IN-CONFIDENCE

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

FILE No. C.46 /

ARCHIVAL ACTION

FORMER PAPERS	LATER PAPERS

TITLE ALLEGATION NO 33

Related Papers

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FILE No. C. 46

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

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 said 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

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

— See David Williamson 10-30, Burlgara. [redacted], with DD. Introduced ourselves, explained [illegible] of commission in hand terms. DD: 'Need for a person we cannot identify that you may have some info. about CAVE relevant to our enquiry! DW then outlined briefly his assoc. with CAVE - 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 [illegible] 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 summoned! DW: 'OK!' We left about 10 mins after arriving.

(Note: A Phelan diary)

The Hon. Mr J R 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 ([redacted] to arrange a suitable time for an appointment to be made.

Yours faithfully

[redacted]

Sir George Lush
Presiding Member

21 July 1986

Amended allegation (see endorsement).

ALLEGATION NO 33

Particulars of Allegation

The Honourable Lionel Keith Murphy, in or about April 1982, at Sydney and whilst a Justice of the High Court of Australia, held a private conversation with the Chief Judge of the District Court of New South Wales, James Henry Staunton. In that conversation, the Judge asked the Chief Judge to arrange for Morgan Ryan to receive an early trial on certain charges which were then pending in the District Court of New South Wales. Further, in this conversation, the Judge sought to persuade the Chief Judge that Ryan was a public figure, and as such was entitled to and should be granted an early trial.

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 respects -

a) abusing his office as a Justice of the High Court of Australia;

further, or in the alternative,

b) improperly attempting to influence a judicial officer in the execution of his duties.

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

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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 NO. 33 - THE APPROACH TO JUDGE STAUNTON

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

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

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

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

Persons to be interviewed

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