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FILE No. C. 34/

Parliamentary Commission of Inquiry
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FILE No. C.34

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

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

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

Matter No.4 - Sala

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

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

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

Matter No.5 - Saffron surveillance

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

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

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

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

Matter No.7 - Ethiopian Airlines

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

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

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

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

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

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

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

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

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

Matter No.9 - Soviet espionage

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

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

Matter No.10 - Stephen Bazley

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

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

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

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

Matter No.12 - Illegal immigration

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

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

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

Matter No.17 - Non-disclosure of dinner party

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

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

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

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

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

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

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

Matter No.28 - Statement after trial

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

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

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

Matter No.29 - Stewart letter

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

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

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

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

Matter No.31 - Public Housing for Miss Morosi

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

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

Matter No.32 - Connor view of the Briese matter

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

Matter No.34 - Wood shares

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

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

Matter No.35 - Soliciting a bribe

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

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

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

Matter No.37 - Direction concerning importation of pornography

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

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

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

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

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

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

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

Matter No.38 - Dissenting judgments

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

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

Matter No.41 - Comment of Judge concerning Chamberlain committal

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

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

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

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

[redacted]

S.Charles

M. Weinberg

[redacted]

A. Robertson

[redacted]

D. Durack

[redacted]

P. Sharp

[redacted]

A. Phelan

21 August 1986

MEMORANDUM RE ALLEGATION NO 32

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

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

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

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

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

[redacted]

M Weinberg

[redacted]

A Robertson

16 July 1986

Extract from Weinberg/Phelan Memorandum

dated 3 July 1986 (full copy on File C51

ALLEGATION NO. 21 - THE LUSHER - BRIESE CONVERSATION

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