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FILE No. C 29/

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Parliamentary Commission of Inquiry
G.P.O. Box 5218,
Sydney, N.S.W. 2001.

TITLE ALLEGATION No. 16

Related Papers

Folio No.	Referred to	Date	Cleared	Resubmit	Folio No.	Referred to	Date	Cleared	Resubmit

FILE No. C 29

NOTE OF MEETING WITH MR J McCLELLAND 4.30 pm, 31.7.86

S Charles, M Weinberg and D Durack present at meeting.

J McClelland questioned re his evidence given at Murphy trials etc - put to him that people had told us that his evidence had not been truthful re the approach to Judge Staunton and that he had himself told people this.

J McClelland denied this was the case and said that although he believes he could have been more forthcoming in his evidence it had not been untruthful and anything he had said to other people related only to the extend of his evidence.

D DURACK

31.7.86

2942A

ALLEGATION NO 16

29/7/86

Particulars of Allegation

The Honourable Lionel Keith Murphy, between the nineteenth day of June 1985, and the twenty-fourth day of June, 1985, at Sydney, and whilst a Justice of the High Court of Australia, being a witness upon his trial before Cantor J. and a jury in the Supreme Court of New South Wales, on an indictment charging him with two counts of breaching Section 43 of the Crimes Act 1914 (Cth), knowingly falsely swore that the only effort that he had made on behalf of Morgan Ryan so far as the criminal proceedings against Ryan were concerned was to approach Chief Judge Staunton in April 1982 in order to see whether something could be done to arrange an earlier trial for Ryan. The Judge also swore that he had only spoken to Mr Justice McClelland regarding this matter after he, the Judge, had spoken to Chief Judge Staunton.

The true position was, as the Judge then knew, that the Judge had spoken to Mr Justice McClelland in order to persuade him to approach Chief Judge Staunton on behalf of Ryan, and that he had done so before either Mr Justice McClelland or the Judge had approached Chief Judge Staunton. Accordingly, the testimony given by the Judge was false, and knowingly false in these respects.

The specific questions and answers which give rise to this allegation are set out at pages 508 to 509, 526, 531, and 532 of the transcript of the first trial. In particular, at page 508 the following passage appears;

q. Did you speak at some stage to Mr Justice McClelland as he then was, now Mr McClelland?

a. Yes.

q. When was it that you spoke to him in relation to your visit to Chief Judge Staunton's chambers?

a. It would be shortly after that - it would be some day or so after that, it may have been a little longer.

q. How did you come to speak to him?

a. We were talking together. We often spoke to one another and I think I raised the topic of Ryan and said something, I think I described him as "the poor little bugger", it's driving him mad. He ought to get it over and done with." And McClelland said, "It's Ryan's" - he said, "he had spoken to me about it and I have spoken to Staunton.", this is what McClelland was saying. And I said, "yes, Staunton told me you had already spoken to him." And McClelland said, "I have told him what to do, to get in touch with the Solicitor for Public Prosecutions and make an application there."

At page 526 the Judge responded to a question from the Prosecutor in these terms:

q. When did he (Mr Justice McClelland) tell you that?

a. He told me when I spoke to him.

q. When was that in relation to your discussion, your face to face discussion as you say, with Chief Judge Staunton?

a. Shortly after it.

q. How long after it?

a. It would be a day or two.

q. A day or two.

a. At the most.

q. And how did it come about that you were in touch with Mr Justice McClelland, as he then was, a day or two after your discussion with Chief Judge Staunton?

a. Because I think I rang him up.

At page 532 the following passage appears:

q. Well, did you ring Mr Justice McClelland or did he ring you?

a. I think I rang him.

q. Did Morgan Ryan ask you to approach Chief Judge Staunton?

a. No.

q. You did it entirely off your own bat?

a. Yes.

q. So that you could help Morgan Ryan?

a. Yes.

q. The man to whom you referred I think as "the poor little bugger", something to that effect?

a. Yes.

q. And was that the only effort that you say you made in relation to Morgan Ryan so far as the criminal proceedings against him were concerned?

a. Yes.

q. The only effort you made?

a. Yes.

It will be contended that this conduct by the Judge amounted to misbehaviour within the meaning of Section 72 of the Constitution in the following respect - knowingly giving false testimony.

As such it constituted conduct contrary to accepted standards of judicial behaviour.

MEMORANDUM

On 28 July 1986 I spoke to N. Cowdery of Counsel who appeared for the DPP in the committal Proceedings and the two trials.

A number of points of interest emerged.

First, in relation to the McClelland perjury question, Cowdery told me that he and Callinan QC had spoken to McClelland shortly before the second trial in relation to rumours which had come to their attention via Richard Ackland of Justinian. These rumours were that Kristen Williamson had been told by McClelland that he had given untrue evidence at the first trial of Mr Justice Murphy and that McClelland had told Wendy Bacon of a number of conversations he had had with Murphy on the subject of Ryan's trial.

When this was put to McClelland by Callinan and Cowdery (but without names) the impression he gave, according to Cowdery, was that he would retract his evidence if he could. He certainly did not deny the rumours or appear surprised by them. Nevertheless, at the second trial, he repeated his evidence that he, McClelland, had approached Staunton J before Murphy J had done so and independently of Murphy J.

A copy of the note Cowdery made of the meeting with Ackland is attached. Also attached is a copy of Cowdery's note to me which mentions the meeting with McClelland.

Secondly, in relation to the call by Murphy J on Staunton J Cowdery told me that Staunton's firm view, which he formed after hearing Murphy J's evidence at the first trial, was that the approach was part of an attempt by Murphy and Foord J to get Flannery J, the judge allotted to the trial of Ryan, to act improperly.

Clearly it would be necessary here to take care to avoid the consideration by the Commission of the issue dealt with at the first trial in respect of the Flannery charge: see S5(4) of the Act.

Thirdly, in relation to the Briese diaries, Cowdery says the only opportunity for copying the diaries was a couple of days into the committal when the diaries were produced. There was no opportunity in the first trial since the diaries were then inspected at Court.

At the committal, says Cowdery, the magistrate made it clear at the end of the relevant day's sitting that the diaries were not to be taken out of Court and were not to be copied, (although Cowdery says the latter is less clear than the former)

The next moring the diaries were on the bar table with Shand Q.C. saying that he did not know how they came to be there.

Fourthly, in relation to Murphy J's evidence of his association with Ryan, Cowdery said it was his impression that Murphy J had tailored his evidence to conform to that which Ryan gave at the committal. Nevertheless the essence of the matter was the difference between Murphy J's evidence and unsworn statement of minimum contact, so far as he could recall, as against the Age tapes which showed not only constant contact but also, by the tone of the conversations, a close association between Murphy J and Ryan. In other words it is a matter of impression which realistically could only be substantiated by proving the contents of the relevant portions of the Age tapes. As to the periods not covered by the Age tapes, assuming Ryan's evidence will be unhelpful, the suspicions could be substantiated only by proving the contacts between Murphy J and Ryan by a means apart from Ryan's evidence.

28 July 1986 A. ROBERTSON

0150M

SELBORNE CHAMBERS,
4th Floor,
174 Phillip Street,
Sydney. 2000

Telephone: 231 4988
D.X.: 531

28th July 1986

Alan

My memory continues to deceive me — it was of Ackland's conversation that I made a note (enclosed), not of McClelland's.

In summary:

1. Ackland telephoned me with the information noted.
2. Callinan QC & I saw McClelland about a week before the trial commenced (on about 9.4.86) when his reaction was as I described it to you. All the allegations on the note were put to him in the course of conversation, but not the names.

Regards,

[redacted]

RE: JAMES McCLELLAND

1. (a) It has been suggested that in conversation with Wendy Bacon before the Senate hearings McClelland told her that Murphy had telephoned him a number of times asking him to intercede with Chief Judge Staunton on behalf of Morgan Ryan.

In one such conversation McClelland said to Murphy words to the effect:
"What do you want me to do - nobble Staunton?"
To which Murphy laughed sardonically and said words to the effect:

"Oh, we wouldn't want to do that, now, would we?"

(b) After giving evidence in the Murphy case, McClelland was again spoken to by Bacon who asked him about his evidence and what he was going to do about it. McClelland replied:

"What can I do about it? I don't want to be another Kerr".

2. It has been suggested that at a 1985 Christmas party McClelland, apparently "a little tired and unwell", was discussing the Murphy case and his evidence. He commented:

"There's nothing much I can do about it. I don't want to be shown to be a perjurer".

Kristen Williamson was present at the time.

July 1986

WEEK 30 . 205-160 THURSDAY 24

5 do: - Phone Tegarden. [redacted].
- Any service of summons

— See David Williamson 10-30, Buckgate.
79 Louisa St, Birchgrove, with DD. introduced ourselves, explained purpose of
commission in broad terms. DD: 'Hard for a person we cannot identify
that you may have some info. about LHM relevant to our enquiry!' DW then
outlined briefly his assoc. with LHM - met 10 years ago at Don Dunstan's place
in Adelaide - met socially on a few occasions since. DD: 'Do you know
Jim McClelland? We see told it may have something to do with something
he said'. DW: 'I think you had better ask Wendy Bacon about that. I have
a lot of respect for Jim McClelland. He is taking an important stand
on a no. of issues. I don't want to implicate him, to harm him
(He repeated this several times). No, I don't want to discuss that.
I would only talk on subpoena, on oath.' DD: 'Obviously we can
give you no undertaking that you won't be summonsed!' DW: 'Oh!
We left about 10 mins after arriving.

(Note: A Phelan dying).

The Hon. Mr J F McClelland

WOOLLAHRA NSW 2025

Dear Mr McClelland,

PARLIAMENTARY COMMISSION OF INQUIRY - MR JUSTICE L K MURPHY

As you may be aware the Parliamentary Commission of Inquiry established pursuant to the Parliamentary Commission of Inquiry Act 1986 has commenced its task of inquiring into and advising the Parliament whether any conduct of the Honourable Lionel Keith Murphy has been such as to amount, in its opinion, to proved misbehaviour within the meaning of section 72 of the Constitution.

Mr S Charles QC, Senior Counsel assisting the Commission, has informed me that he would be assisted by having a discussion with you in relation to some aspects of the Commission's Inquiry. Accordingly, I should be glad if you would contact Mr Charles on telephone number (02) 232 4922 to arrange a suitable time for an appointment to be made.

Yours faithfully

[redacted]

Sir George Lush
Presiding Member

21 July 1986

MEMORANDUM

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

FROM: Mr Robertson

DATE: 14 July 1986

THE MEMORANDUM DEALS WITH QUESTIONS WHICH HAVE ARISEN CONCERNING POSSIBLE PERJURY IN RELATION TO EVIDENCE GIVEN AT THE APPROACH TO CHIEF JUDGE STAUNTON BY MURPHY J AND BY MR JAMES McCLELLAND.

At the first trial (transcript pages 199-200) Judge Staunton said that in April 1982 Mr Justice Murphy telephone him and said to him words to the effect that Morgan Ryan had been committed for trial on a conspiracy charge or charges, that the matter was affecting his practice as a solicitor and he wanted an early trial of the charges and that Mr Justice Murphy had asked him "could you do something about it?" Judge Staunton's evidence continued

> Jim McClelland has already been in touch with me about this. He told me that Ryan had spoken to him and that Ryan wants and early trial and I have told McClelland that Ryan would know what he ought to do about that, that he ought to apply to Clerk of the Peace or the Solicitor for Public Prosecutions and the matter would be considered".

At the second trial (transcript pages 227-228) Judge Staunton gave evidence as follows

> Well, Mr Justice Murphy rang me in my Chambers. He opened the conversation in some fashion, which I do not recall, and he said something to the effect, "you know Morgan Ryan he has been committed for trial on a conspiracy (conspiracies) charges". He said, "this is disrupting his practice as a solicitor and he wants the matter heard as

> soon as possible. Can you do something about it, or is there anything you can do about it", something like that.
>
> However I said "Jim McClelland has already been in touch with me about this matter". I said "I have told him that Ryan would have to make an application to the Clerk of the Peace or the Solicitor for Public Prosecutions, as Ryan would well know, for an expedited hearing and consideration no doubt would be given to it.

At the first trial (transcript 187–188) James McClelland gave evidence of a telephone conversation with Mr Justice Murphy in or about March or April 1982. He gave evidence that Mr Justice Murphy made the telephone call but that he thought that he, James McClelland, raised the subject of Ryan because Ryan had recently been to see him. McClelland gave evidence that he said to Murphy J

> "Well he has been to see me and I have already rung Jim Staunton, that is the Chief Judge of the District Court, and ask him what are the procedures for obtaining an expedited hearing?"

Later in his evidence (transcript 188) James McClelland said that he could not remember whether Murphy J indicated in that conversation that he himself had spoken to Judge Staunton on a similar topic.

At the second trial (transcript 214–215) James McClelland again gave evidence. He said that as far as he could recall Mr Justice Murphy phoned him in about April 1982. His evidence continued

> I think I was the one who first raised the matter of Ryan because he had recently been to see me shortly before.
>
> ...I said, yes, as a matter of fact he (Ryan) had been to see me and at his request I rang Jim Staunton, that is Judge Staunton, the Chief Judge of the District Court, to ask him what needed to be done, what were the procedures for getting an expedited hearing and I told them to Justice Murphy.

James McClelland said that he could not remember whether Murphy J had told him that he (Murphy) had already been to Judge Staunton.

At the first trial, Murphy J gave evidence (transcript pages 507 onwards) that in early April 1982 he saw Chief Judge Staunton in his (Staunton) Chambers and had a conversation as follows

> "Surely something could be done about him getting an earlier trial if he wants it". He said, "Jim McClelland has already spoken to me about it and I've told him what should be done and Ryan should know it. It used to be the Clerk of the Peace but now it is the Solicitor for Public Prosecutions. He should make an application to him giving his reasons."

Murphy J also gave evidence that he had a conversation with Jude Staunton on the telephone before his visit to his Chambers.

In relation to Murphy J's conversation with McClelland, Murphy J's evidence was

> I think I raised the topic of Ryan and said something, I think I described him as "the poor little bugger, its driving him mad. He ought to get it over and done with" and McClelland said "it's Ryan" - he said "he had spoken to me about it and I have spoken to Staunton", this is what McClelland was saying. And I said, "yes, Staunton told me you had already spoken to him" and McClelland said "I have told him what to do, to get in touch with the Solicitor for Public Prosecutions and make an application there", that was the upshot of that. We talked about other things.

In cross-examination it was put to Murphy J, as was the case, it was never remotely suggested that Chief Judge Staunton, when he gave his evidence, that Murphy J called upon him rather than that Murphy J telephoned him.

Further, in cross-examination, Murphy J said that he never told Ryan of the results of his inquiries with Chief Judge Staunton because James McClelland then told Murphy that he, McClelland, had already informed Ryan of what the proper procedure was.

In Murphy J's unsworn statement in the second (page 247 and following) trial he said

> A little after that I spoke to Chief Judge Staunton about whether Ryan could get an early trial. 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. And Staunton spoke to me and told me he had already told McClelland how he should go about it. Afterwards I rang McClelland, McClelland said yes, he had already advised Ryan - told him what Staunton's advice was about how to get an early trial.

That was the full extent of the reference to this topic in the unsworn statement.

It now appears that James McClelland has admitted, privately, that there was a conversation between himself and Murphy J before Murphy J ever approached Judge Staunton. Apparently, during the course of the conversation between Murphy J and James McClelland Murphy J attempted to persuade James McClelland to intervene on Ryan's behalf with Judge Staunton. One version of the conversation is that James McClelland said on at least two occasions during the course of the conversation "you mean you want me to nobble him?" Apparently Murphy J on each occasion replied, "no, not at all".

Even if it could be shown that James McClelland perjured himself at the first or second trial it would be most unlikely that it could be shown that Murphy J was a party to that perjury. It may, perhaps, be worth asking James McClelland whether he discussed the evidence he was to give with Murphy J before each trial.

As to any perjury by Murphy J, there is nothing which arises from his unsworn statement. Furthermore I doubt whether the extract I have set out above constitute the offence of "in any judicial proceeding ... knowingly giving false testimony touching any matter, material in that proceeding" within the meaning of section 35 of the Crimes Act 1914 (Cth). It may be noted in passing that section 35(2) provides that for the purpose of section 35 it is immaterial whether the testimony was given on oath or not on oath, or was given orally or in writing. There are however two questions and answers in the course of Murphy J's

evidence in ..... in the first trial which, if James McClelland's present story is true, warrant closer scrutiny.

At page 507 Murphy J was asked and answered as follows

> Q. Thereafter did you communicate with anyone concerning the subject of any forthcoming trial for Morgan Ryan?
>
> A. Yes.
>
> Q. With whom?
>
> A. Chief Judge Staunton.

The clear implication is here that Chief Judge Staunton was the only person with whom Murphy J communicated on the subject of Morgan Ryan forthcoming trials.

At page 508 of the transcript Murphy J was asked and answered as follows

> Q. Did you speak at some stage to Mr Justice McClelland as he then was, now Mr McClelland?
>
> A. Yes.
>
> Q. When was it that you spoke to him in relation to your visit to Chief Judge Staunton Chambers?
>
> A. It would be shortly after that - it would be some day or so after that, it may have been a little longer.

The clear implication is here that Murphy J did not speak to James McClelland before he, Murphy, visited the Chambers of Chief Judge Staunton.

Both these answers would be untrue if James McClelland's version is right, that is, that Murphy J spoke to him before McClelland went to see Staunton.

It seems to me that if James McClelland will give evidence both of Murphy J's request to him to approach Judge Staunton and of the apparent importance of that request to Murphy J, then it is possible that the allegation of wilfully false or wilfully misleading testimony might be made out, particularly if it were the fact and James McClelland would admit that he and Murphy J discussed what evidence McClelland would give at the first trial.

To D. Durack
Fax M. Wenton

MEMORANDUM RE THE APPROACH TO JUDGE STAUNTON - PERJURY?

This memorandum deals with the question whether any of the evidence given by the Judge at his first trial regarding the approach to Judge Staunton could give rise to a charge of perjury against the Judge. The matter first arises at the bottom of page 507 where the Judge is asked whether, after meeting Morgan Ryan in Martin Place, he had communicated with anyone concerning the subject of any forthcoming trial for Morgan Ryan. The Judge answered "Yes."

Question: With whom?

Answer: Chief Judge Staunton.

Question: How did you do so?

Answer: I saw him in his chambers.

Question: Can you place when that was with some degree of particularity?

Answer: It would be not long after I had seen Ryan.

Question: Was there conversation between you and him on that occasion?

Answer: Yes.

At page 508 the Judge describes what he told Staunton. The Judge's version is "Surely something could be done about him getting an earlier trial if he wants it." The Judge then said that Chief Judge Staunton told him that Jim McClelland had already spoken to Staunton about it, and the Chief Judge had told McClelland what should be done. After setting out as much as the Judge could recall of that conversation, he was asked

Question: Did you speak at some stage to Mr Justice McClelland as he then was, now Mr McClelland?

Answer: Yes.

Question: When was it that you spoke to him in relation to your visit to Chief Judge Staunton's chambers?

Answer: It would be shortly after that it would be some day or so after that, it may have been a little longer.

Question: How did you come to speak to him?

Answer: We were talking together. We often spoke to one another and I think I raised the topic of Ryan and said something. I think I described him as "the poor little bugger its driving him mad he ought to get it over and done with" and McClelland said "its Ryan's". He (Ryan) had spoken to McClelland about it and McClelland had spoken to Staunton". The Judge then said that Staunton had told the Judge that McClelland had already spoken to him. McClelland then told Murphy that he had already told Ryan what to do ie, to get in touch with the Solicitor for the Public Prosecutions and make an application.

The sequence of events set out by Mr Justice Murphy here is that he, Murphy approached Chief Judge Staunton without any knowledge that McClelland had already done so. Staunton told Murphy that McClelland had made such an approach. Murphy then contacted McClelland a day or so after he (Murphy) had spoken to Staunton and McClelland had revealed to him that he, McClelland, had spoken to Staunton about the same matter. Further, McClelland told Murphy that he had already passed onto Morgan Ryan what Morgan Ryan should do ie, get in touch with the Solicitor for Public Prosecutions (based upon the advice McClelland had received from Chief Judge Staunton).

We are told that Mr Justice McClelland may be now prepared to give a different version of events. He would now say that he had been approached by Mr Justice Murphy to contact Chief Judge Staunton before he (McClelland), had made any such approach to Chief Judge Staunton. He would say that Murphy rang him and asked him to speak to Staunton on behalf of Morgan Ryan. He would also say that he asked Murphy whether he, Murphy, was seeking to have McClelland "knobble" the Judge.

This presents a totally different picture from that which the Judge gave in his evidence in-chief. If McClelland's visit to Staunton was instigated by Murphy, then it would show that Murphy was far more determined to assist Morgan Ryan

than he revealed in his own evidence.

It might even have more sinister conotations. It is possible that McClelland will say that he reported back to Murphy as to what Staunton had told him prior to Murphy making his own approach to Chief Judge Staunton. This would tend to support the proposition that not only was Murphy prepared to abuse his own office, but also to cause another Judge to put pressure upon Staunton to do a favour for Morgan Ryan. The non-disclosure by Murphy of that earlier approach to McClelland certainly created a very misleading impression.

At page 525, Murphy explained that he did not reveal to Morgan Ryan the advice that he had received from Chief Judge Staunton because he discovered from McClelland that McClelland had already conveyed that information to Ryan. That answer would be entirely misleading and untrue if McClelland had spoken to Murphy prior to Murphy speaking to Chief Judge Staunton, and Murphy had learned from McClelland at that stage that the appropriate avenue was to approach the Solicitor for Public Prosecutions.

At page 526, the Judge comes perilously close to perjury (assuming McClelland will give this account) when he is asked about the conversation with McClelland in these terms "When was that in relation to your discussion, your face to face discussion as you say, with Chief Judge Staunton?"
Answer: Shortly after it.
Question: How long after it?
Answer: It would be a day or two.
Question: A day or two?
Answer: At the most.
Question: And how did it come about that you were in touch with Mr Justice McClelland a day or two after your discussion with Chief Judge Staunton?
Answer: Because I think I rang him up.

Once again this is highly misleading. If Murphy had instigated the approach by McClelland to Chief Judge Staunton it can scarcely be said that he has answered with the whole truth. The matter arises again at the bottom of page 531 when Murphy is asked why he didn't telephone Ryan on the same night that he got the information from Chief Judge Staunton. His answer was that he'd been told by Chief Judge Staunton not only that Ryan should know this information, but that McClelland had also been in touch with Staunton about the matter, that Ryan had spoken to McClelland and McClelland had spoken to Chief Judge Staunton. The Judge decided that Ryan ought to have known it, and the Judge then rang McClelland.

At page 532 the Judge denied that Morgan Ryan had asked him to approach Chief Judge Staunton. He was then asked this:
Question: And was that the only effort that you say you made in relation to Morgan Ryan so far as the criminal proceedings against him were concerned.
Answer: Yes.
Question: The only effort you made?
Answer: Yes."

These two questions and answers constitute clear perjury if the Judge had in fact approached Mr Justice McClelland prior to the approach that he made to Judge Staunton and asked McClelland to approach Staunton on behalf of Murphy. It is critical to determine whether McClelland will support this assertion. We are told that David Williamson will say that McClelland conceded that Murphy had approached him prior to his own approach to Chief Judge Staunton and that he McClelland had committed perjury. Williamson should be called, at least for inquireal purposes, provided the Act permits this to be done.

Mr Justice James Robert McCLELLAND, Chief of the Land and Environment Court, New South Wales, was sworn and examined.

Mr Simos - You are named Mr Justice James Robert McClelland and are you Chief of the Land and Environment Court of New South Wales?

Mr Justice McClelland - I am.

Mr Simos - And were you first appointed chief judge of that court in April 1980?

Mr Justice McClelland - Yes.

Mr Simos - Could you tell the Committee, please, when you first met Morgan John Ryan.

Mr Justice McClelland - I would think it would be about 1946. It was the first year I came to live in Sydney and I started a law course and I met him in the course of that.

Mr Simos - And did the relationship develop in any particular direction after you first met?

Mr Justice McClelland - I was on reasonably friendly terms. I would not say I was ever a close friend but I was on reasonably friendly terms with him for perhaps five or six years. Later on, I know we had a serious falling out.

Mr Simos - Yes. And what happened? When was that?

Mr Justice McClelland - That would have been, I suppose, some time in the mid-fifties and from then on - well, for a long period - we just didn't even speak to each other but then after a while we just got sick of the feud being so intense and we would run into each other in the street and we would nod to each. Sometimes we might even stop and exchange a few words. But that would not have occurred more than about half a dozen times over a period of 25 years.

Mr Simos - Thank you. Now, did something happen early in 1982?

Mr Justice McClelland - Yes, I would think it would be some time in March 1982. Morgan Ryan rang my house on several occasions when I was not there and spoke to my wife, who did not know him. He just said that he was wanting to get in touch with

me and I think she must have told him to ring me at the Court because he subsequently rang me there and asked if he could come and see me. I agreed to see him and he came to see me.

Mr Simos - Thank you. And on that occasion when he came to see you, did you have a conversation and, if so, what was the substance and effect of it?

Mr Justice McClelland - Well, he told me, and, of course, I knew already, about his having been committed for trial. He protested his innocence and said that he was so worried about it that he wanted to get it on and over with as soon as possible and he said that he knew that I was a longstanding friend of Jim Staunton - would I mind speaking to him to see if he could get the case expedited. And I rather reluctantly agreed that I would do that.

Mr Simos - Did you do something following upon that conversation?

Mr Justice McClelland - Yes. I phoned Chief Judge Staunton and said to him, to the best of my recollection: 'Morgan Ryan has been to see me. He has asked me to approach you to see if there is any chance of having his trial expedited'. I said also: 'Do you have any procedures for that sort of thing?'. I have no acquaintance with criminal jurisdiction; never had anything to do with it. And the judge said to me something to the effect, 'Well, there is a procedure for that. He has to ring or get in touch with the Solicitor for Public Prosecutions'. And I said: 'Who is that?'. He said 'Well, in your time it would have been the Clerk of the Peace', or something like that. And our conversation ended on that note. And Ryan rang me again, shortly afterwards; came to see me again and I told him that and that was the end of it.

Mr Simos - Do you know His Honour Mr Justice Murphy of the High Court?

Mr Justice McClelland - Yes, I know him well. I have known him for a long while.

Mr Simos - And are you friends?

Mr Justice McClelland - Yes.

Mr Simos - And do you speak from time to time on the telephone?

Mr Justice McClelland - Yes, from time to time he rings me just for a general legal or political gossip. Sometimes I ring him.

Mr Simos - Do you ever discuss any work he does on the High Court in those discussions?

Mr Justice McClelland - Oh, yes, if he has just given a judgment that he is particularly proud of; he is never slow to draw my attention to it and suggest that he should send me a copy of it, and he does.

Mr Simos - Did you have a conversation with His Honour Mr Justice Murphy after the events concerning Morgan Ryan that you have just told us about?

Mr Justice McClelland - Yes. I could not say just how long; it might have been a few days; it may have been a week or so. He rang me. I could not say at this stage what it was about, but it was not specifically for the purpose of discussing Ryan. He rang me about something and in the course of it the Ryan matter came up and I can recall him saying something to the effect of 'The poor little bugger's worried out of his mind. He ought to get it on and over with as soon as possible'. And I remember saying 'Well, I have already had a word with Jim Staunton about that' and I can't recall whether he said something also about his having got in touch with Staunton. But apart from the question of expedition, there was no discussion of the merits of the Ryan trial.

Mr Simos - Have you had any other conversation with His Honour Mr Justice Murphy concerning the Morgan Ryan case?

Mr Justice McClelland - No, not at all.

Mr Simos - Thank you. I have no further questions, Mr Chairman.

CHAIRMAN - Thank you, Mr Simos. Mr Hughes?

Mr Hughes - Mr Justice McClelland, it goes without saying, does it not, that you saw nothing improper in what you did in relation to Morgan Ryan's request?

Mr Justice McClelland - I didn't exert any pressure. I suppose it was naive of me to get mixed up in it at all but I didn't even ask Judge Staunton to give an expedited hearing; I just asked if it were possible to get one.

Mr Hughes - You would agree, I think, would you not, that these days judges don't live in ivory towers all the time?

Mr Justice McClelland - Well, I don't.

Mr Hughes - And it's commonplace for judges to discuss cases they're hearing, between each other?

Mr Justice McClelland - Well, a great number of them don't seem to have any interest in anything else.

Mr Hughes - Just like barristers.

Mr Justice McClelland - Yes. Most of them have acquired their diseases while practising as barristers.

Mr Hughes - No further questions.

CHAIRMAN - Mr Gleeson?

Mr Gleeson - Just in relation to that last line of questioning, Judge, there is a judicial hierarchy in the State of New South Wales and elsewhere, is there not? When you say it is commonplace for judges to discuss cases with one another, is it commonplace for judges higher in the judicial hierarchy to discuss with judges lower in the judicial hierarchy who have particular cases either before them or before their courts the merits of those cases?

Mr Justice McClelland - No, not the merits but there'd be nothing extraordinary in one judge saying to another, having read something in the paper - for instance, take a case out of my own experience - 'I see that that Parramatta Park case of yours is still going. How is it going?', or something like that. That wouldn't be extraordinary.

Mr Gleeson - No. But it would be extraordinary, wouldn't it, if a judge further up in the judicial hierarchy were to express a personal view to you about the merits of a case which was currently before you?

Mr Justice McClelland - Well, it hasn't happened to me, anyway.

Mr Gleeson - And would you agree that it would be extraordinary?

Mr Justice McClelland - Well, it's extraordinary in that it is rare. Well, I just don't know of it having happened.

Mr Gleeson - Would you regard it as improper?

Mr Justice McClelland - If a judge higher up tried to influence my decision?

Mr Gleeson - Well, if a judge higher up in the judicial hierarchy expressed to you a personal view about the merits of a case that was currently being tried before you?

Mr Justice McClelland - Yes, I would think that was extraordinary.

Mr Gleeson - Or a case that was currently being tried before the court of which you are the chief judge?

Mr Justice McClelland - Yes, I'd agree with that.

Mr Gleeson - And would you also agree that it would be extraordinary for a judge higher in the judicial hierarchy to make known to you that he had a strong personal interest in the outcome of a case currently being heard and determined before you?

Mr Justice McClelland - Yes.

Mr Gleeson - Or before the court of which you are the chief judge?

Mr Justice McClelland - Yes.

Mr Gleeson - Thank you.

CHAIRMAN - Are there any other counsel who wish to exercise their right of re-examination as to matters relevant to their client?

Mr Simos - I have no re-examination, Mr Chairman, and if the Committee members and the commissioners have no questions, may the witness be excused?

CHAIRMAN - In that case the witness is excused. Thank you very much. The Committee itself will adjourn until 2.15 p.m.

Luncheon adjournment

JAMES ROBERT McCLELLAND.
(Declared and Affirmed, examined as under).

MR. CALLINAN: Mr. Justice McClelland is your full name James Robert McClelland? A. Yes.

Q. And are you Chief of the Land & Environment Court of New South Wales, and have you been Chief of that Court since April, 1980? A. Yes.

Q. Do you know Morgan Ryan? A. Yes.

Q. For how long have you known him? A. About 1946 I think.

Q. Do you Mr. Justice Murphy? A. Yes.

Q. For how long have you known him? A. Not much less, perhaps about 1950.

Q. Mr. Justice McClelland I want to ask you about a conversation which I think you had with Mr. Justice Murphy in about April, 1982 touching upon Morgan Ryan, do you recollect that occasion? A. Yes I do.

Q. Could you tell me, using direct speech if possible what the contents of that conversation were? A. Well it happened on the telephone, and the subject of Ryan came up.

Q. Can you tell me how it came up? A. Well I'm not absolutely certain in retrospect whether I raised the matter or whether Mr. Justice Murphy did. I'm inclined to think that I did because Ryan had been to see me----

Q. I don't, I don't know whether we need that. Please continue.
A. Mr. Justice Murphy said to me after we'd had a brief discussion about Ryan, "The poor little bugger's worried out of his mind. ~~He You~~ ought to get the thing over and done with as soon as possible".

Q. Did you make any response to that? A. Yes I said "Well as a matter of fact he's been to see me and I've already rung Jim Staunton, that's Judge Staunton, the Chief Judge of the District Court, and asked him what the procedures were for an expedited hearing, and he told me and I conveyed that to Ryan".

Q. Did Mr. Justice Murphy make any response to that? A. No I think that was the end, we then turned to other matters.

CROSS EXAMINATION.

MR. SHAND: Q. When was it that the Defendant rang you to the best of your recollection? A. Well it was early '82, I think it was about April, 1982.

Q. You had yourself contacted Judge Staunton, the Chief Judge of the District Court as you've said? A. Yes.

Mr. Justice McClelland, x,

Q. You'd put to him words to the effect that it would be desirable that Morgan Ryan should have an early trial or something like that?
A. I don't know that I put it like that---

OBJECTION.

MR. CALLINAN: I object. It's not relevant to any issue in this case, it's hearsay, it ought not to be received.

MR. SHAND: It's certainly not hearsay Your Worship, it's a piece of conduct by this Judge not involving hearsay at all, it's a fact that I'm looking for, that Mr. Justice McClelland contacted Judge Staunton upon the subject of a trial for Morgan Ryan, now if it's desired I should explain the relevance of that I will.

BENCH: I'm prepared to allow it Mr. Shand.

MR. SHAND: Sorry Your Worship?

BENCH: I'm prepared to allow the answer.

WITNESS: Well the answer is not that I said it was desirable but that Ryan himself had told me that he wanted an early trial.

MR. SHAND: Q. Did you see anything improper about yourself contacting the Chief Judge in that way?

OBJECTION.

MR. CALLINAN: I object.

MR. SHAND: I press it.

MR. CALLINAN: Your Worship it falls into precisely the same category as the question you ruled upon yesterday which was asked of Chief Judge Staunton. It is not for any witness, it is for you to determine these matters in these proceedings.

BENCH: I thought the question was "Did you say anything".

MR. SHAND: No 'Did you consider there was anything improper about that approach,'that was the question Your Worship.

BENCH: Yes Mr. Shand?

MR. SHAND: Two matters arise in relation to this Your Worship, firstly I put the question on credit as going to this witness's credit and I submit it's a perfectly proper question on credit, and secondly I put it on the basis that whilst nothing has been made clear concerning the issue of the Defendant's conversation with Judge Staunton concerning fixing of an early trial for Morgan Ryan, and as to what part it is intended that matter should play in the Crown case, we haven't been told in the course of my learned friend's opening, what part, or what significance it's intended to attempt to attach to that fact in the Crown case, and of course it falls

outside the period referred to in the charge relating to Mr. Briese or, relating as I understand it to Judge Flannery, so we're not told, in no circumstances as it was opened by my learned friend in his opening statement in this case that that will be a fact which it was proposed to prove, one can only assume that it's intended to give it some relevance to the charge, or a charge, in no circumstances because we're not told what it is, what I propose to do through this question is not only to put it to the credit of this witness but to offer evidence through him from his knowledge of legal procedures and of course that's a knowledge based on many, many years of experience both as solicitor and Judge to the effect that an approach of that kind, in his view, is not of itself in any way improper, and that Your Worship we submit is evidence relevant to the issue as well, and admissible upon the issue.

BENCH: I don't know that I want to hear you further Mr. Callinan. In my view it calls for an opinion from the witness and in my view it's not admissible, and I disallow it.

(QUESTION DISALLOWED).

MR. SHAND: Your Worship I'm not canvassing or anything, I take it Your Worship also disallows it as going to credit?

BENCH: Yes.

MR. SHAND: Q. Judge you have had a long association with the Defendant in various environments have you not? A. Yes.

Q. To put it shortly the environments include many years of association with him often opposed to him in connection with litigation? A. Yes.

Q. And largely subsequent to that quite a long and intensive political association with him? A. Yes.

Q. During a period when you and he were both members of the Senate of Australia? A. Yes.

Q. While you were leading members of the Labour Government for a period? A. Yes.

Q. Needless to say, and you'll correct me if I'm wrong, you spent many many long hours during the last period of twenty years or so talking to each other and listening to each other talk to others? A. Yes.

Q. You became, for instance, quite familiar, or should I say very familiar with the Defendant's tone of speech and choice of words? A. Yes.

Q. And with the expressions that he was either accustomed or not accustomed to use? A. Yes.

Q. Can I direct your attention to one particular word and ask you this, was the word 'mate' ever used by him? A. Never---

Mr. Justice McClelland, xx.

OBJECTION.

MR. CALLINAN: I object Your Worship, that can't tend to prove, as it's obviously designed to do that he didn't use it on the occasion upon which he say he used it. A pretty ordinary word, one would think a very common part of most people's vocabulary, but it doesn't assist you, it doesn't assist you to know that this witness may not have heard the Defendant use that word.

BENCH: No I'm against you Mr. Callinan I think it goes to weight rather than to witness ability.

MR. CALLINAN: As Your Worship pleases.

Mr. Justice McClelland, xx.

MR. SHAND: Q. Do you remember the question, Judge? A. Yes, well, no, I can't recall ever having heard him use that expression in talking to other people. In fact, I can remember him being quite derisory about a fellow Senator who was----

OBJECTION.

MR. CALLINAN: I object to this, really. It's plainly hearsay.

MR. SHAND: I press it. It's evidence to corroborate a habit of not using the word, in my submission. If in fact the defendant has expressed such an opinion in the past, namely an opinion to the effect that the word you preferred not to use for reasons given, that goes to support the absence of use of that word by the defendant to which this witness testifies.

MR. CALLINAN: Can I reply to that?

BENCH: Yes.

MR. CALLINAN: Your Worship, it can be tested this way, let's assume the defendant himself sought to give that evidence, he wouldn't be permitted to do so, it would be regarded as a self-serving statement, and if he couldn't give it, in my submission, this witness plainly can't give it.

MR. SHAND: Your Worship, may I answer that by saying this: if the defendant sought to say "I never used the word 'mate', I disliked it and my reasons for disliking it were X or Y and I gave vent to my attitude to that word by expressing in unequivocal terms to other people my opinion about its use", all that goes, I submit, to establish his mental attitude to the use of the word, and I submit he would be permitted to give such evidence.

BENCH: I'm inclined to admit the evidence, but in the absence of a temporal context its value is questionable.

MR. SHAND: I'll fill that out, your Worship.

Q. Would you proceed, please, Judge, with the answer? A. Well, I said on numerous occasions I've heard him make derisory remarks about a fellow Senator who was habitually overdoing the use of the word "mate", and every time he met anybody he called them "mate". His Honour was, regarded that as almost unseemly, I thought.

Q. Yes, and will you tell us over what period you recall him making such remarks? A. Over, all the time I was in the Senate with him.

Q. And that was until when? A. Well, he left in 1975. I'd been there since the beginning of 1972.

Q. Yes, and subsequent to the time when you were no longer fellow members of the Senate have you continued to associate with the defendant? A. Oh, yes.

Q. And what have you noticed about his use or otherwise of the word "mate" during that period? A. Wel, I've never heard him use the word.

Q. Well now, I'd like to take you back a little in point of time to the time when you were both practising the law and you recall when the defendant was admitted to the Bar? A. Well, I don't know exactly but I think it was about 1949, 1950.

Q. Yes, and you were a solicitor at that time? A. No, not until---

Q. When were you admitted to---A. '51, or '52, I think, '51.

Q. And from the time of your admission were you a principal in any firm? A. Yes, I had my own firm.

Q. Your own firm, and would you tell us what sort of work your firm did from that time ----A. At that stage it would be mostly industrial work in the Arbitration Court and common law work, Supreme Court and District Court.

Q. Did your firm have as clients a number of Unions? A. Yes.

Q. And how big did the practice of your firm grow from that time onwards in those fields? A. It grew pretty large.

Q. Did you in the course of your work at that time find yourself in any way associated with or opposed to the defendant? A. Yes, he was, he led various clients in opposition to my clients. We were legal opponents to start off with.

Q. And were you able to form an assessment as to the progress of his practice from that viewpoint? A. Yes, his practice grew very rapidly, too.

Q. What fields did you, were you able yourself to observe his practice covered? A. Well, he was, I would say he was the leader of the industrial bar very shortly after, in the mid-fifties, he was in all the big cases.

Q. Within about five years or so he'd become the leader in that area? A. Yes.

Q. We know that he went into the Senate in 1961 or perhaps more accurately 1962, did you, and he took silk before that time, did he not? A. Yes.

Q. What would you say as to any suggestion that from at least the middle 1950's onwards or before that time he was heavily dependent upon one firm only for his work? A. Well, I wouldn't have thought that, I thought he was in demand generally. He started off in the industrial field getting a lot of work from Ryan but I didn't think his work was confined to that.

Q. Yes, and would you yourself be in a position to know from your own litigious activities, that is your firm's, in those days what other firms to your knowledge gave him considerable work? A. Well, I'm hazy about that now, but I know that he didn't just have a one firm practice.

Q. And did he take silk in comparative terms at a very early stage of his career? A. Yes, yes, he did.

Q. And that was a mark, was it not, of a barrister who'd made very fast progress? A. Yes.

Q. Now, in the course of your continuing relationship with him, I withdraw that for the moment, when did you enter the Senate, Judge? A. Early 1972.

Q. Yes, so he was there some ten years before you? A. Yes.

Q. From some time did you developa social relationship with him? A. Oh, yes, over the years I've seen a bit of him.

Mr. Justice McClelland, xx

Q. Did you, on what sort of social occasions did you see each other? A. What period are you referring to, when we were in the Senate?

Q. Yes, I'll take that one? A. Well, we often dined together, we often had a drink together at the end of proceedings, night-time, sometimes he'd even ask me over to his place (inaudible).

Q. In Canberra? A. In Canberra, when there'd been something particularly exciting on I'd go over to his place to talk over the events of the day.

Q. And was that a process which continued through to the time when you retired from the Senate? A. Yes.

Q. Now, from the time you retired from the Senate what was your contact with him? A. Well, he'd ring me from time to time, sometimes I'd ring him. He'd ring me particularly if there was some Judgment that he'd participated in on the High Court that he thought I would be interested in. He'd ring me and tell me that he was sending me a copy of his Judgment, something like that, and when he was in town, when he was in Sydney, he'd ring me and suggest that we have a meal or have a drink, something like that.

Q. Yes? A. Was sporadic but our friendship was uninterrupted.

Q. Right, and during the course of these times spent together, were you able to form your own assessment of his feelings and attitudes towards the law? A. Oh yes, he was absorbed in the law, absorbed in his job on High Court, and I think he had a great reverence for the law.

Q. Yes, what about the same qualities such as he'd displayed towards the law while he was Attorney-General? A. Attorney-General?

Q. Yes. A. Oh, he was absolutely obsessed with his job, he was a law reformer, he always had a lot of reforms in the pipeline.

OBJECTION.

MR. CALLINAN: I object to this, your Worship. Now, I didn't object before because it seemed to me with respect that the character of the evidence was in fact character evidence, but this goes beyond that.

BENCH: Are you pressing it, Mr. Shand?

MR. SHAND: I certainly am, your Worship. It is precisely character evidence and put forward unequivocally as such, going right to the heart of this matter.

MR CALLINAN: Could I reply on just that point Your Worship, what I objected to was the mention of the law reforming activiities. Now that doesn't, we would submit, throw any light on the Defendant's character. It proves that he's interested or was interested in law reform. One man's view of law reform might be different from another's.

MR SHAND: Your Worship that, with all respect to my learned friend, is a meaningles submission. Law reform is one, obviously one very salient part of the Defendant's enormous love and enthusiasm for the law. A person who tries to reform a law does so because they have an honest respect for it and try to improve it. It's all part of the same basket.

BENCH: Yes I'll allow the evidence to continue.

MR SHAND: Your Worship pleases.

MR SHAND: Q. You were about to describe his qualities that he exhibited while holding the position of First Crown, First Law Officer of a country Judge? A. Wel he was, as a matter of fact he was almost obsessive about the pages that he was preparing to put before the Parliament for changes and what he saw as improvements in the law. He wanted to talk to everybody about it, especially anybody associated with the law and he pressed them very hard in the caucus meetings and sought priority for his own measures. He was a really obsessive reformer.

Q. And after he was appointed to the High Court you've mentioned that he supplied you judgments from time to time, were they the High Court's judgments or his own in particular or both? A. Well he'd usually send me the whole lot but especially in cases where it was apparent that he had written the judgments and the other Judges had gone along with it as happens occasionally in the High Court and on matters that he thought were of special interest to me.

Q. Very well, did you reach a relationship with the Defendant which could be described by the word "intimate"? A. Yes.

Q. You confided in each other? A. Yes.

Q. And that fairly describes the depth of conversations between you? A. Yes.

Q. Now would you tell us any views that you have formed of the Defendant with regard to his manner of speech, directness, bluntness or the like? A. Yes he was very direct, quite blunt, he doesn't beat about the bush.

Q. And what do you say about his gregariousness? A. Yes, very, very gregarious, very approachable and, we'll he's a man who loves people.

Q. Would you be prepared to describe any habit of his in that direction as perhaps being carried to an extent to a fault? A. Yes I would, he, he was, well he was too approachable I thought, everybody, his door was open to everybody and he would, he'd ask people for a drink or a meal or even home after a very casual acquaintance. He sought company.

Q. Did you notice any habit of his with regard to launching himself into discussions with other lawyers of all kinds concerning matters of current interests and contentiou nature? A. Yes.

Q. What did you notice about that sort of habit? A. Well --- .

OBJECTION: (MR CALLINAN)

MR CALLINAN: Your Worship this isn't character evidence, this is evidence of what the Defendant has done or may have done on other occasions. It does not tend to prove or disprove anything in this case. This evidence just isn't admissible.

MR SHAND: Your Worship merely to say as a submission it doesn't prove or disprove anything in this case is to make a subjective submission only. When this evidence is analysed it's the character of a man that's being described and the character of a man who has a habit and many habits which have been described which would go a long way towards highlighting the significance of conversations that have been given in evidence in this case, and properly putting them in context as part of the habit and make-up, personality and character of this Defendant, and I submit it's vitally relevant.

MR CALLINAN: May I reply Your Worship. Your Worship I couldn't educe evidence that on other occasions this Defendant may have behaved in some particular way and I would submit that it's not open for my learned friend to do that, unless the other occasions can be shown to be directly related to or of the kind in question.

MR SHAND: Your Worship the answer to that is that if I lead evidence of good character which I'm unashamedly and unequivocally doing it is open to the Prosecutic if they can find any, to lead contrary evidence, so that disposes we would submit of that submission.

BENCH: It's my view that we are perhaps wandering a little from character but not sufficiently to exclude this evidence but perhaps Mr Shand there are some limits to it.

MR SHAND: Yes, there won't be much more of this evidence Your Worship, I can assur you of that.

BENCH: Right.

MR SHAND: Q. Would you repeat your answer please Judge? A. I've forgotten the question let alone my answer.

Q. It was really, to describe whether in fact in his gregarious habits he used often to launch himself into discussions of legal subjects of current interest and of contentious nature? A. Yes, he could be quite a pain in the neck when he had a bee in his bonnet about a subject, he'd drag a matter in out of the blue, almost with anybody and hammer it.

MR SHAND: Thankyou.

BENCH: Yes Mr Callinan?

RE-EXAMINATION.

MR CALLINAN: Q.Mr Justice McClelland, he was a man given to close friendships I gather from what --- ? A. Yes, yes.

Q. And --- ? A. But many close friendships.

Q. Yes, and was he prepared to do things on behalf of friends? A. You mean favours or go out of his way to help?

Q. Yes? A. Yes.

Q. All right, only one other matter, who was the person who, who frequently used the word "mate", the subject of criticism? A. Do I have to answer that, it woul be offensive for the person now that I've said it Your Worship.

MR CALLINAN: Well there's no objection Your Worship and ---

MR SHAND: I'm not, I haven't raised an objection Your Worship.

WITNESS: Well I'd just say that I would rather not answer it Your Worship unless it's absolutely essential.

MR CALLINAN: Well I wouldn't ask it unless I had some purpose Your Worship.

BENCH: All right, I'm afraid I have to direct you to answer it.

WITNESS: Well ---

MR SHAND: Well Your Worship I'm pressed to take this objection, I don't take it because I wish to take it but if in fact the person who would be referred to is a leading current political figure Your Worship might well think that his name shouldn't be mentioned and that perhaps this, this is an attempt to cross-examine in re-examination perhaps because the only relevance of this could be that my learned friend wishes to cast a doubt upon the evidence given under cross-examinati by the Judge. Now if that's the object of it then it savours very distinctly of cross-examination and Your Worship's discretion ought to extend to disallowing the question.

BENCH: Well that's a belated objection Mr Shand, I invited you to make any comment and you declined.

MR SHAND: Your Worship I, I've explained that I didn't wish to make the objection myself because from a forensic point of view it would probably be helpful if the name were mentioned. I have been instructed to take the objection and that makes the objection just as entertainable as if I'd made it in the first place.

MR CALLINAN: Your Worship may I say something I won't press the name if I can obtain an answer to another question, I won't undertake not to press it depending upon the answer, well I'll, I'll try to avoid it, I appreciate the views of others.

BENCH: The Court is not anxious to embarrass some person who is alien to these proceedings and it can get out of proportion ---

MR CALLINAN: Nor am I.

BENCH: On the other hand, is that would your purposes be served if our witness wrote it on a piece of paper for your ---

MR CALLINAN: I don't even require that Your Worship, I don't, depending upon the answer that I receive.

MR CALLINAN: Q. Mr Justice McClelland, was this person very boring about the extent to which he used the expression "mate"? A. Well I thought he overdid it

Q. And can you give us some idea of the extent to which he overdid it? A. We obviously politicians meet a great number of people and they find it hard to remember their names and this person that I'm referring to got into the habit of evading an accusation of lapse of memory by calling everybody "mate" ad nauseum.

Q. Most exceptional, be most exceptional the use of the word "mate"? A. No, used to do it to me even though he saw me everyday.

MR CALLINAN: It's more than enough for my purposes Your Worship, may Mr Justice McClelland be excused.

BENCH: Be no objection, thankyou.

MR SHAND: No objection to excuse.

(Witness retired and excused

First Trial

Q. Is that the way it works? A. Yes, it does in the District Court, on the basis that there may be two or three judges or courts available on any particular day and two or three cases to proceed and members of my staff do make the decision as to what cases will proceed before what judges. There is, however, a further arrangement whereby particular cases for one reason or another are arranged with the Chief Judge of the District Court to determine before which judge that case will proceed and we refer to those cases as special fixtures.

Q. Can you tell us whether in the system as it worked, for instance back in 1981/1983, once the case had been allocated to a particular judge to hear that the case would stay with such a judge even though it may not proceed on the original day and be adjourned to some later date? A. Yes, that would be the normal procedure; it would stay with the particular judge.

(No re-examination)

(Witness retired and excused)

JAMES ROBERT McCLELLAND
Affirmed and examined:

CROWN PROSECUTOR: Q. Your full name is James Robert McClelland, is that so? A. Yes.

Q. You are a retired judge of the New South Wales Supreme Court but at present I think you are undertaking a Royal Commission, is that so? A. Yes.

Q. Indeed, you were the Chief Judge of the Land and Environment Court of New South Wales until about a week or so ago? A. That is correct, exactly a week.

Q. Where do you live? A. [redacted].

Q. Do you know Morgan Ryan? A. Yes.

Q. How long have you known him? A. I'd say for almost 40 years.

Q. Do you know the accused? A. Yes.

Q. How long have you known him? A. Around about the same, perhaps a little less.

Q. I want to ask you about a conversation which I think you had with the accused concerning Morgan Ryan in the first third or quarter of the year 1982. Do you remember such a conversation? A. Yes, I do; a telephone conversation, yes.

Q. Are you able to tell us exactly when that conversation was? A. It would have been in the early part of the year, around about March or April I would think.

Q. The topic of Morgan Ryan came up in that conversation? A. Yes.

Q. Who initiated that conversation; who made the call to whom? A. Mr Justice Murphy made the call but as I remember it it was not - he did not ring me about Ryan, the subject of Ryan cropped up in the course of our conversation.

Q. Using direct speech as best you can would you tell us what he said and you said concerning Ryan? A. Well to the best of my recollection, I would not be sure of it, but I think I raised the subject of Ryan because Ryan had recently been to see me.

Q. Do not trouble yourself about that, please - A. When I raised the question of Ryan his Honour then said to me, "Yes, the poor little bugger is worried out of his mind. He ought to get it on and over with as soon as possible".

Q. What did you say? A. I said, "Well he has been to see me and I've already rung Jim Staunton , that is the Chief Judge of the District Court, and asked him what are the procedures for obtaining an expedited hearing?", that is as much as I remember about it.

Q. Was anything said in relation to whether you had conveydd any of that information to Ryan, that is, said to the accused? A. No, I can't remember that. I know that I did, after I had spoken to Jim Staunton, I did speak to Ryan but I am not sure now whether I raised that subject with Mr Justice Murphy.

CROSS-EXAMINATION:

MR SHAND: Q. The fact was you had in fact contacted Judge Staunton, the Chief Judge of the District Court after Morgan Ryan had spoken to you? A. That is so.

Q. On the subject of procedures of obtaining an expedited hearing? A. That is correct.

Q. Incidentally, this may sound quite obvious, but an expedited hearing is an expression which indicates a hearing of a case earlier than might happen in the criminal courts? A. Yes, jumping the queue.

Q. In the course of the telephone conversation which you mentioned between yourself and the accused after you had indicated that you had already rung Judge Staunton did he indicate that he himself had spoken to Judge Staunton on a similar topic? A. Well I am a bit vague about that, I can't remember it precisely whether he did or he did not.

Q. Your mind is open on that subject? A. My memory is fallible as everybody else's; that is a blank with me whether he did or did not.

Q. I take it you cannot pin down the date of the telephone call with the accused to you any more precisely than you say it was in March or April 1982? A. It can be pinned down more precisely in this way, that Ryan had already been committed for trial and it was some time, more than a few days, I would have thought perhaps a month or two after he had been committed for trial, at

least as soon as that or at least as late as that, I suppose.

Q. As you have indicated you have known the accused a very long time? A. Yes.

Q. Can you tell us upon what basis it was that you first got to know him? A. In legal practice shortly after I was admitted as a solicitor I developed a fairly large industrial practice and it was in the context of Internecine war in one or two trade unions, when I found myself on the opposite side to Mr Justice Murphy and in that way I got to observe his skills and his general demeanour and I came to admire him even though he was on the other side.

Q. Did you brief him whilst you were a solicitor? A. I don't think I did, after he went into the Senate when my practice was reaching its zenith - I certainly would have if he had not become involved in the Senate but I don't think I did brief him.

Q. Do you recall he went into the Senate in 1961? A. Yes.

Q. Prior to 1961 have you seen much of him, I mean in the professional sense which you have described or in any social sense? A. I saw him from time to time but I think mostly professionally at that stage. I think my personal friendship with him developed after he went into the Senate.

Q. Can you tell us whether after he had gone into the Senate you were in a position to observe whether he continued to do any barrister work? A. Yes, he still did a certain amount of legal work.

Q. Did there come a time when you yourself were elected to the Senate? A. Yes.

Q. When was that? A. Towards the end of 1971 I went into the Senate; I took my place in the Senate early in 1972.

Q. In due course you rose to Cabinet rank when the Labor Party gained power? A. Yes.

Q. When was it that you gained that rank? A. In February 1975.

Q. Having entered the Senate did you see much of the accused? A. Yes, I saw a great deal of him.

Q. Would you tell us the circumstances under which you saw a great deal of him? A. Well we were colleagues in the Senate, we took part in debates, often collaborated with the preparation of speeches we were making in the House, then occasionally we would have dinner together or have a drink together after the end of proceedings, sometimes even at the end of the night if there had been say a particularly exciting day or a day in which we had played some sort of a role I might even go home to his place at the end of proceedings and have a talk and a drink.

Q. That was in Canberra? A. Pardon?

Q. In Canberra? A. In Canberra, yes.

Q. Did you in the course of that period while you were both in the Senate become his friend? A. Yes.

Q. Quite a good friend? A. Yes, a close friend.

Q. Following the end of the Whitlam era of Government did you both still continue along together or not? A. Yes, we would see each other occasionally. When he was in Sydney he would give me a call, sometimes we would have dinner together, sometimes he would ring me just to talk about some decision that he had been involved in in the High Court that he thought I might be interested in. He would perhaps tell me that he would send me a copy of a judgment which might be of particular interest to me, that sort of thing; it was a professional and personal our relationship.

Q. The behaviour and relationship which you have just described relates to the period from the time of his appointment to the High Court Bench, is that so? A. Yes.

Q. Was there a period obviously during which the High Court building had not been constructed in Canberra that he was least for some of his time resident in Sydney while the court sat here? A. Yes, that is correct.

Q. During those periods you saw something of him on a social basis, did you? A. Yes, that is correct.

Q. Did you attend each other's homes? A. Yes.

Q. Did you regard yourself as being in effect one of his closest friends? A. Yes.

Q. And he one of your closest friends? A. Yes.

Q. Were you in a position to observe his social habits with regard to gregariousness and qualities of that kind? A. He was an extremely gregarious man, he had friends in all walks of life, he was approachable, there was nothing of the grandeur which you seem to attach to some High Court judges, he didn't have any airs.

Q. As far as topics and subjects of conversation were concerned did you know what his habit was particularly when with lawyers?

HIS HONOUR: I did not hear that question.

MR SHAND: Q. So far as his conversation was concerned and the topics of conversation in which he indulged, did you notice what his habit was particularly when he was talking with lawyers? A. Well, he had a tendency to obsessiveness to matters which were apparently engaging his attention. He could, to use the vernacular, give you a good ear pounding on occasions when he had a bee in his bonnet about something.

Q. Did you have many discussions with him on matters of current legal interest? A. Yes, we were interested in reform of the

industrial law in the way the bill - the Act that he had sponsored through Parliament, the Family Law Act, was working. He was very interested in reform of the law of defamation, matters like that.

Q. In general terms did you regard him as being a very intensive and enthusiastic legal reformer? A. Yes, absolutely.

Q. Did you attend with him at gatherings where you heard him talking with various other people, lawyers and the like? A. Yes.

Q. Did he exhibit the habits of conversation which you have described? A. He would have somebody in a corner plugging his latest interest in matters of law.

* Q, Are you able to say what his habit was with regard to seeking out people's company? A. He needed human company. He was an extroverted man who went out of his way to - you did not have to know him terribly well to be invited to dinner by him - (Objected to as irrelevant: allowed)

(Question marked * read)

WITNESS: It was not just a matter of him seeking out people's company, people who got to know him, and I assume if they were on his wave length and they were interested in what he was interested in he would soon form a good association with them. I have seen him ask somebody out for dinner on first acquaintance - (Objected to as irrelevant)

MR SHAND:

Q. Did you observe his habits of speech with regard to bluntness and the like when in conversation with others? (Objected toas irrelevant; disallowed)

Q. I want to ask you about whether you learnt from your association with the accused his attitude to the law; did you learn from him what it was? A. I thought he had a great respect for the law.

Q. From what did you draw that view? A. He was interested in law above everything else. Well I took it that his interest in law reform, which was most patent and which lasted over all the time that I knew him, in itself indicated a great respect for the law.

Q. Did you become aware of his habits of speech from having been associated with him over these years? (Objected to)

CROWN PROSECUTOR: This objection raises matters of law which should be discussed in the absence of the jury.

HIS HONOUR: Members of the jury, would you withdraw to the jury room, please.

IN THE ABSENCE OF THE JURY:

CROWN PROSECUTOR: Your Honour, I do not think there is any doubt where this is leading. My learned friend will undoubtedly ask whether this witness had heard the accused express any views

concerning the use of the word "mate" or whether he did use the word "mate" himself.

In my submission such evidence is in exactly the same category as the evidence your Honour ruled as inadmissible questions asked by Mr Shand. An answer in the negative that he had not heard the word "mate" used would not tend to establish in any way at all that it was not used on this occasion and, indeed, in particular circumstances the accused might have denigrated some other person for using the word "mate" repeatedly is not evidence that it was not used on this occasion. We would submit that it ought not to be received.

MR SHAND: We do not cavil with the proposition. There isa basis for the suggestion why your Honour ruled relating to evidence of a similar kind. We put this with respect, in our submission, that this evidence is, on the authorities, really admissible. We refer your Honour to Wigmore on Evidence 3rd edition, vol. 1, par. 93, at p.519 to 520. We refer your Honour to Halsbury's vol. 17 4th edition, par. 33 on p.26/27.

HIS HONOUR: That paragraph seems to be devoted to civil proceedings

MR SHAND: Yes, it is purely, we submit, a matter of the rules of evidence as to which one cannot draw any distinction between civil and criminal proceedings and the mere reference to the law of similar facts and acts is well known to your Honour as applying to the criminal jurisdiction.

HIS HONOUR: There are a few exhortations to trial judges to exercise caution in allowing similar fact evidence in criminal matters.

MR SHAND: Most definitely, I concede that. I take your HOnour to an English authority, Joy v. Phillips (1916) 1 K.B. 849, and Lahrs v. Eichsteadt (1961) S.R. Queensland 457. There are other cases which deal with matters of industrial practice and I refer your Honour to Connor v. Blacktown District Hospital(1971) N.S.W.L.R. at 713.

We would submit your Honour is in a position where the majority judgment, in our submission, clearly supports the admissibility of the evidence which we seek to have Mr McClelland give, that your Honour is not in a position yet literally,,but is distinct from the cross-examination which proceeded during the previous witness to the effect there will be a denial of the claim alleged which contained the word "mate". We submit the authority of Connor v. Blacktown District Hospital evidence is admissible even if one looks at the dissenting judgment, your Honour is not in a position to determine whether or not the accused would say that he has a distinct recollection of what took place on the day in question. We are only dealing with the minority judgment in that instance and rely on the approval given at p.721 to the proposition set out in Wigmore on Evidence and supported by the authority Trotter v. McLean (1879) 13 Ch. Div. 574.

We submit it is another example of custom and habit.

(Luncheon adjournment)

MR SHAND: Martin v. Osborne (1955) C.L.R. at 637 concerns a charge under the Transport Regulation Act dealing with the question as to whether or not the defendant was conducting the driving of a commercial vehicle whilst unlicensed and a question as to whether or not payment was involved which would seem to be the key issue. The cases referred to in that judgment may well be recognised as examples of admission of evidence of similar facts as a form of facts substantially proved by the charge. In our submission as Evatt, J. indicated, that only illustrated an application of general principle of relevancy on the basis evidence so admitted renders more probable or perhaps less probable a fact in issue. The task which faces the prosecution under strict requirements could not be said to rest on the accused, bearing in mind the onus of proof and the adducing of facts in this instance concerning habit which may give rise to the prdable or even possible a fact is central to an issue is not to be accepted.

I suggest this is the proposition, if, and I do not concede this by any means is a situation in this case, the fact and the use of the word "mate" on that one occasion were a central or primary fact then according to Chamberlain's case, that is a case which the jury have to prove beyond reasonable doubt, it is to be used as a basis for any conclusion of guilt or the drawing of any inference relevant to any opinion about guilt which proposes and imposes the requirement. Therefore, if this alleged fact is to be so, it is one as to which, if the jury consider that there is a reasonable doubt and about the existence of that fact, that is rationally reasonable doubt, they would be unable to find, according to a proper direction, that it had been proved and therefore unable to use it in reaching any conclusion from it.

In this case it is our submission, putting it at its absolute lowest, and we submit it is higher than that, the evidence we anticipate will be given, the accused, according to a close association with this witness, never used the word. That has a much higher probitive value than that and therefore is compelling evidence, if not compelling highly persuasive evidence, from which the jury could conclude it was not used on the occasion in question.

HIS HONOUR: Am I to understand the evidence you would seek to lead from the witness lays along the lines of the evidence given in the committal proceedings?

MR SHAND: That evidence falls into two sections. One section of it, upon which I have not addressed, is on p.219.7 of the transcript which starts, "Would you proceed please..." and the next three answers comprise one body of evidence on that matter. The particular part we are seeking to look at commences at the second last question on p.219 and that sufficiently encapsulates the evidence we would seek to lead.

I will illustrate the proposition and I put it on the basis of assumption. If the accused were to seek to give evidence

to the effect that he as from a certain time many years ago up to the present time or the time of relevant events, never used the word "mate" would he be permitted to give such evidence. In our submission it would be very clearly admissible as establishing a habit on his part from which a strong inference could be drawn as to a fact in issue. We would submit, in particular the authority Lahrs v. Eichsteadt provides a very apt example of the application of the principle which emerges from these cases to the effect that this evidence would be admissible here. I do not for the moment address your Honour as to the passage of the evidence of this witness on p.219.7 to which I made reference. I give an indication I will be seeking to lead that evidence from this witness.

His Honour: About the other Senator?

MR SHAND: Yes, your Honour.

HIS HONOUR: Mr Crown, do you wish to put any submissions?

CROWN PROSECUTOR: It is the effect of the reference in Wigmore's case that there must be an invariable regularity of action and, of course, there was the further assertion sounded in that passage where it was said seldom is such an inference shown or demonstrated we would submit the circumstances of this case are plainly not within the principles referred to in Wigmore on Evidence and, indeed, that statement of principle deals with an American case, not that be any criticism, but there are domestic and English authorities.

I would submit it is abundantly plain that the reference in Halsbury par. 48 is two civil cases and civil cases only and indeed the editors seem to be making it clear in that respect.

In the cases referred to by Mr Shand, the first case of Joy v. Phillips is a civil case and a case in which there was absolutely no direct evidence upon the matter at all. It seems plain that it was on the basis of complete absence of evidence that the evidence was in fact received.

HIS HONOUR: The statements in the judgment do refer in general terms to deceased men and Lehrs was a case of similar principle being directed to a person who had no intellectual capacity.

CROWN PROSECUTOR: It would seem to have been upon those bases and those alone that the evidence was received, so the cases are not in my submission authorities for the proposition which Mr Shand advances.

If we go to Connor v. Blacktown District Hospital, this again is a civil case and in order for such evidence to be received it must be in respect of an act habitually and uniformly done in circumstances so substantially similar. It is plain enough from the merest glance of the transcript that Mr Shand is unable to show those circumstances in this case. Coming to the evidence here, the evidence perhaps be adduced is in respect of a period of only three years in a special context, in a political context and a context far removed from the context here

To illustrate the point to refer to a person directly or to address a person as mate may well be an offensive form of address depending upon the circumstances. However, it is highly unlikely that anybody would regard a reference to a third person as "my mate" as any way an offensive method of describing such a person. I refer to this to highlight the difference in context between the evidence sought to be adduced here and the circumstances in which it is contended by the Crown the word "mate" was used. Trotter v. McLean refers to a course of business and there has always been a different role to a course of business in the commen sense and because of business has nothing to do with this case.

We would submit the passage referred to in Martin v. Osborne, particularly the judgment of Evatt, J. supports us, for example, the passage in the second last paragraph of p.382 and following on to p.384. We are talking about the use of the word "mate" in an entirely different context completely divorced from the context of which the witness could speak. In our submission the evidence sought to be adduced cannot be brought within any of the authorities indeed, it is clearly outside them.

MR SHAND: The proposition put by the Crown that the word "mate" can be used in an offensive manner was not explained and does not have any direct relevance to the point under discussion. We are not talking about the meaning of the word "mate" but its use as a matter of habit.

The Crown puts the rules referred to as in Lahrs v. Eichsteadt and other cases applies to civil cases and not criminal which is negative as expressed by Evatt, J. in Martin v. Osborne.

HIS HONOUR: Halsbury was confined as a statement of principle to civil cases.

MR SHAND: The proposition for which we contend applies to only civil cases we will not argue. It was put the role of such applies in the case of negative evidence of habit, not negative evidence as to the absence of conduct and it is our submission the very discussion in Lahrs v. Eichsteadt indicates it goes both ways as logically it must and lacks a foundation of commonsense and logic so to attempt to restrict it.

On a matter of fact it was put this witness's evidence goes to about five years, that is not so, we seek to offer evidence which covers the whole period from the time the accused and Mr McClelland were in the Senate together through tothe very time of the act charged.

Martin and Osborne on the question of admissibility lays down the requirement that the evidence in relation to the other facts or acts other than the act charged must be established beyond reasonable doubt that such act was committed and perhaps committed by the accused is a well known proposition and has been borne out in later cases in the High Court which merely follow the proposition that the Crown's onus is to prove beyond reasonable doubt. When it comes to the accused offering evidence

no such barrier is erected against the evidence which he may offer of the words here and the reference in Martin's case illustrate the onus on the Crown and not on the accused.

The Crown referred to the last paragraph on p.382 which seems to address itself largely to the probitive fac t of the effect of the evidence in question which was the very proposition Evatt, J. was prescribing as a qualification which the evidence had to pass and an illustration of the Crown evidence. This evidence is not only a matter of resemblance, it is precise and relates to the use of the word "mate" and no additional resemblance is required. What more nexus could be required than evidence going directly to the question as to whether in fact the word "mate" was used.

The first paragraph on p.393 is another illustration of the use of the words "inference or irresistable" and doesnot have any application to the admissibility of this evidence.

(For judgment see separate transcript)

MR. SHAND: Your Honour, prior to the jury returning, the passages on p.219 -

HIS HONOUR: Relating to the question of what he has said about another Senator, yes, I reject that also.

IN THE PRESENCE OF THE JURY

HIS HONOUR: Members of the jury, I have upheld the objection to evidence sought to be led by Mr.Shand.

MR. SHAND: Q. You have known the accused as, firstly, a junior barrister; secondly, Queen's Counsel; thirdly, a senator; fourthly, Attorney-General of Australia,and fifthly a judge and now senior judge of the High Court of Aust ralia, is that so? A. Yes.

Q. What do you say as to the character of the accused? A. Well, I hold him in the highest esteem. I think he is a man of excellent character.

RE-EXAMINATION

CROWN PROSECUTOR: Q. Mr. McClelland, I just want to ask you a little about your acquaintance with the accused concerhing which you have given evidence, and you have given evidence of his character.Were you in cabinet with him? A. No , I succeeded him in Cabinet. I filled a vacancy caused by his elevation to the Bench.

Q. But you and he were on the same political side, of course? A. Yes.

Q. For how long had you been on the same politicalside - perhaps I should ask you how long have you been a member of the Labor Party? A. Ithink since before Mr. Justice Murphy, going back to the 40s.

Q. When did he become a member of the Labor Party, do you know? (No answer)

Q.What is the period of your common membership, to your knowledge? A. I would not know that but I would think he would have joined later than me, if only because he is younger than me.

Q. Was there a period of common membership of which you can be certain A. Oh yes.

Q. Can you tell me what that period is? A. Well, I would think it would be safe to say at least from 1950 to - from 1950 onwards.

Q. You told my learned friend, Mr. Shand, that he was one of your closest friends? A. Yes.

Q. Would that be a large group of close friends? A. No, I would never have had a large group of close friends.

Q. You would never? A. No, I would never have had more than half a dozen at any one time. It is a shifting group, but at any one time half a dozen is as much as a busy life would accommodate.

Q. You said of his character at an earlier stage or perhaps of his interests, that he had a tendency towards obsessiveness. Do you remember saying that? A. Well, when he got a bee in his bonnet that excited his intellectual or moral interest he was inclined to be a bit of a bore about it with his colleagues, to hammer it excessively.

Q. You said he was gregarious, is that so? A. Yes.

Q. Can you tell us anything of his loyalty to his friends? A. Well, he has always been loyal to me. I have no reason to doubt his loyalty to people to whom he gave his friendship.

(Witness retired and excused)

JAMES HENRY STAUNTON
Sworn and examined:

CROWN PROSECUTOR: Q. Judge, is your full name James Henry Staunton? A. Yes.

Q. You are the chief judge of the District Court of New South Wales? A. Yes.

Q. Where is your residence?A. [redacted].

Q. When were you appointed a judge of the District Court of N.S.W.? A. 1st April, 1971.

Q. When did you become chief judge of the court? A. When that position was provided by statute on 1st July, 1973.

Q. Judge, can you tell me how many district court judges there were in N.S.W. in 1981 to 1982 and 1983? A. 36, 37, thereabouts.

Q. 36 or 37. Do you know the accused? A. Yes.

Q. For how long have you known him? A. I would say over 35 years.

Q. You were at the bar, of course, before your elevation to the Bench? A. Yes.

Q. Did you ever appear against the accused when you were at the Bar? A. I think I did on one or two occasions.

Q. Did you ever appear with him? A. I don't think so.

Q. Was he senior to you or were you senior to him? A. Yes, he was senior to me.

Q. He was a Queen's Counsel and you do not think you ever appeared as his junior? A. No, I don't believe I did.

Q. What was your professional relationship with him? A. Well, we were in the same building, chambers building. We saw each other in the ordinary course of life at the Bar. We saw each other at professinal functions and we were on cordial terms, very cordial terms.

2nd Trial

JAMES ROBERT McCLELLAND
Affirmed and examined:

CROWN PROSECUTOR: Q. Mr McClelland your full name is James Robert McClelland? A. Yes.

Q. You are a retired judge of the NSW Supreme Court, is that so? A. Well, Land and Environment Court.

Q. When did you cease to be a judge - indeed you were Chief Judge of that court? A. In June last year, June 3rd.

Q. You reside at [redacted]? A. I have changed that.

Q. Do you know Morgan Ryan? A. Yes.

Q. For how long have you known him? A. About 40 years.

Q. You were a practising solicitor before you went on the Bench, is that correct? A. Yes.

Q. You also served asa Senator? A. Yes.

Q. And a Minister of the Crown, is that so? A. Yes.

Q. Mr McClelland, do you know the accused? A. Yes.

Q. How long have you known him? A. Well, about the same time as I have known Ryan, perhaps a little less. Nearly 40 years.

Q. I want to ask you about the conversation which I think you had with the accused concerning Morgan Ryan in the first third or quarter of the year 1982. Do you remember such a conversation? A. Yes, I do.

Q. Are you able to tell us about when it was? A. Well, I think it would be around about this time of the year in 1982, roughly four years ago.

Q. Did the topic of Morgan Ryan come up? A. Yes.

Q. Who made the telephone call, by the way? A. Mr Justice Murphy phoned me as I recall it.

Q. Who initiated the reference to Morgan Ryan? A. Well, I think it was me. I cannot be absolutely certain. It was four years but I think I was the one who first raised the matter of Ryan because he had recently been to see me shortly before.

Q. Did the accused say anything of Ryan to you? A. Well, I said something about his having been to see me and Justice Murphy said, "Yes, the magistrate has made up his mind. The best thing he can do is get the thing on as soon as possible."

Q. What did you say? A. I said, Yes, as a matter of fact he had been to see me and at x his request I rang Jim Staunton, that is Judge Staunton, the Chief Judge of the District court, to ask him

what needed to be done, what were the procedures for getting an expedited hearing and I told them to Justice Murphy.

Q. Did you say anything to the accused as to whether you had passed that information on to Ryan or not? A. No, I cannot remember that. I was asked that at the other trial and I don't remember whether I did or not. I just couldn'tbe positive about that.

Q. In any event you did tell him that you had made an enquiry at Ryan's request of Chief Judge Staunton? A. Yes.

CROSS-EXAMINATION

MR BARKER: Q. You told the accused that you had already rung Jim Staunton? A. No, I'm not - yes, I did,that's right.

Q. You asked him about the procedures for obtaining an expedited hearing? A. I asked him about that, yes.

Q. By an expedited hearing do we mean an early trial? A. Yes, that's right. I knew nothing about criminal procedures.

Q. When you talk about an early trial according to law? A. Yes.

Q. Did the accused tell you that he had already been to Judge Staunton? A. No, I told you I cannot remember. He may have but I cannot remember.

(Witness retired and excused)

IN THE ABSENCE OF THE JURY

(Legal discussion ensued in regard to the admissibility of evidence of Judge Flannery).

(For judgment see separate transcript)

(Further hearing adjourned to Friday, 18 April 1986, at 10 am)

Information Given on 24/6/86 at 5.30 pm.

1. Staunton - McLelland

(a) Did Murphy speak to McLelland before or after McLelland first went to see Staunton?

(b) In the Murphy-McLelland conversation, did Murphy ask McLelland to talk to Staunton, with McLelland replying on at least two occasions, "You mean, you want me, to nobble him"? Murphy on each occasion replying "No, not at all".

(c) Did Judge Foord meet Murphy on several occasions also, in the course of this exercise, including at Murphy's Darling Point flat?

(d) Did McLelland perjure himself in Murphy's trial

(i) by not telling the full story of the conversation - as to nobbling. Arguably not ;

(ii) by saying that Murphy frequently referred to people as his "mates"?

2. Murphy-Staples

(a) Did Murphy tell Staples about his intervention in a constitutional case, telling Wran, as Premier, that he didn't like the argument the A/G (Mary Gaudron) was putting and that it ought to be changed?

(b) Staples is reported to take the view that there is nothing wrong in Murphy doing so.

(c) What case was it?

3. Areas of Intervention as A/G

(a) Did Murphy ask to be shown all files relating to heroin trafficking?

(b) Did Murphy intervene in any files concerning Felipe Ysmach?

(c) List of Morgan Ryan's clients.

2696A

Extract from Weinberg/Phelan Memorandum

dated 3 July 1986 (full copy on File C51

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 <u>before</u> 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.