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No. 202/1981

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES
COMMITTEE OF PRIVILEGES

Report relating to a printed
reference and an article
published in the Sydney
Daily Mirror of Wednesday,
2 September 1981

together with
Minutes of Proceedings
and Minutes of Evidence
of the Committee

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Mr R. Jacobi, M.P.

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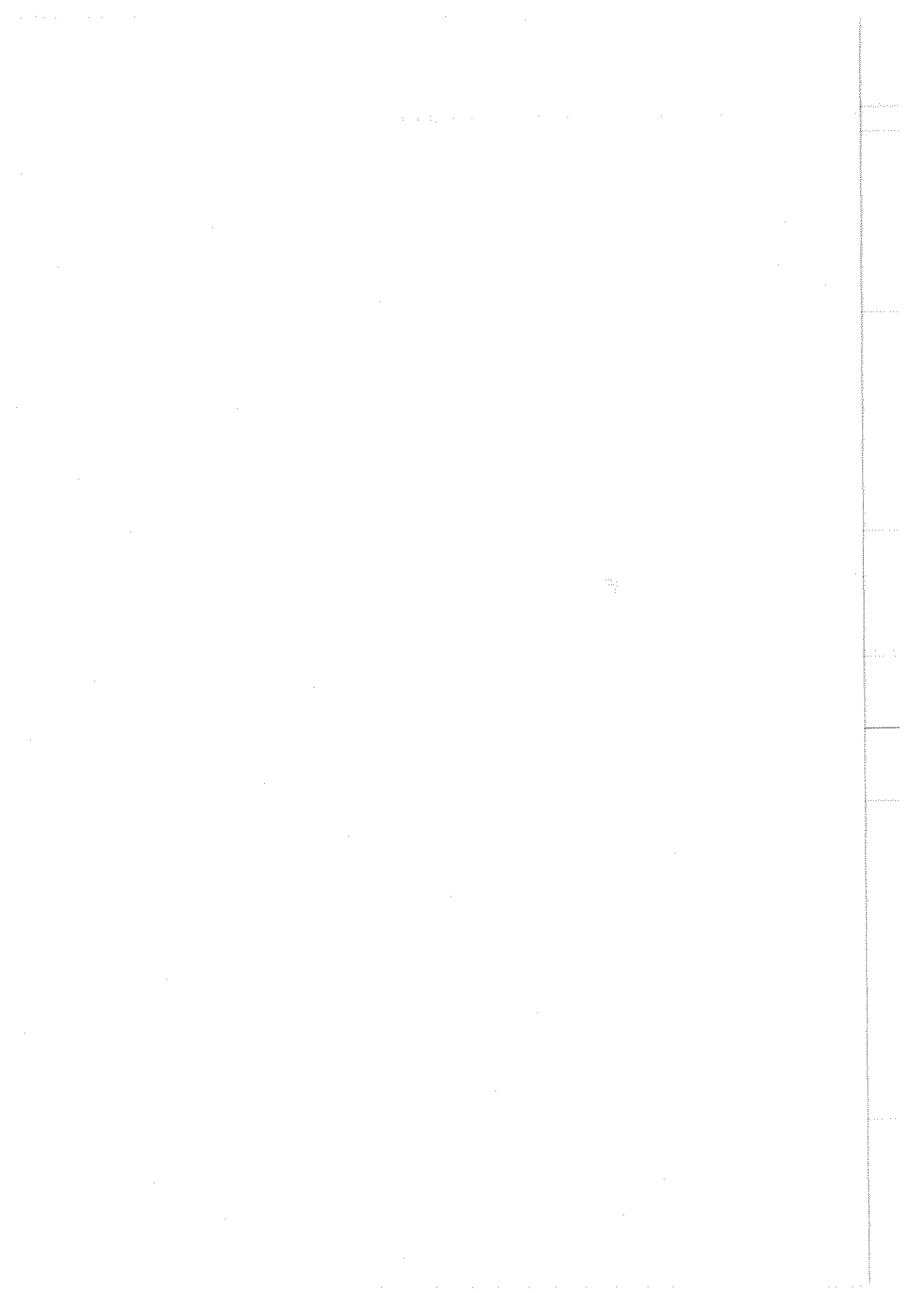
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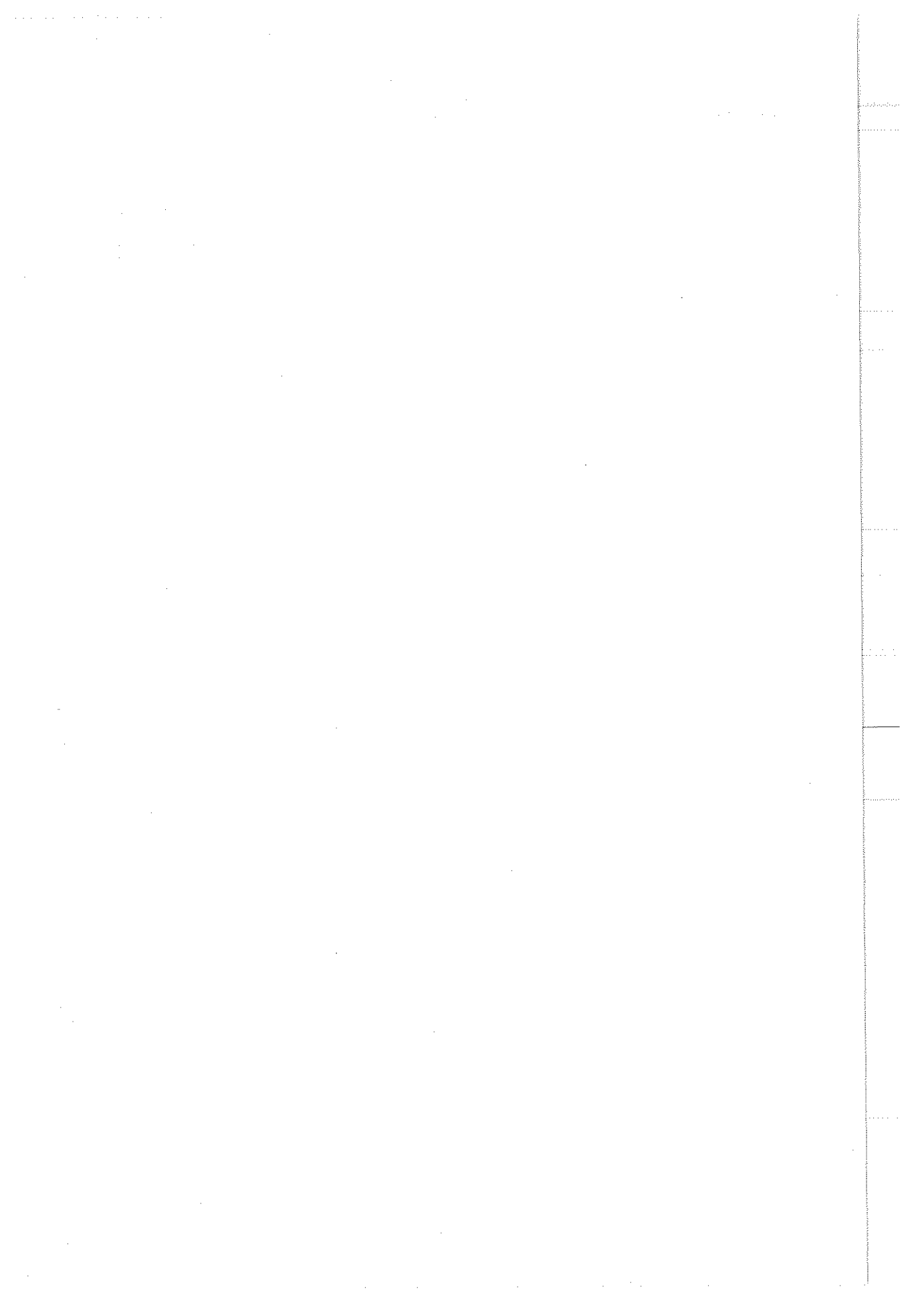
Secretary—Mr L. M. Barlin

1. Nominated by the Deputy Leader of the Opposition to serve in his place during this inquiry.
2. Nominated by the Leader of the House to serve in his place during this inquiry.



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EXTRACTS FROM VOTES AND PROCEEDINGS

No. 49 of Tuesday, 8 September 1981

- 4 **PRIVILEGE:** Mr Ruddock raised a matter of privilege based on a printed reference and an article by Mr L. Oakes relating to Members of the Commonwealth Parliament appearing on pages 1 and 9, respectively, of the *Daily Mirror* of 2 September 1981. Mr Ruddock produced a copy of the *Daily Mirror* containing the material and gave the name of the printer and publisher of that newspaper. Mr Speaker stated that he had formed the opinion that there was a prima facie breach of privilege and stated that he would exercise his discretion not to give the matter precedence immediately but would allow Mr Ruddock time to consider the form of motion he might wish to move.

Privilege—Material in Daily Mirror—Reference to Committee of Privileges (See entry No. 4): Mr Ruddock moved—That the matter of the printed reference and the article by Mr L. Oakes relating to Members of the Commonwealth Parliament appearing on pages 1 and 9, respectively, of the *Sydney Daily Mirror* of Wednesday, 2 September 1981, be referred to the Committee of Privileges.

Debate ensued.

Question—put.

The House divided (the Speaker, Sir Billy Snedden, in the Chair)—

AYES, 75

Mr Adermann	Mr Cowan	Mr Humphreys	Mr Morris
Mr Baume	Mr Cross	Mr Hunt	Mr Morrison
Mr Birney	Mr Cunningham	Mr Hyde	Mr Mountford
Mr Bouchier	Mr Dean	Mr Jacobi	Mr Newman
Mr Bowen	Mr Dobie	Mr Jarman	Mr O'Keefe
Mr Bradfield	Mr Drummond	Mr C. K. Jones	Mr Porter
Mr Braithwaite	Dr Everingham	Mr Jull	Mr Ruddock
Mr N. A. Brown	Mr Fife	Mr Killen	Mr Sainsbury
Mr Bungey	Mr Fisher	Dr Klugman	Mr Scholes
Mr Burr	Mr Fry	Mr Lloyd	Mr Shack
Mr Cadman	Mr Giles	Mr Lusher	Mr Shipton
Mr D. M. Cameron	Mr Groom	Sir Phillip Lynch	Mr Street
Mr E. C. Cameron	Mr Harris	Mr MacKellar	Mr Tambling
Mr I. M. D. Cameron	Mr Hawke	Mr MacKenzie	Mr Thomson
Mr Carlton	Mr Hicks	Mr McLean	Mr Tuckey
Mr Chapman	Mr Hodges*	Mr J. L. McMahon*	Mr Viner
Mrs Child	Mr Hodgman	Sir William McMahon	Mr White
Mr Coleman	Mr Holding	Mr McVeigh	Mr Wilson
Mr Connolly	Mr Howard	Mr Millar	

NOES, 27

Mr Armitage*	Mr Dawkins	Mr B. O. Jones	Mr Spender
Mr Beazley	Mr Duffy	Mr Kent	Dr Theophanous
Dr Blewett	Mr Free	Mr Kerin	Mr Uren
Mr R. J. Brown	Mr Goodluck	Mr Mildren	Mr Wallis
Mr Campbell	Mr Hall	Mr Peacock*	Mr West
Mr Charles	Mr Howe	Mr Rocher	Mr Willis
Mrs Darling	Mr Johnson	Mr Scott	

* Tellers

And so it was resolved in the affirmative.

(Note: Pairs are not recorded in the Votes and Proceedings. For details of Pairs arranged for this division, see page 59).

No. 51 of Thursday, 10 September 1981

8 COMMITTEE OF PRIVILEGES: Mr Speaker informed the House that, during consideration of the matter referred to the Committee of Privileges on 8 September 1981, the Leader of the House and the Deputy Leader of the Opposition had nominated Mr Hodgman (Minister for the Capital Territory) and Mr Duffy, respectively, to serve in their places as members of the Committee.

10 COMMITTEE OF PRIVILEGES: Mr Sinclair (Leader of the House), by leave, moved—That the Committee of Privileges, when considering the matter referred to it on 8 September 1981, have power to send for persons, papers and records.

Question—put and passed.

REPORT

1. The Committee of Privileges to which was referred the matter of the complaint made in the House of Representatives on 8 September 1981 relating to a printed reference and an article by Mr L. Oakes published in the Sydney *Daily Mirror* newspaper of 2 September 1981 has agreed to the following report.

Complaint

2. On 8 September 1981 Mr P. M. Ruddock, M.P. raised a matter of privilege based on a printed reference published on page 1 of the first edition and an article published on page 9 of all editions of the *Daily Mirror* of Wednesday, 2 September 1981. On page 1 of the first edition the printed reference was preceded by a heading 'MPs BLUDGERS, DRUNKS!' and the article on page 9 by the heading 'Bludgers on the back bench'. Mr Speaker informed the House that under the rules of privilege this was a contempt of the Parliament and therefore a *prima facie* breach of privilege. In doing so Mr Speaker stated that he would exercise his discretion and not give the matter precedence at that moment but would allow the Member to consider, perhaps in consultation with other Members of the House, a form of motion which might dispose of the matter that day. Subsequently Mr Ruddock moved that the matter be referred to the Committee of Privileges and the motion was debated and agreed to on division by 75 votes to 27.

3. The printed reference and article published in the *Daily Mirror* are reproduced in Appendix A and the relevant extracts from *Hansard* in Appendix B of the Memorandum of the Clerk of the House of Representatives annexed to this report.

Powers, Privileges and Immunities of the House of Representatives, and of its Members

4. Section 49 of the Commonwealth of Australia Constitution Act provides that:

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

5. The Parliament has not declared its powers, privileges and immunities except in relation to a few relatively minor powers, viz.:

Parliamentary Papers Act—protection of Government Printer and others;

Parliamentary Proceedings Broadcasting Act—protection of Australian Broadcasting Commission;

Public Accounts Committee Act and Public Works Committee Act—privileges of, and protection of, witnesses who appear before these Committees; and

Jury Exemption Act—exemption from jury service of members and certain officers.

The Parliament is, therefore, strictly limited to the powers, privileges and immunities of the United Kingdom House of Commons as at 1 January 1901, being the date of establishment of the Commonwealth.

6. In considering the matter referred to it, the Committee had recourse to the practice and precedents of the House of Commons and of the House of Representatives itself. Relevant cases and precedents are included in the Memorandum of the Clerk of the House of Representatives attached as Appendix I to this report.

Reflections on the House and its Members

7. *The House of Commons has often had to deal with contempts caused by reflections upon it or its Members. On a number of occasions in the last 25 years, matters have been referred to its Committee of Privileges (see pages 37–42 of the Memorandum of the Clerk of the House). The particular rules in respect of this type of contempt are set out in the following extracts from Erskine May's Parliamentary Practice (19th edition) published in 1976:*

In 1701 the House of Commons resolved that to print or publish any books or libels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House, and indignities offered to their House by words spoken or writings published reflecting on its character or proceedings have been constantly punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.

Reflections upon Members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House.

(May 19, pp. 144–5)

Analogous to molestation of Members on account of their behaviour in Parliament are speeches and writings reflecting upon their conduct as Members. On 26 February 1701, the House of Commons resolved that to print or publish any libels reflecting upon any member of the House for or relating to his service therein, was a high violation of the rights and privileges of the House.

Written imputations, as affecting a Member of Parliament, may amount to breach of privilege, without, perhaps, being libels at common law, but to constitute a breach of privilege a libel upon a Member must concern the character or conduct of the Member in that capacity.

(May 19, p. 152)

8. The House of Representatives itself has also had some experience in similar cases. In 1951, it referred to its Committee of Privileges an article published in *The Sun* newspaper reflecting on members. Again in 1978, an editorial published in the *Sunday Observer* newspaper was referred to the Committee of Privileges. Details of those cases are also contained in the Memorandum of the Clerk of the House.

The Inquiry

9. Guided by these precedents the Committee first gave consideration to the wording of the article, to the heading on the article on page 9 and to the heading and printed references published on page 1 of the first edition of the *Daily Mirror* of Wednesday, 2 September 1981. It then decided to call the Editor of the *Daily Mirror*, Mr P. F. Wylie, to appear before it and he was so requested.

10. When he appeared before the Committee, Mr Wylie requested permission to have his legal advisers assist him with respect to any questions that may be put to him and to make submissions to the Committee on his behalf. The Committee deliberated on this request and agreed that counsel be permitted to address argument to the Committee on his right to appear generally for Mr Wylie. The Hon. T. E. F. Hughes, Q.C. and Mr N. R. Carson instructed by Mr H. D. H. Keller of Dawson Waldron were nominated by Mr Wylie as his legal representatives. Mr Hughes argued the case for representing Mr Wylie before the Committee.

11. Following consideration of the arguments the Committee resolved by a majority decision 'that applying Section 49 of the Constitution and Standing Order 1 of the House of Representatives, this Committee determines that this application for counsel to appear generally on behalf of Mr Wylie is not granted'. In making that decision the Committee was guided by the practice of the House of Commons where counsel have not been heard before its Committee of Privileges since the 1770s and the decision in the *Bankstown Observer* case of 1955 when the House of Representatives Committee of Privileges heard counsel on his right to appear generally for one of the witnesses, but declined to so allow.

12. Mr Wylie was examined before the Committee and accepted responsibility for the publication. He informed the Committee that he had personally written the heading 'MPs BLUDGERS, DRUNKS!' on page 1 of the first edition and that the printed reference on page 1 of the first edition and the heading on the article on page 9 of all editions of the *Daily Mirror* had been written by the acting features editor. He confirmed that Mr L. Oakes had written the article. He also advised the Committee that Mr Oakes' article 'underwent normal sub-editorial treatment for grammar, paragraphs, cross-heads, commas and so forth. It was not taken out of context. It was normal sub-editorial treatment'.

13. The Committee questioned Mr Wylie in regard to his choice of words used in the heading and the wording of the 'pointer' on page 1 of the first edition of the paper and to the allegations made by Mr Oakes in the article itself. Referring specifically to back bench members of the House (and the Senate) the article claimed that:

for much of the rest of the time they loaf, become frustrated and often frequent the members' bar at Parliament House.

It went on to say that:

There is a group of Opposition MPs known as the Labour Old Guard Socialists—LOGS for short. They sit around the members' bar boozing, complaining . . . and achieving very little. There are quite a few members on the Government side who are little more than political time-servers—bludging, in effect, on the taxpayers.

Later it went on to say:

People who are really working hard do not get time to hit the bottle, though. The Parliamentarians with reputations as drunks and those regarded as workers are two quite separate groups.

Later the article stated that:

The result is a small group of ministers weighed down by workloads that are well nigh inhuman and nearly a hundred other MPs with too little to do.

14. Mr Wylie was asked if he had any personal knowledge to substantiate the allegations and informed the Committee that he did not. He had not checked the accuracy of the statements contained in the article and had not discussed the article with Mr Oakes prior to publication. He stated that he had 'complete faith in Laurie Oakes' and endorsed the article. He described Mr Oakes as 'a credible and reputable journalist'. He had relied on 'Mr Oakes' reputation' in satisfying himself on the accuracy of accusations contained in the article.

15. In answer to a question Mr Wylie admitted that prior to publication he considered the article may have constituted a contempt of the Parliament. Although he did not want to commit a breach he had not sought legal or other advice in relation to it. Nevertheless, he allowed publication.

16. Mr Wylie maintained that an article published the following day which described the activities of a hard-working Minister was a deliberate 'balancing article'. Quite apart from any other aspect, the Committee points out that the first publication singled out the non-ministerial members as 'drunks and bludgers'—it specifically excluded Ministers from the description. Far from balancing the first publication the second article can only be seen as reiterating and re-enforcing the allegations contained in the first.

17. The author of the article, Mr L. Oakes, was requested and did make himself available to attend the hearing at which Mr Wylie was heard. However, he was not called that day. Through his legal advisers he had previously made it known to the Committee that he would be making application to be legally represented if called before the Committee.

18. Having ascertained the facts of the publishing and the authorship from Mr Wylie, the Committee resolved that Mr Oakes should be extended the opportunity to appear before the Committee if he so wished. This advice was conveyed to Mr Oakes in writing

and he declined. The Committee did not call Mr Oakes and he did not give evidence to it.

19. The Committee is satisfied that sections of the publication are inaccurate and offensive and had individual Members been named redress may have been sought through normal court action. The Committee believes that the clear impression that the headings (especially) and parts of the article would convey to the average reader of the *Daily Mirror* was that back benches were lazy, drunks and bludgers. Such an inaccurate allegation could not fail to bring the institution into contempt. The Committee has concluded that parts of the publication come under the established rules of contempt.

Finding and Recommendation

20. The Committee has determined as follows:

- (1) That the printed reference on page 1 of the first edition and the article on page 9 of all editions of the Sydney *Daily Mirror* of 2 September 1981 constitute a contempt of the House of Representatives by the author, editor and publisher;
- (2) having considered the reference and the article, the Committee is of the view that the article and its presentation are irresponsible and reflect no credit on its author, the editor or the publisher; and
- (3) while finding a contempt of the House of Representatives has been committed, the Committee is of the opinion that the matter is not worthy of occupying the further time of the House.

Related Matters

21. The Committee feels that it should comment on some additional matters related to this inquiry. The matters now referred to serve to illustrate inconsistencies and anomalies that can arise in applying the law of Parliamentary privilege.

22. The article by Mr L. Oakes which was referred to the Committee of Privileges was published in the Sydney *Daily Mirror* of 2 September 1981. In respect of that publication the Committee has found that the article and the headings constituted a contempt of the House of Representatives. The same article with different headings and slightly altered format also appeared in three other newspapers about the same time. Also about that time a fourth newspaper published an editorial which, in effect, repeated some of the extravagant and inaccurate aspects of the Oakes' article, challenged the whole basis of the law of Parliamentary privilege and strongly deplored the reference of the *Daily Mirror* article to the Committee of Privileges. Only the publication in the *Daily Mirror* was raised as a complaint of breach of privilege in the House and referred to the Committee of Privileges. Having found that the *Daily Mirror* publication was a contempt of the House, it would appear, *prima facie*, that the publications in the other newspapers were also a contempt. Yet it is not within the power of this Committee to inquire into and report on the other publications as they were not referred to it by the House.

Broader Issues

23. The 1978 report of the Committee of Privileges in relation to an editorial published in the *Sunday Observer* newspaper of 26 February 1978 (Parliamentary Paper No. 120/1978) raised matters in relation to the law of Parliamentary privilege in general. The report of that Committee of Privileges strongly recommended that the whole question of Parliamentary privilege should be referred to it for investigation and report. This Committee has noted that despite the agreement in principle of the House

on 13 April 1978 (V&P 1978-80/147-8) for the carrying out of such an inquiry by a joint select committee of the Parliament, the proposed inquiry has not eventuated. Accordingly, this Committee has resolved as follows:

... the Committee of Privileges—

- (1) notes that on 13 April 1978 the House agreed in principle that there should be an inquiry into the whole question of Parliamentary privilege, as proposed by the Committee of Privileges in its report presented on 7 April 1978, but that such inquiry should be conducted by a joint committee of the Parliament;
- (2) notes that the proposed joint committee inquiry has not eventuated;
- (3) calls on the House to immediately initiate a resolution for the establishment of a joint committee as previously proposed; and
- (4) further calls on the House, in the event of the failure of the Senate to agree to the establishment of the proposed joint committee, to move for the establishment of a select committee of the House to conduct the inquiry.

24. It is the Committee's unanimous view that it is essential that such a Committee should be established immediately and the inquiry commenced without delay.

25. Having recommended the establishment of a Committee of Inquiry this Committee feels that it should comment in this report on some of the areas of Parliamentary privilege which merit particular attention. In doing so it does not seek to pre-empt any consideration by that Committee of Inquiry but rather to invite attention to particular areas of continuing concern to the Committee of Privileges.

The method of raising complaints in the House

26. In 1979 the House of Representatives Standing Orders Committee recommended adopting procedures for raising privilege matters based on revised arrangements adopted by the House of Commons in 1978. The new procedures of the House of Commons stemmed from a major review of Parliamentary privilege conducted by a Select Committee of that House in 1966-67 which was reviewed by the Committee of Privileges in 1977. The proposals of the House of Representatives Standing Orders Committee were as follows:

That standing orders 95, 96 and 97 be omitted and the following standing order substituted:

Privilege 95. Upon a matter of privilege arising:

- (a) a Member shall give written notice of the alleged breach of privilege or contempt to the Speaker as soon as reasonably practicable after the matter has come to his attention;
- (b) if the matter arises from a statement published in a newspaper, book or other publication, the Member shall provide the Speaker with a copy of the newspaper, book or publication;
- (c) the Speaker thereupon will determine as soon as practicable whether or not the matter merits precedence over other business;
- (d) if, in the opinion of the Speaker, the matter does not merit precedence, he will inform the Member, in writing, accordingly and may also inform the House of his decision, and
- (e) if, in the opinion of the Speaker, the matter merits precedence, he will inform the House of his decision, and the Member who raised the matter may move a motion without notice forthwith to refer the matter to the Committee of Privileges.

27. The House of Representatives did not debate the recommendation of the Standing Orders Committee and the new procedures were not adopted. The experience of the House of Commons as described by Speaker Thomas in *The Parliamentarian* of October 1980 provides ample evidence of the success of the new arrangements operating at Westminster. There is no reason to believe that such a procedure would be any less effective here in sieving matters referred to the Committee of Privileges.

Need to exercise penal jurisdiction sparingly

28. The 1966-67 House of Commons Select Committee on Parliamentary Privilege proposed the following set of rules for the guidance of the House in dealing with complaints of contemptuous conduct:

- (i) The House should exercise its penal jurisdiction
 - (a) in any event as sparingly as possible, and
 - (b) only when it is satisfied that to do so is essential in order to provide reasonable protection for the House, its Members or its Officers from such improper obstruction or attempt at or threat of obstruction as is causing, or is likely to cause substantial interference with the performance of their respective functions.
- (ii) It follows from sub-paragraph (i) of this paragraph that the penal jurisdiction should never be exercised in respect of complaints which appear to be of a trivial character or unworthy of the attention of the House; such complaints should be summarily dismissed without the benefit of investigation by the House or its Committee.
- (iii) In general, the power to commit for contempt should not be used as a deterrent against a person exercising a legal right, whether well-founded or not, to bring legal proceedings against a Member or an Officer.
- (iv) In general, where a Member's complaint is of such a nature that if justified it could give rise to an action in the courts, whether or not the defendant would be able to rely on any defence available in the courts, it ought not to be the subject of a request to the House to invoke its penal powers. In particular, those powers should not, in general, be invoked in respect of statements alleged to be defamatory, whether or not a defence of justification, fair comment, etc., would lie.
- (v) The general rules stated in subsections (iii) and (iv) of this paragraph should remain subject to the ultimate right of the House to exercise its penal powers where it is essential for the reasonable protection of Parliament as set out in subsection (i) of this paragraph. Accordingly, those powers could properly be exercised where remedies by way of action or defence at law are shown to be inadequate to give such reasonable protection, e.g. against improper obstruction or threat of improper obstruction of a Member in the performance of his Parliamentary functions.

29. Subsequently in 1977 the House of Commons Committee of Privileges recommended that the intention of the Select Committee's recommendation should be given effect, not by means of a formal resolution attempting to define contempt—a step which it considered might later prove to be too restrictive—but rather by proposing the adoption of a resolution that the Speaker be empowered to have regard to the reports of the Committee of Privileges in deciding whether to give a complaint precedence over the orders of the day. The House of Commons agreed to such a resolution on 6 February 1978 and as a consequence of that resolution and the revised method of raising complaints of breach of privilege, privilege matters face a more severe test before being allowed precedence by Mr Speaker. The result has been a substantial reduction in the number of matters referred to the Committee of Privileges.

Legal Representation before the Committee of Privileges

30. The Committee has already referred to the applications for legal representation which were made to it by a witness and a potential witness during the present inquiry. The decision the Committee reached to decline such applications was in accordance with long standing Parliamentary precedents in the United Kingdom and the experience of the Committee of Privileges of the House of Representatives itself. An alternative view put to the Committee was that this matter should be referred back to the House for direction. The issues canvassed are dealt with in a dissent attached to this Report.

31. As previously stated, since the 1770s the United Kingdom House of Commons Committee of Privileges has not heard counsel or solicitors on behalf of persons called before it. The view has consistently been taken that the justification of the practice is that the Committee of Privileges is not a court of law; it is a Committee of the House to which a complaint is referred for investigation and report.

32. The 1966–67 Select Committee of the House of Commons in considering the question of legal representation had this to say:

182. The practical situation is that a complaint is made which may lead the House eventually to impose the penalty of committal to prison upon the person against whom the complaint is made. Moreover, the conduct of other persons, including the Member who has made the complaint, may be

placed under serious scrutiny and their reputations may be subject to the effect of severe criticism in the Committee's Report.

183. In Your Committee's opinion the Committee of Privileges, whatever their technical character may be, are in practice in a position closely analogous to that of a tribunal set up under the Tribunals of Inquiry (Evidence) Act, 1921. Such a Tribunal is empowered to authorise the representation before it by counsel or solicitor of any person appearing to the tribunal to be interested, or it can refuse to allow such representation. Your Committee consider that similar rules ought to apply to a complaint of contempt which is being investigated by the Committee of Privileges.

Proposed Rules of Procedure

184. Your Committee accordingly recommend that whenever a complaint of contempt is entertained or is ordered to be investigated by the Committee of Privileges, the rules set out in the following paragraphs will in all cases apply.

Right of Attendance

185. The complaining Member and the person against whom the complaint is made will be entitled as of right to attend the proceedings of the Committee throughout the hearing of evidence and submissions, unless the Committee within their discretion decide otherwise. If they do decide otherwise, the decision and the reasons for the decision will be included in the Committee's report to the House.

Representation and Evidence

186. The complaining Member and the person against whom the complaint is made will be entitled to apply to the Committee at any stage of the proceedings for the right to be represented by counsel or solicitor or by any other person, including any Member of the House, and the Committee will be entitled to authorise or to refuse such representation. If the Committee so refuse, their decision and the reason for their decision will be included in their report to the House.

187. The Committee may at any stage of their investigation permit to any person whose reputation appears to be substantially in issue, and to the Member alleged to be damaged, if he is not the complaining Member, the same rights as under paragraph 185 are recommended to be made available to the complaining Member and to the person against whom the complaint is made; and may also permit to such person the right of representation referred to in paragraph 186 if this right is granted to the complaining Member or to the person against whom the complaint is made.

188. The Committee will be entitled to permit, or to refuse permission for, the calling of any witness by or on behalf of any of the persons referred to in paragraphs 185 to 187.

189. The right granted by paragraph 185 will include the rights to examine, cross-examine and re-examine witnesses and to make submissions to the Committee; and any right of representation granted by the Committee under paragraph 186 will include the right of the authorised representative to play a similar part in the proceedings.

Legal Aid

190. Your Committee are of the opinion that provision should be made by legislation to enable the Committee of Privileges to authorise in appropriate cases payments out of public funds for legal aid and for the necessary resources to be made available for this purpose. The benefits of this assistance should, whenever the Committee think it desirable, be available to all persons (including Members) who have or to whom the Committee authorise the right of attendance, as explained in paragraphs 185 and 187.

33. The recommendations were not adopted by the House of Commons and advice received by the Committee makes it clear that there has been no change in the practice of the Commons.

34. The Committee has also sought advice of the position in other Commonwealth countries. It has now been informed that in New Zealand alleged privilege offenders may be legally represented by counsel with the consent of the Committee of Privileges. In 1980, in a case regarding alleged breach of privilege by a Minister, the Minister and another witness were each legally represented before the Committee.

35. In Canada the position is somewhat different. The Standing Committee on Privileges and Elections resolved in 1975 that any witness or member or group of members may have in attendance legal counsel but such counsel shall not participate in the proceedings of the Committee beyond rendering advice to his client or clients.

36. The Australian Senate Committee of Privileges which in 1971 inquired into articles published in the *Sunday Australian* and the *Sunday Review* of 2 May 1971 (Parliamentary Paper 163/1971) adopted a similar approach to that operating in the Canadian House of Commons. On that occasion the Senate Committee resolved:

- (1) that witnesses may be accompanied by their solicitor or counsel and may, with leave, seek advice from their solicitor or counsel during the answering of questions put by the Committee;
- (2) that any submissions or representations made by witnesses be heard by the Committee; and
- (3) that the right of the solicitor or counsel to make any submissions be considered by the Committee when application therefor be made.

The Minutes of Proceedings of the Committee reveal that in the event the legal adviser accompanying one of the witnesses also addressed the Committee.

37. Having carefully considered the procedures adopted elsewhere and the undesirability of turning an inquiry by the Committee of Privileges into a court-type situation, the Committee feels that there are good grounds for review and reform. It sees this issue as requiring early resolution by the proposed joint select committee inquiry.

The Conduct of the Committee's Inquiry

38. It has been the practice of the House of Representatives Committee of Privileges since its first establishment on 7 March 1944 to conduct its examination of witnesses at *in camera* hearings. This practice was adopted from the Committee of Privileges of the United Kingdom House of Commons which, as expressed in *May*, page 675, 'does not sit in public'.

39. On one occasion (The *Daily Telegraph* case of 1971) the House of Representatives Committee of Privileges presented the evidence received by it with its report to the House. On another occasion (The *Sun* case 1951), the Committee laid parts of the evidence it had taken on the table in the Parliamentary Library, and in the *Bankstown Observer* case parts of the evidence were quoted in the Committee's report. On all other occasions the evidence taken by the Committee has not been published.

40. In accordance with long standing practice, the Committee followed the procedure of examining a witness in the privacy of a committee room, *in camera*. Nevertheless, the Committee believes that the evidence should be published in the instant case. There may, on occasions, be overriding considerations of national or commercial security or of a sensitive nature, e.g. involving unsubstantiated personal allegations; however, the Committee believes that generally the evidence should be presented. The Committee has accordingly supported this report to the House by the publication of the evidence taken.

41. The question of whether *in camera* hearings are the most appropriate method of proceeding, and in the best interests of the Parliament and the witnesses, are matters that should be the subject of consideration by the proposed joint select committee.

Transfer of Inquiry to the Courts

42. Suggestions have been made from time to time that the House should hand over to the Courts investigation of complaints of breach of privilege or contempt and the imposition of any penalty. It is said that the House should not be 'both prosecutor and judge' and that it is wrong in principle that 'Parliament should be judge in its own cause'. The 1908 report of the Joint Select Committee on Parliamentary Privilege (H. of R.4, S.6 1907-08) under the chairmanship of Sir John Quick, M.P. for Bendigo, reported that:

The ancient procedure for punishment of contempts of Parliament is generally admitted to be cumbersome, ineffective, and not consonant with modern ideas and requirements in the administration of justice. It is hardly consistent with the dignity and functions of a legislative body which has been assailed by newspapers or individuals to engage within the Chamber in conflict with the alleged offenders, and to perform the duties of prosecutor, judge, and gaoler.

The Committee went on to make the following recommendations:

- (1) That all persons printing, publishing, or uttering any false, malicious, or defamatory statements calculated to bring the Senate or House of Representatives or Members or the Committees thereof into hatred, contempt, or ridicule, or attempting to improperly interfere with or unduly influence, or obstructing, or insulting or assaulting, or bribing or attempting to bribe Members of Parliament in the discharge of their duties, shall be deemed guilty of breach of privilege and contempt of Parliament, and shall be liable to be prosecuted for such contempts upon complaint instituted by the Commonwealth Attorney-General before a Justice of the High Court pursuant to a resolution authorising such prosecution to be passed by the House affected.
- (2) That such prosecutions shall be heard and determined by a Justice of the High Court in its original jurisdiction, and in summary way upon evidence upon oath presented in open court subject to the proviso that matters of form and not of substance can be proved by affidavit.
- (3) That upon the hearing of such complaints the persons accused shall have the right to give evidence upon oath.
- (4) That upon the hearing of complaints for libel and slander against Parliament the only defence available shall be justification or proof of the truth of the statements complained of.
- (5) That upon such Justice of the High Court finding such complaints proved he shall, according to his judicial discretion, have power to impose a fine not exceeding five hundred pounds or imprisonment not exceeding twelve months, and may in addition to such fine or imprisonment order the accused so found guilty to pay the costs of the prosecution.
- (6) That, in view of the fact that a new measure of punishment for breach of privilege and contempt of Parliament is hereby recommended, Your Committee cannot advise that the proposed new law should be made retrospective.
- (7) That a law be passed defining the mode of proving by legal evidence what are the powers, privileges, and immunities of the House of Commons.
- (8) That a law be passed making provision for the summoning, attendance, and examination on oath or affirmation of witnesses before Select Committees of either House, and in cases of contempt before the High Court.

43. A Bill was drafted in 1934 at the request of the House of Representatives Standing Orders Committee to give effect to the recommendations of the Quick Committee. A copy of that Bill, which was never introduced into the Parliament, is attached to this report as Appendix III.

44. The question of the possible transfer of its penal jurisdiction to some other tribunal was considered in detail by the 1966-67 United Kingdom Select Committee which reported as follows:

140. Your Committee have nonetheless considered the suggestion with open minds. Having done so, they have come to the very clear conclusion that no such change is desirable. In the following paragraphs Your Committee set out the principal reasons for their view.

141. Reference to paragraph 48 indicates that in deciding whether a contempt has been committed the tribunal concerned must decide a number of questions which involve a delicate balance between the freedom of the individual and the essential protection of the House, its Members and Officers to enable them to perform their various functions and duties. Such functions and duties are in a constant state of alteration and development and Your Committee are firmly of the opinion that it must be the prerogative of the House, and of the House alone, to determine what at anytime are their limits.

142. This balance between the freedom of the individual and the essential protection of the House involves considerations of a political character which may vary according to the circumstances of the day. It is right that the House, which is responsible to the electorate, should make such decisions rather than that they should be made by an appointed tribunal, whether or not of a judicial character.

143. Once the decision has been made that a contempt has been committed, the question of the necessary penalty, if any, may again be governed by considerations of a political character. In practice, as pointed out by the Clerk of the House . . . the House has in recent years adopted a very much harsher approach to contempts committed by its own Members than to those committed by strangers. If it has been judge in its own cause, it 'has been a very lenient judge in its own cause'. An outside tribunal—and in particular any branch of the Judiciary—would have very great difficulty in exercising a similar selective leniency and would undoubtedly be embarrassed by the need to take into account considerations of a political character.

144. If the jurisdiction were transferred to an outside tribunal, whether that tribunal dealt with both guilt and penalty or with only one of them, it would still be necessary for the House to decide in each case whether to refer the complaint to the tribunal. In order to make this decision the House would have to be satisfied that it would be proper to do so and accordingly in practice might have to give to the complaint the same consideration which would be given to it if the jurisdiction were retained by the

House. There could, in Your Committee's opinion, arise embarrassment in the event of a conflict of view between the House and the ultimate tribunal.

145. Your Committee are not clear whether those who suggest such a change would impose any limit upon it. In Your Committee's opinion, quite apart from the considerations set out in the preceding paragraphs, it would be contrary to the normal practice of responsible bodies to remove from the House its penal jurisdiction over its own Members and Officers, involving respectively the possibility of expulsion and dismissal. It would also be inconvenient and undesirable to remove from the penal jurisdiction of the House misconduct committed within the precincts and in the sight or hearing of Mr Speaker, whether committed by a Member, an Officer or a stranger.

146. Your Committee accordingly strongly recommend that the House should retain its penal jurisdiction. It has been suggested that there should be some appellate procedure, but Your Committee are satisfied that the present procedure whereby the Report of the Committee of privileges is not effective until endorsed by a resolution of the House which may be debated contains adequate protection of an appellate character. If the House is not satisfied that justice has been done, or that it is manifest that it has been done, it has the power to reject the recommendation of the Committee of Privileges and, if need be, to refer the matter back to the Committee or to some other body.

45. The Committee presents both views on this aspect of the method of dealing with privilege matters for consideration by the House and the proposed joint select committee of inquiry.

The Need for Codification of Contempts

46. Another aspect of privilege to which this Committee invites the attention of the proposed joint select committee of inquiry is in respect of the desirability of attempting to codify categories of contempt.

47. It has been said that the scope of Parliament's penal jurisdiction is too wide, too uncertain and too dependent upon precedent; the press and the public are wrongly inhibited from legitimate criticism of Parliamentary institutions and of Members' conduct by fear that the penal jurisdiction may be invoked against them.

48. This view was rejected by the Commons Select Committee. In doing so it referred to the possibility of new forms of obstruction, new functions and new duties all contributing to new forms of contempt. The Commons Committee was convinced that the House ought not to attempt by codification to inhibit its powers.

49. This Committee believes that the proposed joint select committee ought to give serious consideration to the possibility of drawing up some guidelines to assist those persons and organisations involved in the reporting of the Parliament and the functioning of its Members. Such guidelines if able to be drawn up would do much to clear up some of the misunderstandings which surround Parliamentary privilege, the lack of appreciation of what are in fact the very limited privileges available to the Parliament, and in particular, those matters which may amount to a contempt of the institution of Parliament or its Members.

The Provisions of Standing Order 340

50. Standing Order 340 of the House of Representatives provides that:

The evidence taken by any select committee of the House and documents presented to and proceedings and reports of such committee, which have not been reported to the House, shall not, unless authorized by the House, be disclosed or published by any Member of such committee, or by any other person.

The standing order is in similar terms to the rule applied in the House of Commons.

51. A strict interpretation of the standing order can present, and on this occasion has presented, the committee with some difficulty. Taken literally it is not possible for a witness to discuss any part of his evidence with his legal representative, or his employer, even on a strictly confidential basis, without putting him or herself into contempt of the House. There are occasions when it is necessary that such discussions should occur and

this committee seeks guidance from the proposed joint select committee inquiry on the latitude that should be permitted in applying the provisions of Standing Order 340 in the future.

Conclusion

52. The circumstances surrounding this particular reference to the Committee and the large number of media reports and interviews in relation to it and Parliamentary privilege generally, combined with comments made in the House itself both at the time the matter was referred to the Committee and subsequently, have made this inquiry particularly difficult. The Committee has already referred to the anomalies created by referring only one of several publications of the Oakes article, namely that in the *Daily Mirror*, to the Committee. Nevertheless the Committee was charged with the responsibility of conducting this particular inquiry on behalf of the House and it has so done.

53. The Committee urges that its findings and recommendations in respect of the *Daily Mirror* publication and its earnest suggestion for the establishment of a proposed joint select committee of inquiry into all aspects of Parliamentary privilege are given serious and urgent consideration by the House and the Government. It is strongly of the view that the House should pass a resolution for the establishment of the proposed joint select committee without delay and that in the event of the Senate's concurrence in the establishment of the proposed joint select committee not having been received within a reasonable period, say by 30 April 1982, the House should proceed immediately to set up a select committee of Members of the House of Representatives to carry out the proposed inquiry as recommended by this Committee.

D. M. CAMERON
Chairman

22 October 1981

DISSENTING REPORTS

The following members of the Committee have lodged dissenting reports to the report of the Committee:

- (1) Mr M. J. Duffy, M.P. and Mr B. O. Jones, M.P.
- (2) Mr R. J. Birney, M.P., Mr A. C. Holding, M.P., and Mr R. Jacobi, M.P.
- (3) Mr G. G. D. Scholes, M.P.

Their dissenting reports are set out hereunder.

DISSENTING REPORT BY MR M. J. DUFFY, M.P. AND MR B. O. JONES, M.P.

Re: The matter of a reference by the House of Representatives on 8 September 1981 of an article by Laurie Oakes relating to Members of the House of Representatives appearing in the Sydney *Daily Mirror* of Wednesday, 2 September 1981.

Dissenting Report

1. The conduct of the inquiry into the abovenamed matter by the Committee of Privileges indicated very clearly the unsatisfactory state of the law, precedent and practice in the Australian Parliament.
2. The authors of this dissenting report support the general findings in the paragraphs 1-20 of the Majority Report which describe the conduct of the Oakes inquiry and we agree on the evidence, that a constructive contempt was committed. However, we express our deep concern at the unsatisfactory nature of the hearings, due principally to defects in the law of privilege and the Parliament's failure to restate and update this law.

The major objection to the present conduct of privilege cases relate to:

- (a) secrecy;
 - (b) denial of representation by counsel; and
 - (c) Parliament acting as judge in its own cause.
3. Section 49 of the Commonwealth Constitution declares that 'the powers, privileges, and immunities of the Senate and the House of Representatives . . . shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom . . . at the establishment of the Commonwealth' (i.e. 1 January 1901).

Standing Order 1 of the House of Representatives provides that:

In all cases not provided for hereinafter, or by sessional or other orders or practice of the House, resort shall be had to the practice of the Commons House of the Parliament of the United Kingdom of Great Britain and Northern Ireland in force for the time being, which shall be followed as far as it can be applied.

Secrecy

4. In practice the Committee of Privileges operates as a secret committee. Explicit warnings are given by the Chairman both to witnesses and to Committee members that they must not divulge any details of evidence or of procedures adopted or resolutions debated to any other person.

Standing Order 339 of the House of Representatives provides that:

No strangers, or Members not being of the committee, may be admitted at any time to a secret committee. The words 'secret committee' do not appear at any other point in the Standing Orders. The procedure of 'Non-secret committees' is set out in Standing Order 337, as follows:

When a committee is examining witnesses, strangers may be admitted, but shall be excluded at the request of any Member, or at the discretion of the chairman of the committee, and shall always be excluded when the committee is deliberating.

There is no Standing Order declaring the Committee of Privileges to be a secret committee. However, it is presumably a matter of practice of long standing for all Committees of Privilege to hear witnesses in secret and it may be assumed that this was the practice in the House of Commons. However, Erskine May's *Parliamentary*

Practice, (19th Edition) contains only a single reference (p. 675) as to how the Committee of Privileges conducts itself:

'The Committee does not sit in public.'

It is within the power of the Committee to vary or end the existing practice of secrecy. Standing Order No. 340 provides:

The evidence taken by any select committee of the House and documents presented to and proceedings and reports of such committee, which have not been reported to the House, shall not, unless authorised by the House, be disclosed or published by any Member of such committee, or by any other person.

However, Standing Order 341 provides that:

By leave of the House a committee may report from time to time its proceedings with or without the evidence, or the evidence only.

Denial of Representation by Counsel

5. As a matter of practice, persons accused of breaches of privilege are not entitled to put an argument as to why they should be entitled to be represented by counsel, although in the 1955 *Bankstown Observer* case, and the present one, counsel have been entitled to put an argument as to why they should be entitled to act in the proceedings. In both cases, the Committees concluded that the operation of Section 49 of the Constitution and Standing Order 1 of the House of Representatives precluded legal representation.

This matter is dealt with on p. 167 of *May* (19th Edition):

HEARING OF COUNSEL IN CASES OF BREACH OF PRIVILEGE AND CONTEMPT.

Persons accused of breaches of the privileges or of other contempts of either House are not, as a rule, allowed to be defended by counsel; but in a few cases incriminated persons have been allowed to be heard by counsel, the hearing being sometimes limited to 'such points as do not controvert the privileges of the House'. Where a person has been allowed to make his defence by counsel, counsel have sometimes been heard in support of the charge; and where a complaint of an alleged breach of privilege was referred to the Committee of Privileges, counsel were allowed, by leave of the House, to examine witnesses before the Committee on behalf of both the Member who had made the complaint and the parties named therein.

Counsel have not been permitted to appear before the House of Commons Privileges Committee to defend a person accused of breach of privilege during the hearing of evidence since the 1770s.

Parliament Acting As Judge In Its Own Cause

6. In 1908 a Joint Select Committee on Procedure in Cases of Privilege met under the Chairmanship of Sir John Quick, MHR for Bendigo and a constitutional lawyer. This Committee made fundamental criticisms of the law of privilege and recommended that alleged breaches be transferred to the High Court. No action was taken on this request until a draft Bill (Offences against the Parliament) was prepared in 1934 by the Attorney-General, J. G. Latham. However, no action was taken on the Quick Report or the Latham Bill.

The substance of the Quick Report is found in paragraph 42 of the Majority Report and the Latham Bill is in Appendix III. There is no need to repeat these texts here.

7. We also note the recommendations of the 1967 House of Commons Select Committee on the reform of privilege proceedings, contained in paragraph 28 of the Majority Report and the action taken by the House of Commons in 1977 to adopt the spirit, if not the letter, of those recommendations quoted in paragraph 29.

The Justification for Privilege

8. Historically, the law of Parliamentary Privilege was aimed at protecting the institution of Parliament and its members from practices which prevented Members of

Parliament from carrying out their duties without fear or favour or which provided inducement of some kind which encouraged members to act in some particular way (or discouraged them from acting at all). Thus the law of privilege covered:

- intimidation
- solicitation
- molestation
- bribery

freedom from suit for actions performed and words spoken in Parliament

The law of privilege has been static for nearly three centuries, while the world of politics has changed dramatically. In 1704, *May* reports (19th Edition, p. 72), the Lords communicated a resolution to the Commons at a conference,

That neither House of Parliament hath any power, by any vote, or declaration, to create to themselves any new privilege, that is not warranted by the known laws and customs of Parliament;

which was assented to by the Commons. *May* comments:

It is agreed that by itself neither House can create a new privilege.

Prima facie, it would be a strange way to protect the Parliament to say that no new element in politics, administration and the media which has arisen since 1704 can be raised as a breach of privilege. The vexed question of the relationship between Parliament and the public service is a far more fundamental issue than the action of journalists who figuratively thumb their noses at Parliamentarians. If privilege is to survive, as the movers of this Dissenting Report contend is essential, it must be re-examined, renovated and its administration must be subject to the application of natural justice, open procedures, the right of defence by counsel, and the principle that people should not be judges in their own cause—that those who are the targets of abuse and who raise the matter by complaint should not also be the judges of it.

9. One of the questions which deserves careful examination in any reconsideration of Parliamentary Privilege is this:

Is it a breach of privilege for Australian newspapers to print reports of debates in Parliament?

May (19th Edition, page 79) notes that the House of Commons passed a resolution on 3 March 1762 declaring that reporting or publishing reports of the proceedings of the House of Commons to be a contempt. On 16 July 1971 the House of Commons expressly set aside the earlier resolution, although as *May* says after 1909 the traditional attitude towards publication fell increasingly into decay.

Does the fact that the House of Commons took action on this matter in 1971 satisfy the requirements of Standing Order 1 so that it is no longer necessary for the Parliament to 'declare' its privilege 'pursuant to Section 49 of the Constitution' about newspaper publication in general? The answer is quite uncertain and needs resolution.

Particular features of the Oakes Case

10. The Oakes case is a *locus classicus* for illustrating the inconsistencies and anomalies involved in applying the law of privilege.

- (a) The article by Laurie Oakes which was referred to the Committee of Privileges appeared in the Sydney *Daily Mirror* for 2 September 1981. It also appeared, under different headings and slightly altered format, in the Adelaide *News* for 4 September, the Brisbane *Sunday Sun* for 6 September and the Northern Territory *News* for 9 September. However, only one act of publication, that in the *Daily Mirror*, was raised in the House and referred to the Committee of Privileges. Only one editor was summoned before the Committee and interrogated, without benefit of counsel. And yet if the editor of the *Daily Mirror* committed a contempt, what of the other editors? Are they guilty too?

- (b) On Thursday, 10 September the *Australian Financial Review* published an editorial headed 'Privileged parliamentary boozers' which began with the words: 'Some members of the Federal Parliament are drunks, some are lazy and some are political time servers. Some are all three'. The editorial challenged strongly the whole basis of the law of privilege and deplored the reference of the Oakes case to the Committee of Privileges. *Prima facie*, if the Oakes article was a breach of privilege, so was the *Financial Review* editorial. On 10 September the same member who had raised the Oakes matter in the House and who moved the motion of referral made a statement in the House but did not move to refer the editorial to the Committee.
- (c) The Oakes article does not distinguish between Senators and Members of the House of Representatives; both were covered by his broad brush approach. *Prima facie*, if the article constituted a contempt of the House of Representatives it was also a contempt in the Senate. Nevertheless the matter was not raised in the Senate.
- (d) The authors of this dissenting report have no doubt that on the precedents the Oakes article did constitute a constructive contempt. It was both offensive and inaccurate. It may well have been written in order to test the operation of Parliamentary Privilege. Nevertheless the matter is not worthy of occupying the further time of the House.

Conclusion

11. The present methods of conducting privilege hearings are objectionable on the following grounds:

- (a) Hearings, including the cross-examination of witnesses, are held in secret and witnesses are warned that they may not even discuss the conduct of the hearings with their legal advisors.
- (b) Persons summonsed are denied the right to be assisted by counsel.
- (c) Members of Parliament, attacks on whose dignity and function are the subject of contempt proceedings, are not only the victims but also take roles as prosecutors and judges.

12. These three elements constitute a denial of natural justice. There is a popular view that the Privileges Committee operates as a 'Court of Star Chamber'. This is an exaggerated view because that Court had power to fine and mutilate, which the Privileges Committee lacks.

13. Parliamentary privilege is and ought to remain a powerful weapon. But we adopt the words of the 1967 House of Commons Select Committee Report that the power to punish should be exercised as sparingly as possible and only 'to provide reasonable protection . . . from such improper obstruction . . . as is causing, or is likely to cause, substantial interference with the performance of their respective functions' by the House, its Members, or its Officers.

14. Overuse of the powers of privilege would lead to undesirable results. If we act arbitrarily, and in secret, and override natural justice we will undermine the whole justification of parliamentary privilege. Similarly, if no new development in society since 1704 can be raised as a matter of privilege, parliamentary privilege will be reduced to the status of a mere exhibit in the museum of Parliamentary practice.

15. In the present case it is a matter for regret that the archaic state of our privilege law did not enable the Speaker to dispose of the matter summarily by rejecting the accuracy of the article complained of and declaring that to take further action should be below the dignity of the House.

16. We do not oppose the majority recommendation to refer the matter to a joint select committee. However, noting the very long period of inaction on this matter we believe that any such references should be made with a clear view to achieving specific results which will remove the major deficiencies in the existing law.

17. In particular any reform should at the very least ensure that in future any proceedings against someone for contempt of Parliament:

- are not held in secret
- are on record

and that anyone being proceeded against:

- has notice of the hearing and the charges against him
- has the right to legal representation
- has the right to be heard in his own defence
- has the right to cross-examine his accusers concerning the alleged offence

18. Fundamentally, however, we believe that it is quite simply against the principles of natural justice, and commonsense to have either House of Parliament act to punish any individual in its own defence.

19. In accord with modern principles of the administration of justice, the power to punish for contempt of Parliament should be removed from the jurisdiction of the Parliament and placed in the hands of a court.

20. It is with that in mind that the minority recommend that the Quick Report of 1908 be brought before the House for consideration and that a Committee be authorised by the House to prepare a draft Bill with the object of removing the contempt power from the Houses of Parliament to a court of Record.

B. O. JONES
M. J. DUFFY

DISSENTING REPORT BY MR R. J. BIRNEY, M.P., MR A. C. HOLDING, M.P., AND MR R. JACOBI, M.P.

1. Having endorsed the report of the Committee we feel that there are two other areas not covered by the report which are important enough to move us to make additional comment.
2. We have had the benefit of reading the dissenting report of Messrs Duffy and Jones and adopt many of the arguments advanced therein. We do not, however, concur with the views expressed in that report which invites us to draw the conclusion that it is in accord with modern principles of the administration of justice, that the power to *punish for contempt of Parliament should be removed from the jurisdiction of the Parliament* and placed in the hands of a court.
3. We believe in reaching that position our colleagues have not weighed heavily enough the traditional relationship that exists between the Parliament and the judiciary. The fact is that the development of the law relating to Parliamentary Privilege was historically intertwined with the need for Parliament to protect and develop the prerogatives of the Parliamentary institution. It is, in our view, still an important principle of the Westminster system that the powers of the executive, the legislature, and the judiciary should be separated.
4. The Parliament has always been traditionally jealous of its own rights to determine its own standards of conduct.
5. The judiciary has equally been reluctant to involve itself in political assessments which are often closely interrelated to the question of Parliamentary Privilege.
6. There are many areas of privilege which, in our view, are more proper to be determined by the Parliament than by courts, e.g. the threat by one Parliamentarian against another.
7. While not taking a final position on this matter which we believe properly to be a subject for much closer examination, we do not believe that the difficult and complex area of privilege and its enforcement would necessarily be more adequately handled by the courts.
8. It should also be remembered that the courts, and indeed individual judges, have maintained their own right to punish for contempt without the allegation being made, that in so doing, they are judges in their own cause.

Parliament's Relationship with the Press

9. One of the important areas which we believe would have to be considered by any committee examining the question of privilege would be to examine the relationship that exists between the Parliament and the Press. The fact is that the National Parliament, Ministers of the Crown and individual Parliamentarians, rely heavily both upon the Press and the electronic media, to ensure that the community is properly informed of both the decisions of government, debates in Parliament, and statements of both Ministers, Shadow Ministers and members.
10. The Parliamentary Press Gallery is very relevant to the operation of the Parliament. It has a duty to observe, report and comment upon all aspects of the often complex political issues and the personalities that make up the Parliamentary institution.
11. The relationship between the Press, the Parliament and the individual Parliamentarian is one of complexity and one which would certainly not have been

foreseen as being covered by the established concepts of Parliamentary privilege. The press statement, the background brief, and indeed the leaking of information are all part of the modern Parliamentary system and those who live within it.

12. Its development and role could not be contemplated in the establishment of the essential features of the Westminster system, or indeed even by the Quick Committee of 1908.

13. Any examination by a committee examining privilege must in our view encompass the reality of the existing relationship and consider the adoption of codes of conduct which enable the political commentator and working journalist to perform their functions effectively in terms of their duty to the wider electorate, while operating within clearly established ethical principles.

R. J. BIRNEY

A. C. HOLDING

R. JACOBI

DISSENTING REPORT BY MR G. G. D. SCHOLES, M.P.

1. I dissent from the Committee's decision to publish the Minutes of Evidence taken by it *during this inquiry*.
2. The decision to publish the evidence was not taken prior to the examination of Mr Wylie and that examination was conducted on the assumption that the evidence would not be published. To decide subsequently that the evidence should be published is wrong in principle.
3. I am concerned also that if evidence taken by the Committee of Privileges in future inquiries is to be published as a matter of course, there is a danger that an opportunity will be taken by Members to engage in grandstanding, and by witnesses to make unsubstantiated allegations under the protection of Parliamentary privilege. Should such a situation occur, the Committee may be forced into a position of having to censor the publication of evidence. Such a procedure would be far more damaging to the Parliament than the present practice whereby evidence is not normally published.
4. I take the view that where the Committee believes that it is necessary for the evidence to be available to the House in considering the findings of the Committee, the Committee should make such a recommendation in its report. It would then be open to the House to pass a resolution, calling for the evidence, if it considers it desirable so to do.

G. G. D. SCHOLES

MINUTES OF PROCEEDINGS OF THE COMMITTEE OF PRIVILEGES

(Note: Sections of the Minutes of Proceedings relating to an inquiry still under consideration by the Committee have been omitted)

COMMITTEE OF PRIVILEGES MINUTES OF PROCEEDINGS

**Parliament House—Canberra
Thursday, 10 September 1981
32nd Parliament—First Meeting**

Present:

Mr Birney	Mr Jarman
Mr D. M. Cameron	Mr B. O. Jones
Mr Duffy	Mr Millar
Mr Hodgman	Mr Porter
Mr Holding	Mr Scholes
Mr Jacobi	

The following extracts from the Votes and Proceedings indicated were reported by the Secretary:

- (1) No. 2—26 November 1980—appointing members of the Committee and fixing its quorum.
- (2) No. 6—4 December 1980—adoption of sessional order amending standing order 26 to include the Leader of the House, or his nominee, and the Deputy Leader of the Opposition, or his nominee, as members of the Committee of Privileges.
- (3) No. 12—5 March 1981—appointing Mr Scholes to the Committee.

The Secretary advised that letters had been received by Mr Speaker from Mr Sinclair and Mr Bowen nominating Mr Hodgman and Mr Duffy, respectively, to serve in their places during consideration of a matter referred to the Committee on 8 September 1981.

On the motion of Mr Birney, Mr D. M. Cameron was elected Chairman.

The following extract from the Votes and Proceedings indicated was reported by the Chairman:

- No. 49—8 September 1981—That the matter of the printed reference and the article by Mr L. Oakes relating to Members of the Commonwealth Parliament appearing on pages 1 and 9, respectively, of the *Sydney Daily Mirror* of Wednesday, 2 September 1981, be referred to the Committee of Privileges.

The following paper was received:

Copy of the *Sydney Daily Mirror* of Wednesday, 2 September 1981.

The Committee deliberated.

Resolved: On the motion of Mr Porter—

That the Clerk of the House of Representatives be asked to submit a Memorandum on the questions of privilege involved in the matter referred to the Committee on 8 September 1981.

Mr Millar moved—That approval of the House of Representatives be sought for the Committee, when inquiring into the matter referred to it on 8 September 1981, to have power to send for persons, papers and records.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

Ayes, 6

Mr Birney

Mr Holding

Mr Jacobi

Mr Jarman

Mr Millar

Mr Porter

Noes, 2

Mr Duffy

Mr Jones

And so it was resolved in the affirmative.

Resolved: On the motion of Mr Birney—

That in respect of the inquiry presently being undertaken by the Committee, any statements to the Press shall be made by the Chairman, after being authorised by the Committee.

The following paper was received:

Letter from the President of the Federal Parliamentary Press Gallery to the Secretary of the Committee, dated 9 September 1981 together with a submission and two accompanying pages of signatures referred to in the letter and the submission.

The Committee further deliberated.

The Committee agreed that further meetings should be held on Wednesday, 16 September 1981 at 8.45 a.m., and Monday, 21 September 1981 at 2.30 p.m.

The Committee adjourned until Wednesday, 16 September 1981 at 8.45 a.m.

COMMITTEE OF PRIVILEGES MINUTES OF PROCEEDINGS

Parliament House—Canberra

Wednesday, 16 September 1981

32nd Parliament—Second Meeting

Present:

Mr D. M. Cameron (Chairman)

Mr Birney

Mr Duffy

Mr Hodgman

Mr Holding

Mr Jacobi

Mr Jarman

Mr B. O. Jones

Mr Millar

Mr Porter

Mr Scholes

The Minutes of Proceedings of the meeting held on 10 September 1981 were confirmed. The Chairman brought up a Memorandum prepared by the Clerk of the House of Representatives in relation to the matter referred to the Committee on 8 September 1981.

The Chairman announced receipt of an extract from the Votes and Proceedings, as follows:

No. 51—10 September 1981—granting the Committee power to send for persons, papers and records during consideration of the matter referred to it on 8 September 1981.

The following paper was received:

Press accommodation and arrangements in Parliament House—Paper prepared by the Secretary.

The Committee deliberated.

Mr Hodgman moved—

That, having carefully considered the printed reference and the article referred to it on 8 September 1981, this Committee now resolves to call Mr L. Oakes to appear before it on Monday, 21 September 1981 at 2.30 p.m.

Debate ensued.

Mr Scholes moved, as an amendment—That all words after 'That' be omitted with a view to substituting the following words:

'the Committee should meet again before proceeding to decide on a course of action'.

Debate continued.

Question—That the words proposed to be omitted stand part of the question—put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

Ayes, 4

Mr Birney

Mr Hodgman

Mr Holding

Mr Jarman

Noes, 6

Mr Duffy

Mr Jacobi

Mr Jones

Mr Millar

Mr Porter

Mr Scholes

And so it was negatived.

Question—That the words proposed to be substituted be so substituted—put and passed.

Motion, as amended, agreed to.

The Committee adjourned until tomorrow at 8.45 a.m.

COMMITTEE OF PRIVILEGES MINUTES OF PROCEEDINGS

Parliament House—Canberra

Thursday, 17 September 1981

32nd Parliament—Third Meeting

Present:

Mr D. M. Cameron (Chairman)

Mr Birney

Mr Duffy

Mr Hodgman

Mr Holding

Mr Jacobi

Mr B. O. Jones

Mr Millar

Mr Porter

Mr Scholes

The Minutes of Proceedings of the meeting held on 16 September 1981 were confirmed.

Mr Scholes moved—That

- (1) the Committee finds that the printed reference and the article contained on pages 1 and 9, respectively, of the *Daily Mirror* of 2 September 1981 constitute a contempt of the House;
- (2) Mr Speaker be requested to advise press organisations and press pass holders that they are expected to comply with established practices on publishing material relating to the House and its Members; and
- (3) having considered the reference and the article referred to herein, the Committee finds that a contempt of the House of Representatives has been committed but that the matter is not worthy of occupying further time of the House.

Debate ensued.

Question—put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

Ayes, 3

Mr Duffy

Mr B. O. Jones

Mr Scholes

Noes, 6

Mr Birney

Mr Hodgman

Mr Holding

Mr Jacobi

Mr Millar

Mr Porter

And so it was negatived.

Mr Hodgman moved—That, having carefully considered the reference and the article referred to it, this Committee now resolves to call the Editor of the *Daily Mirror* before it on Monday, 21 September 1981, at 2.30 p.m.

Debate ensued.

Suspension of meeting: At 10 a.m. the meeting was suspended.

Resumption of meeting: At 11.10 a.m. the meeting was resumed.

Debate resumed (on the motion moved by Mr Hodgman).

Question—put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

Ayes, 6

Mr Birney

Mr Hodgman

Mr Holding

Mr Jacobi

Mr Millar

Mr Porter

Noes, 3

Mr Duffy

Mr B. O. Jones

Mr Scholes

And it was resolved in the affirmative.

Mr Hodgman moved—That Mr Laurie Oakes be notified that the Committee requests him to make himself available to attend the Committee of Privileges in Parliament House, Canberra, on Monday, 21 September 1981, at 2.30 p.m.

Debate ensued.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

Ayes, 5

Mr Birney

Mr Hodgman

Mr Holding

Mr Millar

Mr Porter

Noes, 4

Mr Duffy

Mr Jacobi

Mr B. O. Jones

Mr Scholes

And it was resolved in the affirmative.

Mr Scholes moved—That the Committee present a Special Report to the House of Representatives this day seeking authority from the House to include in its investigations printed references and the same article attributed to Mr L. Oakes published in other newspapers.

Debate ensued.

Question—put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

Ayes, 3

Mr Jacobi

Mr Millar

Mr Scholes

Noes, 6

Mr Birney

Mr Duffy

Mr Hodgman

Mr Holding

Mr B. O. Jones

Mr Porter

And so it was negatived.

The Committee adjourned until Monday, 21 September 1981 at 2.30 p.m.

COMMITTEE OF PRIVILEGES MINUTES OF PROCEEDINGS

Parliament House—Canberra

Monday, 21 September 1981

32nd Parliament—Fourth Meeting

Present:

Mr D. M. Cameron (Chairman)

Mr Birney

Mr Duffy

Mr Hodgman

Mr Holding

Mr Jacobi

Mr Jarman

Mr B. O. Jones

Mr Millar

Mr Porter

Mr Scholes

The Minutes of Proceedings of the meeting held on 17 September 1981 were confirmed. The Chairman reported written advice from Dawson Waldron, Solicitors, that they act for Mr L. Oakes, who will attend the Committee as requested. The letter advised that Mr L. Oakes would request legal representation if requested to appear before the Committee.

The Committee deliberated.

Mr Peter Floyd Wylie, Editor, *Daily Mirror*, was called and sworn.

The witness requested that he be represented by counsel.

The witness withdrew.

The Committee deliberated.

Mr Hodgman moved—

That counsel be permitted to address argument to the Committee on his right to appear generally for Mr Wylie.

Question—put and passed—Mr Scholes dissenting.

Mr Wylie was recalled.

The witness nominated his counsel (Mr T. E. F. Hughes, Q.C. and Mr N. R. Carson) instructed by Mr H. D. H. Keller, of Dawson Waldron, who were admitted.

Mr Hughes addressed the Committee.

Mr Wylie, his counsel and instructing solicitor withdrew.

The Committee deliberated.

Mr Hodgman moved—

That applying section 49 of the Constitution and standing order 1 of the House of Representatives, this Committee determines that this application for counsel to appear generally on behalf of Mr Wylie can not be granted.

Debate ensued.

Mr Birney moved the following amendment—

Omit 'can not be granted', substitute 'is not granted'.

Debate continued.

Question—That the amendment be agreed to—put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

<i>Ayes, 5</i>	<i>Noes, 2</i>
Mr Birney	Mr Hodgman
Mr Holding	Mr Scholes
Mr Jarman	
Mr Millar	
Mr Porter	

And so it was resolved in the affirmative.

Question—That the motion, as amended, be agreed to—put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

<i>Ayes, 7</i>	<i>Noes, 3</i>
Mr Birney	Mr Duffy
Mr Hodgman	Mr Jacobi
Mr Holding	Mr B. O. Jones
Mr Jarman	
Mr Millar	
Mr Porter	
Mr Scholes	

And so it was resolved in the affirmative.

Mr Jacobi moved—

That the Committee adjourn its proceedings at this point to seek a directive from the House of Representatives as to whether witnesses should be entitled to be represented by counsel in this particular case.

Debate ensued.

Question—put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

<i>Ayes, 4</i>	<i>Noes, 6</i>
Mr Duffy	Mr Birney
Mr Jacobi	Mr Hodgman
Mr Jarman	Mr Holding
Mr B. O. Jones	Mr Millar
	Mr Porter
	Mr Scholes

And so it was negatived.

The witness, his counsel and instructing solicitor were recalled.

The Chairman informed the counsel of the Committee's resolution.

The counsel and instructing solicitor withdrew.

Mr Wylie was examined.

Mr Wylie presented photocopies of the front page of different editions of the *Daily Mirror* of 2 September 1981, together with page 9 of the newspaper for that day, and pages 3 and 9 of the *Daily Mirror* of 3 September 1981.

Mr Wylie was further examined.

The witness withdrew.

The Committee deliberated.

Mr Wylie was recalled and further examined.

The witness withdrew.

The Committee deliberated.

The Committee adjourned until Wednesday, 23 September 1981, at 8.30 a.m.

COMMITTEE OF PRIVILEGES MINUTES OF PROCEEDINGS

Parliament House—Canberra
Wednesday, 23 September 1981
32nd Parliament—Fifth Meeting

Present:

Mr D. M. Cameron (Chairman)

Mr Birney

Mr Jarman

Mr Duffy

Mr B. O. Jones

Mr Hodgman

Mr Millar

Mr Holding

Mr Porter

Mr Jacobi

Mr Scholes

The Minutes of Proceedings of the meeting held on 21 September 1981 were confirmed.

The Committee deliberated.

Suspension of meeting: At 9.35 a.m. the meeting was suspended.

Resumption of meeting: At 3.15 p.m. the meeting was resumed.

Mr Scholes moved—

That

- (1) the Committee finds that the printed reference and the article contained on pages 1 and 9, respectively, of the *Daily Mirror* of 2 September 1981 constitute a contempt of the House of Representatives by the author, editor and publisher;
- (2) having considered the reference and the article referred to herein, the Committee is of the view that sections of the article and its presentation are irresponsible and reflect no credit on its author, the editor or the publisher; and
- (3) while finding a contempt of the House of Representatives has been committed, the Committee is of the opinion that the matter is not worthy of occupying further time of the House.

Mr Hodgman moved, as an amendment—That all words after 'That' be omitted with a view to substituting the following words:

'Mr Laurie Oakes be given the opportunity to come before this Committee and given every opportunity to be heard on his own behalf'.

Debate ensued.

Question—That the amendment be agreed to—put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

Ayes, 7

Mr Birney

Mr Duffy

Mr Hodgman

Mr Holding

Mr Jacobi

Mr Jarman

Mr Porter

Noes, 2

Mr B. O. Jones

Mr Miller

And so it was resolved in the affirmative.

Question—That the motion, as amended, be agreed to—put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

Ayes, 4

Mr Birney

Mr Hodgman

Mr Holding

Mr Porter

Noes, 4

Mr Duffy

Mr Jacobi

Mr B. O. Jones

Mr Millar

The numbers for the 'Ayes' and the 'Noes' being equal, the Chairman gave his casting vote with the 'Noes'.

And so it was negatived.

Mr Porter moved—That Mr Laurie Oakes be given the opportunity to appear before the Committee.

Debate ensued.

Question—put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

Ayes, 7

Mr Birney

Mr Duffy

Mr Hodgman

Mr Holding

Mr Jacobi

Mr Millar

Mr Porter

Noes, 1

Mr B. O. Jones

And so it was resolved in the affirmative.

The Committee adjourned.

COMMITTEE OF PRIVILEGES MINUTES OF PROCEEDINGS

Parliament House—Canberra

Thursday, 24 September 1981

32nd Parliament—Sixth Meeting

Present:

Mr D. M. Cameron (Chairman)

Mr Birney

Mr Duffy

Mr Hodgman

Mr Holding

Mr Jacobi

Mr Jarman

Mr B. O. Jones

Mr Millar

Mr Porter

Mr Scholes

The Minutes of Proceedings of the meeting held on 23 September 1981 were confirmed. The Chairman presented a letter from Mr L. Oakes, dated 24 September 1981. The Committee deliberated.

Mr Scholes moved—

That—

- (1) The Committee finds that the printed reference on page 1 of the first edition and the article on page 9 of all editions of the *Sydney Daily Mirror* of 2 September 1981 constitute a contempt of the House of Representatives by the author, editor and publisher;
- (2) having considered the reference and the article, the Committee is of the view that the article and its presentation are irresponsible and reflect no credit on its author, the editor or the publisher; and
- (3) while finding a contempt of the House of Representatives has been committed, the Committee is of the opinion that the matter is not worthy of occupying the further time of the House.

Debate ensued.

Question—put and passed.

Mr Scholes moved—

That the report of this Committee to the House of Representatives should contain the following resolution:

The Committee of Privileges—

- (1) notes that on 13 April 1978 the House agreed in principle that there should be an inquiry into the whole question of Parliamentary privilege, as proposed by the Committee of Privileges in its report presented on 7 April 1978, but that such inquiry should be conducted by a joint committee of the Parliament;
- (2) notes that the proposed joint committee inquiry has not eventuated;
- (3) calls on the House to immediately initiate a resolution for the establishment of a joint committee as previously proposed; and
- (4) further calls on the House, in the event of the failure of the Senate to agree to the establishment of the proposed joint committee, to move for the establishment of a select committee of the House to conduct the inquiry.

Debate ensued.

Question—put and passed.

The Committee deliberated.

The Committee adjourned until a day and hour to be determined by the Chairman and notified to all members of the Committee.

COMMITTEE OF PRIVILEGES MINUTES OF PROCEEDINGS

Parliament House—Canberra

Wednesday, 14 October 1981

(32nd Parliament—Seventh Meeting)

Present:

Mr D. M. Cameron (Chairman)

Mr Birney

Mr Duffy

Mr Holding

Mr Jacobi

Mr Jarman

Mr B. O. Jones

Mr Potter

The Minutes of Proceedings of the meeting held on 24 September 1981 were confirmed. The Chairman presented a letter from Mr P. Wylie dated 28 September 1981. The Chairman presented photocopies of pages 1 and 9 of the *Daily Mirror* of Wednesday, 26 August 1981 forwarded by Mr P. Wylie.

The Committee deliberated.

The Chairman and Mr B. O. Jones (on behalf of himself, Mr Duffy, Mr Holding and Mr Jacobi) submitted draft reports in respect of the *Daily Mirror* inquiry.

Ordered—That the Committee should proceed with the draft report submitted by the Chairman.

Paragraph 1 debated and postponed.

Paragraphs 2 to 8 agreed to.

Paragraph 9 amended and agreed to.

Paragraph 10 agreed to.

Paragraph 11 amended and agreed to.

Paragraph 12 agreed to.

Paragraph 13 amended and agreed to.

Paragraph 14 agreed to.

Paragraph 15 amended and agreed to.

Paragraph 16 agreed to.

Paragraph 17 amended and agreed to.

Paragraph 18 amended and agreed to.

Paragraph 19 amended and agreed to.

Paragraph 20 agreed to.

The Committee adjourned until Wednesday, 21 October 1981 at 8.30 a.m.

COMMITTEE OF PRIVILEGES MINUTES OF PROCEEDINGS

Parliament House, Canberra

Wednesday, 21 October 1981

(32nd Parliament—Eighth Meeting)

Present:

Mr D. M. Cameron (Chairman)

Mr Birney

Mr Jacobi

Mr Duffy

Mr B. O. Jones

Mr Hodgman

Mr Porter

Mr Holding

The Minutes of Proceedings of the meeting held on 14 October 1981 were confirmed. The Committee resumed consideration of the Chairman's Draft Report in respect of the *Daily Mirror* inquiry.

Paragraphs 21 to 27 agreed to.

Paragraph 28 amended and agreed to.

Paragraph 29 amended and agreed to.

Paragraph 30 amended and agreed to.

Paragraph 31 omitted.

Paragraph 32 amended and agreed to.

Paragraphs 33 to 37 agreed to.

Paragraph 38 amended and agreed to.

Paragraphs 39 and 40 agreed to.

Paragraph 41 amended and agreed to.
Paragraph 42 amended and agreed to.
Paragraph 43 amended and agreed to.
Paragraphs 44 and 45 omitted.
Paragraphs 46 to 54 agreed to.
Paragraph 55 amended and agreed to.
Paragraph 56 amended and agreed to.
Postponed paragraph 1 agreed to.

The Committee adjourned until tomorrow at 8.30 a.m.

COMMITTEE OF PRIVILEGES MINUTES OF PROCEEDINGS

Parliament House—Canberra
Thursday, 22 October 1981
(32nd Parliament—Ninth Meeting—

Present:

Mr D. M. Cameron (Chairman)

Mr Birney

Mr Jacobi

Mr Duffy

Mr B. O. Jones

Mr Holding

Mr Porter

The Minutes of Proceedings of the meeting held on 21 October 1981 were confirmed. The Chairman presented a reprinted Draft Report in respect of the *Daily Mirror* inquiry incorporating amendments previously made by the Committee. The Committee deliberated.

Resolved—On the motion of Mr Holding—

That the Chairman's reprinted Draft Report be considered in two parts, firstly paragraphs 1 to 20 as the Committee's Report to the House on the *Daily Mirror* inquiry, and secondly, paragraphs 21 to 53 as related matters of comment on the question of Parliamentary privilege generally.

Resolved—On the motion of Mr Holding—

That paragraphs 1 to 20 of the revised Draft Report, be the Report of the Committee to the House on the *Daily Mirror* inquiry.

Resolved—On the motion of Mr Holding—

That paragraphs 21 to 53 of the revised Draft Report be included in the Committee's Report to the House as additional comment on the question of Parliamentary privilege generally.

Resolved—On the motion of Mr Holding—

That the Minutes of Proceedings record the wishes of Messrs Duffy and Jones that their abstention from voting on the previous motion be so recorded.

The Committee adjourned until Wednesday, 28 October 1981 at 8.30 a.m.

APPENDIX I HOUSE OF REPRESENTATIVES

COMMITTEE OF PRIVILEGES

Memorandum by the Clerk of the House of Representatives

This memorandum has been prepared at the request of the House of Representatives Committee of Privileges in connection with its inquiry into the matter of the printed reference and the article by Mr L. Oakes relating to Members of the Commonwealth Parliament appearing on pages 1 and 9, respectively, of the Sydney *Daily Mirror* of Wednesday, 2 September 1981.

Extracts from the Votes and Proceedings of the House of Representatives, No. 49, of Tuesday, 8 September 1981.

4. **PRIVILEGE:** Mr Ruddock raised a matter based on a printed reference and an article by Mr L. Oakes relating to Members of the Commonwealth Parliament appearing on pages 1 and 9, respectively, of the *Daily Mirror* of 2 September 1981. Mr Ruddock produced a copy of the *Daily Mirror* containing the material and gave the name of the printer and publisher of that newspaper.

Mr Speaker stated that he had formed the opinion that there was a *prima facie* breach of privilege and stated that he would exercise his discretion not to give the matter precedence immediately but would allow Mr Ruddock time to consider the form of motion he might wish to move.

Privilege—Material in Daily Mirror—Reference to Committee of Privileges (See entry No. 4): Mr Ruddock moved—That the matter of the printed reference and the article by Mr L. Oakes relating to Members of the Commonwealth Parliament appearing on pages 1 and 9, respectively, of the Sydney *Daily Mirror* of Wednesday, 2 September 1981, be referred to the Committee of Privileges.

Debate ensued.

Question—put.

The House divided (the Speaker, Sir Billy Snedden, in the Chair)—

Ayes, 75

Mr Adermann	Mr Cowan	Mr Humphreys	Mr Morris
Mr Baume	Mr Cross	Mr Hunt	Mr Morrison
Mr Birney	Mr Cunningham	Mr Hyde	Mr Mountford
Mr Bouchier	Mr Dean	Mr Jacobi	Mr Newman
Mr Bowen	Mr Dobie	Mr Jarman	Mr O'Keefe
Mr Bradfield	Mr Drummond	Mr C. K. Jones	Mr Porter
Mr Braithwaite	Dr Everingham	Mr Jull	Mr Ruddock
Mr N. A. Brown	Mr Fife	Mr Killen	Mr Sainsbury
Mr Bungey	Mr Fisher	Dr Klugman	Mr Scholes
Mr Burr	Mr Fry	Mr Lloyd	Mr Shack
Mr Cadman	Mr Giles	Mr Lusher	Mr Shipton
Mr D. M. Cameron	Mr Groom	Sir Phillip Lynch	Mr Street
Mr E. C. Cameron	Mr Harris	Mr MacKellar	Mr Tambling
Mr I. M. D. Cameron	Mr Hawke	Mr MacKenzie	Mr Thomson
Mr Carlton	Mr Hicks	Mr McLean	Mr Tuckey
Mr Chapman	Mr Hodges*	Mr J. L. McMahon*	Mr Viner
Mrs Child	Mr Hodgman	Sir William McMahon	Mr White
Mr Coleman	Mr Holding	Mr McVeigh	Mr Wilson
Mr Connolly	Mr Howard	Mr Millar	

Noes, 27

Mr Armitage*	Mr Dawkins	Mr B. O. Jones	Mr Spender
Mr Beazley	Mr Duffy	Mr Kent	Dr Theophanous
Dr Blewett	Mr Free	Mr Kerin	Mr Uren
Mr R. J. Brown	Mr Goodluck	Mr Mildren	Mr Wallis
Mr Campbell	Mr Hall	Mr Peacock*	Mr West
Mr Charles	Mr Howe	Mr Rocher	Mr Willis
Mrs Darling	Mr Johnson	Mr Scott	

*Tellers

And so it was resolved in the affirmative.

The publication in the Daily Mirror of 2 September 1981.

The terms of the printed reference and the article by Mr L. Oakes appearing on pages 1 and 9, respectively, of the *Daily Mirror* of 2 September 1981 are attached as Appendix A to this memorandum.

Speeches made in the House of Representatives in relation to this matter.

The speeches made in the House of Representatives on 8 September 1981 (a) when the complaint was raised by Mr Ruddock, M.P. and (b) when the House resolved to refer the matter to the Committee of Privileges, are attached as Appendix B to this memorandum.

CONSTITUTIONAL PROVISION—GENERAL CHARACTER OF PRIVILEGE

Constitution

Section 49 of the Constitution provides that

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

The Parliament has not declared its powers, privileges and immunities except in relation to a few relatively minor powers, viz.

Parliamentary Papers Act—protection of Government Printer and others;

Parliamentary Proceedings Broadcasting Act—protection of Australian Broadcasting Commission;

Public Accounts Committee Act and Public Works Committee Act—privileges of, and protection of, witnesses who appear before these committees; and

Jury Exemption Act—exemption from jury service of Members and certain officers.

The Parliament is, therefore, strictly limited to the powers, privileges and immunities of the United Kingdom House of Commons as at 1 January 1901, being the date of establishment of the Commonwealth. To ascertain the law, it is necessary for recourse to be had to the practice and precedents of the House of Commons. These are dealt with at length in Erskine May's *Parliamentary Practice* (19th edition).

What constitutes Privilege

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law.

(May 19, p. 67)

The particular privileges of the Commons have been defined as: 'The sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords'.

(May 19, p. 67)

The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers'. They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity.

(May 19, p. 67)

PARTICULAR REFERENCES IN RELATION TO MATTER BEFORE THE COMMITTEE

The following references in *May* are considered to be the most relevant to the matter being considered by the Committee:

Contempt in General

It would be vain to attempt an enumeration of every act which might be construed into a contempt, the power to punish for contempt being in its nature discretionary. Certain principles may, however, be collected from the Journals which will serve as general declarations of the law of Parliament. It may be stated generally that any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.

(*May* 19, p. 136)

Constructive Contempts Speeches or Writings reflecting on either House

In 1701 the House of Commons resolved that to print or publish any books or libels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House, and indignities offered to their House by words spoken or writings published reflecting on its character or proceedings have been constantly punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.

Reflections upon Members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House.

(*May* 19, pp. 144-5)

Reflections upon Members

Analogous to molestation of Members on account of their behaviour in Parliament are speeches and writings reflecting upon their conduct as Members. On 26 February 1701, the House of Commons resolved that to print or publish any libels reflecting upon any member of the House for or relating to his service therein, was a high violation of the rights and privileges of the House.

'Written imputations, as affecting a Member of Parliament, may amount to breach of privilege, without, perhaps, being libels at common law', but to constitute a breach of privilege a libel upon a Member must concern the character or conduct of the Member in that capacity.

(*May* 19, p. 152)

MATTERS FOR DETERMINATION BY THE COMMITTEE

The Committee is called upon to make a judgment as to whether the matter referred to it constitutes a contempt of the House and, if it does so judge, to decide upon a course of action.

In regard to the first point the relevant references in *May* are to be found in that section dealing with 'constructive contempts'. The significant words there relate to 'words spoken or writings published reflecting on its character or proceedings . . . which tend to obstruct the Houses in the performance of their functions by *diminishing the respect due to them*' (emphasis added). Again 'reflections upon Members, the particular individuals not being named or otherwise indicated (as is the case with the material in question) are equivalent to reflections on the House'.

The Privilege cases of the House of Commons provide a useful guide for making judgments. References to 5 cases, not too dissimilar to the case before the Committee, are reproduced below. Two Australian House of Representatives cases of 1951 and 1978 are also included. In each case the passage complained of has been reproduced together with the relevant paragraphs of the Report of the Privileges Committee.

HOUSE OF COMMONS CASES

Passage in *Sunday Express* newspaper

Complaint

A passage in the *Sunday Express* newspaper of 16 December 1956, reflecting on the conduct of Members of the House, was referred to the Committee of Privileges on 17 December 1956.

The passage was as follows:

Privilege

Tomorrow a time of hardship starts for everyone. For everyone? Include the politicians out of that. Petrol rationing will pass them by. They are to get prodigious supplementary allowances.

Isn't it fantastic?

The small baker, unable to carry out his rounds, may be pushed out of business. The one-man taxi company may founder. The parent who lives in the country may plead in vain for petrol to drive the kids to school.

But everywhere the tanks of the politicians will be brimming over.

What are M.P.s doing about this monstrous injustice? Are they clamouring for Fuel Minister Mr Aubrey Jones to treat politicians like the rest of the community? If it were a question of company directors getting special preference you may be sure that the howls in Westminster would soon be heard from John O'Groat's to Ebbw Vale.

But now there is not a squeak of protest.

If politicians are more interested in privileges for themselves than in fair shares for all, let it swiftly be made plain to them that the public do not propose to tolerate it.

And let Mr Aubrey Jones know that, if he is so incapable of judging public feeling he is not fit to hold political office for a moment longer.

The Committee's report

The relevant paragraphs of the Committee's report of 20 December 1956 are as follows:

2. On Monday, 17th December, complaint having been made in the House that publication of the article was a breach of privilege, the matter was referred to your Committee for consideration.

3. On Tuesday, 18th December, the following letter was received by Mr Speaker from the Editor of the *Sunday Express*, Mr John Junor:

From The

EDITOR

of the

Sunday Express

Fleet Street, London

Fleet Street 8000

December 18th, 1956

Sir,

I regret that the leading article in the *Sunday Express* of December 16th has been misread and misunderstood by some Members of Parliament.

It was not in any way intended to show discourtesy towards the House of Commons. The comment was not aimed at Members of Parliament in particular but at Politicians in general.

The purpose of the article was to comment on a system whereby—while ordinary members of the public are subject to such stringent rationing—petrol for motoring up to 3,700 miles a month is to be allowed for Political party use in Parliamentary Constituencies.

This was stated to be so by the Ministry of Fuel and was published in the press on December 14th.

Your obedient Servant,

(Sgd) JOHN JUNOR

To the Right Honourable the Speaker
of the House of Commons.

4. Your Committee heard evidence from Mr A. J. Moyes, the official in the Fees Office responsible for the allocation of supplementary petrol allowances to Members of Parliament and from Mr John Junor, the Editor of the *Sunday Express*.

5. Mr Moyes stated that the arrangements made are roughly in accordance with the previous petrol rationing scheme; and that all supplementary coupons issued to Members of Parliament are issued from the Fees Office, whether for political or parliamentary duties or for other purposes for which a member of the public can get a supplementary allowance. For instance, a Member of Parliament who is a doctor may get from the Fees Office, a supplementary allowance for his political and parliamentary duties and an allowance in order to carry on his practice as a doctor. The maximum allowance for political and parliamentary purposes is for 200 miles a month though, in exceptional circumstances, this may be exceeded. This is not issued automatically but only on need being shown. The maximum allowance to a Member of Parliament for these purposes is considerably less than the maximum allowance to those in the priority classes.

6. Mr Junor asserted in his evidence, as he had in his letter of the 18th December, that his article had been misread and misunderstood. He said that the article did not suggest that Members of Parliament were getting an unfair allocation of petrol.

He admitted, however, that the term 'politicians' covers Members of Parliament, but said that he meant to include other politicians.

He agreed that the first paragraph of the article meant that Members of Parliament were with other politicians excluded from the hardship due to petrol rationing which would be suffered by everyone else; that the sentence 'They are to get prodigious supplementary allowances' meant that Members of Parliament, among other politicians, would get such allowances, and that the sentence 'everywhere the tanks of the politicians will be brimming over' meant that the tanks of Members of Parliament would be brimming over.

7. Your Committee are satisfied that these statements were and are entirely without foundation. Mr Junor made no enquiry as to the allocation to Members of Parliament for political and parliamentary purposes and when informed that the maximum allocation for such purposes was for 200 miles a month, expressed the view that it was inadequate for a Member for a country constituency.

8. Mr Junor asserted that while the article contained criticism of Members of Parliament for their failure to make a protest and comment aimed at Members of Parliament, the attack was not aimed at them. He said that he was trying to convey in the article that there was a unfair disparity, as a result of which Members were getting an advantage, and that if there had been no effective protest the House was failing in its duty and that it would be contemptible on the part of Members of Parliament because they were using self interest to justify their silence.

9. Your Committee, having heard Mr Junor's evidence and having considered his demeanour while giving evidence, are unable to accept his evidence that the article had been misread and misunderstood and that it did not suggest Members of Parliament were getting an unfair allocation.

In their view the article clearly meant and was intended to mean that Members of Parliament were getting an unfair allocation, 'prodigious supplementary allowances'. The word 'politicians' would ordinarily be understood to mean, primarily though not exclusively, Members of Parliament.

Your Committee do not accept his evidence that the article did not attack Members of Parliament. In their opinion it was, inter alia, intended to hold them up to public obloquy as a result of their alleged failure to protest against unfair discrimination of which they were the beneficiaries. This is, in your Committee's view, confirmed by the fact that before publication Mr Junor made enquiries to ascertain whether any protest by a Member of Parliament had been reported in the national press.

As your Committee have observed and as Mr Junor admits, the article alleges that Members of Parliament were to get excessive supplementary allowances, yet Mr Junor did not before publication ascertain or make any enquiries to ascertain what allocations Members of Parliament might receive for political and parliamentary purposes.

10. In the opinion of your Committee, Mr Junor has been guilty of a serious contempt in reflecting upon all Members of the House and so upon the House itself by alleging that Members of the House had been guilty of contemptible conduct in failing, owing to self interest, to protest at an unfair discrimination in their favour. Such an attack on Members is calculated to diminish the respect due to the House and so to lessen its authority.

11. Mr Junor was given every opportunity to express his regret and to apologise for his conduct. He said he did not mean to be discourteous to the House of Commons or to bring it into disrepute and that if it had been interpreted as discourtesy, then he was sorry. Your Committee, having heard these statements, recommend to the House that, in view of the gravity of the contempt committed by Mr Junor, he should be severely reprimanded.

Subsequent action in the House of Commons

On 23 January 1957 Mr Junor was ordered to appear before the House at 3.15 p.m. next day. When brought to the Bar of the House next day, Mr Speaker addressed Mr Junor as follows:

Mr John Junor, you have been summoned to appear at the Bar of this House in consequence of a Report made by a Committee of this House. That Committee was directed to inquire into the matter of an

article published on the 16th December, 1956, in the *Sunday Express* of which you are Editor. You did not seek, so the Committee have found, to establish the truth of the article, nor did you appear willing to admit its obvious implications. Although given every opportunity to express your regret, you made what the Committee were only able to regard as an entirely inadequate apology. Nevertheless, I have to inform you that before considering the findings of the Committee the House is willing to hear anything that you may have to say in extenuation.

Mr Junor was then heard and directed by the Speaker to withdraw. The House then resolved as follows:

That this House doth agree with the Committee of Privileges in their opinion that Mr John Junor has been guilty of a serious contempt of this House, but, in view of the apology made to this House by him, this House will proceed no further in the matter.

Drawing and text in the *Evening News* newspaper

Complaint

A drawing and text in the *Evening News* newspaper of 18 December 1956 reflecting on the conduct of Members of the House, was referred to the Committee of Privileges on the same day.

The text complained of was as follows:

Very thoughtful o' them M.P.s giving themselves such a generous Supplementary . . . nice there's one place in London where a gent can be sure o' getting a drop.

The Committee's report

The relevant paragraphs of the Committee's report of 20 December 1956 are as follows:

1. Your Committee have examined Mr Willis, the Editor of the *Evening News*.
2. The decision to publish the cartoon in question was made about 2.30 p.m. on Monday, 17 December, before the article in the *Sunday Express* had been brought to the notice of the House. The decision to publish it was reached in the Editor's absence, but he has very properly accepted responsibility for the publication. The cartoon was sent to the Processing Department of the *Daily Mail* and the block was sent to the *Evening News* office on Monday evening nearly two and three-quarter hours after the editorial staff had left.
3. Early on the following morning, before the Editor had arrived, and despite the fact that the first edition had already gone to press, his staff decided, in view of the fact that the House had referred the complaint regarding the article in the *Sunday Express* to the Committee of Privileges, to withdraw the cartoon. It did not appear in any subsequent edition. In fact out of a total print of 1 412 000 copies that day, it appeared in 57 000 copies. When this matter was raised in the House, a report of this with an apology was immediately published. This appeared in 291 000 copies. Mr Willis also addressed a letter to Mr Speaker tendering to him and to the House his most sincere apologies for the publication of the cartoon. These apologies he repeated when giving evidence before us.
4. Your Committee, while of the opinion that the words in the caption 'very thoughtful o' them M.P.s giving themselves such a generous supplementary' imply that Members of Parliament had improperly favoured themselves in relation to petrol rationing and so constitute a reflection on all Members of the House and a contempt, recommend, in view of the very proper conduct of the Editor and the staff in securing the withdrawal of the cartoon at the earliest possible moment and in voluntarily publishing a full and unqualified apology, that no further action be taken by the House.

Subsequent action in the House of Commons

The report was presented to the House of Commons which took no further action in the matter.

Broadcast by B.B.C. and statements in *Romford Recorder*

Complaints

A broadcast on the British Broadcasting Corporation, commenting on and discussing a subject matter raised as a matter of privilege in the House of Commons on 17 December 1965

and

a statement reported in the *Romford Recorder* newspaper of 4 January 1957 by a Mr Donald Paterson

and

a further statement recorded in the *Romford Recorder* newspaper of 18 January 1957 as having been made by Mr Paterson were referred to the Committee of Privileges on 22 January 1957.

The transcript of the B.B.C. broadcast and the terms of the newspaper reports are as follows:

B.B.C. Broadcast—relevant portions of transcript

MRS. STOCKS: . . . the only people who are really well off under the rationing scheme are M.P.s and potential M.P.s who are nursing constituencies and who apparently have as much petrol as they want to drive round their constituency. (LAUGHTER—APPLAUSE)

MR. GRISEWOOD: Yes Francis?

MR. FRANCIS WILLIAMS: You know, Mary Stocks, I think you're a bit unfair because I think it is perfectly true that a certain amount of petrol—a considerable amount has been allowed for constituencies and for elections; but it is not true that the ordinary M.P. is being given a substantial amount of petrol. I have a number, either to my credit or discredit, a number of M.P.s among my friends; I know that their applications have been cut down quite substantially—that is only proper—and I would judge from their applications and what they've got that they are, on the whole being treated on the same basis as other people.

MRS. STOCKS: Well, the candidates are getting quite a lot; you'd better get yourself adopted and then you will see. (LAUGHTER).

Romford Recorder, 4 January 1957

M.P.s TOO KIND TO THEMSELVES

In common with M.P.s and other prospective Parliamentary candidates, I have just been allocated a supplementary petrol ration to cover 750 miles per month—this in addition to my 200 miles basic for private motoring.

Such an allocation is outrageously high—particularly when one considers how shabbily industry and people like commercial travellers are being treated. I have heard it said that the best club to belong to is *the House of Commons*. The privileges granted to its members certainly seem to be on the increase even if democracy is suffering as a result.

Moreover, it is my opinion that, in the light of their sad record over the past few years, which has more than anything else been responsible for the recent crisis and petrol rationing, the very last persons to have supplementary rations should be Members of Parliament.—DONALD PATERSON.

Romford Recorder, 18 January 1957

PATERSON CALLS MEETING ON POLITICIANS' PETROL

Comment on this question, he told the Recorder, has been 'effectively muzzled' by the recent action of the House of Commons Committee of Privileges against the editors of two national newspapers.

The Committee's report

The relevant paragraphs of the Committee's report of 5 February 1957 are as follows: (In respect of the B.B.C. broadcast)

2. Your Committee are of opinion that this statement does not constitute a contempt of the House. Criticism of a petrol rationing scheme, whether or not well founded, is very different from a reflection upon all Members of Parliament alleging that they have been guilty of contemptible conduct, intended to hold them up to public obloquy and calculated to diminish the respect due to the House and so to lessen its authority.

(In respect of the Romford Recorder, 4 January 1957)

4. The statement as a whole appears to Your Committee to be a criticism of the petrol rationing scheme so far as it relates to Members of Parliament and prospective candidates. The sentence 'The privileges granted to its members certainly seem to be on the increase even if democracy is suffering as a result', though untrue, is from its context related to the petrol rationing scheme.

5. Your Committee are of opinion that this statement made by the said Donald Paterson and published by the *Romford Recorder* does not constitute a contempt of the House. It is not in their view calculated to diminish the respect due to the House or to lessen its authority.

6. The heading to the statement for which the Editor was responsible does not in Your Committee's view constitute a fair indication of the content of the statement. It clearly suggests that Members of Parliament have improperly favoured themselves in relation to petrol rationing and so amounts to a

reflection upon and a contempt of the House: but not, in the opinion of Your Committee, a contempt of such a nature as to make it necessary to take further action.

(In respect of the Romford Recorder, 18 January 1957)

8. Comment on a matter which has been referred to the Committee of Privileges before the report of the Committee thereon has been made to, and considered by, the House may constitute a contempt, but to refrain from comment cannot do so. The allegation that such comment was 'muzzled' by action of Your Committee is without foundation, but Your Committee do not consider that that statement is worthy of any further notice.

Subsequent action in the House of Commons

The report was presented to the House of Commons which took no further action in the matter.

Article in magazine *Town*

Complaint

A passage appearing in the December 1967 issue of the magazine *Town* was referred to the Committee of Privileges on 24 November 1967.

The passage was as follows:

The Free Wales Army would dearly like to blow up the Severn Bridge. These days, when they blow things up, the boys go out with sten guns and Dyfed ap Coslett for one would not at all mind using them. 'We shoot to kill', he said, with great passion, pounding one fist in the other. 'Nothing stops us'. 'We have dossiers on all the traitors, all of them. Cledwyn Hughes and Emlyn Hooson and all the traitors who have sold Wales out to England'.

'Sure', said Cayo, who is not so intense, and better humoured, sipping his Guinness, 'and what about the councillor down the road?'

'I'll have him too. He's a bloody traitor, I'll shoot him.'

The Committee's report

The relevant paragraphs of the Committee's report of 29 January 1968 are as follows:

1. Your Committee are of opinion that the words referred to could constitute a contempt of the House.
2. Having considered the information which the Committee have received concerning the alleged activities which the article reports, and the incidents portrayed in the photographs with which it was illustrated, your Committee have come to the conclusion that it would not be consistent with the dignity of the House to take any action in respect of the contempt.
3. Accordingly, your Committee recommend that no further action should be taken.

Subsequent action in the House of Commons

The report was presented to the House of Commons which appears to have taken no further action in the matter.

Passage in *Sunday Express* newspaper

Complaint

Expressions reported in the *Sunday Express* newspaper of 14 February 1965, as having been made by Mr Duffy, Member of the House of Commons, at a meeting were referred to the Committee of Privileges on 16 February 1965.

The passage in the newspaper was as follows:

Sensational Attack on Tory M.P.s

A Labour M.P. says

'Some were half-drunk
in debates'

(Sunday Express Reporter)

A Labour M.P., Mr Patrick Duffy, has made a sensational attack on Tory members of Parliament. He is reported to have said that some Tory M.P.s were 'half-drunk' and 'disgusting to look at' during recent censure debates in the Commons.

Tories, told of the accusations last night, were enraged. A tremendous row is inevitable.

It was on Friday, at the annual social of Saddleworth (Yorkshire) Labour Party, that Mr Duffy, who is M.P. for Colne Valley, raised this explosive issue. He is reported to have told the 80 people who had paid 7s 6d each for their tickets: 'Some of the Tories were half-drunk during the debates.

It was disgusting to look at them, and I only wish some of their constituents knew about this. Their condition not only hindered the debate but also threatened the whole purpose of having a Parliament'. When Mr Duffy was interviewed by the *Sunday Express* yesterday at his political 'surgery' in Uppermill, near Oldham, Lancashire, he said: 'I stand by everything I said last night.

'One had only to look at the other side of the House to see that some of the members—I refuse to name them—were not themselves but had clearly wine and dined very well.

Shut the bar

'The deliberate and insistent obstruction, involving synthetic points of order and the baying, to prevent Government Front Benchers from being heard, was due to the fact that some of the Opposition members came straight from the bar and created virtual chaos.

'Some Tories have always looked upon the House of Commons as one of the best clubs in London because of the bar facilities which are often available until the early hours during a long debate.'

The Committee's report

The relevant paragraphs of the Committee's report of 8 March 1965 are as follows:

3. The Report in the *Sunday Express* was first raised as a matter of privilege by Sir Herbert Butcher, Member for Holland with Boston, who complained that the remarks by Mr Duffy, if correctly reported, constituted a grave reflection upon the conduct of honourable Members and were therefore a breach of privilege (H.C. Deb, Vol. 706, c.855).

4. Your Committee have also had brought to their attention a passage in the *Daily Telegraph* of 15 February, in which Mr Duffy was alleged to have said that 'the last censure debate . . . was reduced to a farce by Opposition Members coming in straight from the bar and creating virtual chaos with synthetic points of order and baying . . .' In the opinion of Your Committee, this remark could mean that the Members who raised points of order were the worse for drink and, as their names were recorded in Hansard, they could be identified.

5. Mr Duffy, in his written statement, agreed that the report in the *Sunday Express* was accurate, though incomplete. In regard to the quotation from the *Daily Telegraph*, he claimed that the remarks he made had been 'telescoped'. The 'synthetic points of order' referred to the early part of the debate, and the phrase 'coming in straight from the bar' referred to the later part. He further stated that he certainly contemplated no personal imputations and no breach of privilege was intended, and that he was only anxious to uphold the prestige of Parliament and to this end he unreservedly withdrew any remarks which might be construed to the contrary.

6. Your Committee have carefully considered the precedents of this type of complaint. In 1701 the House of Commons resolved that 'to print or publish any books or libels, reflecting upon the proceedings of the House of Commons, or any Member thereof, for, or relating to, his service therein, is a high violation of the rights and privileges of the House of Commons' (C.J., 1699-1702, 767). Since then, words or writings reflecting on the House, and on Members of the House, have constantly been punished upon the principle that such acts tend to obstruct the House in the performance of its duties by diminishing the respect due to it. The precedents of similar cases to this one, quoted in the memorandum of the Clerk of the House, show that the House has always regarded allegations of drunkenness as a gross libel on the House and a breach of its privileges.

7. Your Committee find that the words spoken by Mr Duffy constitute a gross contempt of the House and a breach of its privileges. Your Committee, however, having had regard to the terms of Mr Duffy's letter, recommend that the House should take no further action in the matter.

Subsequent action in the House of Commons

The report was presented to the House of Commons which appears to have taken no further action in the matter.

HOUSE OF REPRESENTATIVES CASES

The Sun newspaper

Complaint

On 3 October 1951 the House of Representatives agreed to the following resolution (V & P 1951-53/111):

That the Committee of Privileges give early consideration to the comments by the Chief of *The Sun* Canberra Bureau appearing in *The Sun* newspaper of the 2nd October, 1951, printed and published in Sydney, and report on—

- (1) the truth, or otherwise, of the impressions conveyed by the article;
- (2) the privileges extended by the House Committee to the writer of the article, and to all others who work within the precincts of Parliament House;
- (3) the wisdom or otherwise of continuing the extension of privileges to others than Members of the Parliament.

The article is reproduced overleaf.

The Committee's Report

The relevant paragraphs of the Committee's report of 31 October 1951 are as follows:

4. In a comparatively recent case which came before the Privileges Committee of the House of Commons it was stated by the then Clerk of the House of Commons, Sir Gilbert Campion, G.C.B. (now Lord Campion) that—

'Aspersions on the general conduct of Members are not reflections involving breach of privilege, unless they relate to the actual transaction of the business of the House (including any Committee of the House)'. (House of Commons Paper 1946-7, 138, p. 126)

5. Thus it is that the statements in *The Sun* article which are of foremost importance are those which deal with the conduct of Members in their parliamentary capacity.

6. The definite statements are made that—

'Within minutes of the Budget details being announced and Members learning that whisky, other spirits, cigarettes and shaving gear were to be dearer, there was a concerted onslaught on the parliamentary bar.'

and

'the mass movement from the chambers of the House of Representatives and the Senate to the bar is a further manifestation of the manner in which members would prefer to see Parliament House function.' The only construction that can be placed upon these statements is that Members *en masse* neglected the business of the House, forsook their parliamentary duties, and participated in the so-called 'inglorious and undignified rush' to the liquor bar. Such an imputation is completely erroneous, and in the opinion of the Committee, grossly reflects on the parliamentary conduct of Members.

7. Subsequently it is stated—

'Just as a man cannot be a hero to his valet, the Parliamentarians are no heroes to a staff that sees those MP's sweat and toil for every privilege and concession that is obtainable and then go into the Chamber and denounce the evils of privilege and concession'.

This further imputation in effect charges Members with carrying out their Parliamentary duties in a completely hypocritical manner. It is regarded by the Committee as not only a serious reflection on the character of members individually, but also on the manner in which the business of the House is transacted.

8. It is the view of the Committee that, having regard to the principles of privilege laid down in respect to reflections upon Members, the statements quoted above are a breach of privilege.

9. The article as a whole, with its accompanying cartoon and captions, conveys an impression that Members generally within the precincts of the House show more interest in the procurement of liquor and tobacco supplies than they do in their official duties. The Committee considers that the statements made in this respect are grossly exaggerated and erroneous in their implications, and consequently convey a false impression.

10. The staff overtime rates which are mentioned in the article are in accordance with the rates specified in the Public Service (Parliamentary Officers) Regulations.

Canberra statesmen beat the Budget

CANBERRA, Tuesday. — Just as a man may admire the functional utility of a zoo without becoming too fond of the animals that inhabit it, he can respect the parliamentary institution without hero-worshipping individual members.

The necessity for distinguishing between the parliamentary institution and those who serve it was provided clearly last week.

Within minutes of the Budget details being announced and members learning that whisky, other spirits, cigarettes and shaving gear were to be dearer, there was a concerted onslaught on the parliamentary bar.

Joe Clark's Labor member for Darling arrived just at the moment a Country Party group were stocking up with razor blades, shaving soap and extraordinary as it may seem, shaving brushes.

(If Clark had arrived at another time he would probably have found members of his own party of Liberals doing the same, for human nature ignores the artificial barriers of party divisions.)

By ALAN REID, chief of The Sun Canberra bureau

Commented Clark bitterly. This is pretty tough. Here are you fellows hooping everything and boxing the sun, and yet you are the very people who are putting the prices up.

BUT it was even more illuminating to stand in King's Hall and watch member after member from all parties coming from the bar with bottles of whisky and cations of cigarettes all at the old price, tucked under the arm.

Inglorious, undignified rush

Those who did not participate in the inglorious and undignified rush had no consideration.

Though members were repeatedly warned that their buying spree would mean that colleagues would have to go without, they demanded everything they could get and kept on demanding, though attempts were made to conserve stocks.

ACTUALLY the mass movement from the chambers of the House of Representatives and the Senate to the bar is a further manifestation of the manner in which members would prefer to see Parliament House function.

The members' angle generally (there are individual exceptions) ap-

pears to be:

• This is our club, and it is to be run exclusively for us.

• We must have people to cater for our needs, but they are dashed lucky to be permitted to cater for our convenience.

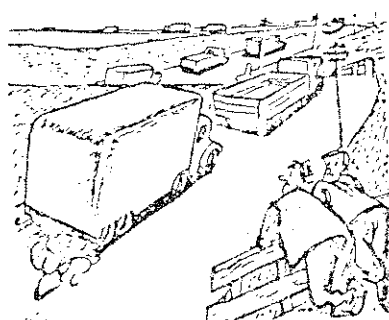
The parliamentary staff, and, particularly, the messengers, do not see it quite in that light.

Just as a man cannot be a hero to his valet, the parliamentarians are no heroes to a staff that sees those MP's sweat and toil for every privilege and concession that is obtainable and then go into the chamber and denounce the evils of privilege and concession.

For a start, there is the bar. In pre-war years when cigarettes and tobacco were plentiful the staff was encouraged to buy at Parliament House because bar trade was profitable and enabled the otherwise considerable deficit of the refreshment room to be reduced.

Solved their smoke worries

This staff buying built up the substantial quota which Parliament House was subsequently allotted. Then came the wartime tobacco shortage. Members solved the problem with brilliant selfishness. They ration-



... They must be MP's going back to Canberra for this week's Parliament ...

ed everyone else in the House but themselves.

• Members could cart away unlimited quantities of beer, whisky and cigarettes. (One Sydney-bound car is reported to have broken a back spring due to the beer load at the end of the last session.)

• Non-members were issued with a pink rationing ticket entitling them to 20 cigarettes a week.

Their own mail order business

The members loudly hailed this reform as equality of sacrifice.

But from this sacrifice they exempted themselves.

This 'reform' enables them now to write from wherever they are in Australia and have forwarded them virtually unlimited quantities of liquor and cigarettes.

With their supplies they can make good fellows of themselves at the expense of the staff

(When Parliament is in recess the quota is cut down to meet only staff needs.)

MORE important than any amnesty is the question of remuneration.

There is a strong move on to get members a pay increase.

This is a move with which I sympathise because I feel that a democracy should pay to the people who shape its laws an adequate and dignified remuneration.

At the same time the messengers are trying to get overtime improvements. Some of the staff work a seven-day week.

Parliament is their club

Under the law, hotels are closed for drinking on Sundays. But not the bar at Parliament House.

Members considering Parliament House as a club rather than as working premises, and there

- They rushed Parliament House bar.
- They stocked up on liquor and cigarettes at the old price.
- They even bought all the shaving brushes!
- Members insist on Parliament House bar opening on Sundays.

is justification for this because, stranded in Canberra over a dreary weekend, it is their only home! Insult upon the bar opening.

But they do not pay overtime to the men who have to sacrifice their Sundays to attend work.

Poor treatment for the staff

Apparently those who wait upon their pleasure and convenience are sufficiently rewarded by the knowledge that they serve the nation's great.

THOUGH Labor was in power for years, the staff had to wait until Archie Gaibrath, Cameron became Speaker before their woes were even partially redressed.

Before that, men who won their safe Labor seats and drew their £1500 a year (and perquisites) for the eloquent manner in which they demanded better treatment for the workers, let the men who worked for them eat their lunches in odd corners and keep their clothes and belongings anywhere.

Cameron gave them a lunch room and locker. He also gave them a system of overtime which, though not satisfactory

from their viewpoint, is at least something.

Now, after working 10 hours, they get 10s. and, after 13 hours, 15s.

These men would sooner be covered by the law rather than parliament's caprice, and have a proper award and conditions that would enable them to get payment if forced to work through the weekend.

In view of the indifference of the average parliament to their welfare, they cannot be blamed.

But at present Parliament House is very definitely the most exclusive club in Australia and only members have rights.

11. Mr Reid, the writer of the article, appeared before the Committee as a witness. With the exception of the cartoon and the captions, he accepted full responsibility for the views expressed in the article. In the opinion of the Committee he was not able to substantiate satisfactorily the accuracy of many of the allegations contained in the article. In evidence he admitted that his use of the word 'mass' in relation to the alleged movement to the bar was 'unfortunate'. The witness estimated that the Members of both Houses whom he had thus observed, over a period of some hours, numbered about eighteen. Other statements appear to be based on hearsay evidence, or conjecture, the authenticity of which is not proved.

12. While holding the view that the article, to the extent indicated, is a breach of privilege, the Committee does not recommend that any punitive action should be contemplated against the writer. The article is in poor taste; whilst not wholly untrue, its many distortions and exaggerations classify it as irresponsible. The Committee considers that the House would best serve its own dignity by taking no further action in the matter.

13. Parts 2 and 3 of the Resolution of the House referring this matter to the Committee refer to the matter of privileges extended by the House Committee to others than Members of the Parliament.

'Privileges' in this instance relate to services provided by the Parliamentary Refreshment Rooms. Such matters come within the prerogative of the House Committee and do not, under Standing Order No. 24, appear to come within the functions of the Committee of Privileges.

14. Following the Resolution of the House referring this matter to the Committee of Privileges for inquiry, the following resolution was passed at a special meeting of the Federal Parliamentary Press Gallery:

'The Federal Parliamentary Press Gallery supports wholeheartedly anything that helps to preserve the dignity of the Parliament and, at the same time, it defends the right of members of the Federal Parliamentary Press Gallery to report fairly and accurately and to comment fairly and accurately on the proceedings of the House or on happenings within the precincts of the Houses.

'Furthermore, without presuming in any way to say whether or not the article in question constitutes a breach of privilege, the Gallery declares its belief that the facts contained in it are correct, either on the evidence of some members of the Gallery in respect to some of the allegations, or as matters of common knowledge in others.'

This Resolution was transmitted to the Committee by the President and Secretary of the Gallery. Whilst refraining from commenting on the propriety of the Press Gallery in attempting to pre-judge the issue, the Committee expresses its opinion that the Gallery does itself little credit in lending its support to an article of the nature written by Mr Reid.

15. During its inquiries, the Committee informally conferred with the Hon. A. G. Cameron, M.P. (Speaker of the House of Representatives), Mr F. C. Green, M.C. (Clerk of the House of Representatives) and Mr R. W. Hillyer (Chief Clerk and Accountant, Joint House Department). Mr Alan Douglas Reid attended the Committee as a witness and was formally examined. A copy of the Minutes of Evidence taken and copies of statements supplied to the Committee by Mr Speaker and the Clerk of the House have been tabled in the Library for the information of honourable Members.

Conclusions

16. (a) That in respect to the statements referred to in paragraphs 6 and 7 of this report, the Committee considers that a breach of privilege has been committed.
- (b) That the article, while not wholly untrue, contains statements regarding the conduct of Members which are grossly exaggerated and erroneous in their implications, and consequently conveys a false impression.
- (c) That the Committee does not recommend the taking of punitive action against the writer of the article; it considers that the House would best serve its own dignity by taking no further action in the matter.
- (d) That Parts 2 and 3 of the Resolution of the House referring this matter to the Committee relate to matters which come within the prerogative of the House Committee.

Subsequent action in the House of Representatives

On 13 November 1951 (V & P 1951-53/171) the House of Representatives debated and agreed to the motion—That the Report be agreed to.

The Sunday Observer newspaper

Complaint

An editorial published in the *Sunday Observer* of 26 February 1978 was referred to the Committee of Privileges on 28 February 1978 (V & P 1978-80/29). The editorial is reproduced as follows:

SUNDAY OBSERVER

A Peter Isaacson Publication

Sunday, February 26, 1978

Political bludgers

THE over - taxed, government -
burdened people of Australia were
treated to a disgusting exhibition
by many Federal politicians this
week.

Many of our so-called leaders proved themselves lazy, two-faced bludgers at the opening of the 31st Parliament in Canberra.

It happened last Tuesday and, until now, not one newspaper has bothered to point out the outrageous antics of these power-puffed thespians of the parliamentary stage.

While our new Governor General, Sir Zelman Cowen, delivered his speech to the combined Houses, politicians from all sides appeared in their newly-cleaned suits.

Colors were carefully chosen for ties and handkerchiefs, and members' wives preened themselves for the ceremonial hoo-ha.

Of course. The television cameras were rolling. Here was a chance to be shown off to the public.

Politicians were actually seen in the House, apparently taking some notice of official business.

But after the official ceremonies were over they skulked out like thieves in the night.

While new Opposition Boss Bill Hayden made his first speech in the House as leader, Members lounged about in the bar.

And when Federal Treasurer John Howard built up to an important parliamentary appearance the House was half empty. Once again the bar was adequately occupied.

Surely we can expect our Federal Parliamentarians to have enough interest in the affairs of government to remain in the House during the first session of government business.

Surely they should be interested in the performance of two major political figures.

Or would they? Probably not — the money's
still pretty good, and they only have to
con the voters once every three years.

The Committee's report

The relevant paragraphs of the Committee's report of 5 April 1978 are as follows:

10. The allegations contained in the editorial were examined by the Committee. It is satisfied that they are without foundation. In addition, the Committee considered that the editorial cast reflections upon Members in such a way as to bring the House into contempt.
11. The Committee called two witnesses, Mr Peter Stuart Isaacson, Managing Director and Editor-in-Chief, Peter Isaacson Publications Pty Ltd, owners and publishers of the *Sunday Observer*, and Mr Alan Leonard Armsden, who, at the time of publication of the editorial, was editor of the *Sunday Observer*.
12. Mr Isaacson accepted responsibility for publication of the editorial. The Committee noted that Mr Isaacson had not read the editorial before publication and had not personally authorised the use of certain words which he described as intemperate. He indicated his agreement with the proposition put to him that the editorial was both inaccurate and irresponsible.
13. The Committee appreciated the responsible attitude of Mr Isaacson and his personal commitment in evidence to the Committee of upholding the dignity of the Parliament.
14. Mr Isaacson undertook to publish an apology incorporating his acknowledgement that the editorial was inaccurate and irresponsible. This apology was published in the *Sunday Observer* of 19 March 1978 and is reproduced as Appendix IV to this Report.
15. The editorial was actually written by Mr Armsden. The Committee noted from his evidence that he was unable to personally vouch for the accuracy of any of the alleged facts contained in the editorial; his admission that he was not present in Canberra on the days in question; his further admission that his information was unreliable and his alleged source would not be used by him again, and his admission that he would not write the same editorial again and that he regretted its inaccuracy.
16. Mr Armsden ceased to hold the position of Editor of the *Sunday Observer* on 15 March 1978 and is no longer employed by Peter Isaacson Publications Pty. Ltd.

Findings

17. The Committee finds:
 - (a) That publication of the editorial in the *Sunday Observer* of 26 February 1978, in having reflected upon Members of the House of Representatives in their capacity as such, constituted a contempt of the House of Representatives, and
 - (b) That Mr Peter Stuart Isaacson, Managing Director and Editor-in-Chief, Peter Isaacson Publications Pty. Ltd., and Mr Alan Leonard Armsden, Editor of the *Sunday Observer* at the time of publication of the editorial, are both guilty of contempt of the House of Representatives.

Recommendations

18. The Committee recommends in the case of Mr Isaacson that, in view of his expressions of regret made before the Committee and his publication of an adequate and acceptable apology, no further action be taken.
19. The Committee further recommends in the case of Mr Armsden that in this particular instance his demeanour and his actions are not worthy of occupying the further time of the House.

Privilege in general

20. In considering the present matter, members of the Committee were concerned at the limited range of options available to the Committee should it wish to recommend the imposition of a penalty.
21. As stated earlier in this Report, the privileges of the House of Representatives are those of the United Kingdom House of Commons in existence as at 1 January 1901. The principal penalties which the House may impose upon a privilege offender would appear to be:
 - (a) to reprimand;
 - (b) in the case of an offence committed by a newspaper or other media organisation, to exclude its representative(s) from the precincts of the House; and
 - (c) to sentence to a term of imprisonment.
22. Administration of a reprimand can be entirely unsatisfactory in certain instances. The Committee believes that the penalty of imprisonment is inappropriate except in the case of the most serious of privilege offences.
23. The power to fine was once exercised by the United Kingdom House of Commons but it fell into disuse about 300 years ago. Possession by the Commons of the power of imposing fines was denied by Lord Mansfield in the case of *R. v. Pitt* and *R. v. Mead**. Consequently, the power of the House of Representatives to impose a fine must be considered extremely doubtful. It seems to Your Committee that the imposition of fines could be an optional penalty in many instances of privilege offences.

*(1762) 3 Burr., 1335

24. The Committee strongly recommends to the House of Representatives that the whole question of parliamentary privilege should be referred to it for investigation and report to the House. Such reference should be couched in the broadest possible terms covering such matters as the means by which complaints of breach of privilege are referred to the Committee, the method of investigation of the complaint by the Committee, and the penalties which should be available to the House in respect of privilege offenders.

Subsequent action in the House of Representatives

On 13 April 1978 (V & P 1978-80/147-8) the House of Representatives debated and agreed to the following motion:

That—

- (1) The House agrees with the Committee in its findings, and with its recommendations in relation to the matter of an editorial published in the *Sunday Observer*, 26 February 1978, and
- (2) the House agrees in principle with the Committee's recommendation in relation to privilege in general, but is of the opinion that the investigation proposed should be undertaken by a Joint Select Committee, the resolution of appointment of which should be submitted to the House at the earliest opportunity.

FURTHER POINTS FOR CONSIDERATION

In considering the matter, no doubt the Committee will wish to satisfy itself as to whether the heading and reference material on page 1 of the newspaper, and the heading to the article on page 9, were written by someone other than the journalist to whom the article itself is attributed. Should this be so, responsibility for the material published may be divided.

The following extract from the Report of the House of Commons Select Committee on Parliamentary Privilege (Paper No. 34 of Session 1966-67) may be of interest to the Committee:

48. Your Committee accordingly propose the following rules for the guidance of the House in dealing hereafter with complaints of contemptuous conduct:

- (i) The House should exercise its penal jurisdiction (*a*) in any event as sparingly as possible, and (*b*) only when it is satisfied that to do so is essential in order to provide reasonable protection for the House, its Members or its Officers from such improper obstruction or attempt at or threat of obstruction as is causing, or is likely to cause, substantial interference with the performance of their respective functions.
- (ii) It follows from sub-paragraph (i) of this paragraph that the penal jurisdiction should never be exercised in respect of complaints which appear to be of a trivial character or unworthy of the attention of the House; such complaints should be summarily dismissed without the benefit of investigation by the House or its Committee.

Again, in considering whether or not to impose a penalty, it is of interest to note the considerable weight which the House of Commons Committee gives to the attitude of the privilege offender. If the Offender conducts himself in a proper manner in response to actions of the Committee and is prepared to tender an adequate apology for his contempt action the Committee has almost invariably recommended no further action.

A range of recommendations is open to the Committee in summing up and making its report to the House. Some examples are:

- that the dignity of the House is best maintained by taking no action;
- that the matter could constitute a contempt but it is inconsistent with the dignity of the House to take action;
- that a technical contempt had been committed but further action would give added publicity and be inconsistent with the dignity of the House;
- that a contempt of the House had been committed but in view of the humble apology tendered, no further action is recommended;
- that a contempt of the House had been committed but the matter was not worthy of occupying the further time of the House;
- that the journalist responsible be excluded from the gallery for a certain period;
- that the editor is guilty of a serious contempt and should be (severely) reprimanded.

THE COMMITTEE OF PRIVILEGES: FUNCTIONS, PROCEEDINGS ETC.

Standing Order

House of Representatives Standing Order No. 26 as amended by sessional order on 4 December 1980, is as follows:

26. A Committee of Privileges, to consist of the Leader of the House or his nominee, the Deputy Leader of the Opposition or his nominee and 9 other Members, shall be appointed at the commencement of each Parliament to inquire into and report upon complaints of breach of privilege which may be referred to it by the House.

Witnesses—Summoning of and administration of oath

House of Representatives Standing Orders Nos 354 to 368 deal with the calling of witnesses etc.

May 19th edn, pp. 644–5 deal with the general powers of a Select Committee regarding the attendance of witnesses.

In 1941, the Chairman of the Commonwealth Parliament War Expenditure Committee asked the Solicitor-General for advice on certain questions. In dealing with the following question:

Has a Select Committee or Joint Committee power to summon persons to give evidence and to administer oaths to witnesses

the Solicitor-General (Opinion 53 of 1941) said that if a Select Committee is empowered to send for persons, papers and records, it may, in his opinion, summon witnesses to give evidence.

By virtue of section 49 of the Constitution, the power contained in the Parliamentary Witnesses' Oaths Act 1871 of Great Britain for any Committee of the House of Commons to administer an oath to a witness is conferred on each House of the Commonwealth Parliament and on the Committees of each such House. This power however, does not extend to a Joint Committee.

The Solicitor-General briefly answered the question by stating:

A Select Committee or a Joint Committee authorised to send for persons, papers and records, has power to summon witnesses. A Select Committee also has power to administer oaths to witnesses. It is doubtful whether a Joint Committee has that power.

Scope of Inquiry

A select committee, like a Committee of the whole House, possesses no authority except that which it derives by delegation from the House by which it is appointed. When a select committee is appointed to consider or inquire into a matter, the scope of its deliberations or inquiries is defined by the order by which the Committee is appointed (termed the order of reference), and the deliberations or inquiries of the committee must be confined within the limits of the order of reference . . . interpretation of the order of reference of a select committee is a matter for the committee . . . If it is thought desirable that a committee should extend its inquiries beyond the limits laid down in the order of reference, the House may give the committee authority for that purpose by means of an instruction.

(May 19, p. 635)

Besides the report properly so called relating to the subject-matter referred to the committee, it is frequently necessary for a committee to make what is termed a special report in reference to some matter incidentally arising relating to the powers, functions or proceedings of the committee.

A report from a committee desiring the instructions of the House as to the authority of the committee or the proper course for it to pursue; or a report that a witness has failed to obey a summons to attend or has refused to answer questions addressed to him by the committee, are examples of such special reports.

(May 19, 661–2)

A House of Representatives case of a special report relates to the Committee of Privileges inquiring into articles in the *Bankstown Observer* (1955). An article dated 28

April 1955 had been referred to the Committee. Subsequently, the Committee presented a special report to the House seeking authority to include in its investigations articles appearing in the *Bankstown Observer* of 5, 12 and 19 May. The House agreed to a motion that the Committee's request be acceded to.

(V & P 1954-55, pp. 225, 239)

... The scope of any inquiry [of the Committee of Privileges] comprises all matters relevant to the complaint. The committee does not sit in public.

(May 19, p. 675)

The foregoing reference in *May* results from a resolution of the House of Commons in 1947-48:

That when a matter of complaint of breach of privilege is referred to a Committee, such Committee has, and always has had, power to inquire not only into the matter of the particular complaint, but also into facts surrounding and reasonably connected with the matter of the particular complaint, and into the principles of the law and custom of privilege that are concerned.

(House of Commons Journals 1947-48, p. 23)

Counsel: Lack of judicial form

Persons accused of breaches of the privileges or of other contempts of either House are not, as a rule, allowed to be defended by counsel; but in a few cases incriminated persons have been allowed to be heard by counsel, the hearing being sometimes limited to 'such points as do not controvert the privileges of the House'. Where a person has been allowed to make his defence by counsel, counsel have sometimes been heard in support of the charge; and where a complaint of an alleged breach of privilege was referred to the Committee of Privileges, counsel were allowed, *by leave of the House*, to examine witnesses before the Committee on behalf of both the Member who had made the complaint and the parties named therein. (The last cases recorded in *May* were in the 18th century.)

Details of the Commons practice in relation to counsel appearing before Select Committees are given in *May*, 19th edn, pp. 644-6.

During the course of the sittings of the House of Representatives Committee of Privileges in the *Bankstown Observer* case, Mr R. E. Fitzpatrick, who had been called by the Committee, requested that he be represented by counsel. By resolution, the Committee decided to hear counsel on the following two points:

- (a) as to his right to appear generally for Mr Fitzpatrick; and
- (b) as to the power of this Committee to administer an oath to the witness.

The Committee heard counsel on these points but did not agree to counsel's application to appear. (Parliamentary Paper 1954-55/H.R. 2, tabled 8 June 1955).

Little attempt is made in the Committee of Privileges to observe judicial forms. Persons accused of contempt of the House are not as a rule allowed to be defended by Counsel, though in a few cases the House has given leave for an exception to be made. The Committee of Privileges usually hears only the parties concerned and the Clerk of the House, and the House decides the appropriate penalty on the tenor of the debate on the Committee's report. (Extract from Paper prepared by the Clerk of the House of Commons for the Association of Secretaries-General of Parliaments—March 1965.)

Protest or Dissent may be added to the Report

Standing Order 343 reads as follows:

The chairman shall read to the committee, at a meeting convened for the purpose, the whole of his draft report, which may at once be considered, but, if desired by any Member it shall be printed and circulated amongst the committee and a subsequent day fixed for its consideration. In considering the report, the chairman shall read it paragraph by paragraph, proposing the question to the committee at the end of each paragraph—'That it do stand part of the report'. A Member objecting to any portion of the report shall move his amendment at the time the paragraph he wishes to amend is under consideration. A protest or dissent may be added to the report.

15 September 1981

J. A. PETTIFER
*Clerk of the House of
Representatives*

APPENDIX A

The printed reference and article appearing in the *Daily Mirror* 2 September 1981.



LAURIE OAKES SPECIAL REPORT

MPs BLUDGERS, DRUNKS!

IT'S not all hard work and stress for Australia's federal members of Parliament.

Many have little or nothing to do other than to sit around

the members' bar, boozing and whingeing.

Today, on Page 9, Australia's top political commentator Laurie Oakes reveals the truth about the drunks and bludgers on Canberra's back benches.

Bugger on the back bench

MOST members of Federal Parliament are not — repeat not — in imminent danger of dying of hard work.

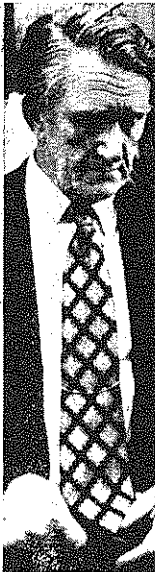
That needs to be said because of the over-reaction in some quarters to Mr Malcolm Fraser's latest bout of illness and the minor heart attack suffered by Senator Don Chipp.

The truth is that a majority of MHRs and Senators do not have enough to do. At least, not the kind of work that would challenge and interest them.

The result is that a significant number become simply "division fodder". Their only real contribution is to vote in parliamentary divisions.

For much of the rest of the time they loaf, become frustrated and often frequent the members' bar at Parliament House.

There is a group of Opposition MPs known as the Labor Old Guard Socialists — LOGS for short.



■ Malcolm Fraser... bout of illness

They sit around the members' bar, boozing and achieving very little.

There are quite a few members on the Government side who are little more than political typewriters — bogging in effect on the taxpayers.

This sort of thing, of course, can be just as damaging to a person's health as working too hard — perhaps more so.

Certainly a pamphlet soon to be prepared to advise MPs on how to protect their health will contain a stern warning about

by LAURIE OAKES,

Australia's top political commentator



the temptations of a boozey, sedentary life in Parliament.

People who are really working hard do not get time to hit the bottle, though. The parliamentarians with reputations as drunks and those regarded as workers are two quite separate groups.

Worthwhile

Quite a few of those MPs who give the impression of being lazy would have no objection to working hard if there was something worthwhile for them to do.

The system is at fault. The work-load is distributed unevenly between back-bench members. And the disparity between the work load of ministers and that of a backbencher is ridiculous.

The backbenchers with least to do are those in safe seats — particularly safe metropolitan seats.

MPs from rural electorates, even the very safe ones, have to travel a great deal — often driving round vast areas to keep in touch with constituents. That is certainly hard work.

Attention

A member in a safe metropolitan seat — whether Labor or Liberal — needs to give very little attention to his or her constituents.

Keeping the local party branches sweet to safeguard the pre-selection is the name of the game. And that is not especially time consuming.

When Parliament is in session, members from such safe seats do not have to worry about trying to get their names in the papers — unlike their colleagues in marginal seats who have to scramble for every vote.

There are members on both sides of the House from blue-ribbon electorates who hardly even open their mouths.

There is no likelihood of such people falling victim to stress-related illnesses.

System

The way the Parliament operates, unless a member from a safe seat gets into the ministry, becomes party whip or gains a similar position, he is going to be under-employed.

This is because the committed system in the House of Representatives has not been allowed to develop to the point where it can give backbenchers a significant role.

The Senate committee system is better and gives members of the upper house an opportunity to occupy themselves more constructively.

But backbench senators too — partly because they do not have the electoral responsibilities of their lower house colleagues — still have too much time on their hands.

Ministers do have to work extremely hard, of course. No-one is disputing that.

Most of them, with their staffs, are hard at it until late at night when Parliament is sitting. Even out of session, they still work very long hours.

Frightening

Ministers are required to travel a great deal and their family lives are seriously disrupted. They get only two weeks leave a year.

The amount of paper that crosses a minister's

'THEY LOAF ABOUT, BECOME FRUSTRATED AND OFTEN FREQUENT THE MEMBER'S BAR'

desk is frightening. Much of it is routine material — but it requires a signature and has to be read.

On top of the task of administering a department, taking part in general cabinet discussions and trying to assess constantly the political implications of decisions, it makes the load almost impossible to handle.

The result is a small group of ministers weighed down by work loads that are well nigh inhuman and nearly a hundred other MPs with too little to do.

In politics of course, like the army, not everybody can be a general. But at least in the army every soldier is kept busy.

There should be some consideration given to the problem of making back-

benchers more relevant and active. And if the ministerial work load can be reduced in the process, so much the better.



■ Don Chipp heart attack

A member in a safe seat needs to give very little attention to constituents

Tomorrow: profile of a worker MP

APPENDIX B

Speeches made in House of Representatives 8 September 1981

Privilege

Mr RUDDOCK (Dundas)—I raise a matter of privilege based on an article published in the Sydney *Daily Mirror* of Wednesday, 2 September, under the page one heading 'MPs bludgers, drunks', and the page nine heading, 'Bludgers on the back bench'. I produce a copy of the *Daily Mirror*, printed and published by Mirror Newspapers Ltd at the office of the company at 2-4 Holt Street, Surry Hills, New South Wales. I saw this article last week. I am not one who is normally sensitive to reasonable criticism, nor proper and perspicacious comments by well-informed journalists. However, I felt quite incensed at the nature of this article which reflected, I believe, on all members of this Parliament. I am one who genuinely could claim to be exempt from the comments because, although it is not a matter about which I skite, I happen to be a total abstainer from the use of alcohol. I believe, therefore, I can come to a more broadly based defence of my colleagues as a result of my informed observations over the eight years that I have been a member of parliament. I can say without any fear at all that I believe this is the most sober working place anywhere in this country.

I must say that whilst the journalist who wrote this article endeavoured to divide members in some senses—he tried to suggest that some members in marginal seats might work harder than others—the fact of the matter is that the article is written in such a form as to reflect upon all members of parliament. Even though in his judgment there are those members who warranted such criticism—I do not believe there are any—all members are lumbered with the tag he has used. I shall quote some of the comments which those members from interstate might not be aware were included in this article. He started his article by saying:

Most members of Federal Parliament are not—repeat not—in imminent danger of dying of hard work.

He went on to state:

The truth is that a majority of MHRs and senators do not have enough to do. At least not the kind of work that would challenge and interest them.

I am not sure what he means by that. He went on to state:

For much of the rest of the time they loaf, become frustrated and often frequent the members' bar at Parliament House.

He went on to add:

They sit around the members' bar boozing, complaining . . . and achieving very little.

There are quite a few members on the Government side who are little more than political time servers—bludging, in effect, on the taxpayers.

I will stop there with that reference to the members of the Government because I do not wish to repeat the even more scathing comments he made about members of the Opposition, which I believe also were totally and absolutely unjustified. I do not believe any journalists who have observed this Parliament and the conduct of members in and around this Parliament would support the remarks of their colleague. I thought of writing a letter to the newspaper concerned in the hope that it might be published and that it would correct some of the tremendous harm that this has done to my colleagues and, in a sense, all members of the Parliament. I have not done that but I

have raised this matter as a matter of privilege in the hope that you will give consideration to it, Mr Speaker, and so that members of the Parliament can see for themselves the nature of the comments and perhaps can add their comments to mine.

It is not difficult, even for a total abstainer, to have formed a view about the use of the facilities around this Parliament. The bar, such as it is, I believe could quite satisfactorily be closed without affecting anyone. I cannot speak for the other bar in this place which is frequented by non-members, I am told, but I assume—I do not wish any comments of mine to endorse the mirth some of my colleagues have expressed—that it is perhaps like the members' bar, empty on most occasions on which it might otherwise be possible for it to be used. Mr Speaker, I hope that you will give proper consideration to this matter and I hope that my colleagues will note the ill-informed nature of this journalist.

MR SPEAKER—The paper produced by the honourable member for Dundas (Mr Ruddock) is the same as a copy that I had earlier seen. I formed an opinion then that, without any doubt, under the rules of privilege, this was a contempt of the Parliament and therefore clearly was a *prima facie* breach of privilege. Under the Standing Orders it is the requirement that a member raising a matter of privilege, if the Speaker finds that there is a *prima facie* breach of privilege, ought then to be prepared to move a motion for the reference of the breach to the Privileges Committee. I do not on this occasion propose to call upon the honourable member to so move at the moment because it may be that he will give consideration to the form of the motion which may enable the matter to be disposed of on this day.

It has been the practice of the Parliament in the past not to deign to consider itself offended by those people who make allegations of a kind which they well know are a breach of privilege and may very well have been intended to acquire personal publicity, especially when they know that the allegations are not based on fact. Accordingly, I will exercise my discretion not to give this matter precedence at the moment. I will allow the honourable member for Dundas to consider, perhaps in consultation with other members of the House, a form of motion which may dispose of the matter today.

Privilege

Motion (by Mr Ruddock) proposed:

That the matter of the printed reference and the article by Mr L. Oakes relating to Members of the Commonwealth Parliament appearing on pages 1 and 9, respectively, of the *Sydney Daily Mirror* of Wednesday, 2 September 1981, be referred to the Committee of Privileges.

MR STEELE HALL (Boothby) (8.1)—I recognise the offence that some honourable members may have seen in the words in the article in question. They may feel that the article is cast wide and is non-specific and therefore includes in its descriptions those to whom no reference may be made. On the other hand I take the view that a reference to the Standing Committee of Privileges is a matter of great consequence to the House. From my reading of the article which has been drawn to the attention of honourable members I do not believe that, whilst it may be offensive to some honourable members, it is of sufficient importance to warrant the attention of the Privileges Committee. Whilst the heading on top of the article reads 'Bludgers on the back bench', that heading no doubt was put there by a sub-editor at some desk within the newspaper office. For consideration of this reference I confine myself to the remarks made under that heading. In looking at the article I can find several paragraphs which I think would have been better not written. They refer to both sides of politics, to Labor members of Parliament known as LOGS and to Liberal M.P.s 'bludging, in effect, on the taxpayers'. A further reference states:

The parliamentarians with reputations as drunks and those regarded as workers are two quite separate groups.

Whilst such a remark is unfortunate, I really do not wish to vote on this matter in relation to the article itself. In a broad sense it seems to be little more than many articles which have been written over the years concerning many members of parliament and, of course, it is little more than has been said in this House at times. I noticed that in one debate today one honourable member said of another: 'He will say anything. He will distort anything'. If it is said about a member that he will distort anything, on examination that is a very serious statement; yet it went unchallenged in this House today. I think all of us can find in our memories further statements of that nature.

For my own part, I suppose I have given a good deal in politics and I have received a good deal in insult and injury via the Press. Early this year I was associated with the words 'deceit' and 'scandal' in an article in the *Sunday Mail*, a weekend newspaper in South Australia. It was headlined: 'Damning deceit over Chowilla'. The sub-heading read: 'New research reveals the scandals behind South Australia's impossible dream'. I was closely associated with that impossible dream, as it was then called. To me, of course, that was a highly offensive article. It may very well have yielded some result at law but I felt on consideration, and after talking the matter over with the reporter who wrote it, that it would be completely futile and non-productive to pursue it further. In fact, I do not believe that my reputation has been harmed by that article. I believe that all honourable members in this House should be and are secure in their reputation as they are known in their district. I do not believe that they will be harmed by a passing reference in the type of article which has been referred to. I again refer to myself, because I suppose it is the easiest way to deflect this argument, instead of using as an example the offence that may have been given to others.

Mr David McNicoll, writing in the *Bulletin* of 18 August, made humorous but damaging remarks about me. He said that in fact I had been dropped from *Who's Who in Australia*. What could be more damaging to a member of Parliament than to be dropped from *Who's Who*? That must be the final emptiness of all politics. He went on to say:

When Steele Hall got pre-selection for Boothby, there was near revolt in several of the branches. They wanted no part of him, and it took great persuasion to get many Liberals to work for him.

He went on to say, in perhaps the more damning of all the remarks contained in this article:

Like many other politicians, Steele Hall has an ambitious and talented wife, regarded by some as the real member for Boothby.

What could be more damning than that? I know that Mr David McNichol is a *delightful old gentleman who belongs in the empire of the last century*.

MR SPEAKER—The honourable member will remain relevant to the issue.

MR STEELE HALL—Having said that, I have not in any way taken any umbrage at what he said. It was just a passing comment. I think that in politics one must take these things as general comment. I can understand the ire of some honourable members at the article concerned. I believe, however, that for the sake of Parliament and its reputation it would be better if the matter receded into obscurity. For that reason and because all of us have made mistakes at times and have written or said things that we have sometimes regretted—because of the many circumstances which surround political life—I will not support this reference.

MR SPENDER (North Sydney) (8.6)—I read this article at the time it was published. I must confess that I did not think it was one of the better pieces of journalism that Mr Oakes has published. Certainly, he said some things which were critical of honourable members of this House, but I must confess that I was surprised this afternoon when I heard the honourable member for Dundas (Mr Ruddock) express the view that this was a grave reflection upon this House. I was somewhat surprised, Mr Speaker, to hear you express the opinion that you were of the view that

prima facie it was a breach of the privileges of this House. I have with me the nineteenth edition of Erskine May's *Parliamentary Practice*. At page 144, on the subject of privilege, it states:

In 1701, the House of Commons resolved that to print or publish any books or libels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House, and indignities offered to their House by words spoken or writings published reflecting on its character or proceedings—

These are important words—

have been constantly punished by both the Lords and the Commons upon the principle that such acts tend to obstruct—

I add some emphasis to the word 'obstruct'—

the House in the performance of their functions by diminishing the respect due to them.

Reflections upon Members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House.

I find it very difficult to think that what Mr Oakes said could be said to have a tendency to obstruct the House in the performance of its functions. What Mr Oakes said may be found by some to be offensive, by others to be inaccurate, and by others still to be slightly ridiculous. But I would have thought that to constitute a prima facie breach of privilege, a breach that should be referred to a committee of this House, in this day and in this robust age, an allegation made against the House should be very serious indeed. I must confess that I can see nothing to warrant such proceedings. We would look more than a little ridiculous if our skins were so sensitive, if we were such tender plants, that we could not take criticism which might be without foundation, which might be utterly inaccurate, and which might in some ways reflect on the way in which we go about our duties. If we cannot take such criticism, what are we to do? Are we to say, when general criticism is offered of members of this House, that this is of such importance, such weight, such gravity that it should be referred to the Standing Committee of Privileges? I most certainly think that would be an unwise course. I think there is no foundation for the reference of this matter to the Committee of Privileges. If the House feels or if members feel that its dignity has been slighted, unless the matter is grave and weighty the House is far better advised to ignore what is said of it. I do not support the motion that the honourable member for Dundas has moved.

MR HOLDING (Melbourne Ports) (8.11)—I join in this debate to make just two points. The matter of privilege was raised in good faith by the honourable member for Dundas (Mr Ruddock). Mr Speaker, you were asked as Speaker to rule as to whether you found it to constitute a prima facie breach of privilege. You so ruled. No doubt you so ruled after due and proper deliberation. The House has established procedures under which, on the basis of your ruling, it is then open to the House to refer the matter to the Standing Committee of Privileges. I point out to some of my colleagues opposite who have spoken on this matter that a reference to the Committee cannot be construed as being a finding of guilt or the making of any decision on the merits of the case. It is simply, as far as I am concerned, supporting the ruling that you have given. On that basis and for that reason I will support the motion.

I believe that there are due processes within the House. I am happy to leave this matter to the adjudication of the Committee. It can return with whatever recommendation it desires to make, and then will be the time for all honourable members to make up their minds on the basis of the examination of the material that is before them as it comes from the Committee. My own view is that once the Speaker has ruled that there is a prima facie case—that is not a decision that can ever be given lightly; it can be given only after due and weighty consideration of all the evidence that is before you, sir—the House has no recourse open to it except to act in respect of your ruling and refer the matter to the Committee in terms of the due processes of this Parliament. For that reason I will support the motion.

Mr GOODLUCK (Franklin) (8.13)—I can understand the honourable member for Dundas (Mr Ruddock) bringing this item forward. Personally I take no offence at all at the article. I do not care what people say, whether they be journalists or otherwise. We are guided by our consciences. I tell the House one thing that I take exception to: The continued use by the Australian Democrats of the saying: 'Keep the bastards honest'. If we are going to start debating this sort of thing we should fight the sorts of things stated by the Australian Democrats far harder than the sort of thing brought forward by the honourable member for Dundas. I have a birth certificate and I am sure that most of the members on my side of the House have birth certificates also. If we allow that to go on without taking issue, we should not be worried about being called boozers and so forth. We can be guided by our consciences. We should fight those sorts of things much more vehemently than this sort of thing.

Mr SPEAKER—The debate has proceeded. I found that there is a prima facie breach of privilege. The honourable member for North Sydney (Mr Spender) found that strange. Perhaps if he does more research he will find that a contempt of the Parliament is a breach of privilege. He might look at the House of Representatives Standing Committee of Privileges report relating to an editorial published in the *Sunday Observer* on 26 February 1978. That is a much more recent establishment of the history of these matters. I will not, of course, refer to that at the moment. I have found that there is a prima facie breach of privilege.

Question put:

That the motion (Mr Ruddock's) be agreed to.

The House divided.

(Mr Speaker—Rt Hon. Sir Billy Snedden)

Ayes	75
Noes	27
	—
Majority	48
	—

AYES

Adermann, A. E.	Cunningham, B. T.
Baume, M. E.	Dean, A. G.
Birney, R. J.	Dobie, J. D. M.
Bouchier, J. W.	Drummond, P. H.
Bowen, Lionel	Everingham, D. N.
Bradfield, J. M.	Fife, W. C.
Braithwaite, R. A.	Fisher, P. S.
Brown, N. A.	Fry, K. L.
Bungey, M. H.	Giles, G. O'H.
Burr, M. A.	Groom, R. J.
Cadman, A. G.	Harris, G. McD.
Cameron, Donald	Hawke, R. J. L.
Cameron, Ewen	Hicks, N. J.
Cameron, Ian	Hodges, J. C. (Teller)
Carlton, J. J.	Hodgman, W. M.
Chapman, H. G. P.	Holding, A. C.
Child, J.	Howard, J. W.
Coleman, W. P.	Humphreys, B. C.
Connolly, D. M.	Hunt, R. J. D.
Cowan, D. B.	Hyde, J. M.
Cross, M. D.	Jacobi, R.

Jarman, A. W.
 Jones, Charles
 Jull, D. F.
 Killen, D. J.
 Klugman, R. E.
 Lloyd, B.
 Lusher, S. A.
 Lynch, Sir Phillip
 MacKellar, M. J. R.
 MacKenzie, A. J.
 McLean, R. M.
 McMahon, Les (Teller)
 McMahon, Sir William
 McVeigh, D. T.
 Millar, P. C.
 Morris, P. F.
 Morrison, W. L.

Mountford, J. G.
 Newman, K. E.
 O'Keefe, F. L.
 Porter, J. R.
 Ruddock, P. M.
 Sainsbury, M. E.
 Scholes, G. G. D.
 Shack, P. D.
 Shipton, R. F.
 Street, A. A.
 Tambling, G. E. J.
 Thomson, D. S.
 Tuckey, C. W.
 Viner, R. I.
 White, P. N. D.
 Wilson, I. B. C.

Armitage, J. L. (Teller)
 Beazley, K. C.
 Blewett, N.
 Brown, Robert
 Campbell, G.
 Charles, D. E.
 Darling, E. E.
 Dawkins, J. S.
 Duffy, M. J.
 Free, R. V.
 Goodluck, B. J.
 Hall, Steele
 Howe, B. L.
 Johnson, Les

NOES

Jones, Barry
 Kent, L.
 Kerin, J. C.
 Mildren, J. B.
 Peacock, A. S. (Teller)
 Rocher, A. C.
 Scott, J. L.
 Spender, J. M.
 Theophanous, A. C.
 Uren, T.
 Wallis, L. G.
 West, S. J.
 Willis, R.

Anthony, J. D.
 Falconer, P. D.
 Edwards, H. R.
 Robinson, Ian

PAIRS

Hayden, W. G.
 Young, M. J.
 Cohen, B.
 Innes, U. E.

In division—

Dr Klugman—Mr Speaker—

Mr SPEAKER—Does the honourable member for Prospect have a point of order?

Dr Klugman—This is not a point of order, Mr Speaker. Having thought about the question, having been at a meeting organised by this House—an Estimates committee meeting—and not having listened to the debate, I have now decided that I do not wish to vote on this motion. I ask leave to withdraw.

Mr SPEAKER—The honourable gentleman has no leave to withdraw.

Question so resolved in the affirmative.

APPENDIX II

HOUSE OF REPRESENTATIVES STANDING COMMITTEE OF PRIVILEGES

Transcript of Evidence
(Taken at Canberra)

MONDAY, 21 SEPTEMBER 1981

Present

Mr Donald Cameron (Chairman)

Mr Birney
Mr Duffy
Mr Hodgman
Mr Holding
Mr Jacobi

Mr Jarman
Mr Barry Jones
Mr Millar
Mr Porter
Mr Scholes

Mr Peter Floyd WYLIE, Editor, *Daily Mirror*, Sydney, New South Wales, was sworn and examined.

CHAIRMAN—Welcome, Mr Wylie.

Mr Wylie—I seek the Committee's permission to have my legal advisers, Messrs Hughes, Carson and Keller, to assist me with respect to any questions that you may put to me and to make submissions to the Committee on my behalf.

CHAIRMAN—Are you making formal application to be legally represented?

Mr Wylie—That is right.—(short adjournment)

CHAIRMAN—The Committee is prepared to consider your application. You nominated three persons. Are you proposing that the three of them argue your case or that one should be the spokesman?

Mr Wylie—I think one.

Mr BARRY JONES—Can three be admitted?

Mr SCHOLES—The instructing counsel must be there.

CHAIRMAN—Mr Hughes will be the spokesman. He will be your adviser.

Mr Wylie—Yes.

The Hon. T. E. F. Hughes, Q.C., Mr N. R. Carson and Mr H. D. H. Keller were admitted.

CHAIRMAN—The Committee has agreed that it will hear the case put forward by Mr Hughes representing Mr Wylie. Mr Hughes will state why Mr Wylie should be entitled to representation generally for the purposes of this hearing. Mr Hughes, I invite you to commence your case.

Mr Hughes—Thank you, Mr Chairman, and members of the Committee. Erskine May, at page 167 of the nineteenth edition of *Parliamentary Practice*, says:

Persons accused of breaches of the privileges or of other contempts of either House are not, as a rule, allowed to be defended by counsel . . . but in a few cases incriminated persons have been allowed to be heard by counsel . . . the hearing being sometimes limited to 'such points as do not controvert the privileges of the House' . . . Where a person has been allowed to make his defence by counsel, counsel have sometimes been heard in support of the charge . . .

It is consistent with previous practice of the House of Commons for the Committee of Privileges to exercise a discretion in favour of allowing legal representation when a charge of contempt is preferred against a stranger to the House. I shall not detain the Committee with arguments as to why the Committee should exercise its discretion favourably with regard to the request for legal

representation. I shall content myself with saying that any charge of contempt against a stranger to the House is a matter of utmost gravity, having regard to the nature of contempt or breach of privilege. The flower of natural justice has become a well-established plant. One goes back 26 years to the days of the famous case of Browne and Fitzpatrick when leave to have legal representation was refused. However, in the administration of the civil law the courts have always recognised that it is important that a person accused of a serious matter or whose livelihood is at stake be permitted legal representation so that his case can be put.

The principles of natural justice have become more widely recognised with the passage of the years—in particular, the passage of just over a quarter of a century since Browne and Fitzpatrick came before the House. In our respectful submission it would be appropriate and meet that Mr Wylie, the editor of the *Daily Mirror*, should have such assistance as legal representation may afford him in facing this very grave inquiry. One appreciates that the power of the Committee is a power of recommendation. It goes without saying that if any recommendation unfavourable to my client were issued from this Committee to the whole House it would carry great weight and could be determinative of the outcome of the substantive procedures.

Those are the reasons why we would respectfully submit that Mr Wylie should be allowed to be assisted by counsel. Such a course would not be contrary to the practices of the House of Commons. These are applied by virtue of section 49 of the Constitution. It would be altogether consistent with the dignity of this Committee in our respectful submission for this application to be granted.

Mr HODGMAN—Mr Hughes, can you assist me as to your submission with respect to those words which you have quoted from page 167 of Erskine May? The words on which I would particularly like your assistance are 'such points as do not controvert the privileges

of the House'. Will you assist me on those?

Mr Hughes—Those words are not entirely clear, in our submission. The phrase is culled from Commons Journals of 1770, in very different times. One view that might well be open to acceptance, but not a view that we would espouse, is that those words are intended to indicate that as a rule representation would be permitted only to advance arguments in extenuation, not to advance arguments dealing with the substance of the matter. If I may go on from there very briefly I will say that this Committee may consider it to be too early at this stage to adopt a hard and fast view of the extent to which representation should be permitted. So much may depend upon the course of the inquiry and it would be our very respectful submission that the Committee postpone a decision upon the extent or ambit of any representation that it may allow until the problem, if it be a problem, arises in a concrete form.

Mr HODGMAN—The second matter on which I would like your assistance is a fundamental question. Do you disagree that the effect of section 49 of the Constitution and Standing Order 1 is that we are obliged to apply the law as to powers, privileges and immunities as it was—no matter what we think about it—in the House of Commons as at 1 January 1901?

Mr Hughes—In substance, yes. But just as with a written constitution the words or the principles remain the same but their connotation may not always do so; the connotation of words or principles may develop with the times. The principles, as they were established in 1901, the common law of Parliament, are the principles which section 49 of the Constitution tells us must be applied in determining and administering the privileges of the House. We all know, however, that the words or principles of the common law are capable of adaption and change according to modern and changing circumstances.

CHAIRMAN—There are one or two

points I would like to raise with you. Are you aware of the fact that the last time the House of Commons agreed to counsel was in the eighteenth century?

Mr Hughes—I had it in mind that it was either the eighteenth or the early nineteenth century.

CHAIRMAN—It was a long time ago.

Mr Hughes—Yes, a long time ago.

CHAIRMAN—Are you aware of the fact that in the last 50 years there have been approximately 70 cases of privilege in the House of Commons? In approximately 20 the Committee decided against calling witnesses. In the remaining cases, though there would be some differences of course in the types of case before the Committee, the House of Commons Privileges Committee has not on any occasion decided to allow representation by counsel.

Mr Hughes—I take your summary to be entirely accurate. I have not had time to check that for myself, but I would not wish to question it for a moment. The only point I would make is that although there may appear to be a substantial weight of practical decisions against my application, on the other side of the scale I would venture to suggest to the Committee that it would in the ultimate result perhaps be more conformable with the dignity that ought to attach to these proceedings that a person who faces the possibility of a serious charge should be afforded the privilege, as it is in this case, of legal representation. In other words, such a person should be afforded a privilege which, before an administrative tribunal or before a court of law, would be a right. That is all I wish to say.

Mr PORTER—Notwithstanding Standing Order 1?

Mr Hughes—Notwithstanding Standing Order 1. There is room for saying, notwithstanding Standing Order 1, that the House of Commons, albeit 200 years ago, has afforded persons brought before the House or a committee of the House on a matter of privilege, the privilege of legal representation. So it

could not be said that the common law of parliament altogether excludes the possibility of representation.

Mr SCHOLLES—There are a couple of matters here. Firstly, all the precedents in Erskine May appear to predate the fixing of the privileges which now apply to this House. This, I think, took place in 1790. These privileges are unalterable as far as we are concerned, except through an Act. That is the first matter. Are you aware of any subsequent precedent? I certainly am not.

Mr Hughes—No, I am not. I am bound to say that, as one would expect, the Chairman's summary of the position is completely borne out by footnote (r) at page 167 of May according to which, if one puts it alongside the text, legal representation has been allowed in three cases. One was in the mid-eighteenth century, another in 1766 and another in 1770. Very briefly the principle is not one of absolute exclusion.

Mr SCHOLLES—The other question I will ask arises out of an earlier statement you made. You indicated that it may be that the Committee would determine to defer finality on your application until the Committee reached the stage where, in its opinion or in the witness's opinion—because he has the initiative right—the Committee has proceeded to such an extent that he felt that we would have to determine the questions. Is that what you were saying?

Mr Hughes—Perhaps I did not make myself clear enough. What I was intending to say to the Committee, by way of submission, was that if the Committee feels that it is not inconsistent with the principle of practice or the common law of parliament to permit Mr Wylie to have legal representation, it might make that decision in principle without tying itself down at this stage before the inquiry has proceeded any distance, by narrowing or defining the ambit of my function as counsel for Mr Wylie. One view could be that the Committee, giving the meaning that seems to reside in those words to which Mr Hodgman drew my attention,

may feel that counsel should be heard only on a question of penalty or on a question of the form of the recommendation and not generally on the question of guilt or innocence. All I was seeking to put to the Committee is that this is a decision that might await the development of the course of the hearing.

Mr HOLDING—In your view is there some distinction between persons accused of breaches of privilege—I am quoting from page 167; your own quote—and persons referred to in the subsequent statement that in a few cases incriminated persons have been allowed to be represented by counsel? I am wondering whether in fact there is a distinction between persons accused of breach of privilege and persons described in those few cases as incriminated persons. I have not had an opportunity to look at the authorities.

Mr Hughes—‘Incriminated persons’, I would suggest, would be a description capable, perfectly reasonably, of referring to people who are accused or against whom recrimination or a charge has been made.

CHAIRMAN—You realise, of course, that Mr Wylie is here in a way to assist the Committee rather than as the accused person.

Mr Hughes—Quite. Of course, the dividing line between the two situations could be a thin one and therefore, as he is potentially at risk in a very important matter, one would venture to suggest that representation might be allowed to him in the same way as, for instance, at certain coroner’s inquests, people whose conduct may be the subject of a criminal charge are allowed representation before the charge is formulated or preferred.

Mr HOLDING—It seems to me that the way in which it is expressed connotes a distinction between persons accused of privilege and, in those few cases, an incriminated person. It may well be that until such time as a committee of privileges decides that there is some prima facie case to answer, the person before it is not an incriminated person.

Mr Hughes—As against that, may I be permitted to advance the consideration that on reading *Hansard* one finds that Mr Speaker, when the matter was drawn to his attention by the honourable member for Dundas (Mr Ruddock), made a statement from the chair that in his opinion there was a prima facie case of breach of privilege. That statement was well within the competence and jurisdiction of the Speaker to make.

CHAIRMAN—That again enables the Parliament to refer the matter to this Committee for further inquiry and investigation.

Mr HOLDING—Do you mean that the finding by the Speaker of a prima facie case of breach of privilege in fact concludes the matter for us?

Mr Hughes—No, indeed no.

Mr SCHOLES—Selwyn Lloyd, as Speaker, said that he would not rule prima facie but only designate. The present Speaker, however, has decided to go back to the form of the Standing Orders.

Mr HODGMAN—Do you think it is possible that, in the old words used and referred to by Mr Holding, incriminated may well be synonymous with convicted? It was used at a time when, as you may recall, an accused person had no right to give evidence on his own behalf. In your view, in that context may the difference between ‘accused’ and ‘incriminated’ be as between one being prosecuted and one convicted or found guilty by the committee, thereupon becoming, in the words of the time, incriminated by virtue of the finding of the committee?

Mr Hughes—I submit that the sense of the words is rather different because ‘incriminated’ is a word that is capable of referring to an accusation of criminality.

Mr BIRNEY—Do you agree that we are bound by the practice of the Commons in relation to these deliberations in the matter of privileges?

Mr HUGHES—I submit that you are bound by the common law—the principles—but within the principles there is room for difference of treatment

in matters of practice, depending on the exigencies of the case. What I am trying to say, with very great respect to the Committee, is that it may be thought upon reflection to be more consistent with modern conceptions of the administration of justice—this Committee is in a very real sense sitting to administer justice—to permit representation so that people who are at risk that a finding will be made against them of an offence against the law of parliament should be permitted representation.

Mr BARRY JONES—With respect, I see a fatal inconsistency in the line that you have been pushing. When it seems appropriate, you say, the exigencies of our contemporary view of justice suggest that we ought to take Lord Denning's view of precedents. Then, within a few moments, you say that back in the eighteenth century representation of counsel used to be allowed. It seems to me that it is inconsistent to say that we can be flexible and yet on the other hand to say that we have to go back to the eighteenth century precedents. The real difficulty, however, seems to lie in section 49 of the Constitution and Standing Order 1. It may be that the House has been negligent in not taking up the opportunity under section 49 to update the privileges. The House of Commons has moved on, nevertheless. In a sense we are still stuck in 1 January 1901. How do we break through that?

CHAIRMAN—I do not think that question is really rightfully—

Mr BARRY JONES—I am talking about his argument. How does an argument break through that?

Mr Hughes—The way I endeavour to break the dichotomy is simply this: There was in 1901 no declared principle or practice, as far as I am aware, to the effect that in no circumstances could a stranger brought before the Committee of Privileges not have legal representation. As has been pointed out, representation was not permitted in most cases, but there was no inflexible position or principle or practice. Erskine May must be regarded as an authority of very considerable

weight and I venture to say that one would not find the statement in the nineteenth edition of his *Parliamentary Practice* that representation may be permitted, although generally not, unless there was a fairly good chance that it represents a principle of the common law of Parliament. When I am talking about practice, all I am talking about is the course the Committee might take according to the exigencies of the particular case. The principle is there; it is flexible. Just because it is flexible, the decision that may be made in actual practice in a particular case may vary from the decision made in another particular case.

Mr BIRNEY—In other words, there is a discretion.

CHAIRMAN—Yes.

Mr Hughes—The power is there to allow representation. It is a matter of discretion whether the power is exercised favourably to the applicant.

Mr DUFFY—Mr Hughes, just taking up the point Mr Jones made, I really thought your argument was two-pronged; that is, you were saying that if we are concerned about the question of precedent representation is not excluded by the Common Law of the Parliament as the House of Commons has allowed representation. Secondly, you were putting that nevertheless if we say that having regard to the time representation was allowed by the House of Commons and the difference in that period from now, if we found that the precedents from that eighteenth century period on were so compelling you came back I thought to a not inconsistent argument, the second argument, that any charge of contempt against a stranger really came back to the question of natural justice.

Mr Hughes—Yes.

Mr DUFFY—Was it two-pronged?

Mr Hughes—Yes.

CHAIRMAN—In terms of precedent, are you of the view in the presentation of this case that, though there has been no permission for counsel to be represented since the 1700s, there have never previously in the United

Kingdom been applications which have been turned down, as existed in 1954 in this country?

Mr Hughes—I could not vouch for the proposition that applications have been made in the United Kingdom and turned down. Frankly, I do not know. Certainly we all know, having consulted the minutes of the Privileges Committee in May–June 1955, that representation was there permitted. Mr Mason, as he then was, was permitted to appear for Fitzpatrick for two limited purposes. One was to submit that the Committee had no power to administer an oath. That is not a submission which would be any part of the argument I would wish to put if I am allowed in. The other point was of a relatively limited character. Possibly the principle in the case of Browne and Fitzpatrick is important because the Committee in 1955, no doubt conceding that it was acting consistently with principles enshrined in the common law of Parliament at the relevant date, 1901, thought that it was proper to permit representation in that case, albeit for limited purposes.

Mr MILLAR—Would we be in accord, Mr Hughes, if it is said that this Privileges Committee has been charged by the Parliament to establish the facts of this alleged breach of privilege?

Mr Hughes—Yes.

Mr MILLAR—Would it not necessarily follow that, taking the worst possible view, the appearance of counsel to assist a witness may frustrate the Committee in the pursuit of its charter and arguably in turn become a breach of privilege of the Parliament's right to establish the facts?

Mr Hughes—It would not be any part of my task to endeavour to frustrate the processes of this Committee. If I had the hardihood to embark upon such a course I have no doubt that I would be roundly brought to order. A witness who is summoned before the Privileges Committee is, if I may say so with respect and having regard to the principles that have been established, in a very exposed pos-

ition. For instance, as we understand the law, he cannot claim privilege against answering a question on the ground that the answer might expose him to incrimination. That is a privilege that attaches to anyone who gives evidence in a civil court. It is the privilege to remain silent rather than, by speaking, to incriminate yourself. So the role that counsel can play in a proceeding of this nature is much more limited than the role that counsel can play in an ordinary proceeding in the civil or criminal courts. You mention the risk that I may, consciously, unconsciously or unintentionally, subvert or frustrate the operations of the Committee. I can only say that this would not be my proper role as counsel and if I trod outside the legitimate boundaries no doubt I could be very properly dealt with by this Committee.

Mr MILLAR—Could you briefly describe the nature of counsel's representation in proceedings of this character?

Mr Hughes—It is to advise the witness if he seeks advice before answering a question and to submit to the Committee, if one conceived it necessary to do so, that the substance of a particular inquiry might be more fairly put to the witness in another way. These are very limited roles. Towards the end of the day one could make submissions, if allowed to do so, on the question of whether contempt or a breach of privilege has been committed.

CHAIRMAN—Are there any further questions? There being no further questions I invite you to make any summing up comments which you wish to make.

Mr Hughes—I am obliged to you for this opportunity. I doubt that I can usefully occupy the time of the Committee any further. The main propositions have been put. I have sought to develop them in answer to specific questions. While I am indebted to you for the opportunity, it might be tedious if I were to cover the same ground again.

(short adjournment)

CHAIRMAN—The Committee has deliberated and has resolved in the following terms: That applying section 49 of the Constitution and Standing Order 1 of the House of Representatives Standing Orders, this Committee determines that this application for counsel to appear generally on behalf of Mr Wylie is not granted. I ask Mr Wylie to stay. I thank the other gentleman for the courtesies extended and ask him to withdraw.

Messrs Hughes, Carson and Keller withdrew.

Thank you, Mr Wylie. You have been sworn and you have stated your name and your position with the *Daily Mirror*. I must go through some procedures formally. You are no doubt aware that on 8 September 1981 the House of Representatives agreed to the following resolution:

That the matter of the printed reference and the article by Mr L. Oakes relating to Members of the Commonwealth Parliament appearing on pages 1 and 9, respectively, of the Sydney Daily Mirror of Wednesday, 2 September 1981, be referred to the Committee of Privileges.

It is the responsibility of this Committee to inquire into the matter which has been referred to it and to report back to the House of Representatives. The report will contain the Committee's findings in respect of the matter and it may also contain recommendations to the House. I should stress, however, that any decision in respect of the matter will be taken by the House itself after it has received this Committee's report.

The proceedings of this Committee are being tape-recorded and in due course a transcript of the evidence you give will be prepared. A copy of the transcript will be made available to you for correction after it has been prepared. Before proceeding to address questions to you, I would like to read the provisions of Standing Orders 340 and 362 of the House of Representatives.

Standing Order 340 reads:

The evidence taken by any select committee of the House and documents presented to and proceedings and reports of such committee, which have not been reported to the House,

shall not, unless authorised by the House, be disclosed or published by any Member of such committee, or by any other person.

Standing Order 362 reads:

All witnesses examined before the House, or any committee thereof, are entitled to the protection of the House in respect of anything that may be said by them in their evidence.

So there is no misunderstanding of the position I make it quite clear that the proceedings of this Committee are confidential and that if you or any other person were to reveal or publish the proceedings to any person before the Committee presents its report to the House of Representatives that disclosure itself would constitute a contempt of the House and therefore a breach of parliamentary privilege. I explain also, Mr Wylie, that the transcript you will be handed of the evidence and the questioning here today also falls into that category and that frequently the House itself decides not to publish or not to accept the transcript of proceedings. Therefore the transcript which you will be handed in due course for correction purposes does not necessarily become a public document. It would become a public document only if the House itself were to decide that was the course it would follow. Are you quite clear on the points I have related to you?

Mr Wylie—I understand that the full transcript of this Committee hearing does not necessarily go to the House.

CHAIRMAN—It is something which the Parliament itself decides. On occasions the transcript has become a public document; on other occasions the House has decided otherwise. I will ask Mr Barlin to show you a copy of the newspaper in possession of this Committee. Do you identify it as a copy of the *Daily Mirror* of 2 September 1981?

Mr Wylie—Yes. That is what I will class as the drop-in edition of the first edition. Let me explain. If I can pass around these copies of the page 1 and the page 9 story on both days I think it will help me when I explain.

CHAIRMAN—Before you speak can I ask you to identify what it is?

Mr Wylie—They are both copies of the first edition. What we have here—‘Boy hangs 17 hours on rope’—was the first part of the first edition but while we were running the edition the boy died. The main headline was different. ‘Boy dies on mountain’ as against ‘Boy hangs on rope’. But the matter on the bottom is the same.

CHAIRMAN—The front page of this drop-in edition of the first edition contains a heading ‘MPs Bludgers, Drunks!’ and other printed references to an article appearing on page 9. Page 9 contains a heading ‘Bludgers on the back bench’ and an article attributed to Mr Oakes. Do you identify those pages as forming part of the *Daily Mirror* of that date?

Mr Wylie—Yes.

CHAIRMAN—Was Mr Oakes the author of the article appearing on page 9 of the newspaper?

Mr Wylie—Yes.

CHAIRMAN—Who wrote the headline and reference material relating to the article which appeared on page one?

Mr Wylie—I wrote the headline and my acting features editor wrote the three paragraphs referring to page 9.

CHAIRMAN—So you wrote the words ‘Laurie Oakes special report—MPs Bludgers, Drunks!’.

Mr Wylie—That is correct.

CHAIRMAN—Was the page 9 heading ‘Bludgers on the back bench’ done by the features editor or by yourself?

Mr Wylie—That was done by the acting features editor—we call him the features editor—in consultation with me two days before.

CHAIRMAN—What is his name?

Mr Wylie—His name is Gordon McGregor.

CHAIRMAN—Is he the only other person involved?

Mr Wylie—He is the only other person.

Mr JARMAN—Is he the acting features editor?

Mr Wylie—Yes.

CHAIRMAN—Do you accept responsibility for the headings and the other printed reference material which is the subject of this inquiry?

Mr Wylie—I do.

CHAIRMAN—Was Mr Oakes’s article as it appeared on page 9 edited in any way from the copy provided by Mr Oakes?

Mr Wylie—No. It underwent normal sub-editorial treatment for grammar, paragraphs, cross-heads, commas and so forth. It was not taken out of context. It was normal sub-editorial treatment.

CHAIRMAN—There were no changes then. Who was responsible for editing the article?

Mr Wylie—I do not know offhand. The acting features editor passes it on to several sub-editors who work in his department. I cannot name the specific sub-editor who treated the story that day.

CHAIRMAN—This is a very important question. Did it occur to you that the headlines and the printed article may have constituted a contempt of the House of Representatives?

Mr Wylie—It did.

CHAIRMAN—Did it occur to you prior to publication?

Mr Wylie—Yes.

CHAIRMAN—In view of the fact that the headlines were your very own work, what was the purpose of the sensational headlines ‘MPs Bludgers, Drunks!’ and the heading on page 9 ‘Bludgers on the back bench’?

Mr Wylie—In my opinion the headline on page 9 reflected what the story was all about and what, in my opinion, Mr Oakes was trying to get over in his article. The heading on page 1 is my heading. It is not a headline as such. It is what we in the industry call a pointer to an article inside the paper. It is intended to encourage people to look inside and to read the main article. There is not a story as such on page one. It is a pointer.

CHAIRMAN—What impression do you believe that, what I might describe as headlines and what you might describe as pointers and subsequent headings, would

convey to the average reader of the *Daily Mirror*?

Mr Wylie—I think the average reader of the *Daily Mirror* would read the headline first. The headline is the heading on the major story on the page. A heading appears over a down-page story.

CHAIRMAN—I repeat my question and I apologise if it was not clear. What impression do you believe the average reader of your paper would gain from looking at that pointer, as you call it, with the words 'MPs Bludgers, Drunks!' and then turning to page 9 for the rest and seeing the words 'Bludgers on the back bench'? This continues: 'They loaf about, become frustrated and often frequent the member's bar'. What impression do you believe the readers of your paper would gain from reading that?

Mr Wylie—I do not know what percentage of people would buy a paper because of that. I do not know what percentage of people would buy a paper because of the bingo pointer on the left hand side or because there are 14 cars to be won. That is up to their individual tastes and depends on whatever appeals to them. Some people might buy a paper without even looking at the front page.

CHAIRMAN—I am not talking about your commercial instincts. It may well be that most people buy your paper because of the bingo, but the question I am asking is this: What impression would that bingo-following public gain, in your view, from that article?

Mr Wylie—I think most people would have bought the paper because of the main heading on the page. It was a very dramatic story about the boy. I would also point out to you that what we are looking at is the first edition. If you turn over, we have the second edition, the third edition and the fourth edition. The second and third editions stayed the same and the fourth edition was changed.

CHAIRMAN—Is page 9 consistent right through all editions?

Mr Wylie—Yes. It may have gone back after the first edition for printer's errors, but it was not changed in any way.

CHAIRMAN—But it stayed on page 9.

Mr Wylie—On page 9, it stayed unchanged.

CHAIRMAN—Let us accept that only some people saw the article as it was on the front page as presented here by you. Then we go to the page 9 presentation for those who did not have the advantage of a pointer.

Mr SCHOLES—Before you leave that, have you an estimate of your normal first edition sales or print?

Mr Wylie—I have not an exact estimate with me.

Mr SCHOLES—I know. Do you have an estimate?

Mr Wylie—The first edition, I think, is around 160 000. I think the second is about the same. The third and fourth average around 50 000 and 30 000.

CHAIRMAN—What was the reason for the removal of this pointer? Was there some concern as to the—

Mr Wylie—No, there was no concern whatsoever. The removal of the pointer was to accommodate the dramatic picture of the boy's body being lifted out by helicopter, which was exclusive to us. If you had a ruler you could see that the picture on the second and third editions is deeper than the one on the first edition and there is that extra space to accommodate it. I kept the bingo pointer on page 1 because it is the biggest seller of newspapers at the moment.

CHAIRMAN—We turn to what was the consistent page 9. Do you believe that in total that article and the headings were writings which reflected on the Parliament itself and the members of the Parliament?

Mr Wylie—I think for the point that the article was trying to make, which was that not all members of parliament are hard working, yes, I do.

CHAIRMAN—Not all members of parliament are hard working. Then we look at Senator Chipp's photograph. There is a paragraph almost next to his eye. It is in line with his eye and it reads:

The result is a small group of ministers weighed down by work loads that are well nigh inhuman and nearly a hundred other MPs with too little to do.

So really it was an article intended to draw the attention of the public to the performance of, say, the nearly 100 other MPs. 'Nigh on a hundred' I think were his words.

Mr Wylie—I am sorry. What was the question again?

CHAIRMAN—You have referred to some members of parliament as bludgers, to use the language of your own newspapers.

Mr Wylie—Yes.

CHAIRMAN—When we look at the paragraph to the left of Mr Chipp's eyes it starts:

The result is a small group of ministers weighed down by work loads that are well nigh inhuman and nearly a hundred other MPs with too little to do.

Almost 100 MPs fall into that category. Is that a fair comment?

Mr Wylie—If Mr Oakes wrote that, yes, it is.

CHAIRMAN—There are about 100 of us out of 124.

Mr Wylie—I do not know how many you have. I should know. I do not know how many MPs there are, but if he says well nigh on 100—

CHAIRMAN—No, MPs and senators. How long have you been the editor of the *Daily Mirror*?

Mr Wylie—I have been the editor of the *Daily Mirror* for nine months.

CHAIRMAN—How many years does your journalistic career span?

Mr Wylie—Twenty.

CHAIRMAN—This is a very difficult question, but do you regard that article in the first edition as a responsible article and responsible journalism?

Mr Wylie—I am sorry. Do I regard what as responsible?

CHAIRMAN—This first edition of the day. That takes in everything we are talking about.

Mr Wylie—I regard the page 9 article as a responsible article, yes.

CHAIRMAN—What about page 1 of that first edition?

Mr Wylie—Yes. I regard page 1 of that first edition as responsible. It was, to me, the second best story I had in the paper for that edition.

CHAIRMAN—Was it suggested by you or any other person in the organisation that Mr Oakes should write an article along those lines?

Mr Wylie—No.

CHAIRMAN—Did it just come through the process?

Mr Wylie—Mr Oakes submits his copy to me every Monday morning. It is up to me then to decide whether to publish it, reject it or alter it in any way.

CHAIRMAN—Have you in your 20-year career or in any other career outside journalism needed to spend time in the Press Gallery or in the precincts of the Parliament?

Mr Wylie—No, I have never spent time as a Press Gallery member.

CHAIRMAN—Have you done so in any State Parliament?

Mr Wylie—No.

CHAIRMAN—Does that apply to State Parliaments as well as to the Federal Parliament?

Mr Wylie—It applies to all parliaments.

CHAIRMAN—I must ask you this. I suppose this is a little difficult for you to answer. Have you been a political roundsman at any time?

Mr Wylie—No.

CHAIRMAN—So I suppose it is difficult, but do you believe that the headlines and the article truly reflect the life and work of members of the House of Representatives?

Mr Wylie—When you take the two articles and the reason we did this series, yes.

Mr PORTER—Do you mean the front page?

Mr Wylie—No, I mean the next day's article, on the same page and in the same place.

Mr SCHOLLES—Does not that second article though deal with a

Minister's work and tend to be a reinforcement of the fact that no one else in the Parliament does any work, which is the import of the earlier article?

Mr Wylie—Yes, but it does show the lifestyle and the pressure on a Minister. As Mr Oakes points out in his article, the work load is unfairly shared. I think he blames the system rather than anything else.

CHAIRMAN—At this time we have a reference to what we might describe now as the first article. This is not a reflection on you for a moment. In view of your lack of intimate knowledge of the workings of the parliamentary institution, did you take any action to check the truth of the allegations contained in the article?

Mr Wylie—I did not pick up the phone and do any checking. I have complete faith in Laurie Oakes. He is a credible and reputable journalist.

CHAIRMAN—Do you believe that sometimes credible and reputable journalists can fall into error?

Mr Wylie—Anyone can fall into error.

CHAIRMAN—So therefore you do agree that some journalists can fall into error.

Mr Wylie—I agree anyone can fall into error.

CHAIRMAN—Does that include journalists?

Mr Wylie—That includes journalists.

CHAIRMAN—So therefore sometimes you probably have your heart in your mouth a little when, instinctively as you have already said to us, you contemplate the possibility of a breach of parliamentary privilege when you have to rely on a journalist with deadlines during the day and you just have to go ahead?

Mr Wylie—There is no deadline for Mr Oakes because his articles are written well in advance of the publishing date. So I do not think there was any mistake or any bad judgment on his behalf. I cannot speak for him. You had better ask him that.

CHAIRMAN—This was a Wednes-

day edition. When did you have the article?

Mr Wylie—I had it by Monday.

CHAIRMAN—Did you find the allegations contained in Mr Oakes's article surprising to you?

Mr Wylie—I did not find them at all surprising.

CHAIRMAN—Yet Mr McGregor on page 1 uses the words in a fairly startling, eye-catching pointer—'Today, on page 9, Australia's top political commentator Laurie Oakes reveals the truth'—as if it were something that had never before been published.

Mr Wylie—I do not see your point on that.

CHAIRMAN—I will put it another way. You do not find it surprising at all. Yet the supporting article to the pointer states:

Today on page 9, Australia's top political commentator, Laurie Oakes reveals the truth about the drunks and bludgers on Canberra's back benches.

You did not find it surprising that this was fact coming straight from Mr Laurie Oakes and yet you saw fit to publish it as if it were a revelation that had never been before the public previously.

Mr Wylie—One has to take the article in its context and consider its timing as well. We did the two articles because, as you know, many of your colleagues have had heart attacks or died because of the pressures under which they are working. Mr Oakes makes the point in his article that the system of applying work to members of both Houses is wrong. The system is at fault. That is what we sought to do in the two articles. There are those who work hard; there are those who do not. The second part of the article—which no one at this stage has bothered to discuss—sets out a day in the life of a Federal Minister. We chose Mr MacKellar because he lives in a Sydney electorate.

CHAIRMAN—When was the decision made to run that article?

Mr Wylie—That was made after I had read Mr Oakes's column on Monday morning.

CHAIRMAN—Was that done on the Monday or the Tuesday?

Mr Wylie—I cannot remember. It was done before Thursday.

CHAIRMAN—I want you to try to remember. Was the article prepared prior to the running on the Wednesday of the Oakes story?

Mr Wylie—The Oakes story was written on Monday. From memory I think the other story came in late Tuesday or early Wednesday.

CHAIRMAN—Was a deliberate decision taken to obtain the other story prior to running the Oakes story?

Mr Wylie—Yes.

CHAIRMAN—Was that seen as balanced journalism?

Mr Wylie—It was seen as a balance—to put the reason for the origin of this article.

Mr SCHOLLES—There is an article on Ministers and there is an article by Oakes which suggests only Ministers and some people in marginal seats work.

In the second article, however, at least one of those who died of a heart attack was not a Minister but a junior senator of very short duration. Is it a reasonable assumption that the article also implies that no one from the Opposition or no one who is chairman of a parliamentary committee or exercises some other functions which are difficult if not decision-making functions does any work? I instance the Leader of the Opposition who appears to me to have a work load higher than that of Mr MacKellar. His is not a decision-making function but his travelling around the country and so on seem to me at least to be equal if not greater than a Minister's load because he does not have similar staff in departments to support him.

Mr Wylie—Senator Knight was an energetic committee worker, was he not?

Mr SCHOLLES—He was a representative of the Australian Capital Territory, which has problems.

CHAIRMAN—He was an energetic parliamentarian. This article appeared in

a number of other newspapers. For the sake of the Committee—

Mr Wylie—Which article appeared there?

CHAIRMAN—I refer to the article on page 9. Only the *Daily Mirror* ran page one in its first edition, but the page 9 article appeared in slightly varying forms in other papers. Do you syndicate the article to the other papers yourself through the *Daily Mirror*? How does that happen? I am only seeking information.

Mr Wylie—No. To my knowledge Laurie Oakes's Wednesday column appears only in the *Daily Mirror*; it is not syndicated. I understand he has contracts with other newspapers. I cannot take his column in the *Sunday Telegraph*, as the *Sunday Telegraph* could not take that column.

CHAIRMAN—Do you have first bite of the cherry, so to speak, and if he sells it elsewhere—

Mr Wylie—He is on an annual contract to write a column on Wednesdays for the *Daily Mirror*.

CHAIRMAN—Have you no great interest in what he does with that article after Wednesday?

Mr Wylie—I do not have any personal interest in it, or the paper has no binding interest in him.

Mr HOLDING—Could he sell that article again, say, to another paper?

Mr Wylie—I do not know. That is his business.

CHAIRMAN—In other words, if he submits an article to you by contract it is run on the Wednesday. Is your view then: 'As long as we have first bite of the cherry, I do not care what you do with it after we have published it?'

Mr Wylie—He provides me with an article and what happens to it after that is not my business.

CHAIRMAN—What happens to the contract? This is only information we are seeking.

Mr Wylie—He may have a contract with another newspaper. I do not know what his business dealings are.

CHAIRMAN—Would the reason it

ran in Adelaide, Brisbane, Perth or anywhere else not be directly related to the *Daily Mirror* or your network?

Mr Wylie—I do not syndicate Laurie Oakes.

CHAIRMAN—That is the matter on which I sought elucidation. I intend to invite members to direct to Mr Wylie any questions which may assist us in this inquiry. I call on Mr Hodgman to begin.

Mr HODGMAN—Mr Wylie, have you been editor of any other paper prior to the *Daily Mirror*?

Mr Wylie—Yes. I was editor of the *Sunday Mail* in Adelaide and I was editor of the *Adelaide News*.

Mr HODGMAN—For what periods?

Mr Wylie—I was editor for five months at the *Sunday Mail* and about a year on the *Adelaide News*.

Mr HODGMAN—You told the Committee that you read Mr Oakes's article on the Monday. Is that correct?

Mr Wylie—Yes.

Mr HODGMAN—Without being pedantic, can you tell me about what time of the day you would have read that?

Mr Wylie—Not on Mondays, no.

Mr HODGMAN—Was it Monday morning or Monday afternoon?

Mr Wylie—I honestly cannot recall the exact time of day.

Mr HODGMAN—But you definitely read it on the Monday.

Mr Wylie—On the Monday.

Mr HODGMAN—Did you have any communication with Mr Oakes prior to publishing his article—in other words, between the Monday and the Wednesday?

Mr Wylie—No.

Mr HODGMAN—Is it correct that the first edition of the *Daily Mirror* is, to your knowledge, the edition which comes to Canberra?

Mr Wylie—To my knowledge, it is.

Mr HODGMAN—And no other edition comes to Canberra for commercial sale?

Mr Wylie—No. I think there are

probably some of the last editions that fly up for the filing systems perhaps.

Mr HODGMAN—But you do know that the first edition is the one that comes to Canberra?

Mr Wylie—Yes.

Mr HODGMAN—In the nine months that you have been editor of the *Daily Mirror* have you ever used on page one a pointer referring to Mr Oakes's Wednesday column?

Mr Wylie—Yes.

Mr HODGMAN—When was that?

Mr Wylie—There had been various, what I class as minor, pointers that I cannot recall. The one that comes to mind—it leads on to the same subject—is the time that the Prime Minister fell ill for the third time. I have not got a copy of that article. Laurie Oakes had a page 9 story on Mrs Fraser's fears and the fears generally about the work load of some politicians. We did a page one story saying 'Tamie's fears for PM' which was a story plus a pointer to Mr Oakes's column.

Mr HODGMAN—Is that the only other occasion prior to 2 September this year when you had a front page pointer of these proportions or greater in reference to a Laurie Oakes's article?

Mr Wylie—I cannot recall offhand.

Mr HODGMAN—You would be able to check, would you not?

Mr Wylie—I could check, certainly.

Mr HODGMAN—Would you check and provide the Committee, through you, Mr Chairman, with any other? If we could have that one in the evidence I would like the witness to produce it. That is the one 'Tamie's fears for PM' that you have just referred to. Have you any objection to that one being produced?

Mr Wylie—It is the only copy I have at the moment. I could send you a copy of the page 9 article with the others that I will have researched during the week.

Mr HODGMAN—It can be photocopied now actually.

Mr Wylie—As I said, there is no copy. Do you only want page one?

Mr HODGMAN—No, I would like the article as well.

Mr Wylie—I will send them up to you.

Mr HODGMAN—What is the date of that one?

Mr Wylie—The date is 26 August 1981.

Mr HODGMAN—Following that article on 26 August 1981, did you have a follow-up article next day relating to the subject or putting the other point of view or commenting on it?

Mr Wylie—I cannot recall until I see my files.

Mr HODGMAN—But you have told the Committee that even before you published the Oakes article you had it in mind to put a balancing story in the next day. Is that correct?

Mr Wylie—Yes.

Mr HODGMAN—I want to be quite clear that I do not do you an injustice. You did read Mr Oakes's article before publication?

Mr Wylie—Yes.

Mr HODGMAN—You are aware that with the exception of Ministers Mr Oakes's article basically is critical of members of parliament who serve on the back bench on both sides of the House. Is that correct?

Mr Wylie—Yes.

Mr HODGMAN—If you were doing a balance—

Mr Wylie—A group on both sides of the House.

Mr HODGMAN—A group on both sides of the House, not on Ministers. It is quite clear he excludes Ministers, is it not?

Mr Wylie—Yes.

Mr HODGMAN—I quote from the *Daily Mirror* of 2 September 1981, page 9:

Ministers do have to work extremely hard, of course. No-one is disputing that.

Most of them, with their staffs, are hard at it until late at night when Parliament is sitting. Even out of session, they still work very long hours.

Ministers are required to travel a great deal and their family lives are seriously disrupted. They get only two weeks leave a year.

Then he goes on:

The amount of paper that crosses a minister's desk is frightening. Much of it is routine

material—but it requires a signature and has to be read.

Then he makes these further two comments:

On top of the task of administering a department, taking part in general cabinet discussions and trying to assess constantly the political implications of decisions, it makes the load almost impossible to handle.

The result is a small group of ministers weighed down by work loads that are well nigh inhuman and nearly a hundred other MPs with too little to do.

Do you agree with me, that it is fair comment to say that Mr Oakes went out of his way to exclude Ministers, of whom I happen to be one, from the impact of this article?

Mr Wylie—Yes.

Mr HODGMAN—He isolates Ministers and his attack is on back benchers. Will you explain to the Committee, in the light of that, how you can say it is a balancing article when your article the next day is on a Minister and a hard working one at that, Mr MacKellar? What is the logic of the balance?

Mr Wylie—To me, as I said earlier, the articles came after Ministers had fallen ill. Mr Oakes, I think, has attempted to point out that there are those in parliament, particularly non-Ministers, who have nothing to do.

Mr HODGMAN—He states there are about 100. We have established that.

Mr Wylie—He might be referring collectively to senators as MPs. I do not know.

Mr SCHOLLES—The article is, as I understand it, a response to statements made by Senator Don Chipp—hence his photograph—about the executives of both parties seeking to exclude back benchers from participation.

Mr HODGMAN—That is true, but the point about which I am asking Mr Wylie to give us the benefit of his opinion is—I use his words; he said it was a balancing article—how it could be a balancing article when it refers to one Minister? I am putting to you that if you really wanted to balance you would have said that on the other hand here is the

teetotal non-bludging member for Dundas, Mr Ruddock, who never goes into the bar, who works 18 hours a day and who slaves his heart out for the electors.

Mr Wylie—Mr Oakes went off on the back benchers but the next day we balanced it by showing a hard worker, a Minister.

Mr HODGMAN—Does that not make it worse for the back benchers?

Mr Wylie—No. Let us talk about them collectively as politicians, as MPs. On the one hand Mr Oakes has written about the back benchers. The second day we endeavoured to let people know what a Minister does, what a hard worker in parliament does.

Mr HODGMAN—You reinforce Mr Oakes's point, I suggest, when you say that here is a concrete case of a very hard working Minister. The implication is that your statements about the back benchers still stand.

Mr Wylie—Yes, because his first article is on back benchers.

Mr HODGMAN—It also, with the greatest of respect, refers in the main to back benchers, to bludgers on the back bench, but it then goes out of its way to exclude Ministers. Do you accept that point?

Mr Wylie—Yes.

Mr HODGMAN—How can you say it balances if you have an article the next day which restates everything Mr Oakes said about the enormous work load on Ministers but says nothing to defend the position of the back benchers? In other words, did your second article not make it worse for back benchers?

Mr Wylie—No, not in my view.

Mr HODGMAN—Please explain.

Mr Wylie—I have.

Mr HODGMAN—I am sorry but you have not.

Mr Wylie—I have tried to explain it.

Mr HODGMAN—Do you claim that it is a balancing article?

Mr Wylie—Both articles showed the two sides of an MP, those who sit on the back bench and those who work hard.

Mr HODGMAN—Are you therefore saying to this Committee that it is still your considered view as editor of the *Daily Mirror* that Ministers work hard and have a task which is well nigh impossible but that nearly 100 members of this Parliament are bludgers and drunks? Is that your view?

Mr Wylie—It is the view of Mr Oakes and I support Mr Oakes in his article.

Mr HODGMAN—I would like to invite you, in the confidence of this Committee, to name, from your knowledge, if you are prepared to, any bludger or drunk on either side of the House of Representatives or either side of the Senate.

Mr Wylie—I know of none personally.

Mr HODGMAN—Did Mr Oakes tell you of any?

Mr Wylie—No, Mr Oakes did not tell me of any; nor did I ask Mr Oakes to name any.

Mr HODGMAN—Did Mr Oakes tell you or did you inquire of him which parliamentarians have, and I quote verbatim, 'reputations as drunks'?

Mr Wylie—No.

Mr HODGMAN—Did you ask Mr Oakes or did he tell you which people were members of this so-called group of Opposition MPs, the Labor Old Guard Socialists, or LOGS, for short?

Mr Wylie—No.

Mr HODGMAN—Did Mr Oakes tell you or did you ask him which people 'sit around the members' bar boozing, complaining . . . and achieving very little'?

Mr Wylie—No.

Mr HODGMAN—Did you ask Mr Oakes or did he tell you which members were political time servers, bludging in effect on the taxpayers?

Mr Wylie—No.

Mr HODGMAN—Did you ask or did Mr Oakes tell you the details of the pamphlet on how members of parliament should protect their health, with a stern warning about the temptations of a boozy, sedentary life in Parliament?

Mr Wylie—Did I ask Mr Oakes that?

Mr HODGMAN—Yes, about the details of that alleged pamphlet?

Mr Wylie—No.

Mr HODGMAN—No, you published it without——

Mr Wylie—They were published, from memory.

Mr HODGMAN—Have you seen them?

Mr Wylie—Do you mean Senator Baume's?

Mr HODGMAN—You are talking about Senator Baume's are you?

Mr Wylie—I am sorry. We may be talking at cross-purposes.

Mr HODGMAN—I am not talking about what you published. What were you talking about when you published that statement: 'Certainly a pamphlet soon to be prepared to advise MPs on how to protect their health will contain a stern warning about the temptations of a boozy, sedentary life in parliament'?

Mr Wylie—No, I did not see the pamphlet but I understand it was the one being prepared by Senator Baume.

Mr HODGMAN—I think I can bring my questions to conclusion by just asking: You do not dispute that the publication of Mr Oakes's article was, on your part, premeditated?

Mr Wylie—What do you mean by 'premeditated'?

Mr HODGMAN—Simply this word. You had planned to publish it two days after you received it and after you had read it.

Mr Wylie—As with any article Mr Oakes writes.

Mr HODGMAN—We are talking about the article of 8 September.

Mr Wylie—Yes, the article in question.

Mr HODGMAN—As a premeditated, considered publication.

Mr Wylie—All of Mr Oakes's articles are into my office two days before publication.

Mr DUFFY—Mr Chairman, there is a point of order I want to raise on that line of questioning.

CHAIRMAN—Have you completed

that aspect of your questioning?

Mr HODGMAN—No, I have a follow-up question. Perhaps Mr Duffy could hear the follow-up question: Do you also agree that the publication of the article on Mr MacKellar was similarly premeditated and planned to come out the day after Mr Oakes's article?

Mr Wylie—Yes.

Mr HODGMAN—Do you further contend that the article on Mr MacKellar was, in your objective and honest opinion, the balancing article?

Mr Wylie—Yes.

Mr HODGMAN—And you do not see that it left still no balance in respect of the back benchers as opposed to the Ministers?

Mr Wylie—In my view, the balance was there.

Mr HODGMAN—As you told me a few moments ago, in your view the general comments relating to the back benchers *en masse*—that they were bludgers and that they were drunks—was fair comment?

Mr Wylie—Yes.

Mr HODGMAN—So rather than resiling from what Mr Oakes has said, you adopted it and personally endorsed it.

Mr Wylie—I am the editor. I have to endorse it; I must endorse it.

Mr HODGMAN—You endorse it.

Mr Wylie—I endorse it.

Mr HODGMAN—Repeat it.

Mr Wylie—I endorse it.

Mr HODGMAN—Would you publish it again?

Mr Wylie—I think that is an unfair question.

Mr HODGMAN—Why is it?

Mr Wylie—It is not likely to be published again, is it?

Mr HODGMAN—I do not know. I am asking you.

Mr Wylie—The story is hardly likely to be republished word for word.

Mr HODGMAN—In hindsight.

Mr Wylie—In hindsight I would publish it. I would stand by my original decision.

Mr HODGMAN—You would stand by it. That brings me then to the final question. Do I take it that in respect of the publication of Mr Oakes's article you effectively will not edit anything that he writes except, as you said, sub-editorial corrections in relation to grammar, paragraphs et cetera?

Mr Wylie—I have rejected an occasional article from Mr Oakes. I cannot recall anything specific. It is mainly if I find them boring, unsuitable or out of date.

Mr HODGMAN—With you, it is all or nothing, is it not? You publish him or you do not publish him.

Mr Wylie—No.

Mr HODGMAN—In the past have you edited Mr Oakes apart from grammatical and other corrections?

Mr Wylie—No. On one occasion I did not publish Mr Oakes because I considered his article—I cannot recall the subject—to be out of date. It happened some time ago.

Mr HODGMAN—We misunderstood each other. I asked you before whether it was a case of all or nothing—you publish Mr Oakes or you do not. I thought you said no, thereby implying that from time to time you might take out part of his article but publish the rest of it. Have you ever edited Mr Oakes?

Mr Wylie—I have never edited anything out of Mr Oakes's articles. There was one occasion when an article was not published because I considered it stale.

Mr HODGMAN—With the exception of one occasion when you did not publish his article you have published his articles previously and consistently without any editing whatsoever, except for grammatical changes, paragraphs et cetera. Is that correct?

Mr Wylie—Yes.

Mr HODGMAN—It was on that basis in relation to this publication that you opted to publish it *in toto* without any deletion.

Mr Wylie—Yes, it was without any deletion.

Mr HODGMAN—For that you accept responsibility.

(short adjournment)

Mr MILLAR—I will be brief at this juncture, but I would like to take up with Mr Wylie a question which was put to him on several occasions and which, with all due respect, I feel he failed to answer. Having in mind that your original circulation has a coverage of 160 000, what impact do you, on consideration, imagine would be made on the 160 000 and more people who could not avoid seeing your headline? The line on the pointer was 'MPs Bludgers, Drunks!' What do you imagine their reaction would be to that?

Mr Wylie—I cannot gauge a person's reaction to a headline. All I can do is say that if we had a good front page that day we could gauge it by sales, but that was not the point that was selling the paper, anyway. I cannot be expected to say what was the reaction of every one hundred and sixtieth person who bought that paper to 'MPs Bludgers, Drunks!'.

Mr MILLAR—Are you saying, in other words, that it does not matter much what you have as a headline?

Mr Wylie—Yes, it does matter because, as I said earlier, that was the second best story in the paper for the first edition.

Mr MILLAR—Can you say that the person reading it would be unmoved by it and would not have a predisposition to concur or have the seed planted in his mind of condemnation of parliamentarians and, by extension, of the Parliament? Again by extension, would that not be holding the Parliament in contempt?

Mr Wylie—I do not know. I cannot answer that.

Mr MILLAR—You said during your evidence that there was a balancing article to show both sides of the story. On the premise that basically it could have been correct that Ministers are overworked and back benchers are underworked,

would it be necessary to present it in such a dramatically uncharitable fashion? Could not the same result have been achieved by saying that the back benchers are frustrated; they are eager to go; they are just not given the work and the Parliament is not being utilised to its fullest extent? To establish the point that you sought to establish is it necessary to brand them as bludgers and drunks?

Mr Wylie—The words are not mine.

Mr MILLAR—They are 'bludgers' and 'drunks'.

Mr Wylie—They are in the story.

Mr BIRNEY—You endorsed them, did you not?

Mr Wylie—I put them on page one. I endorsed them.

Mr MILLAR—You gave them emphasis, did you not?

Mr Wylie—Yes.

Mr MILLAR—The most casual reader of your front page of that early edition could not help noticing it and would be subject to some influence as a consequence. If there was no influence, I suggest, there would be little point in putting it in the paper.

Mr Wylie—They would have noticed it on page one. I suppose, as I said earlier, people buy a paper for certain reasons, but I do not know what they had in their minds when they bought the paper or what opinion they formed.

Mr MILLAR—They were being led to a view that you here again have clearly indicated you hold—that MPs are bludgers and drunks.

Mr Wylie—That was the substance of the article.

Mr MILLAR—It was to draw people to that conclusion.

Mr Wylie—That was the substance of the article.

Mr MILLAR—Do you believe that, having arrived at that conclusion, the Parliament would be held in contempt by those people and that the function of the Parliament in itself in serving those people would be seriously impeded as a consequence?

Mr Wylie—I am not to know that

people hold certain views. I do not know what their views are when they read an article.

CHAIRMAN—Would you mind trying hard to answer that question? It has been put to you a number of times. I will say it on behalf of Mr Millar. He is repeating what I asked you earlier. When an article like that, and every article of Laurie Oakes's which appears every Wednesday, is written you as the editor who has thrown some out and accepted most would gain an impression of the value of the article and the value in the minds of the readers. Surely you can give a better reply than that which you have given to Mr Millar.

Mr Wylie—I think that with all of the lead-up to the health problems of politicians, people had been thinking of politicians' health, and to me it was newsworthy. Therefore I would expect people to stop, look and read it. But I do not know what opinion they formed.

Mr MILLAR—So you, as a hard-headed—no disrespect—newspaper man are quite oblivious to the fact that this sort of thing would be casting seed on fertile soil. In their own life experience the propensity of the average Australian thinks ill of parliamentarians, certainly in a collective sense if not individually.

Mr BIRNEY—Also thinks ill of the institution.

Mr MILLAR—Also, by extension, the institution. I will leave it at that.

Mr SCHOLES—If Oakes's article had named 100 members as bludgers and drunks, would it have been published?

Mr Wylie—If it had named what?

Mr SCHOLES—If it had named them individually.

Mr Wylie—I do not think I would have any legal standing in that matter with our libel laws.

Mr SCHOLES—I do not think the paper would have any money either. Do you think it is fair comment to label all members of parliament who are not Ministers as bludgers and/or drunks?

Mr Wylie—I stand by Mr Oakes in this. He is the person who wrote the

article and I have absolute faith in Mr Oakes's reputation and credibility as a political journalist.

Mr BIRNEY—You said earlier that you had looked at this article on the Monday, but you are not sure what time on the Monday.

Mr Wylie—No, I cannot remember the time.

Mr BIRNEY—You said that you read it in its totality and you decided then to publish it. The answer is yes, is it?

Mr Wylie—Yes.

Mr BIRNEY—Then you told us, if memory serves me right, that prior to the publication of the article it occurred to you that it may have constituted contempt of parliament. If you keep nodding your head it is not recorded. The answer is yes, is it?

Mr Wylie—Yes.

Mr BIRNEY—So you agree with that. After reading the article and prior to its publication you regarded it as a contempt of parliament. Is that correct?

Mr Wylie—I considered that it could be a breach of privilege.

Mr BIRNEY—And as such a contempt of parliament?

Mr Wylie—And as such a contempt of parliament, but . . .

Mr BIRNEY—In any event . . .

CHAIRMAN—The witness should be allowed to finish his comments.

Mr Wylie—Let me make myself clear on that. I considered that it could be a breach of privilege but I did not intend to commit a breach of privilege. If I have done so I will say something about that later if I am allowed to make a submission but I would rather leave it until later if I can. I considered that it could have been a breach but every story we publish could be a breach of parliament, a contempt of court and could land me in hot water with the Press Council. I have to take all those things into consideration.

Mr BIRNEY—In any event it did cross your mind that, because of the nature of the article, it could be a contempt of the parliament. Is that so?

Mr Wylie—I considered that it could

have been a breach of privilege but I did not intend to commit a breach.

Mr BIRNEY—You did not vouch for the accuracy or otherwise of the account, from your personal knowledge. You could not do that anyway.

Mr Wylie—No.

Mr BIRNEY—So you relied entirely on Mr Oakes's reputation. Irrespective of that, and after coming to the conclusion that it may have constituted a contempt of parliament, you decided to publish it. Is that correct?

Mr Wylie—Yes.

Mr BIRNEY—What led you to the conclusion that it may have constituted contempt?

Mr Wylie—I suppose there are some things that should not be brought to the public's attention, but in view of the circumstances surrounding the article I thought it was the proper and responsible thing to do.

Mr BIRNEY—I did not ask you that. I am asking you what led you to the belief that it could have been contempt of the parliament. Was it because it was obviously an attack on the institution itself? Was that one of the considerations?

Mr Wylie—It was not an attack on the institution; I suppose it was on the members of the institution. I considered the article the next day to be a balance, if there was any contempt—if there would have been any contempt.

Mr BIRNEY—I do not want to harp on it but I think you do agree that prior to the publication of it you did form the belief that it could have constituted a contempt of the Parliament.

CHAIRMAN—I think Mr Wylie has answered that question already and he says that he thought it.

Mr BIRNEY—I just wanted to get the point clear. Do you agree with that?

Mr Wylie—I considered it could have been a breach even though I did not want to commit a breach.

Mr BIRNEY—Irrespective of that you went ahead and published it.

Mr Wylie—Yes.

Mr JACOBI—I have only a couple of

questions. Who is the owner of the *Daily Mirror*? What stable is that in?

Mr Wylie—Do you mean which person owns it or which company owns it?

Mr JACOBI—Both.

Mr Wylie—Nationwide News owns it.

Mr JACOBI—So the article appeared in the 'News' on the same day? Are you aware of that?

Mr Wylie—In the *Adelaide News*?

Mr JACOBI—Yes.

Mr Wylie—No, I am not aware it appeared in the *Adelaide News*.

Mr JACOBI—But that is obvious because it is in the same stable.

Mr Wylie—The *Adelaide News* belongs to Nationwide News, yes. But I was not aware it appeared in the *Adelaide News*. In fact I am unaware that the *Adelaide News* takes Laurie Oakes.

Mr JACOBI—There are some surprises for all of us. What is the purpose of a headline and a pointer?

Mr Wylie—A headline on a pointer?

Mr JACOBI—A headline or a pointer. I do not understand the terms.

Mr Wylie—A headline is to entice people to read the newspaper and a pointer is to entice people to turn inside and read an article.

Mr JACOBI—Do you have some consideration of the impact when you draft it?

Mr Wylie—Yes, I do, or my employees do.

Mr JACOBI—I am not interested in your employees at the moment.

Mr Wylie—I am the editor and I take all responsibility, yes.

Mr JACOBI—You would have a pretty fair idea of the impact it would have on the public.

Mr Wylie—We are back to the question that has been put to me several times—the impact on the public. We are in the business of selling newspapers but I, as I said earlier, did not think that was the selling article on the day. It was the second best article.

Mr JACOBI—But if it was the second

best article you put the pointer on the front page.

Mr Wylie—The pointer was on the front page.

Mr JACOBI—You are not surprised that the article or your activities are before the Privileges Committee?

Mr Wylie—I did not expect to appear before the Privileges Committee.

Mr JACOBI—But you did anticipate that you could have created a contempt.

Mr Wylie—I could have.

Mr JACOBI—Would you publish a similar article with a similar theme with the same attacking role?

Mr Wylie—I am sorry, I am not clear. A similar article on what?

Mr JACOBI—On bludgers and drunks amongst politicians.

Mr Wylie—If there were need in the future, I cannot say what is going to happen tomorrow.

Mr JACOBI—Getting back to the question that Mr Hodgman raised about a balancing article, would you not suggest that it is more a corroborative rather than a balancing article?

Mr Wylie—No, I still——

Mr JACOBI—Did you consider that you might do an article on, for instance, back benchers? Did you consider doing an article on those in safe seats or those in marginal seats?

Mr Wylie—No, I did not. I considered doing an article on a worker to illustrate the point.

Mr JACOBI—I put it to you that the article was a corroborative article, not a balancing article.

Mr Wylie—I do not see it that way.

Mr JACOBI—It was an article that confirmed the statement of Oakes. In the article on page 9, who was under attack?

Mr Wylie—Politicians.

Mr JACOBI—What class of politician was under attack?

Mr Wylie—Do you mean in Mr Oakes's article?

Mr JACOBI—Yes.

Mr Wylie—Back bench politicians.

Mr JACOBI—I suggest you would not have gone to that extent to balance it.

You would have been in deep trouble if you had done an article on back benchers.

Mr Wylie—Are you asking me a question or are you telling me?

Mr JACOBI—Asking you.

Mr Wylie—Why would I have been in trouble?

Mr JACOBI—Because for the first time you might have had to analyse exactly what the role of the back benchers is—those bludgers. You have attacked bludgers and drunks amongst back benchers. To balance that—not confirm it—would not those under attack have had some justification in seeking some response from the paper?

Mr Wylie—You make a very good point, but I do not think that is the point at issue.

CHAIRMAN—You have had great difficulty in predicting the impact of articles. Have you as a long time journalist ever been responsible for writing editorials?

Mr Wylie—I have written editorials.

CHAIRMAN—What do you expect the impact of an editorial to be? Is that not an endeavour by a newspaper to influence the thinking of people?

Mr Wylie—Yes. The purpose of an editorial is not necessarily to influence people; it is stating the newspaper's view on a matter.

CHAIRMAN—Do you think editorials can have impacts on people?

Mr Wylie—Yes.

CHAIRMAN—What type of impact do you believe editorials can have upon people?

Mr Wylie—It depends upon what the subject is.

CHAIRMAN—What about an editorial talking about MPs who are bludgers and drunks? What type of impact would you expect that to have, now that you have acknowledged that editorials can have impacts?

Mr Wylie—I think it would create some interest. A very good gauge of impact is the response through letters to the editor. On this subject there were very few such letters.

CHAIRMAN—Therefore all I am suggesting is that, if this matter of the impact is raised again, perhaps you could turn your mind to the impact of editorials in which you are experienced and consider whether articles can have much the same impact. That might help you to cope better with that question.

Mr HOLDING—Whatever your various attributes may be, you do not claim to have any political expertise, do you?

Mr Wylie—Not from a working basis, no.

Mr HOLDING—Is the effect of your evidence that for the truth and accuracy of this article you were at all times relying on Mr Oakes's expertise?

Mr Wylie—Yes.

Mr HOLDING—How do you see the substance of the real points that Mr Oakes was making in that article? When you first read it, what point did you think he was making?

Mr Wylie—I thought it was that there are back benchers who do not work as hard as other members of parliament, and he attributes that very pointedly to the system's being wrong. The work load is not evenly shared—I think that is the point he was trying to make.

Mr HOLDING—I put it to you, though, that in the context of his article he was not saying that about the majority of parliamentarians by any manner of means. Indeed, if you look at the article you see that he says there are quite a few, but at no stage does he suggest in terms of either the work load or the question of drinking that he refers to the majority.

Mr Wylie—No.

Mr HOLDING—I ask you to look at the heading on the front page of the *Daily Mirror*: 'MPs Bludgers, Drunks!'. Would you agree that this heading would, to a fair minded reader, have the import that the majority of MPs, if indeed not all, were bludgers and drunks?

Mr Wylie—No. It does not say 'all MPs'. It says 'MPs'. I suppose it should say 'some MPs' or 'few MPs' but I am

sure you appreciate the typographical problems.

Mr HOLDING—I do. Therefore I put it to you that, given the typographical problems and the problem of space and getting a paper out, to that extent the heading is misleading about the actual content of the article. Do you agree with that? It says: 'MPs Bludgers, Drunks!'.

Mr Wylie—The head does not say 'all MPs' and it does not say 'few'. It simply says 'MPs'.

Mr HOLDING—You have just agreed, have you not, that it would be more accurate if it said 'Some MPs bludgers, drunks!'.

Mr Wylie—Yes.

Mr HOLDING—I agree with that, and I understand what you say about problems of space and time. I put it to you, however, that to the extent to which it has not that qualification the actual banner headline could be misleading about the content of the article.

Mr Wylie—Yes, I suppose it could give the impression to some people that it means MPs collectively.

Mr HOLDING—To that extent it gives a misleading impression, does it not?

Mr Wylie—It could give a misleading impression.

Mr HOLDING—In your answer you said it was not your intention to commit a breach of privilege. That is right, is it not?

Mr Wylie—I had no intention of committing or being charged with a breach of privilege.

Mr HOLDING—I made a note of the term you used. You said that you did not intend to commit a breach of privilege. I put it to you that, being an editor caught with the problem of getting a paper out and relying on the accuracy of a journalist about whom you have already expressed your view in fairly approving terms, you were not in a position to make any accurate judgment about the accuracy of the article itself.

Mr Wylie—No.

Mr HOLDING—You were responsible for putting on the heading. I put it to you that you were more concerned with

the problems of space, time and getting your paper out than you were with getting a set of headlines which were completely accurate in terms of the thrust of Oakes's own article.

Mr Wylie—Are you talking about the page 1 headline?

Mr HOLDING—Yes. In retrospect, to the extent to which you have agreed that this does not truly represent the full thrust of the article, do you not agree that those terms were unfortunate?

Mr Wylie—No. They are the words used in Oakes's article. He uses the words 'drunks' and 'bludgers' in his article.

Mr HOLDING—But he qualifies it in terms of number, by using the word 'some'.

Mr Wylie—You are saying that it is unfortunate to have it on page one but it is, as I said earlier, a pointer heading. If it had been a splash heading we probably would have qualified it but it is a minor headline on the page.

Mr HOLDING—As an experienced editor do you agree that the problem often in libel cases and the problem generally in putting a newspaper together and in projecting the story that is being referred to is in getting the headings right?

Mr Wylie—Absolutely.

Mr PORTER—You said you wrote the headline that appeared on page one. Did you also write the three paragraphs there or were they done by the sub-editor?

Mr Wylie—I stated earlier that my features editor wrote that, Mr McGregor.

Mr HOLDING—You discussed this case with Mr Oakes after the question of privileges was raised, no doubt?

Mr Wylie—I have had talks with Mr Oakes, yes.

Mr HOLDING—I put it to you that in giving your evidence to the Committee today your basic aim is to do what you regard in terms of the profession as appropriate for an editor to do. You are going to carry the can and you are going to stick by your journalists come what may.

Mr Wylie—As editor I am respon-

sible. I take all responsibility. The buck stops here.

Mr PORTER—Do you think that the third paragraph of Mr McGregor's comments properly reflects what is in the article? I specifically refer to the words: 'Laurie Oakes reveals the truth about the drunks and bludgers on Canberra's back benches'.

Mr Wylie—I suppose the word 'truth' is out of place. Perhaps 'reveals the fact' or 'reveals the facts', 'reveals about the drunks', or reveals something. 'Truth' could be a little out of context.

Mr PORTER—You said in answer to Mr Holding's questions that you think the headlines should have been 'Some MPs'; you think that would have been better.

Mr Wylie—I am saying typographically, if I had the room, yes. I suppose it is like sport. You say 'The team played badly' in a headline or 'Roosters played badly'. You do not mean all the roosters. It is the same as 'Police are corrupt'. Not all police are corrupt. For the sake of the headline there has to be a certain amount of licence, I feel, provided the news story reflects the fact.

Mr PORTER—This is not the headline I am talking about. I am talking about the detailed comments.

Mr Wylie—I thought you were referring to the headline earlier.

Mr PORTER—Now I am referring to the detailed comments there. There is no mention of some drunks and bludgers. It is 'the drunks and bludgers'.

Mr Wylie—It says many have little to do.

Mr PORTER—When, in answer to the Chairman's questions originally, you said the sub-editor merely put commas and things like that in, presumably he added the paragraph or section headings, did he? Did he add things like 'worthwhile', 'attention' and 'system'?

Mr Wylie—Yes.

Mr PORTER—Did he add or delete any other words from the base of the Oakes article?

Mr Wylie—No, apart from normal sub-editorial treatment.

Mr PORTER—You have one paragraph here underneath 'attention' in the article about a member in a safe seat et cetera. That presumably is the basis for the larger type beside it which says: 'A member in a safe seat needs to give very little attention to constituents'.

Mr Wylie—I suppose it would be written from that paragraph.

Mr PORTER—Who wrote the larger type there?

Mr Wylie—I assume it was the sub-editor. The man who subbed it and designed the page.

Mr PORTER—Do you check that before the paper is published?

Mr Wylie—I try to read as many proofs as I can in the morning, particularly of the main news pages.

Mr PORTER—Did you on this occasion?

Mr Wylie—I cannot recall.

Mr PORTER—You received this article on a Monday and it was not printed until Wednesday. When would this sort of work have been done?

Mr Wylie—Once again I cannot say exactly, but I think from the way we operate it would have been subbed either late Monday or some time on Tuesday.

Mr PORTER—Do you believe the article as a whole is true?

Mr Wylie—I believe once again in Mr Oakes. If Mr Oakes says it is true I believe in his reputation as a reliable journalist.

Mr PORTER—So if you have a reliable journalist who writes something that you know is not true you will still print it.

Mr Wylie—I believe he is a reliable journalist. If I had an unreliable journalist I would probably take some action.

Mr PORTER—You believe he is a reliable journalist. Do you believe the article is true?

Mr Wylie—Yes.

Mr PORTER—Then can you tell me why you thought you needed a balancing article?

Mr Wylie—Newspapers today cop a

lot of flak from people who say newspapers do not present both sides of the coin. This is one of the reasons why I decided to do it in this case. It is not just for Mr Oakes's article. On many occasions I ask for the other view. My news editor or my deputy or I will ring someone to seek the other view.

Mr PORTER—Is that normally in relation to an opinion?

Mr Wylie—It could be in relation to an ordinary news story. That day it could have been in relation to the page one story or the page 3 story. I do not know.

Mr PORTER—Do you not see the difference between the truth and an opinion?

Mr Wylie—Yes.

Mr PORTER—Would you not more often put in a balancing article if you thought it was necessary in relation to an opinion rather than in relation to the truth?

Mr Wylie—What is an opinion? You are saying Mr Oakes's article is an opinion rather than a truth.

Mr PORTER—I am not saying that at all. I am asking you this question: Would you not put in a balancing article in relation to opinions rather than in relation to the truth?

Mr Wylie—We would put in a balancing article to the truth.

Mr PORTER—The front page article is the truth. That fellow died. What balancing article would you need for that?

Mr Wylie—I do not understand your point on that. The fellow died. The truth is that he died.

Mr PORTER—You are suggesting to me that sometimes you put in balancing articles in relation to the truth. Can you explain to me a case where that might occur.

Mr Wylie—No, I cannot.

Mr PORTER—Bearing in mind that you thought this article could have been a breach of privilege, did you seek legal or any other advice as to the nature of the article?

Mr Wylie—No.

Mr JARMAN—Do you think more

people would read the words on page one than would read the words on page 9? There must be many people who would see a newspaper and never turn over to page 9.

Mr Wylie—Are there?

Mr JARMAN—I would think so.

Mr Wylie—Page one is the mirror of the paper; it reflects what is inside the paper. Page one would be the most looked-at page.

Mr JARMAN—More people would read page one than page 9. Therefore if page one were misleading in relation to the article on page 9, at least some people who read page one and did not read page 9 would be misled about the content of the article.

Mr Wylie—Yes, as far as the heading and the use of the word 'truth' are concerned.

Mr JARMAN—You said earlier that you would stand by anything Mr Oakes said. You were referring particularly to the words 'bludgers and drunks'. If he had gone further and said members of parliament were also thieves and corrupt and perhaps, to take an even further example, some male members were sleeping with some female members or female senators—

Mr Wylie—I think that is hypothetical.

Mr JARMAN—Would you still question him on that?

Mr Wylie—I think that is a hypothetical question, Mr Chairman. I do not think I should have to answer that.

CHAIRMAN—I see it this way: You have indicated your great trust in Laurie Oakes and anything he writes. I think Mr Jarman is trying to establish whether or not Mr Oakes would ever reach the point with you that he would not be automatically accepted by you.

Mr Wylie—So long as Mr Oakes has credibility and it is in the interests of the public or whatever, yes I would; and if it were within the law of libel, yes.

CHAIRMAN—It is hypothetical, but I think that is what Mr Jarman was trying to do.

Mr Wylie—It is very hypothetical and I do not like——

Mr JARMAN—That is exactly what I was getting at. You did make the statement that you would accept whatever Mr Oakes said because he was a reliable journalist. Are you really naive enough to consider that the days in which a member is in Canberra are the only days he works or perhaps the hardest days he works? Are you not aware that every member of parliament works far harder back in his electorate than perhaps he does even in the 15 hours he must be in the chamber when the House sits?

CHAIRMAN—Could you rephrase that question to ask directly the point eliminating the first part of the question?

Mr JARMAN—I will leave out the word 'naive'. Are you unaware that members of parliament probably perform their hardest work and their most arduous work during the days they spend in their electorates rather than in the relatively few days, compared with the rest of the year, they spend in Canberra? This is even though when they are in Canberra they may well work 15 hours or 16 hours a day. Their hardest work is done back in the electorate. This article presumably refers only to work done in Canberra.

Mr Wylie—It refers entirely to work done in Canberra.

Mr JARMAN—That is what I wanted to know.

CHAIRMAN—There is one little point I wanted to raise. Someone drew to my attention to the fact that the billboards, the things that go outside the pubs and clubs——

Mr Wylie—Posters.

CHAIRMAN—The posters also screamed 'MPs bludgers and drunks'. Is that right or is that misinformation?

Mr Wylie—I would have to check and let you know.

CHAIRMAN—If it was done who would have written that?

Mr SCHOLES—There is no need for Mr Wylie to answer that. I would just make the point that in the reference to the Committee it was not submitted as evi-

ence and therefore it cannot be brought before us.

CHAIRMAN—It is very hard to rule against oneself. In view of Mr Scholes's objection, let me put the question another way. Would the headlines have reappeared elsewhere?

Mr Wylie—I cannot remember.

CHAIRMAN—Who writes other means of advertising the articles of the day for your paper?

Mr Wylie—Are you talking generally or are you talking about a specific subject?

Mr HOLDING—I take a point of order here. I think the point Mr Scholes made is a proper point. I do not think you can really pursue that. It is only this article.

Mr HODGMAN—I have noted with interest the comment you have made many times that Mr Oakes is, in your opinion, a reliable journalist. Is that your professional assessment of him or are you a close personal friend? Have you worked together for a long time?

Mr Wylie—No. I am neither friend nor foe. I have met Mr Oakes on several occasions for business. He has a reputation as a reliable, reputable political correspondent.

Mr HODGMAN—So I would be quite fair to you and to him if I get it clear in my mind that you are not a close personal friend of his and that your relationship has been purely professional?

Mr Wylie—Yes.

Mr PORTER—Can you explain to me how the *Adelaide News* could have printed an article which is almost the same as the one you printed? It has the same headline. Is that because you are part of the same organisation? Does the *Adelaide News* sometimes take bits out of your paper and vice versa? Does it sometimes lift the whole thing or nearly all of it?

Mr Wylie—I cannot really say. I am unaware that Mr Oakes is under contract to any other paper. Is there an author's name on that story?

Mr PORTER—Yes. It is from Laurie Oakes in Canberra.

Mr Wylie—Is it the same article?

Mr PORTER—Yes, it is.

Mr Wylie—The *Adelaide News* may have made its own arrangements with Mr Oakes. My arrangement is between the *Daily Mirror* and Mr Oakes, and no one else.

Mr PORTER—Do you have within your organisation an arrangement for swapping articles between papers?

Mr Wylie—Within our organisation we syndicate or we buy once up.

Mr PORTER—Do you syndicate articles by Laurie Oakes within your organisation?

Mr Wylie—I have not made that very clear. I am not on the business side of things. To my knowledge Mr Oakes's articles are not syndicated. I am surprised that this article turned up in the *Adelaide News*.

Mr PORTER—It turned up in the Brisbane *Sunday Sun* too.

Mr Wylie—I do not know about Mr Oakes's business dealings.

Mr JACOBI—Are they all in the same group?

Mr Wylie—I am sorry. Which newspapers are you asking about?

CHAIRMAN—The *Sunday Sun* in Brisbane, the *Adelaide News* and the Northern Territory *News*.

Mr Wylie—Yes, they are all in Nationwide News Pty Ltd.

Mr JACOBI—They are all in the same stable. They eat the same chaff and food as everybody else.

Mr BARRY JONES—I want to follow up what the witness said about his concept of balance. Would you concede that the first article, the Laurie Oakes article, had essentially two themes? The first theme was that Ministers were hard working. The second theme was that back benchers were bludgers. The second article, on Mr MacKellar, stresses that Ministers are hard working. Could you explain to me again your concept of balance?

Mr Wylie—My concept was that Mr

Oakes's article showed that there are MPs, particularly those on the back bench who, because of the system, are bludgers or have little to do. I wanted to balance that by showing the other side of the coin, the life of the Ministers. In this case we chose Michael MacKellar because he is a Sydney MP.

Mr BARRY JONES—What is the concept of a balance? You said in the first article that Ministers are hard working; in the second article you said a particular Minister is hard working.

Mr Wylie—Surely, the guts of the first article concerned back benchers who did not do anything, and it was qualified that Ministers

Mr BARRY JONES—The first article said that Ministers were hard working and the second article reinforced the point.

Mr Wylie—Well, reinforced or balanced. I look at it as balance.

Mr BARRY JONES—Where is the balance as far as the back benchers are concerned?

Mr Wylie—There is none, as I have said, to give the view of a back bencher. But I do not think that is the point of the whole thing.

Mr BARRY JONES—What is the point of the whole thing?

Mr Wylie—The article was written originally because of the Ministers and some members of parliament—chairman of committees and so forth—who were falling ill. As Mr Oakes said in his first article, not all members of parliament are hard working and he went on to explain how the back benchers are the bludgers. So we decided to do an article on a hard working Minister.

Mr BARRY JONES—What is the balance that is redressed? If you said there was an accusation against a Minister but it would be all right because you were going to redress it by an article in support of a Minister, that would provide a balance. If there is a defence of a Minister, what is the accusation against the Minister?

Mr Wylie—I can see your point that

we should have done an article on a hard working back bench.

Mr BARRY JONES—I am not saying what you should have done. I am simply asking what is the balance you are redressing. You say the case for the prosecution is that Ministers are hard working, and then you say: 'It is all right, here is the case for the defence: Ministers are hard working'. If the case for the prosecution is that back benchers are bludgers, where is the case for the defence? Would you concede that there was no balance?

Mr Wylie—I will concede that there should have been or, rather, there could have been a balance in——

Mr BARRY JONES—You said 'should' and then you corrected it and said 'could'. Do you think on reflection that you would prefer the word 'should' or 'could'?

Mr Wylie—There could have been a balance, but it was my decision at the time to do an article on a Minister to show what pressures they are under.

Mr BARRY JONES—The first article, the Laurie Oakes article, had already said that.

Mr Wylie—It did not do so in depth, however.

Mr BARRY JONES—It could be said that the Laurie Oakes article did not do it in depth as far as the back bench is concerned, either. Did you ask Laurie Oakes whether he was able to substantiate the nature of the charge?

Mr Wylie—No, I did not.

Mr BARRY JONES—Did you expect that he would be able to substantiate it?

Mr Wylie—Yes.

Mr BARRY JONES—Would you imagine that he would be able to name names, to provide a substantial number—half, or more, or less—of the members?

Mr Wylie—I imagine he would.

Mr BARRY JONES—You imagine he would?

Mr Wylie—He would.

Mr BARRY JONES—If he was unable to fulfil that, might you lose some faith in his credibility as a journalist?

Mr Wylie—If he felt that for certain reasons he did not want to name them I could understand that and I would not change my opinion of him.

Mr BARRY JONES—Would you be happy to have the accusation made in generality so that the odium of something that was appropriate to one member but might not be appropriate to another was able to be spread around to everyone?

Mr Wylie—I do not think Mr Oakes would find it healthy to name any members.

Mr BARRY JONES—But do you think it is healthy to make a generalised accusation against a group?

Mr Wylie—Yes.

Mr BARRY JONES—So you think that is healthy?

Mr Wylie—I think in terms of the article, yes it was. Even though he was talking about a group, he did name a group.

Mr BARRY JONES—That is so, even though it deprives you of the opportunity of proving its accuracy or not.

Mr Wylie—To whom will you prove its accuracy? You will not do it through the articles. Will you do it by naming them in committee?

Mr BARRY JONES—No. You will prove it to your own satisfaction.

Mr Wylie—To my own satisfaction.

Mr BARRY JONES—What were the tests you used to satisfy yourself?

Mr Wylie—Mr Oakes's reputation.

Mr HODGMAN—In fairness to Mr Wylie he did not answer one of Mr Jones's key questions. Leave aside whether Mr Oakes would like to give the list of names publicly, would your view of his credibility be affected if you were talking to Mr Oakes and said 'All right Laurie, give me the names' and Mr Oakes said: 'I am awfully sorry, Peter; I can think of only about three'. What Mr Jones was asking you was this: If Mr Oakes could not come up with about 100 names, would that not affect your view of his reliability and credibility a little?

Mr Wylie—I suppose it would.

Mr HODGMAN—If he said to you ‘Peter, I am sorry, the whole thing is rather a fizzer; I have not the names or the numbers’ that would affect your view of his reliability.

Mr Wylie—Yes, but I am saying I know Mr Oakes would have those names and would be able to name them.

Mr HODGMAN—So you published in the expectation that if put to the test Mr Oakes could come up with the names of about 100 bludgers and drunks in the Federal Parliament.

Mr Wylie—Yes, but not including—

Mr BIRNEY—Paragraph 6, page 9, says:

There is a group of Opposition MPs known as the Labor Old Guard Socialists—LOGS for short.

He attributes certain behaviour to them. That is a fairly definite statement, is it not, relative to the existence of such a group at the time of the writing of the article? Do you agree with that?

Mr Wylie—Yes.

Mr BIRNEY—If it was established that there was no such group in existence, would that shake Mr Oakes’s credibility in your eyes?

Mr Wylie—Are you saying there is not such a group?

Mr BIRNEY—I said if it could be established. It is a fairly definite allegation about a certain and a specific group. Do you agree?

Mr Wylie—Yes.

Mr BIRNEY—If for example it were established that there was no such group in existence at the time the article was written, would that shake your faith?

Mr Wylie—Did you say at the time the article was written?

Mr BIRNEY—Yes. Would that shake your faith in Mr Oakes’s credibility?

Mr Wylie—You had me rather confused when you said ‘at the time the article was written’.

CHAIRMAN—I do not think there is any confusion there. The article reads:

There is a group of Opposition MPs known as the Labor Old Guard Socialists—LOGS for short.

Mr Oakes obviously has to be corrected sometimes for grammatical reasons and you are one of the correctors. If it were shown that what Mr Oakes has written there is not true, would your faith in Mr Oakes diminish?

Mr Wylie—If Mr Oakes said that the Labor Old Guard existed and it did not, then I would like to have a talk to him about it and seek his explanation before I formed any judgment on him.

CHAIRMAN—Thank you. Mr Wylie, do you wish to say anything to the Committee before you withdraw?

Mr Wylie—I have a short submission. I would like to read it and have it included in the transcript.

CHAIRMAN—Would you read it?

Mr Wylie—In publishing the article and the pointer I relied upon Mr Oakes’s reputation as a reliable and authentic journalist. These are qualities which I have at all times believed him to possess. I had no intention of causing the House of Representatives as an institution to be held in contempt. I had no intention of obstructing the course of business in the House or of obstructing members of the House in the performance of their duties as such. I did not intend to commit a breach of privilege and did not believe that I was doing so. If I have committed such a breach—which I deny—I wish to express my regret. My purpose in publishing the Oakes article was to introduce a degree of balance into the discussion of what I conceive to be a matter of public importance—namely, the risks to health involved in the performance by members of the Commonwealth Parliament, including Ministers, of their public duties. My desire to achieve an appropriate balance is demonstrated by the fact that in the *Daily Mirror* the following day an article concerning the work load on Mr Michael MacKellar, M.P., was published on the same page as, and occupying the same amount of space as, the article written previously by Laurie Oakes.

Mr SCHOLLES—Would you have any objection to the inclusion of that in the Committee's report if the Committee so decided?

Mr Wylie—No.

CHAIRMAN—I want to remind you once again of the Standing Orders that we discussed at the very beginning and to remind you that they preclude even your having over-dinner or after-dinner discussions with anybody else who may have a considerable interest in this case. Do you understand that?

Mr Wylie—I do, Mr Chairman.

Mr HOLDING—There is one other thing arising out of the statement. In the statement you expressed regret. Assuming it was the finding of this Committee that there had been a contempt and that we accepted your expression of regret, has that not been your intention? Would you be prepared to publish that?

Mr Wylie—I would have to consult

my superiors on that matter.

Mr BIRNEY—When would that be done?

Mr Wylie—I do not know what the procedure is from here.

CHAIRMAN—If you wish to communicate the response to that question through to Mr Barlin, it would complete the response. With that in mind, are there any further questions?

Mr HODGMAN—No, but there is just one thing, in fairness to the witness. He knows he cannot tell anybody including legal advisers what he was asked or what he said, but he would be entitled, as Mr Birney said, to ask advice about the publication of an apology or expression of regret. It goes as far as that and it goes that you cannot discuss it even with Mr Oakes.

CHAIRMAN—Thank you Mr Wylie.

Committee adjourned at 6.54 p.m.

APPENDIX III

DRAFT.]

[CONFIDENTIAL.

1932-33-34.

A BILL

for

AN ACT

Relating to Offences in contempt of the Parliament.

BE it enacted by the King's Most Excellent Majesty, the Senate,
and the House of Representatives of the Commonwealth of
Australia, as follows:—

1. This Act may be cited as the *Offences against the Parliament Act* Short title.
1934.

2. Nothing in this Act shall derogate from any power or privilege
of either House of the Parliament, or of the Members of Committees of
either House of the Parliament, as existing at the commencement of
this Act: Privileges of
Parliament not
affected.

Provided that no person shall be punished for any act or conduct as
a breach of privilege, and also as an offence against this Act or any law
of a State or Territory or at Common Law.

3. Where the act or conduct of any person is punishable as an
offence against this Act, and is also punishable as an offence against the
provisions of some law of a State or Territory, or at Common Law, the
offender may be prosecuted and convicted either under this Act or
under the law of the State or Territory, or at Common Law, as the case
may be, but he shall not be twice punished for the same offence. Prosecution
under this Act
or State Act.

[196]—30/30.5.1934.—F.876.

4. Nothing in this Act shall affect the right of any person, aggrieved by any act or omission punishable as an offence against this Act, to institute civil proceedings in any Court of competent jurisdiction for any remedy to which he is by law entitled in respect of that act or omission.

Civil rights not affected.

5. Any person who, without lawful authority, publishes any false scandalous or defamatory matter—

Slandering Parliament.

- (a) concerning the conduct of the Senate or the House of Representatives; or
- (b) concerning the conduct of any Committee of the Senate or of the House of Representatives or any joint Committee of the Senate and of the House of Representatives; or
- (c) concerning the conduct of any Senator or Member of the House of Representatives as such Senator or Member,

shall be guilty of an offence against this Act.

6. Any person who wilfully—

Disturbing Parliament.

- (a) disturbs the Senate or the House of Representatives while in session; or
- (b) commits any disorderly conduct, in the immediate view and presence of either the Senate or the House of Representatives while in session, tending to interrupt its proceedings or to impair the respect due to its authority,

shall be guilty of an offence against this Act.

7. Any person who improperly interferes—

Interference with Parliament.

- (a) with the free exercise by the Senate or the House of Representatives of its authority; or
- (b) with the free performance by any Senator or any Member of the House of Representatives of his duties as such Senator or Member,

shall be guilty of an offence against this Act.

8. Any person who—

Bribing Members of Parliament

- (a) in order to influence any Senator or Member of the House of Representatives in his vote, opinion, judgment, or action, upon any question or matter arising in the House of which he is a member, or in any Committee thereof, or in any joint Committee of both Houses; or
- (b) in order to induce any Senator or member of the House of Representatives to absent himself from the House of which he is a member, or from any Committee thereof, or from any joint Committee of both Houses,

gives confers or procures, or promises or offers to give confer or procure, or to attempt to give confer or procure, any money, property or benefit of any kind to, upon, or for any such Senator or Member, or to, upon, or for any other person, shall be guilty of an offence against this Act.

9. Any Senator or Member of the House of Representatives, who asks, receives or obtains, or agrees or attempts to receive or obtain, any money, property or benefit of any kind for himself or any other person, upon any understanding that his vote, opinion, judgment or action in the House of which he is a member, or in any Committee thereof, or in any joint Committee of both Houses, shall be influenced thereby, or shall be given in any particular manner or in favour of any particular side of any question or matter, shall be guilty of an offence against this Act.

Member receiving bribes.

10. Any person who endeavours, by fraud, threats or intimidation of any kind—

(a) to influence any Senator or any Member of the House of Representatives in his vote, opinion, judgment, or action upon any question or matter arising in the House of which he is a member, or in any Committee thereof, or in any joint Committee of both Houses, or

(b) to induce him to absent himself from the House of which he is a Member, or from any Committee thereof, or from any joint Committee of both Houses,

Unduly influencing Members of Parliament.

shall be guilty of an offence against this Act.

11. Subject to the provisions of section thirteen of this Act, proceedings shall not be instituted against any person for any offence against this Act unless an order or a resolution has been made or passed by the House affected directing the institution of the proceedings.

Proceedings only to be taken under direction of the House affected.

12. Offences against this Act shall be punishable on indictment or on summary conviction.

Offences triable on indictment or summarily.

13.—(1.) Proceedings for offences against this Act shall be instituted only by the Attorney-General or by his direction.

Proceedings to be instituted by Attorney-General only.

(2.) The Attorney-General, or person acting under his direction, may institute proceedings for the summary conviction of the accused or for his commitment for trial on indictment, as the Attorney-General thinks fit.

14. A person convicted of an offence against this Act shall be punishable as follows:—

Punishment of offenders.

- (a) If convicted on indictment, by imprisonment for a term not exceeding two years or by a penalty not exceeding Five hundred pounds;
- (b) If convicted by a Court of summary jurisdiction, by imprisonment for a term not exceeding six months or by a penalty not exceeding One hundred pounds.

15. The Court before which any proceedings for an offence against this Act is tried may award costs to any party to the proceedings.

