

IN-CONFIDENCE

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

FILE No.
C63 /

ARCHIVAL ACTION

FORMER PAPERS

LATER PAPERS

TITLE **ALLEGATIONS DRAWN AND
SERVED**

Related Papers

1	2	3	4	5	1	2	3	4	5
Folio No.	Referred to	Date	Cleared	Resubmit	Folio No.	Referred to	Date	Cleared	Resubmit

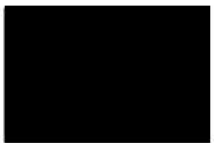
FILE No. **C63**

FILE NOTE

Copies of allegations provided to Judge's representatives save for Allegation 15 which was drawn but not served due to Commission winding-up.

- 3 sets of allegations (1, 2, 11, 18, 20, 23, 25, 27, 33 - 14, 24 and 39)

provided to G Griffith QC, B Gummow, and T Fitzgerald QC (Qld) for preparation of High Court proceedings - all 3 sets returned by B Gummow and G Griffith - a vocadexed copy forward ~~by~~^{to} Tony Fitzgerald in Queensland was destroyed on advice from Robert Mueke - all accounted for and destroyed.



D Durack

19 August 1986

2949A

Steve Masselos & Co
Solicitors
1st Floor
44 Martin Place
SYDNEY NSW 2000

Dear Sirs,

Mr Justice L K Murphy

I refer to my letter of 17 July 1986.

I attach hereto further allegations numbered 16 and 40.

Yours faithfully,

A solid black rectangular box used to redact the signature of the instructing solicitor.

D N Durack
Instructing Solicitor

30 July 1986

Steve Masselos & Co
Solicitors
1st Floor
44 Martin Place
SYDNEY NSW 2000

Dear Sirs

MR JUSTICE L K MURPHY

I refer to my letter of 15 July 1986 and to discussions between Mr S Charles QC and Mr R Gyles QC on 16 July 1986.

I attach hereto further allegations numbered 14, 24 and 39. (Allegation No. 24 was provided to Mr Gyles on 16 July 1986)

I also attach hereto amended allegations numbered 1, 25, 27 and 33 (amendments underlined in red). These amended allegations were also provided to Mr Gyles on 16 July 1986.

Yours faithfully

A solid black rectangular box redacting the signature of the instructing solicitor.

D N Durack
Instructing Solicitor

17 July 1986

Steve Masselos & Co
Solicitors
1st Floor
44 Martin Place
SYDNEY NSW 2000

Dear Sirs

MR JUSTICE L K MURPHY

I refer to your letter of 14 July 1986 and to conversations between respective Senior Counsel in relation thereto.

In accordance with the statement of Senior Counsel Assisting the Commission I enclose herewith nine allegations. They will be considered at the Commission's hearing on Thursday next together with any other allegations, details of which are able to be provided before that date.

Yours faithfully

A solid black rectangular redaction box covering the signature of the sender.

D N Durack
Instructing Solicitor

15 July 1986

ALLEGATION NO 1

Particulars of Allegation

The Honourable Lionel Keith Murphy, in or about the month of December 1979, at Sydney, and whilst a Justice of the High Court of Australia, engaged in a conversation with Donald William Thomas, then a Detective Chief Inspector of the Commonwealth Police in charge of the Criminal Investigation Branch for the New South Wales Region. The Judge spoke to Thomas regarding a social security conspiracy prosecution in the conduct of which Thomas had played a principal role. He extended an invitation to Thomas to meet Senator Donald Grimes, who in Parliament had strongly criticised the conduct of that case.

The Judge then spoke to Thomas about the impending formation of the Australian Federal Police. In the course of this conversation, the Judge said, "we need somebody inside to tell us what is going on", thereby conveying to Thomas that the Judge sought from him the provision of covert information relating to or acquired by the Australian Federal Police to unauthorised persons within the Australian Labor Party. The Judge said that in return for Thomas fulfilling the role which he had suggested, the Judge would arrange for Thomas to be

promoted to the rank of Assistant Commissioner in the Australian Federal Police. Thomas told the Judge that he would not be happy forming an affiliation with any political party. The Judge asked Thomas to think about the matter.

The said conversation occurred at a Korean restaurant during the course of a lunch attended also by Morgan Ryan and John Donnelly Davies, then the Assistant Commissioner, Crime, of the Commonwealth Police in Canberra. The Judge arranged for Thomas to attend the lunch for the purpose of holding the conversation set out above.

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) attempting to bribe a Commonwealth officer;

further, or in the alternative

b) urging or encouraging a Commonwealth officer to publish or communicate to unauthorised persons official information which it would be his duty not to disclose;

further, or in the alternative

- Ⓒ) for improper purposes, offering to intervene to secure
for a Commonwealth officer an appointment to a higher
rank.

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

ALLEGATION NO 2

Particulars of Allegation

The Honourable Lionel Keith Murphy, between the twenty-first day of April, 1980, and about the twenty-third day of July, 1981, at Sydney and elsewhere, and whilst a Justice of the High Court of Australia, did agree with Morgan Ryan and other persons unknown to make inquiries with a view to determining whether two officers of the Australian Federal Police, David James Lewington and Robert Allan Jones, could be bribed or otherwise influenced to act contrary to their duty as police officers.

Further, in a telephone conversation between the Judge and Ryan, which conversation occurred after the said agreement, Ryan asked, in substance:

"Have you been able to find out about those two fellows who are doing the investigation; are they approachable?"

The Judge replied, in substance, that he had made inquiries, and that the answer was definitely no, they were both very straight.

At all relevant times Lewington and Jones were conducting investigations into certain alleged illegal activities of Korean nationals who had obtained permanent residence status in Australia and into the part, if any, Ryan had played in those alleged activities.

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 -

entering into an agreement to investigate the possibility of bribing or otherwise improperly influencing Australian Federal Police.

not
criminal
conduct.
(too early
to be attempt
or conspiracy)

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

ALLEGATION NO 11

Particulars of Allegation

On the twentieth day of November, 1975, informations were laid by a private citizen, Danny Sankey against the Honourable Lionel Keith Murphy and other persons alleging an offence against Section 86 of the Crimes Act 1914 (Cth) and a conspiracy at common law. Between the first day of June, 1976, and the thirty-first day of October, 1976, at Sydney and elsewhere, and whilst a Justice of the High Court of Australia, the Judge agreed with Morgan Ryan and Abraham Gilbert Saffron that Saffron would arrange for an approach to be made to Danny Sankey in order to persuade him to withdraw these private prosecutions.

At the relevant time, as the Judge knew, Saffron was a person of ill-repute, and the Judge entered into this agreement in the expectation and with the intention that Saffron would cause Sankey to be improperly and unlawfully intimidated into withdrawing these private prosecutions.

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) entering into an agreement to threaten or coerce a party to a cause in order to persuade him to discontinue his part therein;

conspiracy to
commit a
contempt of
Court.

further, or in the alternative,

- b) entering into an agreement to pervert the course of justice in relation to the judicial power of the Commonwealth.

S.42 (with Crimes
Act.

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

ALLEGATION NO 14

Particulars of Allegation

During June and July of 1985, the Honourable Lionel Keith Murphy, a Justice of the High Court of Australia, was tried before Cantor J. and a jury in the Supreme Court of New South Wales on an indictment containing two counts. Both counts charged the Judge with breaches of Section 43 of the Crimes Act 1914 (Cth). The Judge's trial began on the fifth day of June, and ended on the fifth day of July. The Judge gave evidence on oath in his own defence. On the fifth day of July the jury returned verdicts of guilty on the first count and not guilty on the second count.

Thereafter, the Judge appealed to the New South Wales Court of Criminal Appeal, and certain questions of law were reserved for consideration by the New South Wales Court of Appeal arising out of his conviction. On the eighteenth day of November 1985, their Honours delivered judgment, and ordered that the Judge be retried on the count upon which he had been convicted previously.

On the fourteenth day of April 1986, the retrial of the Judge upon that count commenced before Hunt J. and a jury in the

Supreme Court of New South Wales. The Crown case concluded on the twenty-first day of April. A submission that there was no case to answer was made on behalf of the Judge, but that submission was rejected by the trial Judge. Counsel for the Judge then stated that he did not wish to open the defence case, but told the Court that the Judge would make a statement to the jury. The Judge did make such a statement pursuant to Section 405 of the Crimes Act 1900 (NSW).

In the course of that statement, the Judge said, "the next time I met him (i.e. Mr Briesé) was on Saturday 23 April 1983. This was fifteen months after I am supposed to have said something wrong or criminal to him - fifteen months after. It was at the Academy of Forensic Science Seminar at the University of New South Wales."

The Judge then went on to mention lunch, and he continued:

"...after the lunch I was just starting to walk back with someone else and Mr Briesé came over and greeted me and joined us and I introduced the other person and then we walked, strolled, all the way up to the Lecture Room, about one hundred yards. It was for about three or four minutes he chatted away to me. Now, I thought he was very friendly to me, I just cannot understand - to my mind he could not have been nicer to

me, and this was after I am supposed to have invited him to do something criminal, to undermine, to subvert the justice, and pervert the course of justice."

The statement proceeded:

"These allegations, the first I heard about them, was in middle of 1984. I have done my best to recall the exact words which passed between us but I had no idea when I was talking to him in January 1982 that out of the blue, years later it would be suggested that I had done something wrong or criminal."

The Judge, by including these remarks in his statement suggested to the jury that the conduct of Briese in April 1983 was inconsistent with the alleged act of criminality on the part of the Judge having taken place, and that Briese's allegations against the Judge had been invented by Briese after that meeting in April 1983.

The Judge, through his Counsel, had previously disavowed any suggestion that there had been an allegation of recent fabrication made during the course of the cross-examination of Briese. This disavowal was made expressly, and in terms. By including in his statement the imputation that Briese had recently fabricated his allegations against the Judge, the

Judge deliberately and wilfully violated the principles laid down in *Browne v Dunn* (1893) 6 R 67. The consequences of this were that -

- a) Briese was unfairly deprived of the opportunity of supporting his credibility and
- b) the Crown was unable to adduce evidence in support of its case which would have been relevant and admissible, had there been compliance with the rule.

It will be contended that the conduct of the Judge -

- a) in making a statement pursuant to Section 405 of the Crimes Act 1900 (NSW);
- b) in deliberately and wilfully including in his statement the imputation that Briese had recently fabricated his allegations against the Judge, in circumstances where the Judge's Counsel had expressly and in terms disavowed any such suggestion;

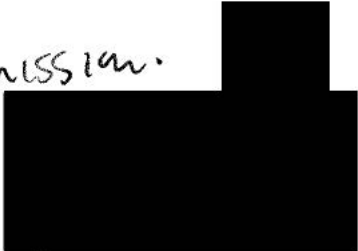
amounted to misbehaviour within the meaning of Section 72 of the Constitution in that it constituted conduct contrary to accepted standards of judicial behaviour.

It will also be contended that the conduct set out in a) above constituted misbehaviour in the following further respects -

- a) putting his own interests above the standing and esteem of the Court of which he was a member;
- b) bringing himself, a Justice of the High Court of Australia, and thereby that Court, into disrepute.

Allegation 15

Drawn but not served
on the Judge due
to wind-up of the
Commission.





Parliamentary Commission of Inquiry

G.P.O. Box 5218
Sydney, N.S.W. 2001
Ph: (02) 232-4922

With the compliments of

ALLEGATION NO. 15

Particulars of Allegation

The Honourable Lionel Keith Murphy, on or about 20 April 1985, and whilst a Justice of the High Court of Australia, supplied to Pamela Whitty, secretary to Rodney Groux, photocopies of diaries belonging to Clarence Briese, in order that further copies might be made and retained by Groux. The Judge knew that the copies which he had in his possession had been made at a time when the diaries had been subpoenaed by his legal advisers in or about June 1985, during the course of his trial before Cantor J. and a jury in the Supreme Court of New South Wales. The Judge also knew that Cantor J. had during the trial, ordered that the Judge's legal advisers could have access to the diaries, but had made no order authorising the diaries to be photocopied, or distributed to any person other than the Judge or his legal advisers.

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 -

Contempt of Court

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

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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.

ALLEGATION NO 18

Particulars of Allegation

The Honourable Lionel Keith Murphy, in or about March 1979, and whilst a Justice of the High Court of Australia, agreed with Morgan Ryan that he, the Judge, would speak to the then Premier of New South Wales, the Honourable Neville Wran, for the purpose of procuring the appointment of Wadim Jegarow to the position of Deputy Chairman of the Ethnic Affairs Commission of New South Wales. Further, the Judge subsequently spoke to the Premier for that purpose, and later informed Ryan that the Premier had told him that Jegarow would be appointed to the position.

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 -

entering into an agreement to influence the making of a Public Service appointment, and actually intervening to achieve that purpose.

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

Not
Criminal
conduct

ALLEGATION NO 20

Particulars of Allegation

The Honourable Lionel Keith Murphy, on or about the thirty-first day of March 1979, and whilst a Justice of the High Court of Australia, did urge or encourage Morgan Ryan to cause harm to David Rofe, one of Her Majesty's Counsel.

Further, the Judge, on or about the seventh day of February 1980, and whilst a Justice of the High Court of Australia, again urged or encouraged Ryan to cause harm to Rofe.

From 1975 to 1979 Rofe had acted and appeared as Counsel for the informant in private prosecutions brought by Danny Sankey against the Judge and others upon a charge of conspiracy to effect a purpose that was unlawful under a law of the Commonwealth, and a charge of conspiracy at common law.

The Judge's purpose in urging or encouraging Ryan to cause harm to Rofe was to take revenge upon Rofe for what he had done in the conduct of these prosecutions.

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: -

Contempt
of
Court.

- a) urging or encouraging another to take revenge upon a person for what that person had done in the discharge of his duty in the administration of justice;

further, or in the alternative

Not criminal
offence.

- b) urging or encouraging a person unlawfully to cause harm to another.

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

ALLEGATION NO 23

Particulars of Allegation

The Honourable Lionel Keith Murphy, in or about March 1980, did agree to assist Morgan Ryan by arranging a meeting between Ryan and Milton Morris, a Member of the New South Wales Parliament, believing that the purpose of the meeting was to enable Ryan to threaten Morris with exposure of his alleged involvement in a tax evasion scheme in order to induce Morris to persuade the then Leader of the Opposition in the State of New South Wales, the Honourable John Mason, to desist from making speeches in Parliament attacking Ryan for his role in relation to summary proceedings in which Roy Cessna and Timothy Milner were the defendants. Further, the Judge did assist Ryan by taking steps to arrange such a meeting.

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) agreement to assist another in making an unwarranted demand with menaces, and without reasonable cause;

not blackmail
or
conspiracy

further, or in the alternative

- Article
9 Bill of
Rights.
- b) committing a breach of parliamentary privilege by agreeing to assist another in making an unwarranted demand with menaces upon a Member of Parliament acting in his parliamentary capacity.

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

ALLEGATION NO 24

Particulars of Allegation

The Honourable Lionel Keith Murphy, on or about the second day of April 1980, at Sydney or elsewhere, and whilst a Justice of the High Court of Australia, engaged in a telephone conversation with Dorothy Ryan, the wife of Morgan Ryan. During the course of that conversation, the Judge said to Mrs Ryan that her husband should arrange to have a Government member of the New South Wales Parliament assert that that member had made enquiries about Ryan, and that he, Ryan, had "come up smelling like a rose". By that statement, the Judge intended that the Member should convey that enquiries had been conducted, and that Ryan had been exonerated of any wrongdoing. The Judge knew that no such enquiries had been conducted at the time he made this suggestion. Further, the Judge intended that the statement by the member be made irrespective of whether any such inquiries be conducted. The Judge also knew that Ryan had not been exonerated of any wrongdoing.

At the relevant time, Morgan Ryan was under investigation by the Australian Federal Police for the part, if any, he had

played in the alleged illegal activities of Korean nationals who had obtained permanent resident status in Australia. It had also been alleged in the New South Wales Parliament that Ryan had been involved in perverting the course of justice in relation to summary proceedings in which Roy Cessna and Timothy Milner were the defendants.

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 -

urging or encouraging a person to cause a Member of Parliament to make false statements for the purpose of misleading or preventing legitimate enquiry into matters of public concern.

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

ALLEGATION NO 25

Particulars of Allegation

The Honourable Lionel Keith Murphy, in or about January 1980, and whilst a Justice of the High Court of Australia, agreed with Morgan Ryan that he, the Judge, would make, or cause to be made, representations on behalf of interests associated with one Abraham Gilbert Saffron to persons in a position to influence the award of a contract to remodel the Central Railway Station in Sydney for the purpose of assisting those interests to obtain the contract. Further, the Judge subsequently made such representations, and informed Ryan that he had done so, and that the representations were likely to be successful.

At the relevant time, Saffron was, and was known by the Judge to be, a person of ill-repute.

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 -

a) entering into an agreement to intervene to influence the award of a public contract to a particular tenderer, and actually intervening to achieve that purpose;

further, or in the alternative

b) entering into an agreement to intervene to influence the award of a public contract to a tenderer associated with a person of ill-repute, and actually intervening to achieve that purpose.

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

ALLEGATION NO 27

Particulars of Allegation

The Honourable Lionel Keith Murphy, in or about the early months of 1980, and whilst a Justice of the High Court of Australia, agreed with Morgan Ryan that he, the Judge, would make representations on behalf of a company associated with Abraham Gilbert Saffron to the Honourable Neville Wran, then the Premier of New South Wales, in order to obtain a lease over premises in Sydney known as Luna Park. Further, the Judge subsequently made such representations, and informed Ryan that he had done so and that the representations had been successful.

At the relevant time Saffron was, and was known by the Judge to be, a person of ill-repute.

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 -

a) entering into an agreement to intervene to influence the grant of a lease of public land to a particular tenderer, and actually intervening to achieve that purpose;

further or in the alternative

b) entering into an agreement to influence the grant of a lease of public land to a tenderer associated with a person of ill-repute, and actually intervening to achieve that purpose.

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

(11)

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.

ALLEGATION NO 39

Particulars of Allegation

The Honourable Lionel Keith Murphy, on or about the sixth day of January 1982, at Sydney, and whilst a Justice of the High Court of Australia, engaged in a conversation with Clarence Briese, the Chief Stipendiary Magistrate for New South Wales, during the course of which the Judge spoke about a case that was then being heard before Bruce Brown, a Stipendiary Magistrate in New South Wales. That case was known colloquially as the "Greek Conspiracy" case. During the course of the conversation, the Judge described it as having been one of the greatest scandals in legal history. Further, the Judge said that it was "oppressive that 180 people could be charged with a single conspiracy". The Judge went on to say that the Magistrate would be a hero in the community if he dismissed the case, and, for emphasis, in one paragraph.

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 -

- a) expressing to a judicial officer of an inferior court a strong and concluded view as to the merits of a case which might come before the Judge in his judicial capacity;

further or in the alternative

- b) expressing such a view to a judicial officer of an inferior court in circumstances where it might be communicated to another judicial officer within the same court, who was then hearing the matter, and where this view, being known to be held by a Justice of the High Court of Australia, would or might influence, in the performance of his duties, the judicial officer then hearing the matter.

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

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.