general observations about the frequency of visits by Morgan Ryan to the then Senator Murphy's Office during the period up to 1975 the statement is otherwise useless. The final folder contains a statement by Francis Leslie William Gannell who was on various occasions a bodyguard for the then Senator Lionel Murphy. The statement contaims some general comments relating to the frequency of mail from Morgan Ryan and Brock to Senator Murphy and also provides interesting insight into the events leading to deportation of Sala (discussed later). A final file contains evidence of Ryan and the Judge given during the first trial.

The Story of Rodney Groux

19. The DPP material included a somewhat butchered photocopy signed statement by Rodney Gordon Groux. Most names in the statement have been whited out and replaced with some form of numbered code. The names can still be read however. Groux says that he was employed in about May 1985 by the Minister of Sport Recreation and Tourism for a period of 4 years. His duties as ministerial advisor were to include assisting and advising on various matters in relation to the Minister's Portfolio.

20. Groux says that whilst employed by Brown he met Lionel Keith Murphy at Woden Shopping Plaza outside premises known as 'Meat City'. Murphy asked him whether he would visit him at his house to discuss a document (unidentified in anyway) Groux said he prepared for Senator Bolkus. Groux says he obtained

personal approval from Brown to visit Murphy and accordingly on the next day (a Sunday) he attended Murphy's residence at Red Hill. Murphy asked whether he would be prepared to assist him by conducting enquiries on his behalf into the various people who had given evidence against him in criminal proceedings in New South Wales. Groux said that he would. Murphy then produced various material to him including a photocopy of diaries he said were those of Mr Clarence Briese. Murphy said that he obtained the diaries via Mr Mick Young, that they were illegally obtained and that they should be carefully guarded. Murphy explained to him that he regarded the then current proceedings as a conspiracy against him and that the parties to that conspiracy were Mr Temby, Ian Callinan and the Liberal Party.

21. Groux says that Murphy and he, in the presence of Murphy's wife, proceeded to inspect the material produced and attempted to place it in chronological order. Murphy told Groux that he wanted the diaries analysed and investigated in certain areas (unspecified). He said he wanted Mr Briese and others investigated. After several hours Groux told Murphy that he would arrange for his secretary, Pamela Whitty to collect the material next morning, photocopy it and return it to the Judge. He said he would later contact him to explain how he proposed to proceed with the investigation.

22. The material was apparently collected, copied and returned. Groux later rang Murphy and told him he proposed to dissect the diary and put it into computer programming for cross referencing purposes. According to Groux Murphy was ecstatic and from then rang him often. Groux said he proceeded to dissect the material and input it to the computer. During this time he reported to Brown and told him generally what was going on in relation to the Murphy matter.

23. Groux says that at some stage he travelled to Sydney and booked into Ollims Hotel in Macleay Street, Potts Point. He met with Mr Luchetti, another member of Mr Brown's staff, and delegated to him certain tasks, namely telephone checks and Social Security checks. Groux then travelled to Mr Brown's Electoral Office in Parramatta and was there contacted by Murphy who arranged for Groux to visit him later in the day. He also asked Groux to investigate an accusation supposedly made to Mr Wran that Briese had paid $20,000 cash for a swimming pool to Mutual Pools. Murphy said that Wran was Acting Attorney-General and was in a position to help. Groux then made some inquiries in relation to the swimming pool matter and interviewed a few people and so on. In relation to the swimming pool matter he approached Mutual Pools in Sydney and confirmed that a pool had been installed by them but could find no evidence of payment of $20,000 in cash.

24. Groux says that that evening he visited Murphy at his unit at Darling Point, arriving in a commonwealth car. Murphy and his daughter Laurel were present. Murphy and Groux had a discussion about what Groux had done and what Groux intended to do. Murphy was keen for Groux to contact the landscape gardener who had worked on Mr Briese's premises and had previously provided a Statutory Declaration (no description) which Murphy had earlier provided Groux. Groux reported that he had tried to do so but without success. Murphy said that Wran would be arriving shortly. He said that he would introduce Groux to Wran but so far as Groux was concerned there was no relationship between himself, that is Groux and Wran. He also said that when Wran arrived Groux and Murphy's daughter were to go out for a while. Wran arrived and was introduced to Groux. Wran said that if Groux wanted any help to tell Lionel what was required and he (that is Wran) would do his best. Murphy's daughter and Groux then left and later returned to the unit and had a meal with Murphy. Wran had left. Groux later ordered a Commonwealth car and returned to his hotel with Laurel Murphy(!).

25. The next day Groux continued his inquiries, and during the day contacted Murphy and said he was having difficulty because he was not familiar with Sydney. He said he needed a car and Murphy said that he would see what he could do for him. The next day a vehicle (Commonwealth?)was made available to Groux as were two (unidentified) adult males. They took him to various places around Sydney. Groux says that after a few days he decided to conduct enquiries on his own and dispensed with his helpers. He claims he located and interviewed Briese's gardener and as a result of that interview he did not believe the material contained in the gardener's Statutory Declaration.

26. Groux says he returned to Murphy's premises and detailed what he had been doing (what?). Wran arrived and Groux told him what he had been doing. Wran expressed surprise that Mr Briese had his direct telephone number. Both then urged Groux to continue his inquiries into Mutual Pools arrangements, Mr Briese's share transaction (unspecified), Mr Briese's reputation and Mr Briese's relations with the media. Murphy urged Groux to pursue these areas as a matter of priority. Groux returned home to Canberra for the weekend and saw quite a bit of Murphy over that weekend generally discussing the investigation. Prior to returning to Canberra Groux said he spoke to Brown by telephone outlining what he had been doing for Murphy and stating that he was not quite happy with the situation. Brown told Groux that if only a small bit of his work could be of benefit to Murphy it would be worthwhile and Groux should continue.

27. Some time later Groux returned to Sydney and continued his inquiries. Groux contacted Murphy who was most insistent that Groux complete his inquiries and give him a result. Inquiries continued for a couple of weeks with constant reference back to Murphy. Groux said he kept Brown up to date

on the inquiries and also on the ministerial work he was doing. Groux said he also saw Wran during this period, the latter urging him to pursue certain (unspecified) select areas of investigations.

28. Groux says that during this period on one occasion Murphy asked him to attend the Banco Court in Sydney and tape record the proceedings of Murphy's case. Groux says he did this and handed the tape to Murphy on the way out of court.

29. Groux says that after court he had a conversation with Mr Luchetti He told him that he would not pursue his inquiries further as he had decided that Murphy was guilty(!). He thereupon returned to Canberra.

30. On the following Monday Groux was dismissed by Brown ostensibly for failure to disclose his financial difficulties on appointment. Brown told him that Mr Hawke did not want any skeletons in his closet.

31. Groux says this statement had been prepared and taken in a hurry and without access to his records. He claimed that during the period he maintained a diary and recorded many of the events covered in his statement in it. He claimed to also have other records including a copy of Briese's diaries, portions of the Murphy stranscript, portions of the Senate transcript and various receipts for car hire and other expenses incurred during this time. He said he was able to produce these on request.

32. Mr Groux should be interviewed and his records analysed in some detail. Certain parts of his story may be verified by Mr Luchetti and Ms Witty.

The Sala Allegations

33. The DPP provided a number of folders of information relevant to this allegation. The file marked 'Sala Ramon' contains a useful chronology of the events leading to Mr Sala's departure. It would appear to have been taken from various Immigration, Attorney-General's and Police files. Extracts from those files appear in another folder marked 'Sala Analysis'. Included in that folder is the report dated 18 June 1974 from Inspector Dixon to the Commissioner of Commonwealth Police in relation to the matter. In that report Inspector Dixon outlined his suspicions. Possible Saffron/Ryan connection to the matter is outlined in paragraphs 11 and 12 in the report. Sala was accompanied into Australia by his girlfriend Michelle Senannes. During the period of Sala's incarceration Senannes stayed at Lodge 44. She was guarded throughout her stay in Sydney and was seen onto the plane by Mrs Ryan, wife of Morgan. Senannes was not permitted to speak to anybody.

34. Also provided was a copy of the Menzies Report which should be read in its entirety.

35. As previously mentioned there was a statement from a police officer named Gannell in which inter alia he outlined a conversation he had with the Attorney-General in relation to the Sala matter. He said he attended a meeting in the Members' Lounge in Senator Murphy's Parliament House office. Present were Senator Murphy, Assistant Commissioner Davies of the Commonwealth Police and Alan Carmody from Customs. Gannell cannot recall whether other people were present but he had some recollection that Clarrie Harders may have been present. The people mentioned came out of Senator Murphy's private office and sat around in the lounge area discussing the Sala matter. They appeared to be debating whether Sala ought to be deported or charged. During the course of the meeting Gannell was asked

for his view by Senator Murphy. Gannell said he was unaware of the matter and was then given a brief outline of the facts by Senator Murphy. Gannell's recollection is that Customs wanted Sala deported because of the cost of keeping him in jail. His recollection was that the Commonwealth Police wanted Sala detained in Australia because he was a suspected drug trafficker and the police had been unable to prove his correct identity because the passport on which he was travelling was false. He recalled that he thought that Carmody put forward additional reasons for having Sala deported but he could not recall them. Gannell had some recollection that the Attorney-General's Department had put forward the view that the charges were of a minor nature or that they could not be substantiated. He did not know whether that recollection was based on events at the meeting or otherwise. Gannell said that he told Murphy that he agreed with the Commonwealth Police view expressed by Davies that Sala should be kept in Australia. He recalled that the matter was resolved by Senator Murphy agreeing to give the Commonwealth Police a specified period, perhaps about a week to pursue their inquiries in relation to Sala's true identity and any evidence of him being involved in drug trafficking.

36. I must say that at this stage evidence of impropriety by the then Attorney-General in the Sala matter is somewhat lacking. At this stage, I consider its relevance to this enquiry to be questionable.

Property Transactions

37. The DPP have also provided some analysis of various property transactions by the Judge, Morgan Ryan and Bruce Miles. From an admittedly brief analysis of this information I can see nothing of significance for this Commission in the various transactions entered into by the Judge.

The Don Thomas Allegation

38. The DPP have provided three manilla folders relevant to this allegation: files marked "Thomas File A" and "Thomas B" and files marked simply "Davies". Thomas File A concerns a statement by Thomas given on 24 March 1986, apparently for the purposes of the second Murphy trial. That statement does not deal with the conversation which Thomas has elsewhere alleged occurred at the Korean Restaurant in late 1979. Also in that file are various documents relevant to Thomas's actions in the Greek Conspiracy Case. These include the comments by Brown S.M. and later opinions and internal memoranda relevant to the subsequent decision by the Attorney-General not to prosecute Thomas for various matters which arose during the course of the Conspiracy Case. The file styled 'Thomas B' contains the additional evidence relevant to the luncheon at the Korean Restaurant in late 1979, including some "I said, he said" recounting of the conversations which allegedly took place at the lunch. This additional evidence is unsigned. Also in the file are notes of a conference between Thomas, the DPP and counsel wherein the Murphy/Ryan/Thomas/Davies lunch, later Ryan/Thomas lunch and various aspects of Thomas's involvement in the Greek Conspiracy matter were discussed. Finally, the file contains a transcript of the detailed examination of Thomas before the Stewart Tapes Commission. The final manilla folder, the one styled 'Davies', contains a seven page signed statement by John Donnelly Davies.

39. Thomas's evidence of the lunch with Davies, Murphy and Ryan is this. Sometime prior to October 1979 he received a telephone call from a woman who identified herself as the Associate to Murphy. Thomas had never met Murphy. The Associate told Thomas that Murphy would like to have lunch with him when he was next sitting in Sydney and said she would call again when a date could be arranged. About a month or so later Thomas received another call from the Associate who advised him

that the Judge would be sitting in Sydney the next week and asked if Thomas would be available and he said he would. Not long after, Thomas received a third call from the Associate in which the time, date and the Arirang House Restaurant, Potts Point were nominated.

40. On the day of the lunch Davies arrived at Thomas's office in Sydney and informed him that he would be attending the lunch too. Although it was not be unusual for Davies to visit Thomas he generally announced his intention beforehand but did not do so on this occasion. Thomas drove Davies to the Restaurant and Thomas was aware that Davies knew Murphy. When they entered the restaurant they met Murphy who was apparently alone. Murphy said to Thomas, "I hope you don't mind, I have a very old friend joining us. Time is short and I try to have lunch with him whenever I am in Sydney." Ryan then joined them and introduced him to Thomas (Thomas had not previously met Ryan).

41. General conversation then ensued for some time and then Murphy engaged Thomas in conversation while Ryan and Davies conversed together. Murphy told Thomas, "In 1974 to 75 when I was Attorney-General, I was going to form the Australian Police Force. You were earmarked at that time to be an Assistant Commissioner. It didn't go ahead because the Government lost the election". There was some further discussion and Murphy referred to the Greek Conspiracy Case and to criticism that had been made of Thomas in Parliament about it. He said, "The allegations of misconduct made by Senator Grimes are political. It is not a personal thing. There are a large number of Greek voters in the various Victorian electorates and the ALP is seeking their support. Would you like to meet Senator Grimes?. He is not a bad bloke. Then you will understand." Thomas replied, "No thanks". Murphy then said words to the effect "We'll soon be in power again. We need to know what is going on. We need somebody in the Australian

Federal Police. Somebody at the top. If you are willing to do that, we can arrange for you to be an Assistant Commissioner when it is formed. We have friends on both sides." Thomas said, "Look, I'm not a member of any political party. I really don't want to get involved in that way." Murphy said, "O.K. Well, don't make up your mind straight away, think about it." The conversation then turned to other matters. Ryan and Davies had been in conversation with each other while Murphy and Thomas had the above described conversation.

42. The conference notes go on to describe Thomas's explanation of his behaviour during the Greek Conspiracy prosecution. It is worth reading. Suffice to say at this stage that I find his explanation rather hard to believe.

43. Also on the file is a transcript of Thomas's examination before the Stewart Tapes Commission. In the first part of the transcript Thomas outlines the circumstances leading up to and including his luncheon with Morgan Ryan in early 1980. This is the conversation which he and Lamb taped. Thomas considered that the purpose of the meeting was to offer him a bribe in relation to doing something for Dr. Hameiri. Thomas says that that meeting was the first time that he had ever heard the name Dr. Hameiri. Thomas told the Commission that in relation to this episode he made no notes. He said he would have had a notebook but added that he would not normally carry a notebook as a Detective Chief Inspector In any event he took no note of the conversation even though he considered that he had been offered a bribe in relation to a then current prosecution. Later Thomas was asked again, "But you took it as a bribe. Is that right?" and he said, "I certainly did." He was asked, "Well then, what action did you take?" To which he responded, "None at all." Thomas was asked "Why not". He answered, "Because Inspector Lamb was inquiring, as far as I knew, into organised crime which involved Morgan Ryan and it was then up to him. The whole object of taping the thing was because I did

not trust the man and because Lamb was involved in that area somewhere. His actual duties were not known to me but I'm certain he knew he was involved in that type of investigation, subject directly and working directly to the Commissioner." He was then asked, "In any event, nobody as far as we know took any action on it?" and he responded, "I do not know." Later he was asked whether he made a report to Inspector Lamb. He responded, "No, it would not be my prerogative to make a report to Lamb." He went on to say that Lamb was his junior at the time.

44. Thomas was then led through his evidence on the previous luncheon he had attended with the Judge, Morgan Ryan and Mr Davies. That evidence is broadly consistent with that given later to Mr. Callinan immediately prior to the second Murphy trial. It does however, contain some additional information. For what its worth, the Judge appears to have directed the seating arrangements at the table so that he himself sat next to Thomas while Davies and Ryan were situated at the far end of the table. In relation to Murphy's alleged statement that "we" needed somebody in the new AFP, Thomas assumed that the 'we' referred to the Labour Party, but he was "also a bit conscious of Morgan Ryan being there." Apparently at the meeting Davies and the Judge mentioned that they had been to school together and Thomas had some recollection of that school being Fort Street. Thomas was asked whether Justice Murphy explained how he or anyone else was going to organise Thomas's higher rank in the yet to be formed Australian Federal Police, bearing in mind that Labor was not in government at the time. Thomas said that that was not discussed in any detail at all. There was some conversation about where Labor and Liberal politicians are .opponents in the house but are friends, or can be friends outside (although that conversation may not necessarily have concerned the point of how the alleged promotion of Thomas was to be achieved).

45. Thomas goes on to say that after the meeting he was "inwardly angry" at the offer made by Murphy. He said he told Davies that he could "tell Justice Murphy that he was not interested and more or less the fact that I was disappointed in him." Thomas says that he certainly did not discuss the offer with any other person after the luncheon. He was asked, "From that day to this have you mentioned it to anyone else'," and he responded, "I mentioned it only the other week to Mr Ian Temby and that was because there was an article in the 'Sydney Morning Herald' attributed to the 'Age Tapes', and a report that an Inspector Moller had filed, which intimated that I had been up to something with Davies." He went on to say that that newspaper report was several months previously. However, he had only mentioned it to Mr Temby within the month. (It's not immediately clear to me why Thomas approached Temby when he did). Thomas admitted that he never came forward during the trial at any stage to offer this particular intelligence to anybody. He was asked, "Did it occur to you as an ex-police officer and now a practising barrister that it may have been important to mention it?" and he responded, "No,sir".

46. Davies' version of events is somewhat different. In his statement he said that he had always held Chief Inspector Don Thomas in high regard as an investigator and had felt sorrow at the way in which he was being treated by police dignitaries the time following his handling of the Greek Conspiracy matter. This left him wondering what place there was for Thomas within the police sphere as he was either at that stage a lawyer or about to become one. Davies' medical advisors had told him that he should be pensioned due to hypertension, so he knew he would be leaving the job in the near future. Accordingly, about the end of November 1979 he rang Lionel Murphy (person whom he first met in 1942 and whom he had met infrequently since then) and told him what had happened to him and related the circumstances surrounding Don Thomas. Davies told Murphy that whilst Thomas was not a friend of his, he did feel that he

was being badly treated and would have no future as a police officer despite his academic qualifications. He asked Lionel whether he would be prepared to have lunch with Thomas and him to discuss a possible future in the legal profession. Davies admits to being presumptious because he had not even consulted with Thomas on this score at this stage. Davies said he did so immediately and Thomas offered no objection to the meeting.

47. About mid-December, Murphy's Associate rang Davies to say a luncheon had been arranged between Davies, Murphy and Thomas at the Korean Restaurant in Kings Cross. Davies said he then rang Thomas and arranged for him to pick him up at Town Hall station and take him to the luncheon. It would appear that Davies phoned Thomas on the morning of the luncheon.

48. Upon arrival, they were met by Murphy and Morgan Ryan. They had lunch. Lionel enquired about Thomas' background and legal achievements in the academic world and from Davies' recollection agreed that he would have a career available as a lawyer should he ultimately feel so disposed. Furthermore, Murphy expressed the opinion that with his qualifications Thomas would seem to have a good future within the Australian Federal Police. According to Davies, Ryan had little or no input into the conversation. Davies says he simply recalls that it was a pleasant luncheon - an informal discussion between Lionel Murphy and Don Thomas arranged at his request because of his apprehension that Thomas would be or had been badly done by by the imported United Kingdom heirachy. Davies left with Thomas. Thomas drove Davies to the station. According to Davies he has not seen Thomas, Murphy or Ryan, nor has he spoken to them or communicated with them in any way whatsoever since that date.

49. Davies says that he has been asked if he was privy to all that was said at the luncheon. He says that whilst he was certainly present in a group of four people, he was not able to

say that he could give a complete account of what was said since the 'anniversary is in its seventh year'. He says that as he was sitting in a group of four people at the table, he feels he would have heard anything of major importance that was discussed. However, once again the 'restraints of memory apply'. Thomas says that he left Murphy and Ryan in front of the restaurant. On the way to dropping Davies off Thomas expressed concern that solicitor Morgan Ryan was present. Davies said, so did he.

50. Davies says that he was not aware that Morgan Ryan was to be present at the lunch. He admits to having met Ryan previously at Lionel Murphy's suggestion in order to further Davies' determined approach to the State Government to recover a sum of money he had previously paid to the New South Wales Police Superannuation Fund. If anyone should be interested in Davies' saga in recovering that amount they are welcome to read his statement.

51. I make the following observations on the material obtained from the Director of Public Prosecutiions relevant to the Thomas allegations. If we assume that the conversation as alleged by Thomas took place, it is not immediately clear what the Judge was seeking to achieve. Was he seeking to have Thomas placed in a particular position within the AFP (in effect to replace Davies) as an informer for the ALP? Or was his approach in asking Davies to contact Senator Grimes - an attempt to bring undue influence on the prosecution of the then current Greek Conspiracy case? It is clear that the Judge made no mention at that mention of Dr. Hameiri at the lunch. Morgan Ryan's allegedly improper approach to Thomas (which was taped) appears to have been made on Dr Hameiri's behalf. It would seem then that the second luncheon is an entirely separate matter from the first (although passing reference was made there to the Greek Conspiracy Case).

52. The second thing that must be said is that Thomas's recollection of his lunch with the Judge is remarkably clear, notwithstanding the fact that several years appear to have elapsed between that event and his first disclosing it to any person in authority. Equally remarkable in my view is the fact that Thomas recorded the events of that meeting nowhere; nor did he bring it to the attention of anybody until a newspaper report seemed to indicate that he was in collusion in some unspecified way with Davies. Even then he delayed bringing it to the attention of Mr Temby. Equally, I find it remarkable that although a definite offer of a bribe appears to have been made at the second lunch, Thomas recorded that event and indeed let the matter rest entirely. As a very senior officer within the Commonwealth Police, I find his behaviour unusual to say the least. When Thomas' inactivity in these matters is added to his actions in the Greek Conspiracy matter, it can readily be seen that when his allegations are put to the Commission he will be liable to quite vigorous challenge as to his credit.

53. Davies of course provides no support for Thomas. Davies says he suggested the lunch. He may well have, but I do not believe his stated reason for doing so. It defies credulity that he would have arranged a lunch with a member of the High Court (an allegedly casual acquaintance at that) to discuss a future for Thomas ('not a friend') in the legal profession - particularly as Thomas did not solicit Davies' help in the first place.

54. Nor do I think that the events at Thomas' later meeting with Ryan provide any support for his description of the earlier lunch. Contrary to the views expressed in the Callinan/Cowdrey advice, I consider that the tape of the later meeting has no probative value in relation to questions of the Judge's behaviour.

55. In the end, the strength of Thomas' allegation depends very much on how he 'brushes up' as a witness.

Association with Saffron

56. The DPP files contain very little information on this. There is a manilla folder entitled 'James West' which contains a one page unsigned statement by that gentleman. He said that between 1958 and 1978 he was a partner in a hotel in Western Australia with Abe Saffron. He said that about four or five times during that partnership he visited Saffron at his motel, Lodge 44 at Edgcliffe. On one of those visits during which he was accompanied by his wife (a visit which he dates very approximately "in the early 70's") he was sitting having a meal in the dining room on the first floor of Lodge 44 when about two or three tables away he recognised a person also having a meal as being Lionel Keith Murphy. He was alone. He did not speak to him and he could not recall mentioning to Saffron that he had seen him. As far as he was able to say Saffron did not mention to him that Lionel Murphy had stayed at his hotel.

57. I have not as yet seen the material on James McCartney Anderson.

A. Phelan
24 June 1986

2691A

POSSIBLE WITNESSES

Ackland, Richard – journalist – re evidence of McClelland – senate and 1st trial.

Alldridge, Gordon– lobbyist

Anderson, Jim

Anderson, Nethea – Empress Coffee Lounge.

Andrews, John – Prop.dev. – Central Rlwy.

Avery, John – NSW Police Commissioner – ie investigation Saffron: Molloy, Clark, Lynch

Bazely, Stephen – Mistaken by Murphy for other Bazely, a "hit man".

Bone, Angela – ex associate to Murphy ie premature release of judgments

Boyd, Garry – former Immigration Officer.

Boyle, Terry – private investig. Sydney

Bradley Phillip – NCA – re all matters subject to Stewart Inquiry

Briese, C. S.M. – re Sankey and Murphy/Farquhar relationship.

[redacted] – [redacted] re Ysmael connection, Immigration racket Morosi break–in.

Clark, Bobby NSW Police

Colbrin, Warwick – prop. dev. Central Rlwy.

Davies, Don – AFP report on Morosi break–in.

Delaney – (Author Narc.) – Ex head Southern Division Narcotics Bureau re customs surveillance Saffron.

Ditchburn, David – re Ethiopian Airlines – Juni Morosi's husband.

Dixon – Inspector (AFP) re Sala matter.

Ellicott QC.

England, Bob former Immigration Officer.

Farquhar, M.

Felton, Alan – Morosi break–in.

Foley, Steven Journalist Australian – re 007 and Swiss Bank Accounts

Foord, J. – re prosecution of Felton.

Gambie, Graham Journalist – re S. Bazely.

Griffith, T. (AFP) re Sala matter.

Hagensfelt, Barita – re Murphy/Saffron relationship.

Halpin, David (former press sec)

Hamiri, Dr Danny

Harkins, R.J. (Legal Aid)
[redacted] – AFP – re Lewington allegation of bribery.
Headland, I. – Inspector (AFP) re Sala matter & re Dixon
Hill, David SRA – re Central Railway development.
Hills, Ben – Journalist – re Ysmael, Morgan Ryan & Immigration rackets.
Hogman, B. – Solicitor, Dawson Waldron, re Morosi v. News Ltd.
Jegerow, Bill
Johnson, Les (High Com. NZ former pres sec) re Anna Paul and Saffron relationship. Prop.Consulting services
Johnston, John MLA
Jones, Bob
Jury, Eric – re tapes.
Keenan, Andrew Journ. SMH
Lambe, Peter
Lewer, Wally – S.M. re Sankey & Murphy/Farquhar relationship.
Lewington – Singapore (AFP) re allegations bribery.
Lynch, Rod – NSW Police Arson Invest.
Malloy, Warren NSW Police
Marshall, Don (Dep.head ASIO)
McClelland, Jim
McMahon, Anna (Paul) – re Murphy Saffron relationship.
McVicar AFP – re tapes.
Menzies
Mercer, Neil (Journalist 60 Minutes)
Miles, Bruce
Morosi, Junie
Mullens, Patricia
Opitz, Rosemary [redacted]
Owens, Warren – Journalist,Sunday Telegraph re Farquhar connection.
Phillips – crim. lawyer (May be Phillips J. S.Ct.Vic) re Saffron surveillance.
Rofe, D. QC – re Sankey prosecution.
Ryan, Morgan
Ryan, Mrs – "Smelling like a rose" allegation.
Saffron, Abe
Sankey, Danny

MEMORANDUM

To: Mr S Charles
Mr A Robertson
Mr D Durack
Mrs P Sharp

SUMMARY OF ALLEGATIONS AND AREAS FOR INVESTIGATION

1 It is likely to be useful if an attempt is made at this time to record in summary form a number of the allegations and potential areas of investigation which have emerged during the first few days of the Inquiry. It is possible to identify several matters which, even at this stage, may be stated as allegations with some degree of precision. There are other matters which have been put to us in a form which makes it very difficult to enable them to be stated as allegations at this stage. Finally, there are a number of matters which may give rise to allegations at some future stage, though at this time they can only be described as raising questions for consideration.

2 It should be stressed that no attempt whatever has been made to filter out any of the matters that are to be discussed in this memorandum. Rather, I have sought to set out every conceivable allegation or matter of complaint which has emerged over the past week with a view to enabling us to commence our consideration by having something in writing.

Precise Allegations Which May Be Made At This Stage

1. The Don Thomas Luncheon

Donald William Thomas has provided a statement in which he alleges that in about December 1979 he was invited to have lunch with the Judge (whom he had not previously met). On the

morning of the luncheon, John Donnelly Davies, the Assistant Commissioner Crime of the Commonwealth Police in Canberra arrived in Sydney. He told Thomas that he proposed to attend the lunch that Thomas was having with the Judge. Thomas had not previously told Davies that he had made the luncheon arrangement. At lunchtime on the day in question Thomas attended a Korean restaurant in Kings Cross with Davies. When they arrived at the restaurant, the Judge was already there seated at a table with another man whom Thomas recognised as Morgan Ryan. Thomas knew Ryan by sight. The Judge told Thomas that Ryan was an old friend of his, and that the Judge had lunch with him whenever he came to Sydney. Thomas was immediately suspicious since he knew Ryan to have been involved in criminal activities in the past, and he had previously investigated Ryan in relation to a Korean immigration racket. The Judge spoke to Thomas regarding a social security conspiracy case in which Thomas had been involved. In particular, the Judge mentioned the fact that there was a large Greek contingent in the labour electorates in Victoria and that the prosecution was embarrassing the Labor Party in Victoria. The Judge offered to introduce Thomas to Senator Grimes who had been supporting the Greek cause. Thomas declined the offer. The Judge then spoke of the formation of the new AFP. He said: "We need somebody inside to tell us what is going on". Thomas gained the impression that the Judge was referring to the Australian Labor Party. The Judge went on to indicate that in return for fulfilling the role which had been suggested to Thomas, he would arrange for Thomas to be promoted to the rank of Assistant Commissioner. He also told Thomas that he had proposed to make Thomas an Assistant Commissioner during his term of office as Attorney-General when he had proposed to establish the Australia Police. That proposal had lapsed in 1975 when the Whitlam Government ceased to hold office. Thomas indicated to the Judge that he would not be happy forming an affiliation with any political party. The Judge asked him to think about the matter.

Nothing more happened in relation to this until Thomas was contacted in early February 1980 by Morgan Ryan. Ryan telephoned him at the Redfern offices of the AFP and requested a meeting. Thomas agreed to the meeting, but before attending it, he arranged with Peter Lamb to equip him with a bugging device which would broadcast the conversation which he had with Ryan to a nearby surveillance team. This meeting occurred at the same Korean restaurant as had been used for the previous luncheon. The conversation was recorded.

It may be said that some parts of this recorded conversation tend to corroborate Thomas's story that there had been an approach made to him in the terms described by him. There is no doubt, however, that whether this allegation against the Judge has any force at all will depend in toto upon whether Thomas is a credible witness. If he is believed, it would seem that the Judge may have committed any one of a number of criminal offences. These would include an attempt to pervert the course of justice, an attempted bribe and a conspiracy to pervert the course of justice.

2. The Lewington Allegation

Detective Station Sergeant David James Lewington has alleged that early in 1981 he made contact with Detective Inspective Lamb of the then B Division in Sydney. Lewington made contact with Lamb because of inquiries he was conducting with Detective Senior Constable Jones into alleged illegal activities of Koreans who were obtaining permanent residence in Australia. It appears that Lewington was with Jones when the two of them were taken to a room where a taperecorder was set up and a portion of a tape was played to them. The tape contained conversations between Morgan Ryan and other persons. This happened on more than one occasion. Lewington estimates that it occurred approximately three times. He describes three separate conversations. The first was between Morgan Ryan and a James Mason. Mason was eventually charged as a co-conspirator with Ryan. Secondly, there was a conversation

between Morgan Ryan and a person known as Bell. Thirdly, and for our purposes most significantly, there was one other conversation which Lewington recalls between Ryan and an unknown person making enquiries abut Jones and himself. The import of that conversation was whether Lewington and Jones could be bought off or got at. If one turns to question and answer 28 of the Record of Interview prepared by Lewington on the 22nd February 1984, one notes that Lewington says that in the case of this third conversation no names were used as best as he can recollect. Lewington goes on to say: "However, without being absolutely certain, the voice of the person that Ryan was speaking to sounded similar in most respects to the voice of Mr Justice Murphy whom I have heard speak both on television and radio on previous occasions". Lewington goes on to say that he cannot positively identify that voice as being the voice of Mr Justice Murphy. His belief was, however, that that was who the person was. Lewington is also unable to recollect the specific conversation. He can only recall the general tenor of it.

Lewington summarises the conversation in these terms: "The question was raised by Morgan Ryan along the line of 'have you been able to find out about those two fellows who have been doing the investigation; are they approachable'. The other party indicated that he had made some inquiries and that the answer was definitely no, "they were both very straight."

Lewington asserts that the impression that he received, (and in his discussions with Jones about the matter, he (Jones) was of the same impression) was that Ryan was considering an approach to offer a bribe to buy Lewington and Jones off.

Lewington goes on to say that his impression was confirmed by the fact that in August 1981, two members of the New South Wales Police Force made an offer to Lewington in terms that it would be worth his while to drop the charges or make the charges less severe against Morgan Ryan. That approach was

immediately reported by Lewington to his then supervising Sergeant, his Inspector and the Deputy Commissioner. It resulted in an investigation by the Internal Affairs Bureau of the New South Wales Police. The complaint was sustained. Incredibly, one member of the New South Wales Police Force was fined $100, and sentence was deferred on the other member for a period of 12 months. Lewington goes on to say that it was with "hindsight" that his initial impressions of the conversation he had heard were reinforced to a point of almost certainty.

In answer to question 29, Lewington asserts that Lamb had said to him that the other person on the tape was Mr Justice Murphy. Lewington says that Lamb had told him that after he had already formed his own impression. It will be crucial to investigate this matter carefully. A great deal will depend upon what Inspector Lamb will be able to say in corroboration of Lewington's account. It will also be essential to know precisely what Jones is prepared to say at this stage. There may be other police officers who were involved in recording this conversation who will be able to confirm the substance of what Lewington has to say.

One should also note question 51 and the answer given to question 51 in the Record of Interview. (This involves a suggestion that Inspector Lamb had told Lewington that Justice Murphy had been implicated with young girls in Fiji).

One should also note that Lewington participated in a Record of Interview on Thursday, 23rd February 1984. In question 21 of that second Record of Interview, Lewington is asked to elaborate on the answer he had given to question 51 of the interview conducted on the 22nd February 1984. Lewington recalled that there were four diaries in all belonging to Morgan Ryan which were produced as an exhibit in the committal proceedings against Ryan. At the end of those proceedings, the diaries were returned to the defence. At the trial of Ryan they were called for on subpoena from the defence. However,

they did not produce them and claimed they could not be found. Lewington had, however, taken the precaution of photocopying each diary. The photocopies are still available. These photocopies should be obtained and examined.

If what Lewington says is believed, and in particular, if it is corroborated by Lamb, it would seem that the Judge has participated in a conversation which can be described at the very least as being injudicious. It is obviously unseemly for a High Court Judge to be involved in discussions with a solicitor relating to the possibility of bribing or corrupting police officers investigating the affairs of that solicitor. Whether this conversation would amount to evidence of a criminal offence is, however, more doubtful. It is likely that it would not go far enough to amount to a conspiracy of any sort. It certainly does not amount to an attempt to bribe or corrupt any person. On a broad view of the words "proved misbehaviour" in section 72 of the Constitution, such conduct could fit this description.

Potential Allegations

3. Association with Abe Saffron

We have been told that there is evidence available that the Judge has had a long association with Abe Saffron. It is clear that Saffron has been a person of dubious repute for many years. Saffron himself has denied any association with the Judge. We do not know whether the Judge has issued any similar denial. We are told that there are a number of persons who may give evidence of such long standing association. These include –

(i) James Anderson

(ii) James Alexander West

(iii) Berita Hagensfeld

(iv) Rosemary Opitz

(v) Anna Paul.

Each of these persons should be interviewed. They should be asked for the names of any other persons who might have evidence of an association between the Judge and Saffron.

It is clear that Saffron is not merely a client of Morgan Ryan's, but also a business partner with him. Ryan and Saffron are plainly involved in a number of illegal joint ventures. We have been told that there is evidence available that Murphy is a partner in a brothel with Saffron. It is suggested that he has an interest in the Venus Room. It is said that there is a long history of the Judge receiving sexual favours from women supplied by Saffron, or an associate of Saffron's, one Eric Jory.

If it can be shown that the Judge has had a long standing association with Saffron, both of a personal and business nature, this may be relevant to our inquiry (though not by way of a charge based upon "guilt by association"). It is unclear to me precisely what is the status of the offence of consorting in New South Wales today, or what it has been over the years. Would a part interest in a brothel render the Judge guilty of "proved misbehaviour"? It would seem that managing a brothel, or living off the earnings of prostitution, would amount to a criminal offence in New South Wales. It still does amount to an offence in Victoria unless the brothel has a permit to operate as such. If one goes to a document supplied to us by the Age, which purports to record a statement

made by James West, the Judge is described as "Abe's man". West says that he used to meet the Judge at Lodge 44, a well-known Saffron establishment. West says that Saffron often talked of his association with Murphy. West says that he did not know Murphy "that well". He says that he met Murphy at Lodge 44 with Abe a few times. He thought that Abe paid Murphy. He said that "he" (not clear whether this is Saffron or Murphy) is involved in all this gambling around Kings Cross.

We also know that James Anderson has made similar allegations to the New South Wales Committee investigating the legalisation of prostitution, and, we believe, has repeated those allegations during the course of certain bankruptcy proceedings. Anderson is presently thought to be out of Australia. The National Crime Authority is likely to be aware of his whereabouts. He must be spoken to.

4. The Sala Affair

The history of this matter is well known. What has not hitherto been considered, however, is whether the whole affair takes on a completely different perspective if it can be shown that there is a long standing association between the Judge and Abe Saffron. It is clear that Sala was staying at Lodge 44 when he came to Australia. The likelihood is that he was closely involved with Saffron in some criminal venture. We need to speak to former Inspector Dixon, a man who was very upset about the manner in which the Judge acted at the relevant time. We should also speak to a Mr A Watson (a former First Assistant Secretary who gave certain advice to the Attorney regarding this matter). Other persons to speak to are a R J Harkins (formerly Deputy Crown Solicitor in N.S.W.) and the journalist Ann Summers. She is presently in New York City. She is known to have told other people at around that time that she had knowledge that $30,000 had been paid to Morgan Ryan for his role in getting Sala out of the country before he could be broken down by the police. We must analyse the Menzies Report

carefully. We should compare the views of a Mr Mahoney (Deputy Secretary of the Department) who disagreed with Inspector Dixon in relation to what should be done with Sala. It is also worth investigating the Judge's conduct in relation to a matter involving a gentleman called Lasic. Apparently Morgan Ryan acted in that matter as well and the Attorney personally intervened to accommodate Ryan's wishes.

5. Saffron off Customs Alert

Once again a great deal will depend on whether it can be shown that Murphy was a long-standing associate of Saffrons. If he was, then the decision to accommodate Morgan Ryan's request that Saffron no longer be subjected to strict 100% customs searches takes on a completely different appearance. It must be recalled that Saffron had been named adversely in the Moffitt Royal Commission, the year prior to his being taken off the 100% search list. There is a file note in our possession recording that the police had been told by Customs that the Attorney-General had directed an immediate downgrading of surveillance upon Saffron. We have been told that there was an investigation into this matter and that the investigation cleared the Attorney-General. It appears that the reference to the Attorney-General in the document that we have is a mistaken one and what was really meant was the Comptroller of Customs. We should speak to two persons - a Mr Delaney who has apparently written a book entitled "Narcs", and a Mr Phillips who is said to be a lawyer in Victoria.

If the Judge ordered a downgrading of surveillance upon Saffron in circumstances where he was a close friend and/or business associate of Saffrons, there would appear to be evidence of seriously improper conduct on his part. This might amount to some form of conspiracy. If the Judge received any remuneration, either directly, or indirectly (as for example by sexual favours), or even if the Judge was aware by assisting Saffron in this manner he would be helping his close friend

Morgan Ryan, it might be said that there is "proved misbehaviour". We should also determine whether the Judge whilst Attorney intervened in favour of Lennie McPherson in a similar manner.

6. Safe Deposit Boxes and Shares

We have been handed certain documents which, if genuine, suggest that a safety deposit box and numbered Swiss bank account was opened in the name of the Judge on the 11th March 1975. On the 11th March 1975, an East German national named Zunderman paid 50 Swiss francs at the Zurich branch of the Union Bank of Switzerland to open safety deposit box number 8343 in the names of Lionel Keith Murphy and Edward Gough Whitlam. Another document indicates that the Union Bank of Switzerland in its vault facilities holds the safe deposit box number 8597 on behalf of Mr Lionel Keith Murphy and Miss Junie Morosi for twelve months from the 11th March 1975. This second document was executed in duplicate on the 4th April 1975. The next document shows a receipt numbered 816 for 70 Swiss francs which bears the date 4th April 1975. This document relates to safety deposit box 8343 and purports to show that Junie Morosi was assigned the keys to the box designated for Murphy and Whitlam.

A fourth document shown to us appears to disclose that Mr Lionel Keith Murphy had been allotted 400 shares in the Union Bank of Switzerland, shown to have been worth 500 Swiss francs each at the time. The document in question appears to be a notice of a forthcoming general meeting of the shareholders of the said company. This document bears a particular security account number 3842. It refers to the following deposit as of the 27.2.1975. A very similar document is in existence (dated March 5th 1973) which suggests that Dr. James Ford Cairns has also been allotted 250 of the same shares.

The status of these documents at the present stage is very uncertain. On the morning of Monday, 16th June, we shall be attending at certain premises with a view to seeing what other information we can obtain regarding the Swiss documentation. It may be that someone will have to make further enquiries in Switzerland. We understand that the Swiss Bank is unwilling to be cooperative in this regard unless it is approached on a government to government basis. Some such approach may have to be made. If the Judge did receive an allocation of 400 shares at 500 francs each, this would amount to approximately $80,000 Australian dollars worth of shares in 1975 terms. That would be the equivalent of approximately quarter of a million dollars in todays terms. One would have to look upon any such acquisition by the Attorney-General with extreme suspicion. This would be compounded by any similar acquisition being made by the former Deputy Prime Minister and Treasurer, Dr. Cairns. Any involvement by Miss Junie Morosi in these matters can only heighten suspicion further. She is now known to have been involved in corrupt immigration activities.

It would be extremely unlikely that anyone seeking to bring about embarrassment to the Whitlam Government would have been prepared to make a gift or gifts of these amounts of money in order to do so for domestic polical purposes. The same cannot be said of the opening of safe deposit boxes in the names of the Judge and the former Prime Minister. It may be that the Swiss Bank will have documents or records which will enable us to determine the validity and genuineness of these documents. It ought certainly to be possible to determine what has happened to the shares mentioned in the notice of general meeting if that document genuinely reflects a shareholding on the part of the then Attorney-General.

It is worth examining an article written by Brian Toohey on 20th September 1985 in the "National Times". The article is headed "Murphy the Property Millionaire", and purports to set out accurately some of the Judge's holdings. It must be remembered that during the early part of 1975, we were at the

height of attempts to borrow large sums of money from overseas for "temporary purposes". The suggestion can readily be made that the safety deposit boxes were obtained in anticipation of receiving some secret commission from some person seeking to arrange the loan of vast sums of money to the Australian Government.

7. The Free or Discounted Air Travel

It is suggested that the Judge behaved improperly in receiving free or discounted flights overseas care of Ethopian Airlines. It appears that both he and his wife travelled overseas in December 1973 and January 1974 on air tickets issued by Pan American at the request of Ethopian Airlines for one of their employees, Mrs Ingrid Murphy. It must be remembered that the local manager of Ethopian Airlines was David Ditchburn (husband of Juni Morosi). It appears there was a lengthy Hansard debate on this matter. It is clear that the Judge sued Mirror Newspapers in 1976 for defamation. In that action he told the New South Wales Supreme Court that his wife had received a nominal fee as a Public Relations Consultant for Ethopian Airlines, and that she was therefore entitled to discount travel. He told the court that he took one discounted trip and one free trip pursuant to this arrangement. The question will be whether the Attorney-General conducted himself in a dishonest manner in accepting this travel. Did he receive a secret commission?

8. The Diamond Purchases

Questions have been raised in Parliament regarding certain diamond purchases worth A$7,800 allegedly made on Ingrid Murphy's behalf by a company associated with Perth tax fugitive Christo Moll. In 1984 the "Age" reported that notes on a cheque butt drawn on a company owned by Christo Moll indicated that money had been used for diamond purchases worth $7,800 for Ingrid Murphy. A statement was read in the Senate on behalf of the Judge denying this.

9. Soviet Espionage

It has been suggested to us that there is evidence that the Judge was in fact born in Russia and that he has been engaged in espionage on behalf of the Soviet government for many years.

10. The Steven Bazley Approach

It has been suggested to us that a gentleman named Steven Bazley will say that he was approached by Mr Justice Murphy in June 1983 with a view to determining whether he would be prepared to do a "hit" for him. It is said that Steven Bazley was mistaken by the Judge for James Frederick Bazley who has been convicted of conspiracy to murder Donald McKay in Griffith. The details of this episode are obscure. Steven Bazley should be approached and spoken to. It is said that Bazley attended upon the Judge at his flat in Darling Point when the offer was made.

11. The Sankey Prosecution

It has been suggested that the Judge approached Abe Saffron (either directly or indirectly) to "lean" on Sankey to drop the private prosecution which he had brought against the Judge and others. James Anderson should be spoken to regarding this matter. He will say that he was asked by Saffron to approach Sankey to see if a settlement was possible. Sankey will say that he was approached by Anderson in 1976, and later spoke with Saffron who suggested a meeting. It should be noted that some very strange events occurred in relation to this private prosecution before it was eventually dismissed by Mr Leo S.M. in February 1979. It will be recalled that Mr Leo tried to take himself off the case at Murray Farquhar's suggestion. Murray Farquhar sought to take over the case himself. However, the New South Wales Court of Appeal forced Leo to continue hearing it. Mr Leo may be able to assist in determining what

pressure was placed upon him to withdraw from the hearing by Farquhar. Rofe Q.C. should also be spoken to. It may also be necessary to speak to Mr Justice McHugh.

12. Illegal Immigration Rackets

It has been said that the Judge was involved in an illegal immigration racket re Phillipino girls. It is said that whilst he was Attorney he interceded with the Ministry of Immigration in two cases. It appears that the Judge engaged a Phillipino nanny: this led to questions being asked in Parliament as to whether he had used his influence to allow her immigration to occur. Was the nanny recruited by Morosi? A person who seems to know a good deal about this is a journalist named Ben Hills. It appears that he once appeared before the Joint Committee on Pecuniary Interests of M.P.'s to discuss the matter. One should read the issue of the "National Times" dated July 12 to 18th, 1985. The connection with Ysmael is significant in relation to this matter as well. It is thought that Garry Boyd may have been involved.

13. The Morosi Break-in

We should speak to [redacted] regarding this matter. It is suggested that the Judge had advance knowledge that a break-in would occur at the Sydney home of Juni Morosi. The Judge arranged for Commonwealth Police to be present when the break-in occurred. One of the burglars named Wrigglesworth (represented by Morgan Ryan) was apprehended but never formally charged. No publicity was given to the matter despite the fact that this would have severely embarrassed the Liberal Party through the involvement of Ivor Greenwood in organising the break-in. [redacted] will have a good deal of information regarding the knowledge that the Attorney had of this matter, including a conversation which ostensibly occurred between Bill Waterhouse (the bookmaker) and the Attorney. It is also interesting to note that Foord Q.C. prosecuted Felton before

Murray Farquhar. Felton received a bond in relation to this matter. We are told that Don Marshall at ASIO knows a good deal about the case. We must also scrutinise the role of Don Davies in this affair. If Murphy's involvement can be proved, it would appear that he was a party to a conspiracy to pervert the course of justice.

14. The Unsworn Statement

It has been suggested by some that the Judge's conduct in making an unsworn statement at his second trial was so "unseemly" as to be capable of amounting to proved misbehaviour. This seems highly improbable. Nonetheless, it is a matter which should be drawn to the attention of the Commissioners as being one of the allegations which have been made against the Judge.

15. The Diary Incident

It has been suggested that there has been misconduct by the Judge regarding the use which was made of a diary which was given to the defence for limited purposes during the course of the Judge's first trial. There is also a suggestion of misconduct through the assistance which was supplied to the Murphy defence team of an employee of the Commonwealth Public Service.

16. Perjury

It is suggested that the Judge has either committed perjury, or has told untruths during the course of the accounts that he has given of his involvement with Mr Briese S.M. (which gave rise to the charges brought against him). It must be remembered that the Judge has made a statement to the first Senate hearing. He gave sworn testimony at his first trial. He then made an unsworn statement at his second trial. It is suggested that the Judge committed perjury by understating the number of

contacts he had had with Morgan Ryan during the relevant period. It is further suggested that he had lied by indicating that the only contacts he had had with Ryan during the relevant period were connected with the Sankey case. It is plain that if the Age Tapes are genuine, the Judge has spoken to Ryan during this period about a great many matters other than the Sankey prosecution. It will be necessary to examine with care whether the Judge has been definite about his recollection, or whether it can simply be said that he was mistaken about these matters. It will also be necessary to determine whether the Judge has ever denied associating with Saffron. If an association with Saffron could be proved contrary to any such denial, the Judge would be in difficulty. It has also been suggested that at his first trial the Judge had said that another guest or guests had attended the dinner at Briese's home. His wife Ingrid supported this account. It is thought that the Judge originally said this in his statement of the first senate inquiry. Briese denies that any other guests were present on the night in question. His wife and daughter support such denial. See the National Times dated the 6 December 1985.

It is said that Murphy's testimony at his first trial conflicted with the statement he made to the first senate inquiry - see the National Times dated the 12th July 1985 article per Wendy Bacon.

17. Association with Farquhar

It is said that the Judge associated with Mr Farquhar SM after it emerged that Farquhar was in all likelihood a crook. It is claimed that the Judge acted improperly in not coming forward to tell the authorities about the dinner he had attended at Morgan Ryan's house at which Farquhar had been present together with Commissioner Wood. It is said that the Judge's continuing association with Farquhar in 1980 amounted to improper conduct for a High Court Judge.

It seems very doubtful that these matters could amount to proved misbehaviour within the meaning of section 72 of the Constitution.

18. The Jegorow Approach

It is asserted that the Judge improperly approached Neville Wran on behalf of Mr Bill Jegorow who sought appointment as a Deputy Chairman of the Ethnic Affairs Commission of New South Wales. It is plain from the Age Tapes that the Judge did this at the behest of Morgan Ryan. It will be necessary to learn more of Mr Jegorow's background, and to ascertain whether the duties of that position would provide some advantage to someone such as Morgan Ryan involved in immigration rackets. It may be regarded as unseemly for a Judge to intercede with a Premier on behalf of a person who is seeking a Public Service appointment. It is doubtful, however, that any such intercession would of itself amount to proved misbehaviour.

19. The Paris Theatre

It is said that the Judge exhibited a surprising degree of interest in an application by the Paris Theatre to the Sydney City Council. This matter is discussed by Brian Toohey in the National Times issue 20th September 1985. As matters stand, even if this conversation occurred, it is difficult to see how it could amount to proved misbehaviour. We need to know more about any Saffron connection here.

20. The Rofe Matter

The Age Tape transcrips purport to record a conversation or conversations between the Judge and Morgan Ryan in the course of which the Judge indicates extreme hostility to Rofe QC. The conversations are vague. It may be that they can be construed as an attempt by the Judge to instigate Ryan to bring about some misadventure to Rofe QC. The conversations can certainly

be seen as "unseemly". As they stand, however, it does not seem that they are capable of amounting to misbehaviour in and of themselves.

21. The Lusher-Briese Conversation

There is a passage in the tapes where the Judge is recorded as having had a conversation with Ryan which can be described as very criptic. It may pertain to the legalisation of casinos. While one might be curious as to why the Judge was speaking in these terms (if the conversation occurred) it seems impossible to spell any allegation out of this conversation.

22. Pinball Machines

There is a conversation where the Judge speaks to Ryan about pinball machines. Once again, it seems very difficult to formulate from this conversation (if it occurred) any allegation which can be made against the Judge. Again the Saffron connection may be critical here.

23. The Milton Morris Blackmail

There is a conversation between the Judge and Morgan Ryan during which Ryan tells the Judge that he proposes to engage in a form of blackmail of Milton Morris. The Judge does not counsel against this course, and continues to associate with Ryan thereafter. It is said that this could amount to proved Misbehaviour. Once again, taken in isolation, it may be regarded as unseemly behaviour on the part of the Judge but it probably is not capable of amounting to proved misbehaviour.

24. "Smelling Like a Rose"

There is a summary of a conversation between the Judge and Morgan Ryan's wife in which he advises her to assist her husband by getting a parliamentarian to say that enquiries have

been made into Morgan Ryan's affairs and that he has come up "smelling like a rose". This conversation, if it occurred, would demonstrate that the Judge was prepared to allow untruths to be put forward in the Parliament in order to support his friend Morgan Ryan. It would constitute extremely injudicious behaviour. It would only amount to proved misbehaviour if a broad view of that concept were taken.

25. Central Railway Complex

There is a discussion between the Judge and Morgan Ryan regarding the new Central Railway Complex. The Judge chastises Morgan Ryan for not being sufficiently alert to what is going on. It seems that a company with Saffron links was involved in seeking this development. It is said that it is surprising that the Judge would take such an interest in this particular complex. It is said that the whole of the matter is worthy of investigation. Did the Judge attempt to assist Saffron in relation to this matter? One should turn to the notes of the conversation with Wendy Bacon which occurred on the morning of Friday the 13th June for further elaboration of this matter.

It would seem that taken in isolation the statements attributed to the Judge could not amount to proved misbehaviour. The matter does merit further investigation, however.

26. The Illegal Casinos in Dixon Street

In the course of the Age Tapes there are transcripts of conversations between Morgan Ryan and Abe Saffron. These conversations suggest that the Judge has involved himself on behalf of one Robert Yuen in relation to certain illegal casinos operating in Dixon Street. One should examine carefully the passages in the transcript pertaining to these matters.

It will be extremely difficult to prove any such involvement on the part of the Judge. People who would know, Morgan Ryan and Abe Saffron, are most unlikely to be helpful as witnesses. Robert Yuen, one would think, would be as unhelpful. If the Judge was interceding on the part of Yuen, there is no doubt he would be guilty of a criminal offence of one sort or another. This would clearly amount to proved misbehaviour.

27. Luna Park - Lease for Saffron

This matter appears in the letter written by Mr. Justice Stewart to the Judge as Item 2. I have seen no reference to the matter in any of the Age Tapes that I have thus far perused. Mr. Justice Stewart should be spoken to regarding the matter.

28. The Murphy Allegations Re Political Nature of His Trial

It has been suggested that the outburst of the Judge after he had been acquited at his second trial that the proceedings against him were politically motivated could amount to proved misbehaviour. See Hansard, House of Representatives, per Mr Spender at Page 3447 8th May 1986. Whilst the outburst might be regarded as unseemly conduct, it is difficult to see how it could amount to proved misbehaviour.

29. Failure to respond to Mr Justice Stewart's Letter

It has been suggested that the Judge's failure to respond to Mr Justice Stewart's inquiries during Stewart's investigations could amount to proved misbehaviour. See Hansard page 3448 dated 8 May 1986. It is difficult to see how this could be sustained bearing in mind the Judge's legal rights arising out of Hammond's case.

30. The Wilson-Tuckey allegations

It was alleged in Parliament and reported on 12 October 1985 in the Sydney Morning Herald that the Judge was involved in a tax scandal, see also The Age, 24 September 1985. Wilson Tuckey alleged that a Dr Tiller (surgeon) and a Murray Quartermaine had sought support from the Judge to avoid a public scandal. The allegation apparently emanated from a letter which was said to be written by Tiller and appears to have come into the Age's possession via Christo Moll. Tiller has denounced the letter as a forgery. This allegation may be worth following up. At present its status seems very doubtful.

31. The Judge's conduct in relation to Juni Morosi.

It is asserted that the Judge wrote to Gordon Bryant, then A.C.T. Minister, on December 4, 1974, asking him to "provide shelter for a most engaging employee of the Commonwealth". The Judge meant Morosi. She was then a friend of Ingrid's. He arranged housing priority for her. At the same time he appointed her husband, David Ditchburn, to the Film Board of Review, and appointed Morosi to be an authorised Marriage Celebrant.

It does not appear that any of these matters, taken in isolation, is capable of amounting to proved misbehaviour.

32. The Connor view of Murphy's conduct

It will be recalled that Mr Connor, in his report for the Second Senate Inquiry indicated that he took the view that an inquiry by the Judge as to what was likely to happen to Morgan Ryan was itself possibly misbehaviour (in the Pincus sense) even if it amounted to no more than "a significant impropriety". Thus, Connor was saying, it was wrong of the Judge to engage Mr Brieze in any conversation regarding the

Morgan Ryan matter with a view to finding out what the state of play was even if the Judge did not intend to pervert the course of justice by doing so.

This seems pretty farfetched. It is most unlikely that it could amount to proved misbehaviour.

33. The approach to Judge Staunton

It appears that the Judge approached Judge Staunton of the New South Wales District Court in an attempt to get an early trial for Morgan Ryan. This does not appear to be in dispute. It would be regarded by many as a most injudicious piece of conduct on the part of the Judge. A very broad view of misbehaviour might encompass this action. It is unlikely, however, that the Commissioners would accept this as a form of proved misbehaviour.

34. The Wood shares

It has been suggested to us that the Judge received a large parcel of shares from former Senator Wood in the late 1960s, and that there was something improper about that receipt. It is said that this is worthy of investigation. It may be, however, that without further particulars this matter cannot be investigated at this stage.

35. The Williams' bribery allegations

We have been told that a gentleman by the name of Trevor Williams might be prepared to come forward and say that whilst the Judge was the Minister of Customs, he asked for a bribe of $1,000 from him in relation to some difficulties that Williams was having with customs matters. When Williams indicated that he did not propose to give any such sum to the Minister, the Judge just backed off. It is said that Williams is a reputable person and might be prepared to substantiate this allegation.

36. The Dams Case Allegations

It is suggested that during the course of the Dams case the Judge intervened by communicating to the Premier of New South Wales his disquiet at the manner in which the case was being argued by the Solicitor-General for N.S.W. This apparently led to a change of tack.

M Weinberg

15 June 1986

2660A

Summers, Ann – Fairfax Group – New York – In Australia to address conference 11.7.1986.

Thomas, Don

Walsh, Maximilian – journalist re matters raised when Murphy went to High Court.

Waterhouse, Charlie – nephew

Waterhouse, Snr. – re Morosi Break-in.

Watson, Pat – (NSW Police) re Casinos.

Wentworth, Kate – Morosi break-in.

Wells – Andrew – AFP Investigating for DPP etc.

West, James Alexander – NCA witness, tape recording business involvement with Saffron, & Murphy relationship.

Williams, Trevor – Customs Agent – Professional Consulting Services, re bribe allegation.

Wilson, Marshall –Journ. Australian – re 007 and Swiss Bank accounts.

Wood, Sen Ian – re Shares allegation.

Woods, Sir Colin – (ex Cmr AFP) – London, Security Corp.

Wrigglesworth – re Morosi break-in.

Yuen, John

Yuen – Robert.

MEMORANDUM

TO: S Charles
M Weinberg
A Robertson
P Sharp
F Thomson

FROM: D Durack

Discussions with a Barrister - 17.6.86

. assisting on a Counsel to Counsel basis
(not representing views of DPP)

. in prosecution pre 1975 incidents focused on were those to show:

(a) character of accused
(b) contact with Morgan Ryan
(c) nature of contact with Morgan Ryan

. suggested we look at the Judge's statement to the 1st Senate Inquiry - sworn evidence in 1st trial and unsworn statement of 2nd trial re truthfulness of the evidence as a whole.

Period prior to 1975

. prosecution looked at SALA, SAFFRON, HATCHER and two other matters re showing that Morgan Ryan had direct line to Attorney-General.

NOTE - Decision made not to lead material on Saffron as it was considered too "prejudicial" to the accused - there was no connection apparent at first trial between Sala and Saffron - not until second trial that connection became apparent.

. re SALA matter need to speak to A Watson and Mahoney re advice given to the Attorney-General by AG's. (Police and Immigration files helped to identify the SALA/Saffron connection).

MOROSI BREAK-IN

. helped show relationship between Murphy J and M Ryan
. also showed possible offence of perverting the course of justice.

. for X-examination purposes in second trial statements taken from people involved in break-in - possibly Felton and Wrigglesworth.

NOTE – material not used as character not put in issue. DPP were in a position to lead evidence on this issue.

PERJURY

. did Murphy J. mislead jury in first trial on his relationship with Morgan Ryan – requires close study of evidence at first trial, other statements made by Murphy J. and what subsequent enquiries reveal etc.

NOTE: mention of 2 witnesses in trials.

(1) J. Troutman – Commonwealth driver – gave evidence in first trial – possible that Murphy J may have authorised him as a marriage celebrant and he could be a Phillipino

(ii) D Halpin – independent journalist – gave evidence in second trial – originally said that M Ryan was frequent visitor to Murphy's electorate office but in witness box changed his story completely.

PERIOD POST 1975:

. in second trial prosecution was going to put tape between Murphy and Ryan to Murphy in X-examination to show closeness of relationship.

. believed Murphy J would not give evidence as he was aware of what prosecution had:

. Thomas lunch material

. Morosi break-in

. Age tapes material

. barrister saw nothing that indicated a commercial relationship between Murphy J and M Ryan.

. reference to Murphy J assets:

. Red Hill ACT property approx $400,000

. Darling Point unit, NSW approx $400,000

Units in Queanbeyan, ACT $?

. Shopping centre, ACT $?

NOTE: Units and shopping centre acquired in 1979 - all properties mortgaged

. matters to be put to Judge post 1975:

. Thomas lunch

. Lewington

. Cesna/Milner

Re Thomas lunch

. barrister not convinced that there enough to charge Murphy over Thomas affair (but did agree there was a prima facie case)

NOTE: concerned re charge being brought on eve of second trial

. also D Thomas had come to prosecution after the first trial and told story then.

. Attorney-General's Dept file re Thomas - not charged over the Greek Conspiracy case - G Evans recommendation.

. Don Davies agrees lunch occurred but not substance of conversation etc.

Groux/Lewington

. prosecution would have cross-examined re Groux if opportunity had arisen

. Groux's story - walking in Woden Shopping Plaza saw Murphy J who recognised him and indicated that he was the man who criticized Lewington in the Meat Inquiry - Murphy indicated that Groux may be able to help him - according to Groux he got clearance from J Brown to assist Murphy and obtain C Briese's diaries and investigate them - instructed to get dirt on Briese and Callinan QC and report back to Murphy J.

. Groux then approached the prosecution counsel prior to second trial and told his story.

NOTE: Groux obtained a copy of Briese's diaries - not sure how

. diaries were in Murphy J's possession for one week.

. in Meat Inquiry Woodward J found Groux to be a reliable witness.

. A Wells investigated Groux's story

Cessna/Milner

. discussion re dinner attended by Briese, Murphy, Woods and Farquhar.

D Durack

June 1986

MEMORANDUM

TO: Mr Charles
Mr Robertson
Mr Weinberg
Mr Durack

FROM: Mrs Sharp

SUMMARY OF DISCUSSIONS HELD ON 13 JUNE 1986

The Central Railway Project - 1980

It was suggested that a company having distant Saffron connections was involved in the proposed development at Central Railway. The connection appears to be Warwick Colbrin, a solicitor and former clerk of Morgan Ryan who knew and had done work for Saffron through his association with Morgan Ryan. Colbrin formed a company known as Commuter Terminals with an architect and property developer John Andrews. The company planned a high rise development at Central Railway and was apparently chosen in such a way that tenders were avoided. It was suggested that Fred Clutton, the former property manager in the Railways Department, now dead, was involved with Colbrin and that David Hill the present manager of the SRA was aware of this and resisted the development. John Johnston, a State MLA also lobbied for the construction. When David Hill moved to the SRA he sacked Clutton. It was alleged that that Clutton and Colbrin were also involved in some dealings with land owned by the SRA at Luna Park and that Colbrin had fronted for the alleged Saffron Company which tendered for the license to run Luna Park. It was suggested that Murphy made representations on behalf of that company. It was stated that the files relating to both the Central Railway's development and Luna Park were given to the Stewart Inquiry.

Allegations Concerning Trevor Williams

There was an allegation made that whilst Murphy was Minister for Customs, a customs consultant called Trevor Williams approached Murphy over a problem he had with Customs. It was

alleged that Murphy has asked him how much cash he had on him and upon being told by Williams that he had $200 which he was not prepared to give him, it was alleged that Murphy had asked Williams what he was doing speaking to him and had left the room.

Shares given by Senator Ian Wood

It was alleged that Murphy was given a parcel of shares by a Liberal Senator, Ian Wood, in a company that Wood had floated. Shares were also given to members of Murphy's staff by Senator Wood. It was suggested that Murphy had somehow prevented Senator Wood being asked embarrassing questions in the Senate although this allegation was not further expanded. It was also alleged that during the mining boom Murphy got into some financial difficulties.

Appointment of Bill Jegorow

The telephone conversation in 1979 between Morgan Ryan in which Murphy agreed to approach Neville Wran to appoint Bill Jegerow to the Ethnic Affairs Commission, was discussed. It was suggested that Neville Wran was pleased to move Jegerow, who was a difficult person to get on with, from the Premiers Department. It was implied that the appointment would in some way be of advantage to Ryan in his dealings with the Immigration authorities because he had someone of importance who owed him a favour. The connection between the Ethnic Affairs Commission and the Immigration Department is unclear although it seems probable that there is some interaction between the two bodies and with Jegerow it would be at a fairly high level. In the context of the suggestion that Murphy stood to gain some financial or other advantage in his dealings with Ryan the matter acquires some significance.

Paris Theatre Redevelopment

During the same telephone conversation it was alleged that Murphy had repremanded Ryan for not keeping an eye on the application for redevelopment of the Paris Theatre site.

Murphy is said to have mentioned a company called Gandali Holdings, a company which owned Studio 44, the Barrel Theatre and various sex shops, run by David Gandali. Murphy's concern was said to be that Jim Cairns and Juni Morosi also wished to acquire the site for their company, Research for Survival, and turn it into some sort of community awareness centre. It is unclear whether there is any relationship between Gandali and Saffron although given the nature of their interests it seems likely. The article on Gandali in the "National Times" June 6 - 12 1986 by Christine Rau is informative.

The Lewington Allegations - 1981

The alleged discussion involving the proposed bribing of Lewington and Jones was raised. Lewington had been spoken to by one of the persons present at the meeting who was not prepared to reveal the content of those discussions. It was said that Lewington had complained to Sir Colin Woods and that an internal affairs investigation had resulted in the officers concerned having been found guilty and fined a small amount. It will be necessary to obtain a copy of the internal affairs report.

Illegal Casinos - April 1979

There was some discussion about a casino which it was said was run in a block of flats in Thornton Street, Darling Point by a person named Robert Yuen. It was suggested that the casino was located in the block of flats in which Murphy lived. (At page 98 of the 2nd volume of the Stewart Commission mention is made of a gaming house at '[redacted] Darling Point, run by Ronald Lopes Diaz during the period of interception of that person - 21.6.79).

It was alleged that Murphy in a discussion with Ryan had said that Watson, the Police Commissioner at the time, should be stopped from hindering the Yuens, that is Robert and John Yuen. It was suggested that Watson was on the take from other

illegal casino operators and that Murphy was outraged not by the fact that Watson was said to be taking money from others but that he was raiding the Yuen's casinos. Ryan it was said claimed that Murphy would knife Morgan to stop him from hindering the Yuens.

It was stated that there was an article in the "National Times" of about August 1985 which may be of some background use regarding illegal casinos in New South Wales. It was also suggested that the Committee speak to a person named Garry Boyd.

In addition, the following matters were touched upon:-

It was suggested that the commission speak to Jim Anderson's wife Nethea who is still in Australia, or his son, regarding the alleged relationship between Saffron and Murphy.

The fact that Saffron, [redacted] and Morgan Ryan all share the same doctor, Dr. Danny Hamari was mentioned.

The present whereabouts of the tapes - if they were not all destroyed. It was suggested that the Commission speak to Andrew Keenan, a journalist with the "Sydney Morning Herald" who may have some idea what happened to them.

It was suggested that in addition to his known assets, Murphy also bought land on Frazer Island, at about the same time as a visiting English actress. It was not suggested that there was any connection between the two other than the setting of an approximate date for the acquisition. It was suggested that Richard Ackland might have some further information.

It was suggested that Neill Mercer, a journalist with

"60 Minutes" may be in possession of some taped interviews with Jim Anderson which could be informative.

The Sankey matter was again mentioned and the fact that there was a complaint made by the late John Traill Q.C. about an attempt to remove Leo S.M. and replace him with Farquhar, other than this matter the discussion went no further than that of the morning of 11 June 1986.

The conversation involving "every little breeze" and "the Lush and the Board of three" was discussed but no further light was thrown on the possible meaning of the discussion, as was the case with the discussion involving pinball machines.

There was a suggestion that there was some relationship between Murphy and Farquhar which should be more closely examined and it was suggested that Wally Lewer S.M. may know something of it as also might Clarrie Briese.

There was a discussion about the Thomas lunch and the fact that it was held in a restaurant which was also a casino owned by a person named Choy and run by Waterhouse. The restaurant was also used by Ryan as a meeting place to discuss the Korean immigration racket.

MEMORANDUM

TO: Mr Charles
Mr Robertson
Mr Durack
Ms Sharp

FROM: Mr Weinberg

SUMMARY OF DISCUSSIONS HELD ON 11 JUNE 1986

The morning discussions

Abe Saffron

1. The first matter raised for consideration was whether material would be available to support a finding that the Judge had a long standing association with Saffron. It was noted that Saffron had recently denied ever having met Murphy. The Judge is not known to have made any similar denial.

2 If an association of this nature can be established, it would be of considerable significance to the course of our inquiry. Certain actions taken by the Judge while Attorney-General would take on a new, and potentially sinister connotation. Two examples spring prominently to mind. The SALA affair would be seen in a different light given that it may be possible to establish a link between SALA and Saffron via SALA's residence at Lodge 44. Furthermore the instruction apparently given by Murphy that Saffron no longer be subjected to 100% Customs searches upon departing from and re-entering Australia would have to be re-assessed. At present, Murphy's actions as Attorney-General can be regarded as little more than "favours" done for a solicitor who happened to be a friend of the Attorney's, and who sought assistance on behalf of clients whose civil liberties could be said to have been infringed. If it could be shown that the Judge had an association not just with the solicitor, but with the client as well (using client in a very broad sense in the case of SALA) Murphy's actions take on a completely different aspect.

3. So far as the SALA matter is concerned, it was noted that Inspector Dixon should be interviewed, and any documents prepared by him closely perused. It was suggested that rumours had abounded at or about the time of the SALA case that Morgan Ryan received a payment of approximately $30,000 in order to arrange for SALA's departure from Australia. It was suggested that it was imperative that SALA be removed from this country as quickly as possible because there was concern that he would be broken down by police interrogation if a sufficient period of time elapsed. It was noted that the decision to order SALA's release had been made under a misconception of the relevant principles of the Migration Act. It was noted that any person who entered Australia with a false passport could be lawfully detained, and the mere fact that there had been a deportation order issued would not prevent a charge under the Migration Act from being laid. It was further noted that the passport which SALA had was very obviously forged.

4. It was pointed out that Inspector Dixon had wanted to interview Murphy right up to the day when Murphy was appointed to the High Court. Apparently, a Mr Hedland had stopped any such interview from being carried out. There was said to be something odd about the speed with which the matter reached the District Court. Our attention was directed to the Menzies' Report, and to two persons who might have information about this matter. The first was R J Harkins (apparently a person responsible for the prosecution proceedings) and the second was the journalist Ann Summers. It was noted that Mr Grassby had been the Immigration Minister at the time, and it was said that he was a very pliant tool of the Attorney-General's. It was noted that there was an Immigration file pertaining to the SALA matter found before the recent second trial of Murphy in a safe in the Attorney-General's Department. That file should be examined. Another matter that may be worth investigating is the role of the Sydney Branch of the Immigration Department which was responsible for handling this matter. It should be remembered that two employees of that Department, a

Mr Garry Boyd and a Mr Bob England were later shown to have had criminal connections with Morgan Ryan. Finally, it was noted that it is common to hold persons who are suspected of being illegal immigrants under section 38 of the Migration Act - indeed it was said that this happens "all the time" - why then were extraordinary steps taken in the case of SALA?

5. If one examines the decision that was taken to lift the 100% body search requirement pertaining to Saffron, it was said that useful information would come from a gentleman named Delaney (head of the southern division of the Narcotics Bureau at the relevant time) and also from a lawyer named Phillips. There was some speculation as to who Phillips might be. It was suggested that the 100% search requirement had also been lifted in relation to a Lennie McPherson and that the Attorney-General might have intervened in relation to this matter as well.

6. In order to substantiate the allegations that there had been a long-standing association between Murphy and Saffron, our attention was directed to the evidence that had been given by Mr James McCartney Anderson before the New South Wales Parliamentary Committee into Prostitution. That evidence had been given on November 15, 1983. The transcript of that evidence should be obtained. This matter was raised by Mr Ken Aldred in Parliament, and is the subject of a formal letter written to Sir George Lush by Mr Aldred. It appears that the NCA wish to protect Anderson who is regarded as a main witness in proceedings which are contemplated against Saffron. It is noted that Anderson also gave evidence at a recent coronial inquest into a series of fires which Saffron is suspected of having been responsible for. Anderson is said to be no longer in Australia. It was rumoured that he had been paid a sum of $300,000 (by Saffron) to make himself scarce. It was also noted that Anderson had made similar allegations about an association between Murphy and Saffron during the course of certain bankruptcy proceedings. The transcript of those proceedings should be obtained.

7. It was suggested that the relationship between Murphy and Saffron went back to the 1950s. It was said that Murphy was part of a social set together with Morgan Ryan which frequented nightclubs such as Chequers. It was suggested that confirmation of the association could be obtained from one Rosemary Opitz (telephone no. [redacted]). Ms Opitz had been a stripper at Kings Cross and is currently aged about 49. She is said to be a friend of Berita Hagenfelds who was Saffron's mistress for 25 years. Ms Hagenfelds lived in a house at Centennial Park, and entertained business associates and clients of Saffron. It was said that Murphy had attended dinner parties at that house in the company of Saffron. This was said to have occurred during the early 1960s. At the time, Murphy was going out with a lady by the name of Anna Paul (Anna McMahon). It was suggested that this lady had written a strange autobiography. She had been introduced to Lionel Murphy by Morgan Ryan who had put her on his staff. There was some embarrassment associated with this appointment as she was not capable of typing or carrying out secretarial functions. We were told that Berita Hagenfelds has an alcohol problem, and suffers severe memory loss. She is currently suing Saffron. It was suggested that some confirmation of the material in Anna Paul's autobiography could be obtained from Les Johnson currently High Commissioner to New Zealand. It was suggested that Murphy constantly sought and received sexual favours, presumably from the set surrounding Saffron.

The Ysmael Connection

8. It was noted that Morgan Ryan had been involved in a major immigration racket involving Korean immigrants. It was pointed out that there were suggestions that Murphy had himself been involved in assisting Phillipino immigrants to acquire residency status in Australia. It was noted that he had engaged two housemaids, both of whom were Phillipino. It was suggested that the association between Murphy and Felipe Ysmael

should be investigated. Ysmael was said to be a crony of Marcos at the relevant time. There was later a falling out between the two men. Ysmael was known as a heavy gambler and he was forced to leave Australia in the late 1960s. He was a man who had amassed huge wealth. It was said that he had connections with the same Lennie McPherson discussed earlier in this memorandum. It is thought that the Immigration Department will have files relating to Ysmael. On any view this man was described as not being a savoury character. We were told that Ysmael had in 1971 entertained Murphy in the Philippines. The occasion was Murphy's honeymoon. There was publicity given to a statement that Murphy had made when he arrived in Manilla together with his new wife. He was said to have had indicated that he would "go with the Babe" when offered alternative red carpet treatment.

9. The connection with Ysmael may lead into a range of matters involving firstly Phillipino servants - here the role of Grassby and Morosi would be significant. It then leads naturally into the activities with Morgan Ryan who was involved in a Korean immigration racket from 1973 onwards. We were told that Ben Hills, a journalist, would supply useful information regarding these matters. It was said the Morosi and Jim Cairns, in 1974, were heavily involved in the Phillipino immigration racket. The question is how much did Murphy know about what was going on. It appears that the relevant Minister at the time, Mr McClelland, took steps to stop Morosi and Cairns from carrying out their plans. We were told that it would be worth speaking to one [redacted], a "private inquiry agent" who is said to be a "heavy", and who has worked for a number of criminals in Sydney, and who would be able to supply information relating to Phillipino prostitutes. [redacted] know Ysmael and also knows Murphy (to some extent). It appears that Andrew Wells of the AFP has questioned [redacted] regarding these matters in preparation for the second Murphy trial.

The Morosi Break-in

10. [redacted] would be of great assistance regarding this matter as well. It appears that on January 17, 1975, a break-in occurred at the Sydney house of Morosi in Gladesville. This was said to be about a month prior to Murphy's appointment to the High Court. [redacted] had been hired by a Committee to carry out the break-in. Alan Felton was a member of that Committee, as was the late Ivor Greenwood. It was said Mr Wentworth had also been involved. We were told that we should speak to Kate Wentworth regarding this matter. One of the purposes of the break-in was to discredit Andrew Peacock. It was thought that Peacock had a relationship with Juni Morosi.

11. [redacted] hired a gentleman named Wrigglesworth, who was a locksmith. The first attempt at a break-in failed. It was decided to go back. [redacted] informed Bill Waterhouse (the bookmaker) of the plan to attempt a second break-in. He also told Waterhouse that Greenwood had hired him to carry out this task. Waterhouse was a close associate of both Murphy and Neville Wran. It seems likely that Waterhouse betrayed [redacted] and that there was a tip-off to the Commonwealth Police who were present at the Morosi house when the second break-in attempt occurred. [redacted] can give evidence of a telephone conversation which he was present at. It was said that Lionel Murphy was the other person on the line. There is said to be a confidential report prepared by a Commonwealth Police Officer, one Don Davies, who reported directly to the Attorney-General regarding the Morosi break-in. The AFP should have a copy of this report.

12. It subsequently emerged that Wrigglesworth, who had been apprehended by the Commonwealth Police, was released. He was never charged with any offence relating to the break-in. It appears that Davies had suggested in his report to the Attorney

that it was a matter for the Attorney personally to determine. This report by Davies must be obtained. The matter assumes great significance when one remembers that Davies is thought to have been a corrupt police officer, whom the new Commissioner of the Australian Federal Police in 1980 declined to have as an Assistant Commissioner. Davies of course was also present at the Thomas lunch.

13. The issue is whether it can be established that Waterhouse rang Murphy regarding this matter. The matter still becomes still more sinister when one appreciates that the prosecution of Felton was conducted by Foord QC before, of all people, Murray Farquhar. Foord took a very strong line about the seriousness of the matter on the first day of the hearing but apparently adopted a totally different tone several days later. Felton was given a bond.

14. We need to establish why Commonwealth Police were assigned the task of protecting Morosi's house. We need to know who made the decision that Foord QC would be briefed to prosecute Felton. We need to examine the relationship between Murphy and Farquhar at this time. We need to know why Wrigglesworth was released. We need to know why the Attorney-General took a personal role in this case, and most of all we need to know why it was decided not to use our Australian equivalent to the Watergate scandal for political purposes. Why did not the involvement of Greenwood and Wentworth become a national issue? It was suggested to us that the motive of the Attorney in containing the whole matter was a fear that there might be a counter attack launched and that the whole relationship between Murphy and Morosi would come under public scrutiny.

The Sankey Prosecution

15. James McCartney Anderson will say that he overheard Saffron talking to Murphy. It is not clear whether this conversation occurred in person or over the telephone. Murphy wished to see whether the prosecution launched against both himself and others by Sankey could be settled. Anderson was directed to meet Sankey at a cafe in Double Bay. Sankey subsequently spoke to Saffron. Sankey then spoke to Rofe. The prosecution was eventually dropped, but it appears that Rofe was not initially receptive to the suggestion that it be withdrawn. This may explain a good deal of the bitterness exhibited by Murphy towards to Rofe.

16. The proposition that Murphy used Saffron to "lean on" Sankey (who was an acquaintance of Saffron's) must be investigated. It will be necessary to speak to Rofe regarding this matter. The conversations between Murphy and Morgan Ryan regarding the institution of proceedings against Sankey, Ellicott, and Rofe for malicious prosecution are odd because of the fact that Morgan Ryan was acting for Jim Cairns, and not for Murphy. Why was Murphy discussing the Sankey case with Morgan Ryan? Did Cairns authorise this? It was said that there was a curious absence of any reference to Cairns on the tape.

The afternoon discussions

17. It was suggested to us that a number of allegations against Murphy had been made by one Christo Moll who is a criminal who has fled the country and is wanted for questioning regarding matters of tax evasion, currency smuggling and diamond smuggling. It appears that the AFP have a substantial file on this man. Among the material produced by Moll is a series of photocopies of certain documents which appear on their face to emanate from a Swiss Bank. These documents suggest that an East German gentleman has opened certain accounts with this Swiss Bank (which may involve the use of safe deposit boxes). One of the accounts is in the name of Lionel Keith Murphy. The accounts were opened in March 1975. There was also said to be an issue of shares in the names of Juni Morosi, Jim Cairns, and Gough Whitlam, as well as Lionel Keith Murphy. The value of the shares alloted to Murphy would seem to be something in of the order of $80,000. The photocopy documents have not been authenticated save to the extent that it is known that the Bank Officers whose signatures apparently appear on those documents were actually working for the Bank at the relevant time.

18. It was noted that the documents are not necessarily incriminating since it was perfectly possible that someone else would have opened an account in the name of Lionel Keith Murphy without his knowledge. This could have been done by some person anticipating that it would expedite the payment of commissions or fees to the person named in the event that any monies were loaned to the Australian Government for "temporary purposes". Alternatively, it could have been part of some plot by political opponents of the gentlemen named to discredit them by opening an account in their names.

19. We do not know whether these documents are forgeries, or whether they are genuine. Was there an allocation of shares actually made? Is there any money on deposit in these

accounts? What precisely is known of Murphy's financial position? It was said that he has assets of the order of $2,000,000. Presumably these are known assets within Australia. It appears that it will be impossible to get any information regarding the alleged Swiss Bank deposits except on a Government to Government basis. It would be necessary to determine whether any documents bearing the genuine signature of Lionel Murphy exist in Switzerland relating to these accounts. While there is nothing illegal or improper per se about having a Swiss Bank account, the question would arise (if the documents are genuine) and if Murphy was a party to the establishment of any such accounts, as to what monies he intended secretly to place in those accounts. These matters assume a sinister connotation if one bears in mind the names of the other persons said to have deposits in the Swiss Bank arranged at the same time.

20. There was some discussion about the possibility of some impropriety associated with the Judge's wife Ingrid and Ethiopian Airlines. It was said that the Judge had taken a number of flights for which he had paid only most nominal fee ($1 it was suggested). There are also a number of original cheque butts apparently pertaining to the financial affairs of Ingrid Murphy which have been handed over to the Federal Police. These should be investigated.

21. We were also told of an allegation that had been made by two former employees of a particular newspaper which was thought to be totally devoid of any credibility. These reporters had suggested that they had material to support a conclusion that Murphy's birth certificate was a forgery, that he was in fact a Russian and that he had been engaged in certain espionage activities on behalf of the Soviet Government. It was said that this information came from a Senior KGB officer. It was said that ASIO was aware of these allegations. A problem arises as to whether bizarre and inherently unbelievable allegations of this type should be

investigated in the absence of some specific complaint supported by statutory declaration made by the reporters in question.

22. There was discussion in the afternoon also about the role of James McCartney Anderson, and what he had to say about the relationship between Murphy and Saffron. We were told that Anderson had made his allegations both before the New South Wales Parliamentary Inquiry into Prostitution and in the course of certain bankruptcy hearings. We were told also that there was a tape recording held by the National Crime Authority of an interview conducted with one James Alexander West. West had been Saffron's partner and business associate for many years. He would have far more valuable information to give about any relationship between Murphy and Saffron than Anderson. It appears that West had sold out his business interest to Saffron for the sum of $1.9 million. West had been interviewed regarding certain companies which had gone through a dumping process in Western Australia. It was thought that he could give important evidence regarding bottom of the harbour tax evasion activities of a promoter by the name of Peter Briggs. It appears that on 15 November 1984 West made two tapes which have the effect of corrobating the allegations made by Anderson. West asserts that he had met Murphy at Lodge 44. He further asserts that Murphy was there in the company of Saffron. And that there were a number of top mafia men present. It appears that Lodge 44 was in reality a kind of brothel, as well as being Saffron's headquarters. It was suggested that West had raised the allegation that Murphy was himself a partner in a brothel (the Venus room).

23. We were also told during the afternoon that useful information regarding the relationship between Murphy and Saffron could be obtained from a woman named Rosemary Opitz, and also a woman by the name of Anna Paul. It was suggested in the afternoon that Ms Opitz was the author of the autobiography (which had been alluded to earlier during the day but had been

ascribed to Ms Paul in the morning). The book apparently asserts that Murphy had dined in the company of Saffron.

24. There was an allegation made that a person by the name of Stephen Bazely could give useful information. It appears that Bazely has provided a number of tapes which have been handed to the New South Wales Police Commissioner in which he alleges that in June 1983 he visited Murphy's house in Darling Point, and was told that Murphy wanted him to do a "hit job" on someone. It was suggested that Stephen Bazely was confused with James Frederick Bazely (recently convicted of conspiracy to murder Donald Mackay). We were told that there had been investigative work done by a journalist Graham Gambine regarding this matter.

25. We were also told that we should speak to John Avery the new Commissioner for the New South Wales Police and seek the files relating to Saffron which are currently held by three police officers who are conducting separate investigations into Saffron's affairs. The three officers named are Warren Molloy, Bob Clark and Rod Lynch.

26. We were told that the person who would have most useful information to give us was Andy Wells of the AFP. Wells would be in a position to explain the Central Railway allusion in the Age tapes.

27. We were also told that the Age is holding a transcript of a tape made by Anderson in which he suggests that Murphy is a silent party in the Venus room.

28. It was suggested to us that the circumstances under which Murphy took up his appointment to the High Court bench would repay careful consideration. We were told to look at the events of the Terrigal conference, and particularly the role of Mr Ditchburn and the Ethiopian Airlines connection.

29. We were told that the starting point for our inquiries should be Peter Lamb. We were also told that the Stewart inquiry had a defective copy of the tape recording made of the conversation between Don Thomas and Morgan Ryan in February 1980. It appears that the Federal Police have a reel to reel copy of that conversation which brings it up more clearly than the cassette that was used for the purposes of the Stewart inquiry.

Mark Weinberg

13 June 1986

MEMORANDUM

This memorandum deals with the question of the legislative power of the Commonwealth to enact the Parliamentary Commission of Inquiry Act 1986 ("the Act").

The Act establishes by section 4 a Commission consisting of three members appointed by resolution of the Senate and by resolution of the House of Representatives. A person is not to be appointed unless he is or has been a Judge. The functions of the Commission are to inquire, and advise the Parliament, whether any conduct of the Honourable Lionel Keith Murphy ("the Judge") has been such as to amount, in its opinion, to proved misbehaviour within the meaning of section 72 of the Constitution. By section 8, the Commission is to report to the President of the Senate and to the Speaker of the House of Representatives its findings of fact and its conclusions whether any conduct of the Judge has been such as to amount, in its opinion, to proved misbehaviour within the meaning of section 72 of the Constitution.

There is power granted to the Commission to require the Judge to give evidence where the Commission is of the

opinion that there is before it evidence of misbehaviour sufficient to require an answer and it has given the Judge particulars in writing of that evidence. There is also power granted to the Commission to summon a person to appear before the Commission to give evidence and to produce documents or things. By section 12 the Commission may issue a search warrant. Penalties are provided for failing to appear as a witness or for refusing or failing to produce a document or other thing.

The constitutional provision central to the Act is section 72 which, so far as relevant, is in the following terms.

> 72. The justices of the High Court and of the other courts created by the Parliament -
>
> (i) Shall be appointed by the Governor-General in Council:
>
> (ii) Shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of approved misbehaviour or incapacity:
>
> (iii) Shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

It will be seen that section 72 contains no grant of legislative power. Further, none of the grants of legislative power contained in Chapter III would appear to support the Act. That result would conform with the nature of the inquiry which is non-judicial. Even if the members of

the Commission were serving judges it appears that they would exercise powers as persona designata: see Hilton v Wells (1985) 59 ALJR 396. Put another way, there is no "matter" in respect of which Parliament might make laws.

One turns then to Chapter 1 of the Constitution.

Section 49 of the Constitution provides:

> The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

There has been no relevant declaration by the Parliament of its powers and nothing need be said about that aspect of the section.

So far as concerns the powers, privileges and immunities of the Commons House of Parliament of the United Kingdom at the establishment of the Commonwealth, the address referred to in section 72 of the Constitution is not such a power, privilege or immunity. Section 49 relates only to those rights and privileges of the Houses, their members and committees necessary to maintain for each House its independence of action and the dignity of its position: see The Queen v Richards; ex parte Fitzpatrick and Browne (1955) 92 CLR 157; the matters listed in Quick and Garran at pages

501 to 502 and Halsbury 4th Edition Volume 34 paragraph 1479. It would follow that section 49 is not available to support the Act.

Since section 72 does not itself constitute a grant of legislative power it has no implied incidental power referable to it: the principle expressed in McCulloch v Maryland (1819) 4 Wheat 316 would not apply. The source of power must then be found in section 51 and the only relevant provision would appear to be section 51(xxxix).

That section reads

> The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to:-
>
> ...
>
> (xxxix) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or of the Federal Judicature, or in any department or officer of the Commonwealth.

This express incidental power would seem, on its face, in its reference to "any power vested by this Constitution in the Parliament or in either House thereof" to provide sufficient support for the Act: see Attorney-General for the Commonwealth v Colonial Sugar Refining Co Limited [1914] AC 237 and Colonial Sugar Refining Co Limited v Attorney General for the Commonwealth (1912) 15 CLR 182 and Lockwood

v The Commonwealth (1954) 90 CLR 177 at 182 to 184. The point of disagreement between the Privy Council and certain members of the High Court in the CSR case was not whether a power of inquiry was incidental to the execution of a power but whether the incidental power extended to support an inquiry with compulsive powers where the power to amend the Constitution was the only relevant head of power.

Two questions arise: first, whether the Act can be seen as a law with respect to matters incidental to the execution of a power to make an address to the Governor-General in Council under section 72(ii), including whether the making of an address involves a power. Secondly, there is the question of whether there are any relevant constitutional prohibitions to which the power in section 51(xxxix) is subject.

As to the first of these matters it might be thought that the Houses of the Parliament might always have had the capacity to make an address. An alternative way of viewing the same proposition would be to say that the power to make an address is not a power vested by the Constitution. Assuming this be so, nevertheless the capacity to make an address can be said to become a power in the absence of the exercise of which the Governor-General in Council himself has no power to remove a Justice of the High Court. It therefore can be seen that the Parliament, in exercising in this particular respect its capacity to make an address, is

itself executing a power. Further, the fact that the most frequent exercise of power by the Houses is legislative should not obscure the existence of the non-legislative powers belonging to them.

An alternative basis on which the matter could be put is that the Act is to be supported as incidental to the execution of the power vested by the Constitution in the Government of the Commonwealth. It is the executive which acts to remove a Justice (see sections 61 and 63) and it can be seen that a law to enable the execution of the prerequisite to the exercise of that executive power might be regarded as incidental to the execution of that power. That argument would be no assistance if the High Court did not see the Act as an exercise of the power to legislate with respect to matters incidental to the execution of the power vested in the Parliament by s72(ii). It might nevertheless provide an additional basis of validity.

The accepted test of whether or not a law is 'incidental' within section 51(xxxix) is the same as that applied in questions of implied incidental power: see Burton v Honan (1952) 86 CLR 169, 178. The incidental power extends to matters which are necessary for the reasonable fulfilment of the main power over the subject matter: in other words, all laws which are directed to the end of the main powers and which are reasonably incidental to their complete fulfilment

will be valid. Any argument that the Act is not valid gains its strength not from any lack of connection between the means prescribed and the power to make an address but from notions of constitutional prohibitions.

It might, and no doubt will, be argued that the Act constitutes either an impermissible delegation by the Parliament of its power to make an address or an impermissible trenching by the Parliament upon the judicial power.

As to the former, it is no doubt true to say (transcript at page 14) that the Commission is not a committee of the House or of the Houses. Nevertheless it is improbable that it is beyond the power of the Parliament to legislate to provide for the appointment of and to appoint persons to advise it. The contrary view would mean not only that the power of making an address could only be exercised by the Parliament itself exercising the power but also that, taken to its extreme, no person other than a member of Parliament could assist in that process or advise. It is plain that Parliament has not delegated its power to make an address; it has merely sought assistance in deciding whether or not to exercise that power. Quick and Garran at page 731 quote Todd's Parliamentary Government in England ii at pages 860 to 875 that

> "No address for the removal of a Judge ought to be adopted by either House of Parliament, except after the fullest and fairest enquiry into the matter of complaint, by the whole House, or a Committee of the whole House, at the Bar; notwithstanding that the same may have already undergone a thorough investigation before other tribunals".

Nevertheless, as the concluding clause expresses, the enquiry by the House at the Bar was not considered by Todd to be the exhaustive method of enquiry: Quick and Garran add after the quotation the words "such as a Royal Commission or a Select Committee".

It may be a question for a later day as to how the Parliament itself must proceed, but that does not affect the validity of the Act constituting the Parliamentary Commission.

Turning to the question of judicial power the problem is whether "proved misbehaviour" within the meaning of section 72 requires the misbehaviour to be established by the exercise of judicial power. This would not necessarily require that the process provided for by section 72 might only proceed on the basis of a criminal conviction but that acts which amount to misbehaviour or incapacity should be found by a court in proceedings to which the Judge is a party.

Be that view right or wrong, the task of inquiring and advising whether, in the opinion of the Commission, conduct amounts to misbehaviour would not seem to transgress any constitutional prohibition insofar as it is by no means the final act in the process. On the basis of the same reasoning which allows, as consistent with the separation of the judicial power and the executive power, that a Royal Commission may be validly appointed to inquire into the question whether any individual has committed an offence, so may the Parliament, rather than the Crown, validly appoint a Commission of Inquiry. There would appear to be no distinction between the separation of the judicial and the executive and the judicial and legislative powers. In the light of the decision of the High Court in Victoria v Australian Building Construction Employees' and Builders Labourers' Federation (1982) 152 CLR 25 this question ceases to have any independence from the question of the power of the Parliament itself earlier considered.

On a practical level, it can hardly be denied that it is for the High Court to interpret the meaning of the words "proved misbehaviour" in the Constitution and that whether or not it is for a court to find the facts which might constitute such behaviour. It is difficult to imagine that the High Court would say that the meaning of the word misbehaviour is not justiciable. As I have said it is not a question of the powers and immunities of the House or the Houses. The High

Court may of course decide that it is primarily a matter for the Houses to decide whether certain conduct constitutes misbehaviour, the High Court itself confining its role to pronouncements upon the procedures required by the Constitution and to declaring what conduct could not amount to misbehaviour within the meaning of section 72.

If it be right that there is no inconsistency between the Commission and the judicial power (and leaving aside whether the address might be made in the absence of facts curially established) it is likely that when, as seems probable, an application is made to the High Court in the course of the Parliamentary Commission of Inquiry for a determination of whether certain allegations could amount, in the opinion of the Commission, to misbehaviour, some indication might be given by the High Court of such a view i.e. whether as Quick and Garran suggest the facts considered proved by the Commission must be proved again at the Bar of the Houses or whether court proceedings be necessary.

Finally, I mention the argument put (transcript page 14) that the Commission

> "is not empowered by Parliament or by the Constitution to invite or receive any allegation which does not amount to an allegation of misbehaviour within section 72 of the Constitution."

So far as concerns that part of the argument which is founded upon the Act, there would appear to be no basis for it, either in the Act or in common sense. Section 5 refers to the opinion of the Commission. The same section of section 13 allows or provides for access by the Commission to certain records which could not contain exclusively allegations of misbehaviour. Sections 6 and 8 again refer to the opinion of the Commission. In addition a procedure could hardly be contemplated whereby an inquiry is debarred from enquiring into all matters except those upon which it bases its conclusion. In Lloyd v Costigan (1983) 53 ALR 402 the Full Court of the Federal Court rejected a similar contention. That Court said :

> The existence of probative material is relevant when the respondent is making findings and recommendations to the Government. But the exercise of the inquisitorial powers vested in the respondent does not require the presence of such material. Rather its existence can generally be determined only after the inquisitorial power has been exercised. A Royal Commissioner must, of course, always act in good faith within the terms of his commission.

As to the constitutional argument, again it would seem most unlikely that the Parliament would be debarred from inquiring into all matters except those in which it proposed to make an address. It would follow as a matter of logic that, to be constitutionally valid, the decision must have been made that misbehaviour existed before any inquiry could take place. That would only be practicable if the argument

earlier dealt with be right that proof must take place in a court.

A. ROBERTSON

Wentworth Chambers

10 June, 1986

PARLIAMENTARY COMMISSION
OF INQUIRY

MEMORANDUM

AUSTRALIAN GOVERNMENT
SOLICITOR
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MELBOURNE VIC 3000

Attention: Mr D. Durack