



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 full extent of his past association with Morgan Ryan was as detailed at pages 421, 422, 423, 426, 427, 429, 439, 507, 527, 529, 557, 593, 594, and 595 of the trial transcript and was, in substance:

- (a) That Ryan's firm of Solicitors had briefed the Judge in the early 1950's on a regular basis. At that time the Judge and Ryan were on friendly terms - (page 421).
- (b) That the frequency of briefs delivered to the Judge by that firm had diminished by the end of the 1950's - (page 421).
- (c) That during the 1960's the association between the Judge and Ryan was limited to a few meals - (page 422), and other social occasions - (page 429).
- (d) That for up to three years prior to December, 1972 there had been no social contact at all between the Judge and Ryan - (page 422.)
- (e) That between December 1972 and February 1975 the Judge had no association with Ryan. - (pages 423, 426, and 557).
- (f) That there was contact between the Judge and Ryan in 1976 arising out of and relating to the private prosecution brought by Danny Sankey against the Judge and others. - (page 427.)

- (g) That there was thereafter little contact between the Judge and Ryan until 1979 when evidence was led for the first time in the Sankey prosecution - (page 427.)
- (h) That in 1979 the Judge and Ryan had approximately ten conversations all of which related to the institution of proceedings for malicious prosecution, or the recovery of costs incurred in the Sankey prosecution - (pages 527 and 593). There was also a dinner party at Ryan's home on 10 May 1979 which the Judge attended.
- (i) That during the first six months of 1980 the Judge and Ryan had approximately five conversations all of which related to the institution of proceedings for malicious prosecution arising out of the Sankey prosecution - (pages 527, 529 and 595).
- (j) That during the last six months of 1980 there were no communications between the Judge and Ryan - (page 529.)
- (k) That during the first six months of 1981 there were no communications between the Judge and Ryan - (page 529.)
- (l) That the first communication in 1981 between the Judge and Ryan was in or about September of that year when Ryan rang the Judge to discuss the fact that he, Ryan, had been charged - (page 439.)
- (m) That the next contact between the Judge and Ryan was a chance meeting in Martin Place, Sydney in April, 1982.

The evidence given by the Judge regarding the extent of his past association with Morgan Ryan was false, and false to his knowledge because:

- (i) The Judge and Ryan had been in regular social contact with each other up to 1975, and in particular between 1967 and 1975.



- (ii) The Judge and Ryan had been business associates during the period 1967-1975 and in particular had been partners in a number of restaurants and clubs, including the Venus Room.
- (iii) The Judge and Ryan had acted together on 17 January, 1975 to assist [REDACTED] and Richard Wigglesworth, who had on that day, participated in carrying out a break-in at the premises of Junie Morosi.
- (iv) The Judge had lunch with Morgan Ryan in the latter part of 1979, together with Donald Thomas, and John Davies. Further, the Judge regularly had lunch with Ryan when in Sydney.
- (v) The Judge spoke to Ryan on several occasions between the eighteenth day of March 1979 and the ninth day of April 1979. These conversations did not relate to the institution of proceedings for malicious prosecution against Sankey and others, or the recovery of costs arising out of the private prosecution brought by Sankey against the Judge and others. The conversations in fact related to the appointment of Wadim Jegarow to the position of Deputy Chairman of the Ethnic Affairs Commission, arranging for harm to be caused to David Rofe QC, and some Police interference in the operation of an illegal casino run by Robert Yuen.
- (vi) The Judge spoke to Ryan on several occasions between the seventh day of February 1980 and the sixth day of May 1980. These conversations did not relate to the institution of proceedings for malicious prosecution against Sankey and others, or the recovery of costs arising out of the private prosecution brought by Sankey against the Judge and

others. The conversations in fact related to the Lusher Inquiry, pinball machines, arranging for harm to be caused to David Rofe QC, Milton Morris, Parliamentary attacks upon Ryan, the Central Railway complex, Luna Park, and two officers of the Australian Federal Police who were investigating the affairs of Ryan.

By testifying that the full extent of his association and dealings with Morgan Ryan throughout the relevant period was as set out in paragraphs (a) to (m), and by failing to give evidence as to the matters set out in paragraphs (i) to (vi), the Judge deliberately understated the frequency of his contacts with Ryan and misstated the nature of their association.

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 morning 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



Mr Abraham Gilbert Saffron  
[REDACTED]

Dear Mr Saffron,

Re: Parliamentary Commission of Inquiry

I refer to the summons which has been served on you pursuant to section 11(1) of the Parliamentary Commission of Inquiry Act and note that your attendance is required on 5 August 1986.

However, I would appreciate it if you would contact the Commission and advise a telephone number upon which you can readily be reached in order that a date other than the 5 August 1986, for your attendance, can be communicated to you.

Yours sincerely,


J F Thomson  
Secretary

25 July 1986

COMMONWEALTH OF AUSTRALIA

Parliamentary Commission of Inquiry Act 1986


SUMMONS TO APPEAR BEFORE THE COMMISSION

Mr Abraham Gilbert Saffron  


I, Sir George Hermann Lush, a member of the Parliamentary Commission of Inquiry appointed under the Parliamentary Commission of Inquiry Act 1986 hereby summon you, pursuant to sub-section 11(1) of that Act

- (a) to appear before the Commission at the hearing to be held in the Hearing Room, 8th Floor, 99 Elizabeth Street, Sydney, on Tuesday 5 August 1986 at 10.00 a.m. to give evidence in relation to the matters into which the Commission is inquiring; and
- (b) to attend from day to day unless excused or released from further attendance.

Dated 25 July 1986

  
.....  
Presiding Member

Mr Morgan Ryan  
[REDACTED]

Dear Mr Ryan,

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Presiding Member

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

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

The relevant passages in the transcript are as follows:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

M. Weinberg

0139M