Parliamentary Paper
No. 135/1987

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES
COMMITTEE OF PRIVILEGES

Matter of printed references to the proceedings and prospective recommendations of the Joint Select Committee on Telecommunications Interception in The Sun News-Pictorial and The Courier-Mail on 17 November 1986 and similar references in other newspapers

Report together with
minutes of proceedings

May 1987

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MEMBERSHIP OF THE COMMITTEE

Mr G. Gear, MP, Chairman

Hon. N.A. Brown, QC, MP
Mr G. Campbell, MP
Mr P.R. Cleeland, MP
Hon. W.M. Hodgman, QC, MP
Mr E.J. Lindsay, RFD, MP
Mr P.C. Millar, MP
Mr P.K. Reith, MP
Mr D.W. Simmons, MP
Mr W.L. Smith, MP[1]
Mr J.M. Spender, MP[2]
Mr R.E. Tickner, MP

Secretary - Mr B. Wright

1 Appointed to the committee on 17 February 1987.

2 Discharged from attendance on the committee on 17 February 1987.

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PRIVILEGE - COMPLAINT OF BREACH: Mr Martin raised, as a matter of privilege, press reports relating to purported contents of the report of the Joint Select Committee on Telecommunications Interception which is yet to be presented to the House. Mr Martin produced copies of articles from The Courier-Mail and The Sun News-Pictorial of 17 November 1986.

Madam Speaker stated that she would examine the matter and advise the House in due course.

2. No.139 - 18 November 1986:

PRIVILEGE - NEWSPAPER REPORTS ON PROCEEDINGS OF JOINT SELECT COMMITTEE ON TELECOMMUNICATIONS INTERCEPTION - REFERENCE TO COMMITTEE OF PRIVILEGES: Madam Speaker referred to the matter of privilege raised yesterday by Mr Martin concerning press reports relating to purported contents of the report of the Joint Select Committee on Telecommunications Interception and stated that she was prepared to accord precedence to a motion in connection with the matter.

Mr Martin then moved - That the matter of the printed references to the proceedings and prospective recommendations of the Joint Select Committee on Telecommunicatins Interception in The Sun News-Pictorial and The Courier-Mail of 17 November 1986, and similar references in other newspapers, be referred to the Committee of Privileges.

Debate ensued.

Question - put and passed.

3. No.146 - 17 February 1987:

PRIVILEGES COMMITTEE: Mr Young (Leader of the House), by leave, moved - That Mr Spender be discharged from attendance on the Committee of Privileges and that, in his place, Mr Smith be appointed a member of the committee.

Question - put and passed.

REPORT

The Committee of Privileges, to which was referred the matter of a complaint made in the House of Representatives on 17 November 1986 relating to press reports concerning the Joint Select Committee on Telecommunications Interception, reports as follows:

The complaint

2. On 17 November 1986 Mr S.P. Martin, MP, Chairman of the Joint Select Committee on Telecommunications Interception, raised, as a matter of privilege, press reports which purported to reveal recommendations of the Joint Select Committee on Telecommunications Interception which had not, at that time, reported to either House. Mr Martin produced copies of articles from The Courier-Mail and The Sun News-Pictorial of 17 November 1986. Madam Speaker considered the matter and on 18 November 1986 advised that she was prepared to accord precedence to a motion in connection with it. Mr Martin then moved that the matter of the printed references to the proceedings and prospective recommendations of the Joint Select Committee on Telecommunications Interception in The Sun News-Pictorial and The Courier-Mail of 17 November 1986, and similar references in other newspapers, be referred to the Committee of Privileges. In his speech Mr Martin also referred to reports which appeared on 17 November 1987 in The Adelaide Advertiser, The Advocate, The Mercury, The West Australian, The Weekend Australian (15-16 November) and The Sydney Morning Herald (18 November). This motion was passed after a brief debate.

3. Photocopies of the articles in question are at Appendix 1.

Powers, privileges and immunities of the Houses of the Commonwealth Parliament, their committees and Members

4. Section 49 of the Commonwealth 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.'.

5. The Parliament has not specifically declared its powers, privileges and immunities although specific legislation has been enacted to deal with particular matters, for example, the Parliamentary Papers Act and the Parliamentary Proceedings Broadcasting Act. The Parliament is, therefore, at this time strictly limited to the powers, privileges and immunities of the United Kingdom House of Commons as at 1 January 1901, the date of establishment of the Commonwealth.*

Contempt

6. The Houses of the Commonwealth Parliament possess the undoubted power to take action to protect themselves, their committees and Members against actions which whilst they might not breach any specific right or immunity, are considered to obstruct or impede, or to threaten to do so. Such actions are described as contempts. May defines contempt as follows:

> '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. 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.'.

Particular provisions relating to this matter

Standing order 308 of the Senate provides:

> The evidence taken by any Select Committee of the Senate and documents presented to such Committee, which have not been reported to the Senate, shall not, unless authorized by the Senate or the Committee, be disclosed or published by any member of such Committee, or by any other person.

* Since the report was agreed to the Parliamentary Privileges Bill 1987 has been passed.

Standing order 340 of the House of Representatives 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.

Standard works on parliamentary practice and procedure contain references relevant to this matter:

Australian Senate Practice states:

> '... The publication of a committee's report before its presentation to the Senate is unquestionably a breach of privilege. Unless authorised by the Senate or the committee, the rule relating to premature publication also prohibits any deliberations of a committee and any proceedings of a committee being referred to or disclosed by Senators or others, or described in the press, before being reported to the Senate.'[1]

House of Representatives Practice states:

> '... The publication or disclosure of evidence taken in-camera, or the publication or disclosure of draft reports of a committee before their presentation to the House, constitutes a breach of privilege or contempt'.[2]

May states:

> '... The publication or disclosure of proceedings of committees conducted with closed doors or of draft reports of committees before they have been reported to the House will, however, constitute a breach of privilege or a contempt'.[3]

7. The committee received a memorandum from the Clerk of the House expressing opinions on the law and practice relevant to the reference (Appendix 2).

The inquiry

8. The committee considered the question of whether in fact it had jurisdiction to consider a complaint arising in connection with the operation of a joint committee. Certainly some doubts have been raised in respect of the privilege powers

of joint committees (see, for example, Australian Senate Practice pages 536-7). The committee took the view however that the joint committee was a creature of both Houses and that, even if there were some doubts as to the actual powers of such joint committees - for example in respect to their authority to administer an oath - the question of contempt in connection with a joint committee was an entirely different matter. The powers of the Houses insofar as contempt is concerned are such that either House could regard a matter involving a joint committee as a contempt and the committee therefore took the view that it was quite within its power to consider, and report to the House on, a matter of contempt involving a joint committee. The committee was fortified in this view by the knowledge that on 2 previous occasions the House of Representatives Committee of Privileges has considered matters involving joint committees: a 1973 case involving the then Joint Committee on Prices and a 1980 case involving the Joint Committee on Foreign Affairs and Defence.

9. The committee also considered the law applicable to the particular case. It noted first that, by convention, and not by law or other order, and subject to any specific provisions governing the operation of individual committees, joint committees operate under the standing orders of the Senate (see Australian Senate Practice page 520, House of Representatives Practice page 589). It noted that standing order 308 of the Senate prohibits the disclosure or publication of the evidence taken by and documents presented to a committee which have not been reported to the Senate or authorised to be disclosed or published. The material disclosed and complained of in this case was neither evidence nor documents presented to the committee, but, as is mentioned later, essentially the private deliberations of the committee. The committee noted that a matter involving the disclosure of confidential deliberations, whilst not specifically prohibited by the standing order, could still be dealt with as a matter of contempt. The very definition of contempt permits this, and the authorities are clear on the matter. Australian Senate Practice states:

> 'Unless authorised by the Senate or the committee, the rule relating to premature publication also prohibits any deliberations of a committee and any proceedings of a committee being referred to or disclosed by Senators or others, or described in the press, before being reported to the Senate.'[4]

10. The committee considered that the first step in informing itself on the matter was to invite a submission from the Chairman of the Joint Select Committee on Telecommunications Interception, Mr Martin. Mr Martin provided a written submission to the committee (Appendix 3) on the

matter and was subsequently called to give oral evidence. The committee wrote to the editors of the newspapers in which articles had appeared, advising them of the inquiry, attaching a photocopy of the particular article that was relevant in each case and inviting details of the circumstances in which the articles were published and seeking confirmation of the authenticity of the photocopy of the article in each case. The committee also communicated with the journalists whose names were published in connection with the articles inviting them to provide details of the circumstances in which the articles were published.

11. In his written submission and in his oral evidence Mr Martin referred to information in the various articles concerning recommendations of the committee, and to differences between committee members on questions of substance involving telecommunications interception. Mr Martin stated that the articles in The Sun News-Pictorial and The Courier-Mail indicated to him 'an oral briefing given to a reporter by someone who had participated in the committee's deliberations, rather than a draft report being in the possession of a reporter' and that, in particular, a knowledge of private discussions at meetings of the committee on 13 and 14 November 1986 was revealed. The Chairman was of the opinion that publication 'in no way impeded the committee's work' because the majority of the decisions had already been taken.

12. The committee formed the view that it should take all steps within its power to investigate the matter and that it should seek to ascertain the source of the disclosure, as well as investigating the matter of the publication of the material. In this regard, it wished to be able to take evidence from all persons who could be presumed to have knowledge of the private deliberations of the Joint Select Committee on Telecommunications Interception, that is, members of the committee and staff on the committee secretariat.

13. Because it was a joint committee, the authority of the Senate was necessary if Senators who served on the committee were to appear before the Committee of Privileges on the matter. The committee therefore, on 26 November, presented a special report to the House in which it advised the House that it wished to be able to take evidence from Senators and proposed that the House should communicate with the Senate by message asking it to grant leave for Senators who served on the joint committee to appear. A motion to give effect to this recommendation was passed by the House on 27 November 1986, and on 5 December 1986 the Senate resolved that Senators Archer, Black, Cooney and Vigor (the Senators involved) have leave to appear before the committee if they thought fit.

14. The committee subsequently requested Senators and Members who had served on the committee, persons who had served on the committee secretariat and the journalists in question to appear before the committee.

15. The committee made a number of decisions in connection with the taking of evidence:

- first the committee decided that, unless otherwise ordered, evidence should be heard in public, although witnesses were advised that if they wished to give evidence in camera at any stage, they could ask the committee to agree to this;

- secondly, the committee took the view that, if they wished, witnesses should be able to be accompanied by counsel or an adviser and should be afforded a reasonable opportunity to confer with such persons during the course of their evidence. Counsel were not, however, permitted to address the committee in the course of the giving of evidence by their clients;

- thirdly, the committee wished, as far as possible, to avoid receiving hearsay evidence and advised witnesses that they would be asked to give, in their answers, information which was within their direct or personal knowledge.

The decisions taken in regard to the first 2 of the abovementioned matters were historic in so much as this was the first occasion on which such practices had been adopted by the Committee of Privileges of this House.

16. Four witnesses took advantage of the opportunity to be accompanied by counsel, and, before evidence from their clients was taken, counsel sought, and were given, permission to address the committee directly on the extent of their involvement. Counsel put arguments to the effect that inter alia their clients were, in a practical sense, at risk insofar as the proceedings were concerned, that the principles of natural justice should be observed, and that their clients should have the assistance of counsel to a greater extent than had been proposed by, for example, counsel being permitted to address the committee directly.

17. The committee considered these applications but declined to change the arrangements, the Chairman noting that the committee's decision was made in the light of its role as an advisory body only, that it did desire to conduct its proceedings and to treat witnesses with justice, fairness and

dignity and that the committee was required to operate within certain procedural boundaries. The Chairman noted that the House is linked, by standing order 1, to the practices of the House of Commons when it does not have a practice or standing or other order of its own. In accordance with Commons practice it appeared that the committee itself did not have the power to confer anything greater than the level of assistance it had agreed to and that on those few occasions where greater involvement of counsel had been permitted in the House of Commons, the House itself had permitted that. The Chairman also reminded counsel that there was no barrier to written submissions being lodged with the committee within a reasonable time after the transcripts were made available. Written submissions were subsequently submitted on behalf of 2 witnesses.

18. Each witness was examined on oath or asked to make an affirmation, and given the opportunity to make a statement at the beginning and at the conclusion of his or her evidence.

Evidence - disclosure

19. The committee was advised that only members of the joint committee and staff of the committee had been present at meetings at which the matters later reported were discussed, and that no advisers or other persons had been in possession of the information. All members of the Joint Select Committee on Telecommunications Interception agreed to give evidence, and staff members of the committee also appeared. Each person denied having disclosed confidential material or information to the journalists in question, none revealed any grounds for believing that they could have been a source of an inadvertent disclosure, and each stated that they had no knowledge of the way the apparent disclosure took place.

20. The committee received evidence on the security arrangements applying to committee material, although it was made clear that the articles in question revealed a knowledge of deliberations rather than of committee documents.

Evidence - publication

21. Messrs Rous, Greene, Fewster and Cockburn each identified photocopies of the articles in connection with which their names had been published, and each stated that they had in fact provided material for the reports in question.

22. In the case of Mr Rous the committee was advised that his involvement had been limited, that information had been received as part of a bureau service from Canberra, and that he had then been involved in providing additional information of a 'local' nature. The committee accepts this explanation.

23. One of the journalists involved, Mr G. Greene, provided substantial material for articles which appeared in The Sun News-Pictorial, The Courier-Mail, The Adelaide Advertiser, The Advocate (Burnie), The Mercury (Hobart) and The Western Australian on Monday, 17 November 1986. Mr Greene stated that he had started writing his story on the afternoon of Friday, 14 November 1986 and it appeared that it was completed that day, although not perhaps filed until Sunday, 16 November 1986. Mr Greene told the committee that the information received was conveyed orally, and in person, and that he had in fact had 3 sources for his information from whom he had obtained information and/or confirmation of information, although his first source had given him the most information 'in as much as it was the first information on it and it was the bulk of it'. Mr Greene intimated that, in each case, his sources had indicated awareness of the extent or significance of the information he or she passed to him. Mr Greene felt that the information he received had been 'knowingly given in the full knowledge that it would be published'. Mr Greene stated however that none of his sources had indicated to him that they understood a question of contempt or a breach of procedure could be involved.

24. Mr Greene informed the committee that he had only considered that a matter of contempt could be involved 'in as much as it is always a relevant consideration in the back of the mind when you are writing stories from here, particularly as regards parliamentary committees, but only to that extent'. He later said that he 'did not think it [his report] was in contempt'.

25. Mr A. Fewster, a journalist on the staff of The Australian, was the author of material published in The Weekend Australian, in the Melbourne edition, on Saturday, 15 November 1986. Mr Fewster told the committee that most of his information had been obtained from one source but it had been corroborated by others who had given him other pieces of information. He said that his information was gained from discussions, and not from documentation made available to him. His discussions were conducted by telephone. Mr Fewster said that his sources did not indicate to him that they were fully aware of the extent or significance of the information provided and also that his sources did not indicate that they understood that a question of contempt or breach of procedure could be

involved. Mr Fewster said that in the course of preparing or submitting his material he did not consider that a matter of contempt could be involved.

26. Mr M. Cockburn provided material for an article in The Sydney Morning Herald of Tuesday, 18 November 1987. Mr Cockburn told the committee that he had been in possession of certain information before 17 November 1987 but that this had not been such that he could write a story on it. He had read the story which appeared in The Sun News-Pictorial on Monday, 17 November 1987. Mr Cockburn had commenced writing an article of his own. In answer to the question of whether he considered, in preparing or submitting his material, that a matter of contempt could be involved, Mr Cockburn stated that he did not think the publication of an article would affect the workings and deliberations of the committee and therefore did not believe publication of the article would be in contempt.

Observations on the evidence

27. The committee cannot dismiss the possibility of some form of monitoring or interception in this matter. Whilst various persons may have passed on information to the journalists in question it is at least possible that one or more of those persons received information as a consequence of some form of interception. Our conclusion is, however, that it is most likely that more than one person who was aware of the substance of the confidential deliberations of the joint select committee has divulged confidential information, and if this was done deliberately, then those persons must be regarded as the principal offenders in this matter. Nevertheless, disclosure and publication are separate matters and so, even if the sources of the information cannot be ascertained, this does not lessen any responsibility falling to those involved in the publication.

28. The committee does not accept the proposition that media representatives should not or cannot be pursued or punished in these matters because their action in publishing material is part of the conduct of their professional responsibilities. Such views, whilst no doubt held with sincerity, do not appear to recognise the real damage that can be caused by the actual publication of confidential material.

29. The committee noted the view of the Chairman of the former joint select committee, Mr Martin to the effect that the publication of the material in question did not impede the work of the committee. This is an important aspect and the view of the Chairman of a committee on such a matter is one to which the committee must pay careful regard. It is to be said,

however, that this view goes more to the aspect of what action ought to be taken in connection with a matter, and not to the question of whether or not contempt has been involved in either disclosure or publication.

30. The committee also noted the various statements by the journalists involved on the issue of whether they considered that a question of contempt could be involved when they submitted their material. Whether or not journalists believe that a particular act of publication does or could involve a contempt is one matter, but the general rule is another, and on that aspect the committee must say that it believes that journalists of parliamentary experience of any significance at all would or should have had some appreciation of the rules in these matters.

31. The committee noted that from some of the evidence which came before it, perhaps unintentionally, an inference could be drawn that was unfavourable to the former Secretary to the committee, Mr P. Gibson. Mr Gibson appeared again before the committee and commented on this particular matter. The committee makes it clear that no evidence before the committee gives credence to any suggestion that Mr Gibson, at any stage, acted in any manner other than in accordance with his proper and official duties as Secretary to the former committee. It found Mr Gibson to be a truthful and honest witness and drew no conclusion in any way unfavourable to him from the evidence in question.

The justification for rules in this area

32. It is quite legitimate for the continuing justification for rules in this area to be questioned. In this regard the second report from the House of Commons Committee of Privileges on the premature disclosure of proceedings of select committees, presented on 23 July 1985 is of particular interest (H.C. 555 [1984-85]). Our conclusions are similar to that drawn by the House of Commons committee. We believe that the rules which apply in this area are justified because premature disclosure and publication of confidential committee evidence, deliberations or proposed or draft reports can:

- damage the ability of committees to gather evidence, especially evidence in sensitive matters;
- make more difficult the processes of reaching agreement within a committee. If, for example, views or possible recommendations on a politically sensitive matter are revealed and published the

ability, let alone the willingness, of members to compromise and agree on particular aspects may be reduced;

- damage the committee system itself. If committee members assert a right to be informed on and involved in the consideration of sensitive commercial or governmental or legal matters, for example, but it becomes clear that evidence or material received cannot be held in confidence, members can hardly complain if the credibility of the committee system itself suffers;

- reduce the trust and openness which should exist between committee members and which can be such a positive feature of parliamentary committee work.

33. The committee concludes that the existing prohibitions on the disclosure and publication of confidential committee material and deliberations are justified.

Conclusions

1. On the matter of disclosure, the committee has concluded that confidential committee deliberations have been disclosed without authorisation by persons with access to the information. If such persons acted deliberately, they were each guilty of a serious contempt. Regrettably, the committee has been unable to ascertain the identities of such persons. It takes a very serious view of such actions, which display an offensive disregard for the joint select committee itself, and others associated with it, and ultimately a disregard for the important rules and conventions of the Houses.

2. The committee has concluded that the various acts of publication revealing the confidential deliberations constituted contempts. In particular, Messrs G. Greene, A. Fewster and M. Cockburn, in submitting material for the reports eventually printed, were each responsible for publishing information revealing confidential committee proceedings which had not been authorised for publication, and these actions constitute contempts. Further contempts were committed by those responsible for the later publication of the reports.

Recommendations

1. On the matter of disclosure the committee can make no recommendation, having been unable to find the identity of the person or persons responsible, but if it had the House would have been well-advised to take exemplary action.

2. On the matter of publication, although an important rule has been breached and whilst the actions of the journalists in question do them no credit, the committee has taken note of the view of the Chairman of the Joint Committee on Telecommunications Interception to the effect that no impediment was caused to the committee. It therefore seeks the guidance of the House as to its attitude to penalties. If the House believes that a penalty is warranted in this case it should refer this matter back to the committee for consideration. We would indicate to the House that prior to making any recommendations on penalty, if the matter is referred to it, the committee would propose to recall the persons in question so that they could be heard on the matter.

3. The committee again recommends that the House consider and make decisions on the many important issues concerning privilege and contempt on which the Joint Select Committee on Parliamentary Privilege made recommendations in 1984.

Matters incidental to the inquiry

34. During the course of the committee's inquiry it heard evidence from members and staff of the former joint select committee. As mentioned above, each person denied having disclosed confidential material and stated that they had no knowledge of the source of the material. If the presumption is that persons with a knowledge of the confidential deliberations of the committee in fact disclosed the material in question then it would appear that one or more persons has lied to or misled the Committee of Privileges. The committee regards this as a very grave matter, and even more serious than the actual disclosure of the deliberations of the joint select committee.

35. The committee also has to report that 3 witnesses, namely Messrs Greene, Fewster and Cockburn each refused to provide certain information requested by the committee. The questions involved were relevant to the inquiry, and within the competence of the committee, going as they did to the matter of sources. Each witness involved was advised of the possibility of refusal to answer being regarded as a contempt, however they did not change their position. In refusing to answer the questions, the journalists referred to their desire, or even their obligation, to respect the confidentiality of their

sources. Reference was made, in particular, to the Code of Ethics of the Australian Journalists' Association, an organisation of which each of the journalists was a member. The committee is bound to say that whilst this convention may be given considerable weight by journalists, it is not one which is accorded any special significance by the committee. The committee is of the view that, whilst the Houses, and their committees, would always take some note of the convention, in every case the question of whether it should be respected, or whether, on the other hand, a journalist or other representative of the media should be required to answer a question concerning sources - and perhaps penalised for refusing to do so - would be a matter for the House or committee to determine, in their respective areas of responsibility. Such actions are, by their very nature, most serious. The 3 witnesses who refused to provide certain information requested by the committee were well aware of the seriousness of their actions and, having the benefit of advice from counsel, and having heard the position carefully expressed with clarity and precision by the Chairman of the committee, chose to obstruct the committee in its inquiry. The committee therefore recommends that the House refer the matter back to the committee for the consideration of an appropriate penalty, and the committee advises the House that prior to considering the question of penalty, the committee would recall the witnesses and provide them with an opportunity to be heard on their own behalf.

G. GEAR
Chairman

30 April 1987

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Tuesday, 25 November 1986

(34th Parliament - 6th meeting)

PRESENT:

Mr Gear (Chairman)	Mr Lindsay
Mr N.A. Brown	Mr Millar
Mr Campbell	Mr Reith
Mr Cleeland	Mr Tickner
Mr Hodgman	

The Committee met at 8.25 p.m.

The minutes of proceedings of the meeting held on 22 October were confirmed.

The following extracts from the *Votes and Proceedings* were reported by the Chairman -

1. No. 138 - 17 November 1986 recording the raising by Mr Martin, *as a matter of privilege, of press reports* relating to purported contents of the report of the Joint Select Committee on Telecommunications Interception.

2. No. 139 - 18 November 1986 recording the decision that the matter raised by Mr Martin be referred to the Committee of Privileges.

The Chairman presented copies of articles referring to the Joint Select Committee on Telecommunications Interception from the following newspapers:

The Sun News-Pictorial, 17 November 1986
The Courier Mail, " "
The Advocate, " "
The Mercury, " "
The Advertiser " "
The West Australian, " "
The Sydney Morning Herald, 18 November 1986
The Weekend Australian, 15 - 16 November 1986

The Chairman presented *a memorandum from the Clerk of the House* in connection with the reference.

Consideration of the reference

The Committee deliberated.

Resolved: On the motion of Mr Cleeland - That the Committee write to the Chairman of the Joint Select Committee on Telecommunications Interception inviting him to make a written submission and to be available to give oral evidence to the committee in connection with the reference.

The Committee deliberated.

Mr Hodgman moved - That the Secretary write to the journalists named in the articles referred to the committee, and the editors of the publications involved, inviting them to submit to the Committee in writing details of the circumstances in which the articles were published, and seeking confirmation of the authenticity of the copies of the articles available to the committee.

Debate ensued.

Mr Tickner moved that the words "the journalists named in the articles referred to the committee, and" be omitted.

Debate ensued.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes - 1	Noes - 6
Mr Tickner	Mr N.A. Brown Mr Campbell Mr Cleeland Mr Hodgman Mr Millar Mr Reith

and so it was negatived.

Question - That the motion be agreed to - put.

The Committee divided.

Ayes - 6	Noes - 1
Mr N.A. Brown	Mr Tickner
Mr Campbell	
Mr Cleeland	
Mr Hodgman	
Mr Millar	
Mr Reith	

and so it was resolved in the affirmative.

The Committee deliberated.

Mr Millar moved - That a special report be presented to the House seeking a resolution to seek the leave of the Senate for Senators to be given leave to appear before the Committee.

Debate ensued.

Question - That the motion be agreed to - put.

The Committee divided.

Ayes - 6	Noes - 1
Mr N.A. Brown	Mr Tickner
Mr Campbell	
Mr Cleeland	
Mr Hodgman	
Mr Millar	
Mr Reith	

and so it was resolved in the affirmative.

The Chairman presented a draft special report.

Preamble - considered and agreed to.
Paragraph 1 - considered and agreed to.
Paragraph 2 - considered, amended and agreed to.

Question - That the report as amended, be agreed to - put.

The Committee divided.

Ayes - 6	Noes - 1
Mr N.A. Brown	Mr Tickner
Mr Campbell	
Mr Cleeland	
Mr Hodgman	
Mr Millar	
Mr Reith	

and so it was resolved in the affirmative.

The Committee deliberated.

Mr Cleeland moved - That evidence from the Chairman of the Joint Select Committee on Telecommunications Interception be heard in public session.

Debate ensued.

Question - put.

The Committee divided.

Ayes - 3	Noes - 4
Mr Campbell	Mr N.A. Brown
Mr Cleeland	Mr Hodgman
Mr Tickner	Mr Millar
	Mr Reith

and so it was negatived.

The Committee deliberated.

The Committee adjourned until 8.15 p.m. on Thursday, 27 November 1986.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Thursday, 27 November 1986

(34th Parliament - 7th meeting)

PRESENT:

Mr Gear (Chairman)	Mr Reith
Mr Cleeland	Mr Simmons
Mr Lindsay	Mr Tickner
Mr Millar	

The Committee met at 8.32 p.m.

The minutes of proceedings of the meeting held on 25 November were confirmed.

The Chairman presented a letter dated 26 November, with attachments, from Mr S.P. Martin, Chairman of the Joint Select Committee on Telecommunications Interception.

Resolved - On the motion of Mr Millar - That the letter from Mr Martin be received as evidence.

The Committee deliberated.

Mr Stephen Paul Martin, MP, Chairman of the Joint Select Committee on Telecommunications Interception, was called, sworn and examined.

The witness withdrew.

The Committee deliberated.

Mr Martin was recalled and further examined.

The witness withdrew.

The Committee deliberated.

Mr Cleeland moved - That if the Committee, after deliberation on the evidence received tonight, decides to proceed further, all meetings in which evidence is heard be held in public session.

The Committee deliberated.

The Committee adjourned until Tuesday, 10 February 1987 at 2 p.m.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Thursday, 12 February 1987

(34th Parliament - 8th meeting)

Present:

Mr Gear (Chairman)
Mr Hodgman
Mr Millar
Mr Reith
Mr Simmons
Mr Tickner

The Committee met at 2.06 p.m.

The minutes of proceedings of the meeting held on 7 November were confirmed.

The Chairman presented the following correspondence -

Mr B J Dargaiville, Editor of The Mercury, 4 December 1986

Mr D Smith, Editor - in - Chief, The Courier - Mail, 5 December 1986

Mr D J Cherry, Editor The Advocate Newspaper Pty Ltd, 8 December 1986

Mr M Cockburn, The Sydney Morning Herald, 9 December 1986

Mr A Fewster, The Australian, 11 December 1986

Mr P Akerman, The Australian, 5 January 1987

Mr D B Smith, The West Australian, 28 January 1987

Mr S Rous, Queensland Newspapers, 4 February 1987

Resolved - On the motion of Mr Millar - That the correspondence be received as evidence.

Debate adjourned on the motion of Mr Cleeland, viz:
That if the Committee, after deliberation on the evidence received tonight, decides to proceed further, all meetings in which evidence is heard be held in public session.

The Committee deleberated.

Resolved - On the motion of Mr Hodgman -
That members of the Select Committee on *Telecommunications Interception* and staff on the committee secretariat be requested to attend at a time to be arranged and be examined on oath or asked to make an affirmation.

The Committee deliberated.

Mr Hodgman moved -
That the committee write to journalists involved requiring them to attend before the committee at a time to be arranged to be examined on oath, or to make an affirmation, as to the matter before the committee, and that they bring along any relevant documents including notes, shorthand notes, copy submitted, and tape recordings.

Question - put and passed, Mr Tickner dissenting.

The Committee deliberated.

Resolved - On the motion of Mr Simmons -
That all meetings in connection with the reference in which evidence is heard shall, unless otherwise ordered, be in public session.

The Committee deliberated.

Resolved - On the motion of Mr Tickner -
That parties appearing before the committee be permitted to be represented if they so desire.

The Committee deliberated.

The committee adjourned until Thursday, 19 February 1987 at 8.15 p.m..

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Thursday, 19 February 1987

(34th Parliament - 9th meeting)

Present:

Mr Gear (Chairman)	Mr Millar
Mr N.A. Brown	Mr Reith
Mr Cleeland	Mr Simmons
Mr Hodgman	Mr Smith
Mr Lindsay	

The Committee met at 8.20 p.m.

The minutes of proceedings of the meeting held on 12 February were confirmed.

An extract from the Votes and Proceedings No.146 - 17 February 1987 recording the appointment of Mr Smith to the Committee in place of Mr Spender was reported by the Chairman.

The Committee deliberated.

Resolved - On the motion of Mr N.A. Brown - That arrangements for the involvement of counsel or advisers be in accordance with option 1 of the options considered, viz: that counsel or advisers accompany witnesses if the witnesses so wish and that witnesses be permitted to confer with them during the course of their evidence but counsel or advisers would not be able to address the committee directly.

The Committee deliberated.

Resolved - On the motion of Mr Smith - That members of the Joint Select Committee on Telecommunications Interception, staff of the committee and journalists involved be asked to appear before the Committee at hearings to be held, be advised of all proposed days for the hearing of evidence and that they be advised of the arrangements proposed for the involvement of counsel or advisers, and that the days and times be as follows:

- evidence from Senators and Members on Wednesday, 25 February 1987 and Thursday, 26 February 1987 commencing at 9 a.m. each day, and

- evidence from journalists on Thursday, 5 March 1987 commencing at 10.30 a.m.

The Committee adjourned until Wednesday, 25 February 1987 at 9 a.m.

Confirmed. Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Wednesday, 25 February 1987

(34th Parliament - 10th meeting)

Present:

Mr Gear (Chairman)	Mr Millar
Mr N.A. Brown	Mr Reith
Mr Campbell	Mr Smith
Mr Cleeland	Mr Tickner
Mr Lindsay	

The Committee met at 8.52 a.m.

The minutes of proceedings of the meeting held on 19 February were confirmed.

The Chairman presented the following correspondence:

- a letter from Mr G. Greene, dated 23 February 1987;
- a letter from Mr I. Meikle, Editor, The Advertiser, dated 19 December 1986;
- a letter from Mr C.Duck, Editor, The Sun News-Pictorial dated 23 February 1987.

Resolved - On the motion of Mr Smith - That the letters be received as evidence and that, pursuant to the provisions of the Parliamentary Papers Act 1908, the letters be authorised for publication.

Press and public admitted.

Senator Brian Roper Archer, a member of the Joint Select Committee on Telecommunication Interception was called, sworn and examined.

The witness withdrew.

Mr Peter Duncan, MP, a member of the Joint Select Committee on Telecommunications Interception was called, made an affirmation and was examined.

The witness withdrew.

Senator Bernard Cornelius Cooney, a member of the Joint Select Committee on Telecommunications Interception was called, sworn and examined.

The witness withdrew.

Senator John Rees Black, a member of the Joint Select Committee on Telecommunications Interception was called, sworn and examined.

The witness withdrew.

Mr Stephen Paul Martin, MP, Chairman of the Joint Select Committee on Telecommunications Interception was called, sworn and examined.

The witness and members of the public withdrew.

The Committee deliberated.

Press and public readmitted.

Mr Stephen Paul Martin, MP, was recalled and further examined.

The witness withdrew.

Mr Philip Maxwell Ruddock, MP, a member of the Joint Select Committee on Telecommunications Interception was called, sworn and examined.

The witness withdrew.

Resolved - On the motion of Mr Tickner - That pursuant to the provisions of the Parliamentary Papers Act 1908 this Committee authorises the publication of the in camera evidence taken on 27 November 1986, and of the letter dated 26 November 1986 received from Mr S.P. Martin, MP.

Resolved - On the motion of Mr Millar - That pursuant to the provisions of the Parliamentary Papers Act 1908 this Committee authorises the publication of the evidence given before it at a public hearing this day.

The Chairman presented a letter from Senator B.R. Archer dated 25 February 1987.

Resolved - On the motion of Mr Tickner - That the letter be received as evidence and, pursuant to the provisions of the Parliamentary Papers Act 1908 the Committee authorise publication of the letter.

The Committee adjourned until Thursday, 26 February 1987 at 9 a.m.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Thursday, 26 February 1987

(34th Parliament - 11th meeting)

Present:

Mr Gear (Chairman)	Mr Lindsay
Mr N.A. Brown	Mr Millar
Mr Campbell	Mr Reith
Mr Cleeland	Mr Simmons
Mr Hodgman	Mr Smith

The Committee met at 8.53 p.m.

The minutes of proceedings of the meeting held on 25 February were confirmed.

Resolved - On the motion of Mr Millar - That pursuant to the *provisions of the Parliamentary Papers Act 1908*, the following correspondence be authorised for publication: letters from -

Mr B.J. Dargaville, dated 4 December 1986
Mr D. Smith, dated 5 December 1986
Mr D.J. Cherry, dated 8 December 1986
Mr M. Cockburn, dated 9 December 1986
Mr A. Fewster, dated 11 December 1986
Mr P. Akerman, dated 5 January 1987
Mr D.B. Smith, dated 28 January 1987
Mr S. Rous, dated 4 February 1987

Press and public admitted.

Senator David Bernard Vigor, a member of the Joint Select Committee on Telecommunications Interception was called, sworn and examined.

During his evidence Senator Vigor handed to the committee a paper.

The witness withdrew.

Mr Michael John Lee, MP, a member of the Joint Select Committee on Telecommunications Interception was called, sworn and examined.

The witness withdrew.

Mr Peter John McGauran, MP, a member of the Joint Select Committee on Telecommunciations Interception was called, sworn and examined.

During his evidence Mr McGauran handed to the committee a paper containing a confidential list of names.

The witness withdrew.

Mr Peter Neil Gibson, Secretary of the Joint Select Committee on Telecommunications Interception was called, sworn and examined.

The witness withdrew.

Ms Dorothy Marion Miles, a member of the staff of the Joint Select Committee on Telecommunications Interception was called, made an affirmation and was examined.

The witness withdrew.

Ms Kay Ellen Crouch, a member of the staff of the Joint Select Committee on Telecommunications Interception was called, made an affirmation and was examined.

The witness withdrew.

Mrs Yvonne Margaret Huddleston, a member of the staff of the Joint Select Committee on Telecommunications Interception was called, sworn and examined.

The witness withdrew.

Press and public withdrew.

Resolved - On the motion of Mr Cleeland - That pursuant to the provisions of the Parliamentary Papers Act 1908 this Committee authorises the publication of the evidence given before it at a public hearing this day.

The Committee deliberated.

Resolved - On the motion of Mr Smith - That the meeting scheduled for 5 March adjourn at 4.15 p.m.

The Committee deliberated.

The Committee adjourned until Thursday, 5 March 1987 at 10 a.m.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Thursday, 5 March 1987

(34th Parliament - 12th meeting)

Present:

Mr Gear (Chairman)
Mr N.A. Brown
Mr Hodgman
Mr Millar
Mr Reith
Mr Smith
Mr Tickner

The Committee met at 10.15 a.m.

The minutes of proceedings of the meeting held on 26 February were confirmed.

The Committee deliberated.

Press and public admitted.

Mr N. McPhee, QC addressed the Committee.
Mr T.E.F. Hughes, QC addressed the Committee.
Mr B. Teague addressed the Committee.
Mr P. Applegarth addressed the Committee.

Press and public withdrew.

The Committee deliberated.

Mr Smith moved - That the involvement of counsel or advisers remain as notified to witnesses, viz.: that counsel or advisers be permitted to accompany witnesses and that witnesses be permitted to confer with them during the course of their evidence but that counsel or advisers would not be able to address the committee directly.

Question - put and passed, Mr Tickner dissenting.

Press and public readmitted.

The Chairman advised of the Committee's decision on the question of the involvement of counsel or advisers.

Mr John Steven Baird Rous was called and sworn.

Mr Rous was advised by Mr P. Applegarth, instructed by Thynne and Macartney of Brisbane.

Mr Rous was examined.

During his evidence Mr Rous presented to the Committee a paper.

Resolved - On the motion of Mr Hodgman - That the paper be received as evidence.

Mr Rous was further examined.

The witness withdrew.

Mr Gervase William Greene was called and sworn.

Mr Greene was advised by Mr B. Teague.

Mr Greene was examined.

The witness withdrew.

The Chairman presented a letter from Ms D. Miles dated 27 February 1987.

Resolved - On the motion of Mr Millar - That the letter be received as evidence.

Mr Alan Eric Fewster was called and made an affirmation.

Mr Fewster was advised by Mr T.E.F. Hughes, QC and Mr G. Richardson, instructed by Gallens, solicitors.

Mr Fewster was examined.

The witness withdrew.

Mr Milton Roy Cockburn was called and made an affirmation.
Mr Cockburn was advised by Mr N. McPhee, QC and Mr G. Rares, instructed by Mr G. Bates of Mallesons-Stephen Jaques.

Mr Cockburn was examined.

The witness withdrew.

Press and public withdrew.

Resolved - On the motion of Mr Smith - That pursuant to the provisions of the Parliamentary Papers Act 1908 this Committee authorises the publication of the evidence given before it at a public hearing this day.

The Committee deliberated.

Resolved - On the motion of Mr Brown - That Mr P. Gibson and Ms D. Miles be recalled to give further evidence on Thursday, 19 March 1987.

The Committee adjourned until Thursday, 19 March 1987 at 8.15 p.m.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Thursday, 19 March 1987

(34th Parliament - 13th meeting)

Present:

Mr Gear (Chairman)	Mr Millar
Mr N.A. Brown	Mr Reith
Mr Cleeland	Mr Simmons
Mr Hodgman	Mr Smith
Mr Lindsay	Mr Tickner

The Committee met at 8.19 p.m.

The minutes of proceedings of the meeting held on 5 March were *confirmed*.

The Chairman presented the following material:

- a list of press contacts from the secretariat of the Joint Select Committe on Telecommunications Interception;
- a letter from the Editor, The Sydney Morning Herald, dated 27 February 1987;
- a letter from Mallesons-Stephens Jaques, solicitors dated 16 March 1987.

Resolved - *On the motion of Mr Hodgman - That the material be* received as evidence and that it be authorised for publication pursuant to the provisions of the Parliamentary Papers Act 1908.

The Committee deliberated.

Press and public admitted.

Mr Peter Neil Gibson, Secretary of the Joint Select Committee on Telecommunications Interception was recalled and further examined.

The witness withdrew.

Ms Dorothy Marion Miles, a member of the staff of the Joint Select Committee on Telecommunications Interception was recalled and further examined.

The witness withdrew.

Press and public withdrew.

The Committee deliberated.

Resolved - On the motion of Mr Millar - That pursuant to the provisions of the Parliamentary Papers Act 1908 this Committee authorises the publication of the evidence given before it at a public hearing this day.

The Committee adjourned until Thursday, 26 March 1987 at 8.15 p.m.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Thursday, 26 March 1987

(34th Parliament - 14th meeting)

Present:

Mr Gear (Chairman)	Mr Reith
Mr Campbell	Mr Simmons
Mr Hodgman	Mr Tickner
Mr Millar	

The Committee met at 8.26 p.m.

The minutes of proceedings of the meeting held on 19 March were confirmed.

The Committee deliberated.

Resolved - On the motion of Mr Hodgman - That the Secretary write to Mr A. Fewster, provide him with a copy of the evidence given by Mr P. Gibson and advise that he be invited to make any comment on the evidence in writing or if he so elects, to appear before the committee and that he be asked to respond by 5 p.m. Thursday, 2 April.

The Committee deliberated.

The Committee adjourned until Thursday, 2 April 1987 at 8.15 p.m.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Thursday, 2 April 1987

(34th Parliament - 15th meeting)

Present:

Mr Gear (Chairman)	Mr Millar
Mr Campbell	Mr Reith
Mr Cleeland	Mr Simmons
Mr Hodgman	Mr Smith
Mr Lindsay	Mr Tickner

The Committee met at 8.21 p.m.

The minutes of proceedings of the meeting held on 26 March were confirmed.

The Committee deliberated.

The Committee adjourned until a date and time to be fixed by the Chairman and notified to members of the Committee.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Thursday, 30 April 1987

(34th Parliament - 16th meeting)

Present:

Mr Gear (Chairman)
Mr N.A. Brown
Mr Campbell
Mr Cleeland
Mr Hodgman
Mr Lindsay
Mr Millar
Mr Reith
Mr Simmons
Mr Smith
Mr Tickner

The Committee met at 8.29 p.m.

The minutes of proceedings of the meeting held on 2 April were confirmed.

The Chairman presented a letter from Gallens, Barristers and Solicitors, dated 9 April 1987.

Resolved - On the motion of Mr Hodgman - That the material be received as evidence and that it be authorised for publication pursuant to the provisions of the Parliamentary Papers Act 1908.

The Committee deliberated.

The Chairman brought up for consideration his Draft Report.

Paragraph 1 postponed
Paragraph 2 amended and agreed to
Paragraphs 3-6 agreed to
Paragraph 7 amended and agreed to
Paragraphs 8-10, agreed to
Paragraph 11 amended and agreed to
Paragraphs 12-14 agreed to
Paragraph 15 amended and agreed to
Paragraph 16 amended and agreed to
Paragraph 17 amended and agreed to
Paragraphs 18-26 agreed to
Paragraph 27 amended and agreed to
Paragraph 28 amended and agreed to
Paragraph 29 considered -

.../2

Question - That the paragraph be agreed to - put.

Ayes, 6	Noes, 2
Mr Hodgman	Mr Cleeland
Mr Lindsay	Mr Tickner
Mr Millar	
Mr Reith	
Mr Simmons	
Mr Smith	

And so it was resolved in the affirmative.

Paragraphs 30 and 31 agreed to
Paragraph 32 amended and agreed to
Paragrph 33 considered -

Question - That the paragraph be agreed to - put.

Ayes, 6	Noes, 3
Mr Hodgman	Mr Campbell
Mr Lindsay	Mr Cleeland
Mr Millar	Mr Tickner
Mr Reith	
Mr Simmons	
Mr Smith	

And so it was resolved in the affirmative.

Conclusions

Conclusion 1 considered -

Question - That the conclusion be agreed to - put.

Ayes, 6	Noes, 3
Mr Hodgman	Mr Campbell
Mr Lindsay	Mr Cleeland
Mr Millar	Mr Tickner
Mr Reith	
Mr Simmons	
Mr Smith	

And so it was resolved in the affirmative.

Conclusion 2 considered -

Question - That the conclusion be agreed to - put.

Ayes, 6	Noes, 3
Mr Hodgman	Mr Campbell
Mr Lindsay	Mr Cleeland
Mr Millar	Mr Tickner
Mr Reith	
Mr Simmons	
Mr Smith	

And so it was resolved in the affirmative.

Recommendations

Recommendation 1 considered -

Mr Hodgman moved the following amendment - Omit 'positively identify', substitute 'find the identity of'.

Debate ensued.

Amendment agreed to.

Question - That the recommendation, as amended, be agreed to - put.

Ayes, 6	Noes, 3
Mr Hodgman	Mr Campbell
Mr Lindsay	Mr Cleeland
Mr Millar	Mr Tickner
Mr Reith	
Mr Simmons	
Mr Smith	

And so it was resolved in the affirmative.

Recommendation 2 considered -

Mr Millar moved the following amendment - omit 'It therefore makes no recommendation on the matter of penalties', substitute 'It therefore seeks the guidance of the House as to its attitude to penalties. If the House believes that a penalty is warranted in this case it should refer this matter back to the committee for consideration. We would indicate to the House that prior to making any recommendations on penalty, if the matter is referred to it, the committee would propose to recall the persons in question so that they could be heard on the matter.'.

Debate ensued.

Amendment agreed to.

Question - That the recommendation, as amended, be agreed to - put.

Ayes, 5	Noes, 4
Mr Lindsay	Mr Campbell
Mr Millar	Mr Cleeland
Mr Reith	Mr Hodgman
Mr Simmons	Mr Tickner
Mr Smith	

And so it was resolved in the affirmative.

Recommendation 3 agreed to -

Paragraph 34 agreed to
" 35 considered -

Mr Reith moved the following amendment - omit 'In this case the committee makes no recommendation to the House in respect of any penalty, however if the House takes the view that the imposition of penalties on those offending may be warranted, it should consider referring that question to the committee for advice', substitute: 'The 3 witnesses who refused to provide certain information requested by the committee were well aware of the seriousness of their actions and, having the benefit of advice from counsel, and having heard the position carefully expressed with clarity and precision by the Chairman of the committee, chose to obstruct the committee in its inquiry. The committee therefore recommends that the House refer the matter back to the committee for the consideration of an appropriate penalty, and the committee advises the House that prior to considering the question of penalty, the committee would recall the witnesses and provide them with an opportunity to be heard on their own behalf.'.

Debate ensued.

Question - That the amendment be be agreed to - put.

Ayes, 5	Noes, 2
Mr Lindsay	Mr Campbell
Mr Millar	Mr Hodgman
Mr Reith	
Mr Smith	

And so it was resolved in the affirmative.

Paragraph, as amended, agreed to.

Report, as amended, agreed to.

At 10.45 p.m. the Committee adjourned sine die.

NOT CONFIRMED.

APPENDIX 1

The Sun News-Pictorial

17/11/86

States set to gain phone-tap access

CANBERRA — State police are certain to gain access to phone tapping after the report of the joint parliamentary committee investigating the extension of telephone-interception powers.

The report, likely to be tabled in Parliament next week, has come out strongly in favor of extending phone-tapping powers to the states — though the state police would not be allowed to apply the taps themselves.

At present the Australian Federal Police is the only body allowed to seek a federal judicial warrant for a phone tap, and even then only for suspected drug-related crime.

The proposal is set to provoke a stormy debate within the community and the Labor Party.

The joint committee has split along party lines.

The three Coalition members recommend offering the states the power to apply their own taps where there are reasonable grounds of suspicion of serious crime.

EXCLUSIVE

By GERVASE GREENE

The majority of the committee — Labor backbenchers Mr John Black (Qld), Mr Michael Lee (NSW), Mr Peter Duncan (SA) and chairman Mr Stephen Martin (NSW) — also support state access to phone taps, but only through a national agency which would handle and coordinate all phone-tap applications.

The National Crime Authority also will gain access to phone interceptions, but also only through the national agency.

It is believed the majority report recommendations will be mirrored in Government legislation to be introduced by the Attorney-General, Mr Bowen, on February 27.

The majority recommend allowing the states access to phone taps, but only through a national monitoring agency which would still need to secure judicial approval.

If a state's application succeeded, its government would meet the cost of applying and maintaining the tap, which would be done through Telecom technicians.

Phone taps would be permitted for suspected drug offences and a limited number of other serious crimes, including murder and kidnapping.

The Premier, Mr Cain, said he would look at the report in due course.

"It will be examined like every other report of consequence is examined," he said.

The Victoria Police Association acting secretary, Mr Ken Serong, said last night he could not comment on specific recommendations made by the joint committee.

"However, I will say that it is established policy of the association that phone intercepts should be allowed to our members where major crimes are suspected," he said.

The three Coalition members on the committee — Mr Phil Ruddock (Liberal, NSW), Senator Brian Archer (Liberal, Tasmania) and Mr Peter McGauran (National, Victoria) — recommended granting full phone-tapping powers to the NCA and state police forces.

They also recommended allowing phone taps for a wide range of criminal offences, applying the criteria used to determine "relevant offences" for the NCA to investigate.

Used as a general definition of organised crime, this defines offences relevant to phone tapping as involving sophisticated planning, drugs or currency dealings, corruption and generally carrying a penalty of at least three years' jail.

Mr Duncan, the former Left-wing SA Attorney-General, has previously strongly opposed the extension of phone-tapping powers to state police.

His support for a limited extension is seen as a significant indication of cross-party backing for some increase in anti-crime measures.

The joint committee was set up earlier this year after Mr Bowen tried to push through legislation which would have given state police wide-ranging powers to tap phones for most serious crimes.

All states except Victoria agreed to accept the extended powers, but several withdrew support after a barrage of criticism.

The Courier-Mail

17/11/86

State police to get tap power

Wire Tapping - Qld

By GERVASE GREENE and STEVE ROUS

STATE police will be given extended phone-tap powers in legislation to go before Federal Parliament early next year.

This follows a majority recommendation by a joint parliamentary committee into phone-taps, whose report is likely to be tabled next week.

The Queensland Police Minister, Mr Gunn, said last night he was pleased State police phone taps had moved a step closer.

But he said the power to tap phone conversations to gather evidence in serious offences would be useless if it involved too much red tape.

At present, the Australian Federal Police is the only force allowed to seek a federal judicial warrant for a phone tap — and then only for suspected drug-related crime.

The changes are likely to provoke a stormy debate within the community and the Labor Party over the possible threat to civil liberties.

The joint committee split along party lines, with the three coalition members recommending the States be offered the power to apply their own taps where there are reasonable grounds of suspicion of any serious crime.

> **"You cannot afford to get bogged down with red tape when you're investigating serious crimes"**
>
> — The Police Minister, Mr Gunn, last night

The majority of the committee — Labor backbenchers Mr Black (Qld), Mr Lee (NSW), Mr Duncan (SA) and the chairman, Mr Martin (NSW) — supported State phone taps but only through a national agency which will handle and co-ordinate all phone-tap applications.

The national agency will still need to secure judicial approval.

The National Crime Authority will also gain access to phone interceptions only through the agency.

The majority report recommendations are likely to be mirrored in legislation to be introduced by the Attorney-General, Mr Bowen, on February 27.

Mr Gunn said the Queensland Government supported police phone taps in investigations involving things like major drug offences "as long as there is a proper procedure to be followed".

"But what I'm afraid of is that the Federal Government will make the procedures so complicated that it will be of little, if any, benefit," he said.

"What we want to do is help police catch the criminals and not make police work a lot more difficult."

Mr Gunn said there should be a requirement in the legislation that police obtain judicial approval.

"But it has to be very speedy approval, not something that drags on for days or weeks," Mr Gunn said.

"Time is a serious problem in police investigations and this telephone tapping program will be absolutely useless to them if they cannot get quick approval.

"You cannot afford to get bogged down with red tape when you're investigating serious crimes."

The committee majority recommends that if a State's application succeeds, the Government would meet the cost of applying and maintaining the tap, which would be done by Telecom technicians.

Phone taps will be applicable for suspected drug offences, as is presently the case, as well as a limited number of other serious crimes.

The three coalition members on the committee — Mr Ruddock (Lib., NSW) Senator Archer (Lib., Tas) and Mr McGauran (NP, Vic.) — recommended full phone-tap powers be granted to the authority and the State police forces.

The joint committee was set up earlier this year after Mr Bowen attempted to push through legislation which would have given State police wide-ranging powers.

The Advertiser
Adelaide, Monday, November 17, 1986

States may get access to phone tapping

From GERVASE GREENE

CANBERRA — State police forces are expected to gain access to phone tapping powers following the report of a joint parliamentary committee.

The report, likely to be tabled in Parliament next week, strongly favors extending phone interception powers to the States — although the State police will not be allowed to apply the taps.

State access to phone taps would be through a national monitoring agency which would still need to secure judicial approval.

The Australian Federal Police is at present the only organisation allowed to seek a Federal judicial warrant for a phone tap — when only for suspected drug-related crime.

The committee proposal, set to be reflected in legislation early next year, is certain to provoke a stormy debate within the community and the Labor Party, always nervous about the possible threat to civil liberties.

Split on party lines

The joint committee has split along party lines, with the three Coalition members recommending offering the States the power to apply their own taps where there are reasonable grounds of suspicion of any serious crime.

The majority of the committee — Labor backbenchers Mr Black (Qld), Mr Lee (NSW), Mr Duncan (SA) and the chairman, Mr Martin (NSW) — supported new State access but only through a national agency.

The National Crime Authority will also gain access to phone interceptions, again only through the national agency.

The majority report recommendations are considered certain to be mirrored in Government legislation, to be introduced by the Attorney-General.

If a State application succeed that Government will meet th cost of applying and maintainir the tap, through Telecom techn cians.

Phone taps will be applicab for suspected drug offences, as presently the case, as well as limited number of other seriou crimes. These will be restricte to crimes such as murder an kidnapping.

The three Coalition member on the committee — Mr Ruddoc (NSW, Liberal), Senator Arch (Tasmania, Liberal) and M McGauran (Vic, National) — r commended granting full phon tapping powers to the NCA an the State police forces.

They also recommended allow ing phone taps for a very wid range of criminal offences, a plying the criteria used to dete mine "relevant offences" for th NCA to investigate.

Used as a general definition organised crime, it defines c fences relevant to phone tappin as involving sophisticated pla ning, drugs or currency dealing corruption and generally ca rying a penalty of at least thre years gaol.

Mr Duncan, the Left-wing fo mer SA Attorney-General, ha previously strongly opposed th extension of phone tapping pow ers to State police forces.

His support for a limited exter sion, although not necessaril indicating the Left-wing's sup port, is seen as a significan indication of cross-party backin for some increase in anti-crim measures.

The joint committee wa formed this year after Mr Bowe attempted to push through legis lation which would have give State police wide-ranging powe to tap phones for most seriou crime offences.

The legislation was referred t the committee to avoid a damag ing Caucus brawl.

All States except Victoria ha agreed to accept the extende powers but several later resig ged after a barrage of criticism from local party branches an community groups on civil liber

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MONDAY, NOVEMBER 17, 1986

State police to gain phone-tap powers: Tip

CANBERRA — State police forces are certain to gain access to phone-tapping powers following the report of the Joint Parliamentary Committee investigating the extension of telephone intercuption powers.

The report, likely to be tabled in Parliament next week, has come out strongly in favour of extending phone interception powers to the states — although the state police will not be allowed to apply the taps.

At present, the Australian Federal Police is the only organisation allowed to seek a Federal judicial warrant for a phone-tap, and even then only for suspected drug-related crime.

The proposal, certain to be reflected in legislation early next year, is certain to provoke a stormy debate within the community and the Labor Party, always nervous about the possible threat to civil liberties.

The joint committee has split along party lines, with the three Coalition members recommending offering the states the power to apply their own taps where there are reasonable grounds of suspicion of any serious crime.

The majority of the committee — Labor backbenchers Mr John Black (Qld), Mr Michael Lee (N.S.W.), Mr Peter Duncan (S.A.) and the chairman, Mr Stephen Martin (N.S.W.) — have also supported state access to phone taps, but only through a national agency which will handle and co-ordinate all phone-tap applications.

The National Crime Authority will also gain access to phone interceptions, although also only through the national agency.

It is believed the majority report recommendations are considered certain to be mirrored in Government legislation, to be introduced by the Attorney-General, Mr Bowen, on February 27 next year.

The majority recommends allowing the states access to phone-taps, but only through a national monitoring agency which will still need to secure judicial approval.

If the state's application succeeds, then the Government will meet the cost of applying and maintaining the tap, which will be done through Telecom technicians.

Phone-taps will be applicable for suspected drug offences, as is presently the case, as well as a limited number of other serious crimes.

These will be restricted to murder, kidnapping and a handful of similar crimes.

The three Coalition members on the committee — Mr Phil Ruddock (N.S.W., Liberal), Senator Brian Archer (Tasmania, Liberal) and Mr Peter McGauran (Vic., National) — recommended granting full phone-tapping powers to the N.C.A. and the state police forces.

They also recommended allowing phone-taps for a very wide range of criminal offences, applying the criteria used to determine "relevant offences" for the National Crime Authority to investigate.

THE MERCURY
Tasmania's Newspaper
MONDAY, NOVEMBER 17, 1986

States in line for access to bugging

STATE police forces are certain to gain access to phone-tapping powers after the report of the joint parliamentary committee investigating the extension of telephone interception powers.

The report, likely to be tabled in Parliament next week, strongly supports extending phone interception powers to the States – although State police will not be allowed to apply the taps.

At present, the Australian Federal Police is the only organisation allowed to seek a federal judicial warrant for a phone tap – and even then only for suspected drug-related crime.

The proposal, certain to be reflected in legislation early next year, is certain to provoke a stormy debate in the community and the Labor Party, which is always nervous about the possible threat to civil liberties.

The joint committee has split along party lines, with the three coalition members recommending offering the States the power to apply their own taps where

From GERVASE GREENE
in Canberra

there are reasonable grounds of suspicion of any serious crime.

The majority of the committee – Labor backbenchers Mr John Black, of Queensland, Mr Michael Lee, of NSW, Mr Peter Duncan, of SA, and the chairman, Mr Stephen Martin of NSW– also have supported State access to phone taps, but only through a national agency which will handle and co-ordinate all phone tap applications.

The National Crime Authority also will gain access to phone interceptions, although also only through the national agency.

It is believed the majority report recommendations are considered certain to be mirrored in government legislation, to be introduced by the Attorney-General, Mr Lionel Bowen, on February 27 next year.

The majority recommends allowing States access to phone taps through a national monitoring agency which will still need to secure judicial approval.

If a State's application succeeds, that government will meet the cost of applying and maintaining the tap, which will be done by Telecom technicians. Taps will be applicable for suspected drug offences, as at present, as well as a limited number of other serious crimes. These will be restricted to murder, kidnapping and similar crimes.

The three coalition members on the committee – Mr Phil Ruddock (NSW, Liberal), Senator Brian Archer (Tasmania, Liberal) and Mr Peter McGauran (Victoria, National) – recommended granting full phone-tapping powers to the NCA and State police.

They also recommended allowing taps for a very wide range of criminal offences, applying the criteria used to determine "relevant offences" for the NCA to investigate.

Used as a general definition of organised crime, it defines offences relevant to phone tapping as involving sophisticated planning, drugs or currency dealings, corruption and generally carrying a penalty of at least three years' jail.

The West Australian

PERTH MONDAY NOVEMBER 17 1986

Let police tap phones — study

CANBERRA: State police forces are certain to gain access to phone-tapping after a joint parliamentary committee reports on its investigation into telephone interception.

The report, likely to be tabled in Parliament next week, has come out strongly in favour of extending phone-interception powers to the States.

However, the State police will not be allowed to do the tapping themselves.

The Australian Federal Police is the only organisation allowed to seek a federal judicial warrant for a phone tap — and even then only for suspected drug-related crime.

The proposal, certain to be reflected in legislation early next year, is bound to provoke a stormy debate within the community and the Labor Party which is nervous about the possible threat to civil liberties.

The joint committee has split along party lines, with its three coalition members recommending offering the States the power to apply their own taps where there are reasonable grounds to suspect any serious crime.

Agency

The Labor majority also supported State access to phone taps — with a judge's approval — through a national agency which would coordinate all phone-tap applications.

From GERVASE GREENE

The committee was made up of four Labor back-benchers — John Black (Qld), Michael Lee (NSW), Peter Duncan (SA) and Stephen Martin (NSW), who was also its chairman — and three coalition MPs.

It is believed that the majority-report recommendations will be mirrored in Government legislation to be introduced by the Attorney-General, Mr Bowen, on February 27 next year.

The National Crime Authority (NCA) will also gain access to phone interceptions, though also only through the national agency.

If the State's application succeeds, that Government will meet the cost of applying and maintaining the tap, which will be done through Telecom technicians.

Phone taps will be applicable for suspected drug offences, as is presently the case, as well as a limited number of other serious crimes. These will be restricted to murder, kidnapping and a handful of similar crimes.

The three coalition members on the committee — Mr Phil Ruddock (Lib., NSW), Senator Brian Archer (Lib., Tas) and Mr Peter McGauran (NP, Vic.) — recommended granting full phone-tapping powers to the NCA and the State police forces.

The joint committee was set up earlier this year after Mr Bowen tried to push through legislation which would have given State police wide-ranging powers to tap phones for most serious crime offences.

The legislation was referred to the committee to avoid a damaging caucus brawl.

All States except Victoria had agreed to accept the extended powers.

NCA fails to secure phone-tap approval

By ALAN FEWSTER

THE WEEKEND AUSTRALIAN,

NOVEMBER 15-16 1986, page 3.

A FEDERAL parliamentary committee has rejected the broad extension of telephone tapping powers to the National Crime Authority (NCA) and State police forces.

The Joint Select Committee on Telephone Interceptions has recommended that only the Australian Federal Police (AFP) be allowed to intercept telephone conversations in cases of suspected murder and kidnapping.

At present, the AFP is legally entitled to tap calls in drug-related offences.

The Australia Security Intelligence Organisation (ASIO) is permitted to tap telephones in security cases.

The committee has recommended that a central interception body be established within the AFP and that its officers be seconded to the body for a strictly limited period, perhaps as little as two years.

The NCA and State police would be obliged to apply to the AFP with a Federal Court warrant, under the recommendations of the committee.

In an inconsistent move, given the Opposition's civil libertarian objections to the proposed Australia Card legislation, the three Opposition members on the committee, Mr Peter McClauran (Victoria), Senator Brian Archer (Tasmania), and Mr Phillip Ruddock (NSW), have prepared a dissenting report, saying that the phone-tapping powers should be extended for virtually all serious crimes.

The Opposition members on the committee have thus essentially backed the Federal Attorney-General, Mr Bowen, who last June suffered the rejection by Cabinet of his plan to extend interception powers for all crimes attracting prison sentences as recommended by former royal commissioner, Mr Justice Stewart.

Mr Bowen's plan had already been rejected by the Caucus Legal and Administrative Committee.

In the light of the most recent findings, it now seems highly unlikely it will proceed.

The committee is understood to have found Mr Bowen's plan unworkable and too broad in its application.

The Opposition members' dissenting report is understood to argue that phone-tapping powers should be extended to both the NCA and the State police forces under strict judicial control.

It is understood that they are concerned that the proposed tapping guidelines would preclude the obtaining of information relating to conspiracy offences and suspected tax-evasion cases.

In this way, the proposed limit of the interception powers would allow police to investigate crimes only after they had been committed, rather than allowing them to be in a position to prevent the commission of crimes.

THE SYDNEY MORNING HERALD, 18 NOVEMBER 1986

Committee recommends wider phone tap powers

By MILTON COCKBURN

CANBERRA: State Police Forces should have access to phone-tapping information, but not the power to tap phones themselves.

This is the finding of a majority of members of the Joint Parliamentary Select Committee on Telecommunications Interception, which is expected to report on Thursday.

The committee is expected to recommend the establishment of a small Telephone Interception Agency within the Australian Federal Police to carry out phone taps for the AFP, the National Crime Authority, State police forces and the NSW Drugs Crimes Commission.

The five Labor MPs on the committee and the Australian Democrats Senator David Vigor are understood to have agreed to these recommendations in the committee's report.

The three Opposition MPs are understood to have recommended that State police forces be given the power to make their own telephone interceptions.

The committee is also expected to agree that the range of suspected crimes for which telephone taps can be authorised should be widened to include murder, kidnapping and the investigation of organised crime where that crime involves the commission of serious offences.

To ensure that the widened phone-tapping powers are not abused, the committee is also expected to propose the appointment of an independent judicial auditor with the power to investigate whether procedures are being adhered to, and that information is not being misused.

The committee is understood to have found dramatic evidence of illegal phone-tapping in the private sector, and is expected to recommend the banning of the manufacture, importation, advertising, sale and possession of listening devices.

The joint select committee was established following the report of the Stewart royal commission into alleged telephone interceptions in May.

Justice Stewart recommended a widening of present Federal legislation governing phone tapping to enable information to be collected on crimes other than drug trafficking.

At present only the Australian Federal Police has the power to tap telephones, on judicial warrant, and only for drug trafficking offences.

The majority's recommendation represents a compromise which may find favour with the Federal Government since it meets the needs of State police while maintaining Federal Police supervision of the actual phone-tapping.

Under their proposal, State police forces and the NCA would still have the responsibility of identifying their targets, deciding on priorities and seeking a Federal Court warrant.

If approved, the proposed Telephone Interception Agency would have the responsibility of undertaking the phone tap and conveying the material to the requesting authority.

The majority is understood to have recommended procedures which would enable such taps to be installed within hours of judicial approval being obtained.

APPENDIX 2

COMMITTEE OF PRIVILEGES

INQUIRY INTO PRINTED REFERENCES TO PROCEEDINGS AND PROSPECTIVE RECOMMENDATIONS OF THE JOINT SELECT COMMITTEE ON TELECOMMUNICATIONS INTERCEPTION

Memorandum by the Clerk of the House of Representatives

This memorandum has been prepared for the use of the House of Representatives Committee of Privileges in connection with its inquiry into the matter of the printed references to the proceedings and prospective recommendations of the Joint Select Committee on Telecommunications Interception in The Sun News-Pictorial and the Brisbane Courier Mail of 17 November 1986, and similar references in other newspapers.

THE REFERENCE

Extract from the proof Votes and Proceedings of the House of Representatives No. 138 of Monday 17 November 1986:

> PRIVILEGE - COMPLAINT OF BREACH: Mr Martin raised, as a matter of privilege, press reports relating to purported contents of the draft report of the Joint Select Committee on Telecommunications Interception which is yet to be presented to the House. Mr Martin produced copies of articles from the Courier-Mail and The Sun News-Pictorial of 17 November 1986.
> Madam Speaker stated that she would examine the matter and advise the House in due course.

Extract from the proof Votes and Proceedings of the House of Representatives No. 139 of Tuesday, 18 November 1986:

> PRIVILEGE - NEWSPAPER REPORTS ON PROCEEDINGS OF JOINT SELECT COMMITTEE ON TELECOMMUNICATIONS INTERCEPTION - REFERENCE TO COMMITTEE OF PRIVILEGES: Madam Speaker referred to the matter of privilege raised yesterday by Mr Martin concerning press reports relating to purported contents of the report of the Joint Select Committee on Telecommunications Interception and stated that she was prepared to accord precedence to a motion in connection with the matter.
>
> Mr Martin then moved - That the matter of the printed references to the proceedings and prospective recommendations of the Joint Select Committee on Telecommunications Interception in The Sun News-Pictorial and The Courier-Mail of 17 November 1986, and similar references in other newspapers, be referred to the Committee of Privileges.
>
> Debate ensued.
>
> Question - put and passed.

The speech made by Mr Martin in raising the matter on 17 November is attachment "A", and Madam Speaker's statement on 18 November and Mr Martin's speech in moving the reference is attachment "B".

In raising the matter, Mr Martin cited in particular reports in The Sun News-Pictorial and the Brisbane Courier Mail of 17 November. Copies of the two articles are attached at "C" and "D" respectively. Mr Martin subsequently mentioned substantially similar articles in the Burnie Advocate, the Hobart Mercury, the Adelaide Advertiser and The West Australian of 17 November (attachments "E" to "H"). Mr Martin also mentioned articles in The Sydney Morning Herald of 18 November and The Weekend Australian of 15-16 November (one edition) - attachments "I" and "J". These latter 2 articles, whilst also purporting to reveal conclusions and recommendations of the committee, contain a number of differences to the other articles.

CONSTITUTIONAL PROVISIONS - GENERAL CHARACTER OF PRIVILEGE AND CONTEMPT

House of Representatives Practice quotes May's definition of parliamentary privilege as:

> "... 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."[1]

It goes on to explain the source of the privilege powers of the Houses of the Commonwealth Parliament:

> "The Commonwealth Parliament derives it privilege powers from section 49 of the Constitution which 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.
>
> In addition, section 50 of the Constitution provides that:
>
> > Each House of the Parliament may make rules and orders with respect to -
> > (i) The mode in which its powers, privileges, and immunities may be exercised and upheld:
> > (ii) The order and conduct of its business and proceedings either separately or jointly with the other House."[2]

Although there have been recommendations, for example, by the Joint Select Committee on Parliamentary Privilege, that it take action under section 49 to provide for its powers, privileges and immunities, the Parliament has not yet done so. Specific

legislation has been passed to deal with particular matters, for example, the Parliamentary Papers Act and the Parliamentary Proceedings Broadcasting Act, although these provisions have not been regarded by the High Court as displacing the operation of section 49, and may be regarded as enactments made under the provisions of section 51 (xxxix.) of the Constitution.[3]

The Parliament is, therefore, at this time, strictly limited to the powers, privileges and immunities of the House of Commons as at 1 January 1901, the date of establishment of the Commonwealth. These are described in detail in May's Parliamentary Practice and in House of Representatives Practice.

BREACH OF PRIVILEGE AND CONTEMPT

The privileges of the Houses, their committees and Members are rights and immunities that are part of the law of the land. An infraction or attempt or threat of infraction of one of these rights or immunities may be described as a breach of privilege.

The Houses also possess the power to take action to protect themselves, their committees and members from actions which, whilst perhaps not breaching any specific right or immunity, obstruct or impede, or threaten to obstruct or impede. A good example is disobedience of an order of a House.

Halsbury's Laws of England states -

> "The power of both Houses to punish for contempt is a general power similar to that possessed by the superior courts of law and is not restricted to the punishment of breaches of their acknowledged privileges ..."[4]

May describes contempt as follows:

> "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 contempt even though there is no precedent of the offence."[5]

The Houses of the Commonwealth Parliament have the powers, privileges and immunities of the House of Commons as at 1901. Amongst these powers is the power to hold various actions or omissions as contempts. This is not to say that a recurrence now, or in the future, of any act or omission which is the same or very similar to acts or omissions held by the House of Commons to be

contempts in the years before 1901 must be determined in the same way. It is the power to punish contempts which is inherited, the application of the power is for the judgment of the House, usually in light of advice from the Committee of Privileges.

PARTICULAR REFERENCES IN RELATION TO MATTER BEFORE THE COMMITTEE

Standing order 340 of the House of Representatives 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.

Standing order 308 of the Senate provides:

> The evidence taken by any Select Committee of the Senate and documents presented to such Committee, which have not been reported to the Senate, shall not, unless authorized by the Senate or the Committee, be disclosed or published by any member of such Committee, or by any other person.

The following references are considered to be of particular relevance to the matter referred to the committee:

May states:

> '... The publication or disclosure of proceedings of committees conducted with closed doors or of draft reports of committees before they have been reported to the House will, however, constitute a breach of privilege or a contempt'.[6]

House of Representatives Practice states:

> '... The publication or disclosure of evidence taken in-camera, or the publication or disclosure of draft reports of a committee before their presentation to the House, constitutes a breach of privilege or contempt'.[7]

Australian Senate Practice states:

> '... The publication of a committee's report before its presentation to the Senate is unquestionably a breach of privilege. Unless authorised by the Senate or the committee, the rule relating to premature publication also prohibits any deliberations of a committee and any proceedings of a committee being referred to or disclosed by Senators or others, or described in the press, before being reported to the Senate.'[8]

By tradition, joint committees operate under Senate standing orders, mirroring the case in the United Kingdom where joint committees operate under the standing orders of the House of Lords.

PRECEDENTS

Precedents exist in both the House of Representatives and the Senate for the unauthorised disclosure or publication of committee material or proceedings being raised as matters of privilege or contempt. In addition, it is understood that some 7 complaints of this type have been referred to the House of Commons Committee of Privileges since 1960. (The House of Commons passed a resolution on this matter in 1837, and the terms of the resolution are reflected in the standing orders of the Senate and the House quoted above).

House of Representatives

In 1973 The Sun newspaper published material relating to the contents of a draft report of the Joint Committee on Prices. The matter was raised in the House and subsequently referred to the Committee of Privileges. The committee found that a breach of privilege had occurred, and that the editor and journalist were guilty of a contempt of the House and recommended that an apology be required to be published. The House agreed with the findings of the committee, but in view of the editor's death no further action was taken insofar as the publication of an apology was concerned. The Speaker communicated with the President of the Press Gallery on the general issue, as was recommended.[9]

During the Daily Telegraph case in 1971 the Committee of Privileges became aware that there had been an apparent disclosure of part of its proceedings. The committee found that a breach of the standing orders and a breach of privilege appeared to have been committed, and deplored the action, but no action was taken and the source of the disclosure was not discovered by the committee.[10]

The Senate

In 1971 a case arose in the Senate when the Sunday Australian and the Sunday Review published articles containing findings and recommendations of the Senate Select Committee on Drug Trafficking and Drug Abuse in Australia.

The matter was referred to the Committee of Privileges which heard evidence from the editors of both newspapers, and the chairman of the committee in question. The Privileges Committee found that the publications constituted a breach of privilege and recommended that the editors be required to attend before the Senate to be reprimanded. The Senate subsequently adopted the committee's report, the editors were required to attend before the Senate, and the Deputy-President administered a reprimand.[11]

In June 1984 The National Times published purported evidence taken by, and documents submitted to, the Senate Select Committee on the Conduct of a Judge. The matter was raised in the Senate by the Chairman of the committee, and subsequently referred to the Committee of Privileges. The committee received evidence from members of the committee, the secretary of the committee, and 2 of the witnesses who had given evidence to the committee. In addition, evidence was received from representatives of The National Times. The committee found that the publication of the purported evidence, documents and proceedings constituted a serious contempt of the Senate, that the editor and publisher should be held responsible and culpable, that a journalist was also culpable and that the unauthorised disclosure, by persons it had not been able to identify, of in-camera proceedings constituted a serious contempt of the Senate. The Senate, on 27 October 1984, adopted the report of the committee and subsequently referred to the Committee of Privileges, as the committee had proposed, the question of penalty. In a subsequent report, the committee recommended that the Senate not proceed to the imposition of a penalty at that time but that if the same or a similar offence were committed by any of the media for which John Fairfax & Sons were responsible for, the Senate should, unless at the time there were extenuating circumstances, impose an appropriate penalty for the present offence. The period proposed was for the remainder of the present session. On 23 May 1985 the chairman moved that the Senate adopt the recommendations of the Committee of Privileges, but debate on the motion was adjourned and had not, as at 19 November 1986, been resumed.[12]

UK House of Commons

One of the better known cases in this area in recent years in the UK occurred in 1975 when The Economist published a substantial amount of information from a draft report to be considered by a select committee. The matter was referred to the Committee of Privileges which found that it had caused damage to Parliament, and that constituted a contempt. The source of the disclosure was not revealed but the committee found that the editor and reporter of The Economist had acted irresponsibly and recommended that they both be excluded from the precincts for 6 months. This recommendation was not, however, adopted by the House.[13]

In 1985 the House of Commons Committee of Privileges conducted a major review of this aspect of contempt, considering the problem in the context of the comprehensive system of committees now existing in the House of Commons. The Committee of Privileges made detailed recommendations for the consideration of such matters, and recommended a new mechanism, which provided, inter alia, that, when such problems arise:

- the committee concerned should seek to discover the source of the leak, with the chairman of the committee writing to all members and staff to ask if they could explain the disclosure;

- the committee concerned should come to a conclusion as to whether the leak was of sufficient seriousness, having regard to various factors, to constitute substantial interference, or the likelihood of such, with the work of the committee, or the functions of the House;

- if the committee concluded that there had been substantial interference or the likelihood of it, it should report to the House and the special report would automatically stand referred to the Committee of Privileges, and

- if the Committee of Privileges found that a serious breach of privilege or contempt had been committed, and confirmed that substantial interference had resulted or was likely and was contrary to the public interest, the committee might recommend that appropriate penalties be imposed on members or other persons.

On 18 March 1986 the House of Commons adopted the proposed mechanism.[14]

The first case to be dealt with under the new procedures involved a report in The Times revealing contents of a draft report on radioactive wastes prepared by the chairman of the Environment Committee. The Environment Committee examined the matter, and reported to the House that the publication had caused serious interference with its work. The report stood referred to the Committee of Privileges which heard evidence from the chairman of the committee, and from representatives of The Times. By a majority of 11 to 1, it agreed that damage was done by the leak and that this constituted substantial interference, and it found that a serious contempt had been committed by both the person who was responsible for the disclosure, who remained unknown, and by the journalist and by the editor. The committee rejected an argument that the publication was in the public interest, observing that the interests of The Times were being equated with the public interest the journalists had been claiming to uphold. The committee recommended the reporter be suspended for 6 months from the parliamentary lobbies and that The Times should be deprived of one of its lobby passes for the same period. The report came before the House for consideration, but the House did not agree with the recommendations, resolving instead:

> 'That this House takes note of the First Report of the Committee of Privilege; believes that it would be proper to punish an honourable Member who disclosed the draft report of a select committee before it had been reported to the House; but considers that it would be wrong to punish a journalist merely for doing his job.'[15]

CONSIDERATION BY THE COMMITTEE

The committee has been charged by the House with the responsibility of advising it in relation to this matter. It would seem that the committee would need to consider the basic principles involved in the matter, whatever precedents may be relevant, and the circumstances and consequences of the particular matters complained of.

In discharging its responsibilities, the committee has substantial powers. In the first place, by virtue of section 49 of the Constitution, the UK Parliamentary Witnesses' Oaths Act 1871 applies. That Act enabled committees of the House of Commons to administer oaths to witnesses and that power is enjoyed by the Committee of Privileges.

Secondly, the committee has power to "send for persons, papers and records". These powers are backed by the authority of the House itself.[16]

One complicating factor exists in respect of the present reference in that it has arisen in connection with a joint committee. Section 49 of the Constition provides that the powers, privileges and immunities of the Senate and the House and all Members and committees 'of each House' shall be such as are declared, and until declared shall be those of the UK House of Commons, and of its members and committees at the establishment of the Commonwealth. However, section 50 of the Constitution goes on to provide that each House may make rules and orders with respect to the mode in which its powers, privileges and immunities may be exercised and upheld, and the order and conduct of its business and proceedings 'either separately or jointly with the other House'.

In Australian Senate Practice some doubts are raised as to the 'privilege powers' of joint committees:

> '... Another objection to joint committees appointed by resolution of the Houses is that their privilege power is uncertain. For example, there is a doubt whether a joint committee may administer an oath to a witness. Furthermore, section 49 of the Constitution, which gives to the Houses and committees of each House the powers, privileges and immunities of the House of Commons does not refer to joint committees. Thus, if a witness before a joint committee refused to answer a question, gave false evidence, or behaved insultingly, the Houses may be ill-equipped to deal with the matter. Perhaps the penal power arising from joint committee proceedings may be exercised by joint resolution of the two Houses, but difficulties could arise when the Houses disagreed on the appropriate penalty.[17]

It may, however, be considered that because section 49 confers on each House the powers, privileges and immunities of the House of Commons as at 1901 and because section 50 provides for the Houses to act jointly, the powers, privileges and immunities possesed by committees of each House must be held to apply also to joint committees.

Some of these questions arose in 1941 in connection with the Joint Committee on War Expenditure. An opinion was provided by the Solicitor-General, and inter alia, it concluded that a joint committee authorised to send for persons, papers and records has the power to summon witnesses, but that it was doubtful whether a joint committee had the power to administer oaths.[18]

It should be noted that on 2 occasions in the past the Committee of Privileges of the House has considered matters involving a joint committee. The reference involving The Sun newspaper in 1973 concerned the Joint Committee on Prices. The second case occurred in 1980 when the House referred to the Committee of Privileges the alleged discrimination against, and intimidation of, a witness because of evidence given by him to a sub-committee of the Joint Committee on Foreign Affairs and Defence. The Committee of Privileges at the time considered the question of whether it was able to deal with the matter involving a joint committee and concluded as follows:

> 'Having given careful consideration to this matter and, in particular, to the provisions of Sections 49 and 50 of the Constitution, the Committee was satisfied that it had jurisdiction and resolved to proceed with the inquiry.'[19]

Even if there are unresolved questions about some of the powers of joint committees themselves, such as the power to administer an oath, ultimately the very nature of the contempt powers enjoyed by the 2 Houses would enable either House to hold that an action seen as impeding or obstructing a joint committee was a contempt of it.

The scope of any inquiry by the committee comprises not only the specific matter, but also the facts relevant to it.[20] The following extracts from May (dealing with committees generally) are relevant to this point:

> "Special reports. Besides the report properly so called relating to the subject-matter referred to the committee, it is sometimes 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 . Such reports are similar in point of form to, and are proceeded upon in the same manner as, the principal reports of the committee."[21]

BASIC PRINCIPLES

The matters complained of by Mr Martin would not, if established, constitute a breach of any specific right or immunity enjoyed by the Houses, their committees or Members. Rather, if established, a question of contempt would arise. The accepted definition of contempt has been quoted above.

Whilst it is accepted that the House may treat a matter involving unauthorised disclosure or publication as a contempt, and whilst there are a number of precedents for matters to be so treated, it is important to consider the reasons for the prohibitions on disclosure and publication.

The report of the House of Commons Committee of Privileges already quoted outlines a number of the competing considerations. It outlines arguments put from the point of view of those involved with committees, and also from the point of view of the media. Accepting that there will often be substantial variations between particular cases, but commenting on those of a more serious nature, the committee argued that the nature of damage fell under 3 heads:

- the damage that could be done to the process of seeking agreement, or as much agreement as possible, in a select committee, noting that Members might sometimes deliberately seek through publicity to influence a committee's decisions. The committee observed:

  > 'A draft Report was not a final conclusion, but rather the first step in a process of reaching conclusions, it might well contain passages designed to open up a discussion, which might be dropped or modified in the light of other opinions. To leak and give publicity to such provisional or preliminary thinking, especially on politically sensitive matters, might well render compromise or concessions harder to make and final agreement harder to obtain.'

- a danger to the committee system as a whole - if Members are shown to be incapable of treating their proceedings as confidential, those who give evidence to committees might become more reluctant to do so if confidential or sensitive material was involved;

- damage by undermining the trust and goodwill among Members of a committee.

The committee noted the general views of the media:

- that the very need for prohibitions in this area was questioned by the media, that the prohibition was unworkable and that it should be abolished;

- that the media considered its function was to publish news and information for the public on all matters of public interest, including the work of select committees;

- the view of the media that if some matters were meant to be confidential then the responsibility for keeping them confidential rested with members of committees and if members leaked information to the media, journalists had no reason to refrain from publication, and

- if a leak was received, it was editors' policy to publish if they thought it desirable to do so on journalistic grounds unless on other grounds it would appear to be damaging to the national interest.[22]

MATTERS FOR DETERMINATION BY THE COMMITTEE

After considering the practice and principles involved in these matters, presumably the committee would seek to form a view as to whether or not any of the articles in question do in fact reveal disclosure or constitute publication of the contents of the draft report or of the private proceedings of the committee. In these matters, if published material is found to be merely speculation, perhaps based on evidence taken in public, then no offence is involved; however if it is found that disclosure and publication of confidential material has occurred, it is completely different.

In order to inform itself on this matter, the appropriate course would be to receive evidence on behalf of the committee, presumably from the chairman. This would help enable the Committee of Privileges to establish whether the reports do contain, or are based on, information from confidential committee meetings or reflect the contents of the draft report.

Clearly, there are two aspects in these matters - that of disclosure and that of publication. In the nature of these matters usually it is a straightforward matter to ascertain responsibility for actual publication when these matters come to notice. It is invariably more difficult to uncover the source of the information, the usual position being that media representatives decline to reveal the source or sources of their information.

It will be noted that in 1984 in the Senate case cited above, and under the procedures followed in the House of Commons, committee members and staff have been questioned. In the 1973 case involving the Joint Committee on Prices, the Committee of Privileges heard evidence from the chairman and 2 staff members of the committee, but not from other members of the committee.

The committee may feel that if Parliament is to be respected in these matters by the wider community, and if it is to avoid the insinuation of selective application of its considerable powers, it must have a determination to ascertain the source of disclosures. Insofar as the taking of evidence from members of the select committee is concerned, some complications do arise. There are no difficulties insofar as Members of the House are concerned if they are willing to attend, or members of the secretariat. If, however the committee wishes to invite oral evidence from Senators, particular arrangements would be necessary.

Standing order 359 provides:

> 'When the attendance of a Member of the Senate, or any officer of the Senate, is desired, to be examined by the House or any committee thereof, a message shall be sent to the Senate to request that the Senate give leave to such Member or officer to attend for examination.'

There have been occasions on which Senators have appeared before House committees of their own volition and without leave of the Senate. In each case the appearance of the Senators was at their own request. A Senator may appear before the Committee of Privileges voluntarily, without the leave of the Senate. However if the appearance is to be as a result of an invitation by the committee the mechanism outlined in standing order 359 should be invoked. If the committee wishes to take that course, the appropriate sequence would be for it to convey its view to the House by means of a special report so that a motion can be moved in the House and a message then sent to the Senate, if the House agrees with the motion. The Senate would then need to grant leave for Senators to appear.

General approach

It is usual in these matters for the committee, as well as making findings and conclusions, to make some recommendations to the House as to what action might be taken. Relevant to this is the general approach to the consideration of matters of privilege and contempt now followed in the House of Commons.

On 6 February 1978 the House of Commons, in a significant decision to do with the general policy to be adopted in dealing with complaints of breach of privilege and contempt, agreed with a recommendation that it -

> "... should follow the general rule that its penal jurisdiction should be exercised (a) in any event as sparingly as possible and (b) only when the House is satisfied that to exercise it 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."[23]

This criterion has been incorporated in the new Commons procedures for the consideration of complaints concerning disclosure and/or publication of committee material.

No decision has been made to adopt such a policy in the Commonwealth Parliament although it was recommended by the Joint Select Committee on Parliamentary Privilege. Although the policy has not been adopted here, the Committee of Privileges, having as it does the responsibility of advising the House in these matters, does have the right to take relevant principles and views into account.

Recommendations from Committees of Privileges of the House, the Senate and the Commons in the past have covered a broad range, including the following:

- 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 has been committed but further action would give added publicity and be inconsistent with the dignity of the House;
- that a contempt of the House has been committed but, in view of the (humble) apology tendered, no further action is recommended;
- that a contempt of the House has been committed but the matter was not worthy of occupying the further time of the House;
- that no further action be taken against the editor provided that, within such time as the House may require, he publishes in a prominent position in his newspaper an apology to the following effect;
- that the company concerned, the advertising agency and the editor of the newspaper in which the advertisement was published are guilty of a (serious) contempt and should be (severely) reprimanded, and
- that a serious contempt has been committed and action should be taken to withdraw the press pass ...

ENDNOTES

1. House of Representatives Practice, Pettifer, J.A. (ed), A.G.P.S., Canberra, 1981, p.640.

2. House of Representatives Practice, p.640.

3. R. v. Richards, ex parte Fitzpatrick and Browne (1955) 92 CLR, 168.

4. Halsbury's Laws of England, 4th edn, vol. 34, para. 1500.

5. Erskine May Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 20th edition, ed Sir C. Gordon, Butterworths 1983, p.143.

6. May, p.154.

7. House of Representatives Practice, p.660.

8. Australian Senate Practice, PP 1 (1975) p.648.

9. PP 217 (1973); VP (1973-74/518).

10. PP 242 (1971).

11. PP 163 (1971), J (1971) p.612.

12. PP 298 (1984), PP 239 (1985), J 1985/317.

13. HC 22 (1975-76), CJ (1975-76) p.64.

14. HC 555 (1984-85).

15. HC 376 (1985-86), article by Mr M. Ryle, The Parliamentarian, July 1986, PP 102-3.

16. Standing order 26.

17. Australian Senate Practice, PP 1 (1975) p.519.

18. Opinion of Solicitor-General, 8 August 1941.

19. PP 158 (1980) p.3.

20. House of Representatives Practice, p.672.

21. May, p.715.

22. HC 555 (1984-85) pp ix-xi.

23. HC 417 (1976-77) pp iii-iv.

ATTACHMENT A

PRIVILEGE

Mr MARTIN (Macarthur)—Madam Speaker, I rise on a matter of privilege. I draw your attention to two newspaper articles which were published this morning. The first, headed 'States Set to Gain Phone Tap Access', was in this morning's Melbourne *Sun*, published by the Herald and Weekly Times Ltd. The second article, headed 'State Police to Get Tap Power', was in the Brisbane *Courier-Mail*, published also by the Herald and Weekly Times.

These articles purport to contain the views of members of the Joint Select Committee on Telecommunications Interception as allegedly expressed in the Committee's forthcoming report to the Parliament. I understand that similar articles may also have appeared in Tasmania, in today's Burnie *Advocate* and the Launceston *Examiner*, and I am checking this further.

Madam Speaker, the Committee is in the final stages of deliberation on its report. It appears to me that the publication of these two articles is evidence, prima facie, of a contempt of the Parliament. I ask you to give consideration as to whether, prima facie, a case of contempt of the Parliament exists.

Madam SPEAKER—Order! As is normal in these matters, I will take the matter on board and report back to the House at the earliest opportunity.

ATTACHMENT B

Tuesday, 18 November 1986

Madam SPEAKER (Hon. Joan Child) took the chair at 2 p.m., and read prayers.

PRIVILEGE

Madam SPEAKER—Order! Yesterday the honourable member for Macarthur (Mr Martin) raised as a matter of privilege reports in the Melbourne *Sun* and the Brisbane *Courier-Mail* of 17 November purporting to reveal recommendations of the forthcoming report of the Joint Select Committee on Telecommunications Interception. The honourable member presented copies of the articles in question and referred to a similar article in the Burnie *Advocate* of the same date. In order for precedence to be accorded to a motion in respect of a complaint, two criteria must be satisfied. Firstly, a matter must be raised at the earliest opportunity and, secondly, the Speaker must be of the opinion that a prima facie case of breach of privilege has been made out. Clearly, this matter has been raised at the earliest opportunity. May's *Parliamentary Practice* states:

> The publication or disclosure of proceedings of committees conducted with closed doors or of draft reports of committees before they have been reported to the House will, however, constitute a breach of privilege or a contempt.

That is from the twentieth edition of May, page 154. *House of Representatives Practice* states:

> . . . the publication or diclosure of evidence taken in camera, or the publication or disclosure of draft reports of a committee before their presentation to the House, constitutes a breach of privilege or contempt.

That is from page 660 of *House of Representatives Practice*. There are a number of precedents in this House and in the House of Commons for the unauthorised publication of the contents of committee reports or proceedings being raised as matters of contempt. I have considered the remarks of the honourable member and examined the articles in question. Whilst there are differences between the articles referred to, there are many similarities. The articles, on their face, appear to reveal the private deliberations of the Committee and the substance of recommendations to be made to the Houses. It is clearly impossible for me to reach any conclusion as to whether in fact the articles do reveal the private deliberations and proposed recommendations of the committee. In the circumstances, however, and on the information before me, I am of the opinion that precedence to a motion in respect of the matter is warranted. I am prepared to accept a motion on the matter.

Mr MARTIN (Macarthur)—I move:

> That the matter of the printed references to the proceedings and prospective recommendations of the Joint Select Committee on Telecommunications Interception in the *Sun News-Pictorial* and the Brisbane *Courier-Mail* of 17 November 1986, and similar references in other newspapers, be referred to the House of Representatives Standing Committee of Privileges.

In moving that motion, I have examined all of the issues associated with this matter. Yesterday, as I indicated in this House, three newspaper articles were brought to my attention. They were in the Melbourne *Sun News-Pictorial*, the Brisbane *Courier-Mail* and the Burnie *Advocate*. Since that time other newspapers that contain similar reports have been drawn to my attention. Those newspapers were the Hobart *Mercury*, the Adelaide *Advertiser* and the *West Australian*, all dated 17 November. In addition, two other articles, also purporting to reveal the substance of the deliberations of the Joint Select Committee on Telecommunications Interception have been drawn to my attention. Those articles appeared in the *Sydney Morning Herald* dated 18 November and the *Weekend Australian* of 15-16 November, in one edition—I think in Melbourne.

I am concerned and disappointed that, although the Committee was able to deliberate for a fairly long period and in accordance with the Standing Orders, right towards the death, as we were about to make certain recommendations and hand down a report, the whole of the deliberations fell apart. I think that this really does reflect poorly on the question of privilege and what that therefore attracts to it within the House. A very close working relationship had been developed among all Committee members. A major issue of concern—that is of telecommunication interception—in the wider community was under very close examination. Therefore, I am most concerned that apparent reporting has taken place which talks about deliberations of the Committee—deliberations which had not been concluded. It also mentioned recommendations or dissents from recommendations which had not, in fact, been made.

I believe, therefore, that the information provided to the particular journalist in question and subsequently in some of the other articles is misleading and in fact goes a long way to misrepresenting the views of those members who have worked so hard and so conscientiously on the Committee in question. I hope that members of the Privileges Committee take the matter all the way to try to nail the particular individual who has misrepresented the views of the major-

Attachment B Cont.

ity of the Committee members—in fact, all the views of the Committee members—and has purported to represent the views as a Committee as a whole. I hope that this reference to the Privileges Committee leads to finding the person responsible and some positive action being taken.

Mr SINCLAIR (New England—Leader of the National Party)—Madam Speaker, I want to raise just one matter with respect to this matter of privilege. Your report pertains to the premature release to the Parliament of the contents of a committee report. The honourable member for Macarthur (Mr Martin) has just responded to this House in some detail. Obviously he might have some reasonable expectation that the matter might be one which is referred to the House of Representatives Standing Committee on Privileges. I should say on behalf of the members on this side of the House that we would be most concerned if the advice to the honourable member of your report, Madam Speaker, were different from that that we received. My report was only that at 2 p.m. you would be replying to the privilege matter. I hope that Government members and Opposition members alike, if there is to be a report given by you, be it favourable or unfavourable, should receive the same sort of advice. I hope that the honourable member did not get premature advice that the matter was to be referred to the Privileges Committee. I accept that it was not. The honourable member is shaking his head, and I accept that.

Madam SPEAKER—One would expect that the member who had raised the matter of privilege would be prepared to speak to it in the event that he did get the response that he got.

Question resolved in the affirmative.

PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

PARLIAMENT HOUSE
CANBERRA ACT 2600
TEL 721211

APPENDIX 3

26 November 1986

Mr B.C. Wright
Secretary
House of Representatives
Standing Committee on Privileges
Parliament House
CANBERRA ACT 2600

Dear Mr Wright,

Thank you for your invitation to provide information to the Committee of Privileges concerning the matter of privilege raised by me in the House on 17 November 1986 and Madam Speaker's subsequent conclusion on 18 November 1986 that a prima facie case of breach of privilege had been made out.

In this letter I intend to outline the background to the issue I raised in the House namely, newspaper articles published which contained the purported views of Members of the Joint Select Committee on Telecommunications Interception, as allegedly expressed in the Committee's report which had not then been presented to the Parliament. I am ready to present oral evidence in support of the matters raised in this letter.

In the Melbourne Sun and Brisbane Courier Mail of 17 November 1986, copies attached, similar articles appeared, with which the name of Gervase Greene was associated. In the article in the Sun it was asserted that the three Coalition members of the Committee "recommended allowing phone taps for a wide range of criminal offences, applying the criteria used to determine 'relevant offences' for the NCA to investigate. Used as a general definition of organised crime, this defines offences relevant to phone tapping as involving sophisticated planning, drugs or currency dealings, corruption and generally carrying a penalty of at least three years' jail."

On 13 November 1986 at a Committee meeting I presented a Chairman's Draft Report dated 13 November 1986. In this draft report, at paragraph 4.39(e), a conclusion was expressed that 'until Parliament otherwise provides serious offences defined in the Act should be restricted to only:

(i) murder,
(ii) kidnapping, and
(iii) organised crime involving evidence of murder, kidnapping or serious drug traffiking offences.'

This draft conclusion provoked considerable discussion in the Committee and much disagreement was expressed. Consideration of this conclusion was not completed when the Committee adjourned. I asked Members to provide the Secretariat that day with any suggestions as to a definition of 'serious offences'. The only member to respond was Senator Vigor, and his suggestion, copy attached, was adapted from a definition in the Act establishing the National Crime Authority.

The Committee met again at 8.00am on 14 November 1986. Among other things, consideration of paragraph 4.39 resumed. Senator Vigor's suggestion was distributed to Members and considerable discussion ensued. Again, no agreement was reached. Further consideration was deferred until the next meeting. The Committee did not meet again until 6.30pm on Monday 17 November 1986, that is following the reports of the Committee's deliberations appearing in the subject newspapers. It is clear to me that the Committee's deliberations on this issue had been revealed to the media by a Member of the Committee or someone associated closely with the Committee in the intervening period. At the Committee meetings on 13 and 14 November 1986, all Committee members were present except the Hon. P. Duncan, MP. Staff members present were Mr P.N. Gibson, Ms D. Miles and Mrs Y. Huddleston.

The subject articles also asserted that the Committee had split along party lines. At the meetings on 13 and 14 November Members of the Opposition on several occasions foreshadowed their intention to dissent from some conclusions adopted by the majority of the Committee.

I stress the point that these aspects and others in the articles indicate to me an oral briefing given to a reporter by someone who had participated in the Committee's deliberations, rather than a draft report being in the possession of a reporter.

Both articles refer to a majority view in the Committee that a National Interception Agency should be established to co-ordinate interceptions, but that it would still require judicial approval. This is a reasonable representation, in simple terms, of one of the Committee's eventual majority recommendations.

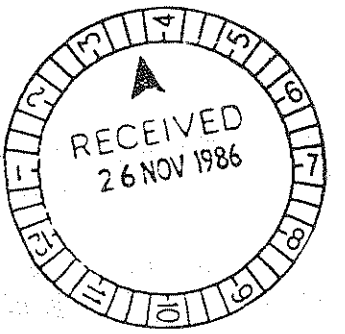
I should like to comment on the security arrangements involved with the handling and preparation of the Committee's report. At the start of the inquiry, I wrote to all members and stressed the need for confidentiality in view of the sensitive nature of the report, reminding them of the requirements of Senate Standing Order 308. In a letter by the Secretary which covered distribution of the first Chairman's draft this was repeated. Copies of these letters are also attached.

Twelve copies only of draft reports were prepared, one to each of the nine members, one held by the Committee Secretary, one by the Committee Research Officer and a spare copy held by the Committee Secretary. All copies were hand delivered to Members by the Committee staff. I am satisfied at the level of security which attended the report's preparation and delivery to Members.

I would conclude by offering my view that reporters who write articles such as these are fulfilling their role. My regret and disappointment was that it appears that somebody revealed the Committee's closed deliberations to the media. I do not believe that publication of the resultant revelations would in any way intimidate a Member of the Committee, but felt that the apparent revelation of confidential deliberations warranted my drawing it to the attention of the House.

Yours sincerely

(S.P. Martin, MP)



PARLIAMENT OF AUSTRALIA

JOINT SELECT COMMITTEE ON TELECOMMUNICATIONS INTERCEPTION
PARLIAMENT HOUSE, CANBERRA A.C.T. 2600

Page 2 The Sun, Monday, November 17 1986

States set to gain phone-tap access

CANBERRA — State police are certain to gain access to phone tapping after the report of the joint parliamentary committee investigating the extension of telephone-interception powers.

The report, likely to be tabled in Parliament next week, has come out strongly in favor of extending phone-tapping powers to the states — though the state police would not be allowed to apply the taps themselves.

At present the Australian Federal Police is the only body allowed to seek a federal judicial warrant for a phone tap, and even then only for suspected drug-related crime.

The proposal is set to provoke a stormy debate within the community and the Labor Party.

The joint committee has split along party lines.

The three Coalition members recommend offering the states the power to apply their own taps where there are reasonable grounds of suspicion of serious crime.

EXCLUSIVE

By GERVASE GREENE

The majority of the committee — Labor backbenchers Mr John Black (Qld), Mr Michael Lee (NSW), Mr Peter Duncan (SA) and chairman Mr Stephen Martin (NSW) — also support state access to phone taps, but only through a national agency which would handle and coordinate all phone-tap applications.

The National Crime Authority also will gain access to phone interceptions, but also only through the national agency.

It is believed the majority report recommendations will be mirrored in Government legislation to be introduced by the Attorney-General Mr Bowen, on February 27.

The majority recommend allowing the states access to phone taps, but only through a national monitoring agency which would still need to secure judicial approval.

If a state's application succeeded, its government would meet the cost of applying and maintaining the tap, which would be done through Telecom technicians.

Phone taps would be permitted for suspected drug offences and a limited number of other serious crimes, including murder and kidnapping.

The Premier, Mr Cain, said he would look at the report in due course.

"It will be examined like every other report of consequence is examined," he said.

The Victoria Police Association acting secretary, Mr Ken Serong, said last night he could not comment on specific recommendations made by the joint committee.

"However, I will say that it is established policy of the association that phone intercepts should be allowed to our members where major crimes are suspected," he said.

The three Coalition members on the committee — Mr Phil Ruddock (Liberal, NSW), Senator Brian Archer (Liberal, Tasmania) and Mr Peter McGauran (National, Victoria) — recommended granting full phone-tapping powers to the NCA and state police forces.

They also recommended allowing phone taps for a wide range of criminal offences applying the criteria used to determine "relevant offences" for the NCA to investigate.

Used as a general definition of organised crime, this defines offences relevant to phone tapping as involving sophisticated planning, drugs or currency dealings, corruption and generally carrying a penalty of at least three years' jail.

Mr Duncan, the former Left-wing SA Attorney-General, has previously strongly opposed the extension of phone-tapping powers to state police.

His support for a limited extension is seen as a significant indication of cross-party backing for some increase in anti-crime measures.

The joint committee was set up earlier this year after Mr Bowen tried to push through legislation which would have given state police wide-ranging powers to tap phones for most serious crimes.

All states except Victoria agreed to accept the extended powers, but several withdrew support after a barrage of criticism.

PARLIAMENT OF AUSTRALIA

JOINT SELECT COMMITTEE ON TELECOMMUNICATIONS INTERCEPTION
PARLIAMENT HOUSE, CANBERRA A.C.T. 2600

COURIER-MAIL 17/11/86

State police to get tap power

By GERVASE GREENE and STEVE ROUS

STATE police will be given extended phone-tap powers in legislation to go before Federal Parliament early next year.

This follows a majority recommendation by a joint parliamentary committee into phone-taps, whose report is likely to be tabled next week.

The Queensland Police Minister, Mr Gunn, said last night he was pleased State police phone taps had moved a step closer.

But he said the power to tap phone conversations to gather evidence in serious offences would be useless if it involved too much red tape.

At present, the Australian Federal Police is the only force allowed to seek a federal judicial warrant for a phone tap — and then only for suspected drug-related crime.

The changes are likely to provoke a stormy debate within the community and the Labor Party over the possible threat to civil liberties.

The joint committee split along party lines, with the three coalition members recommending the States be offered the power to apply their own taps where there are reasonable grounds of suspicion of any serious crime.

The majority of the committee — Labor backbenchers Mr Black (Qld), Mr Lee (NSW), Mr Duncan (SA) and the chairman, Mr Martin (NSW) — supported State phone taps but only through a national agency which will handle and co-ordinate all phone-tap applications.

The national agency will still need to secure judicial approval.

The National Crime Authority will also gain access to phone interceptions only through the agency.

The majority report recommendations are likely to be mirrored in legislation to be introduced by the Attorney-General, Mr Bowen, on February 27.

Mr Gunn said the Queensland Government supported police phone taps in investigations involving things like major drug offences "as long as there is a proper procedure to be followed".

"But what I'm afraid of is that the Federal Government will make the procedures so complicated that it will be of little, if any, benefit," he said.

"What we want to do is help police catch the criminals and not make police work a lot more difficult."

Mr Gunn said there should be a requirement in the legislation that police obtain judicial approval.

"But it has to be very speedy approval, not something that drags on for days or weeks," Mr Gunn said.

"Time is a serious problem in police investigations and this telephone tapping program will be absolutely useless to them if they cannot get quick approval.

"You cannot afford to get bogged down with red tape when you're investigating serious crimes."

The committee majority recommends that if a State's application succeeds, the Government would meet the cost of applying and maintaining the tap, which would be done by Telecom technicians.

Phone taps will be applicable for suspected drug offences, as is presently the case, as well as a limited number of other serious crimes.

The three coalition members on the committee — Mr Ruddock (Lib., NSW) Senator Archer (Lib., Tas) and Mr McGauran (NP, Vic.) — recommended full phone-tap powers be granted to the authority and the State police forces.

The joint committee was set up earlier this year after Mr Bowen attempted to push through legislation which would have given State police wide-ranging powers.

Serious Offences

Senator Vigor's view: (adapted from NCA Act)

A 'serious offence', for which interception powers should be extended is an offence:

a. that involves 2 or more offenders and substantial planning and organization;

b. that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques;

c. that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind, and

d. that involves kidnapping, murder, fraud, tax evasion, currency violations, illegal drug dealings, obtaining financial benefit by vice engaged in by others, extortion, violence, bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory, company violations, harbouring of criminals, armament dealings or that involves matters of the same general nature as one or more of the foregoing, or that is of any other prescribed kind.

PARLIAMENT OF AUSTRALIA

JOINT SELECT COMMITTEE ON TELECOMMUNICATIONS INTERCEPTION
PARLIAMENT HOUSE, CANBERRA A.C.T. 2600

14 August 1986

Mr M J Lee MP
Suite 1 Wyong Plaza Village
Alison Road
WYONG NSW 2259

Dear Mr Lee,

As the Committee is about to begin its inquiry, I feel it is appropriate that I should remind you of the confidentiality provisions of the Senate Standing Orders relating to evidence taken by, and documents presented to, the Committee.

Evidence, documents presented and papers prepared by the Secretariat are confidential and therefore fall within the ambit of Senate Standing Order 308 which states that:

> "The evidence taken by any Select Committee of the Senate and documents presented to such Committee, which have not been reported to the Senate, shall not, unless authorized by the Senate or the Committee, be disclosed or published by any member of such Committee, or by any other person."

I expect that the Committee will authorise publication of most, if not all, of the submissions received during the inquiry, but I would ask that you observe the confidentiality provisions until this is done.

Obviously, your staff will also have access to the material provided to you as a member of the Committee. May I suggest that you remind them of the need to protect information supplied to the Committee. Your staff are, of course, most welcome to attend public hearings of the Committee but are precluded from attending deliberative meetings by Senate Standing Order 305.

I should be grateful for your assistance in these matters.

Yours sincerely,

(S.P. Martin, M.P.)
Chairman

PARLIAMENT OF AUSTRALIA

JOINT SELECT COMMITTEE ON TELECOMMUNICATIONS INTERCEPTION
PARLIAMENT HOUSE, CANBERRA A.C.T. 2600

(062)727781

3 November 1986

ALL MEMBERS

CHAIRMAN'S DRAFT REPORT

1. Enclosed are the following elements of the Chairman's draft report dated 3 November 1986:

   a. Introductory papers;

   b. Chapter 1;

   c. Chapter 3;

   d. Chapter 5

2. The Committee is to meet to consider the report from 10.00am to 5.00pm on Thursday 6 November 1986 and, if necessary, from 9.00am to 4.00pm on Friday 7 November 1986, in House of Representatives Committee Room 1.

3. Chapters 2, 4 and 6 are being revised. They will be distributed to you at the start of the meeting on 6 November 1986.

4. I would draw your attention to the need to protect the confidential nature of this document, which is covered by Senate Standing Order 308:

   '308. The evidence taken by any Select Committee of the Senate and documents presented to such Committee, which have not been reported to the Senate, shall not, unless authorized by the Senate or the Committee, be disclosed or published by any member of such Committee, or by any other person.'

(P.N. Gibson)
Secretary

DISSENTING REPORT OF MR P CLEELAND MP

To punish for contempt is at its best the exercise of an uncertain and arbitrary power. The origins of the privileges of Parliament are clouded in history and were developed at a time when the fledgling House of Commons, in a struggle to establish its independence from the Monarchy and the Royal Courts, was anxious to achieve at least equal status. This was long before the emergence of the notion of distinct legislative and judicial functions or of any theory that such functions should be performed by different bodies.

Conscious of the issue of its status the House of Commons laid claim to three things:

a) the immunity, or privilege, of its deliberations and proceedings from the jurisdiction of the Royal Courts and particularly the immunity of its members from the orders and judgements of the Royal Courts:

b) the powers to compel the attendance of persons and the giving of evidence and to punish contempts of itself; and

c) the exclusive right to knowledge of its own branch of the law.

With the creation of the Australian Parliament in 1901 it was deemed necessary to give the fledgling Parliament the same power and rights as that developed by the House of Commons. Hence, Section 49 of the Constitution gave the Australian Parliament:

> "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."

There are questions which can properly be asked as to the nature of the powers effectively granted to the Australian Parliament by Section 49. Mr Harry Evans, then the Clerk Assistant in the Senate Procedure Office in a paper delivered to a workshop on Parliamentary Privilege in Melbourne August 1984 concluded:

> "In reality, the British Houses and the Australian Houses by virtue of Section 49 of the Constitution, possess only one major immunity, the immunity of their debates and proceedings from any inquiry or any action civil or criminal, and only one major power, the power to punish persons for contempts. The immunity allows a legislature the freedom to debate openly and enquire into all matters and to regulate its own proceedings. The real rationale of the power to deal with contempts is that enables the enforcement of the power to conduct enquiries, that is, to summon witnesses and to compel evidence. That this is historically the most important use of the contempt power is illustrated by the so-called privilege resolutions which, as a matter of tradition, are passed by the House of Commons at the beginning of each session, and which deal with the tampering with witnesses and the giving of false evidence."

If Mr Evans is correct then the only worthwhile power, which should now be considered serious, of the House of Representatives in the area of contempt is the power to summon witnesses and to compel evidence. Be that as it may the Parliament has exercised historically the contempt power in a wider sense. Sally Walker, Lecturer in Law, University of Melbourne, in a paper prepared for the Adelaide Law Review Association in 1984 lists in detail acts or omissions found by the Australian Parliament and the Parliaments of the States to constitute contempts. It is clear that the House of Representatives and the Senate have established the precedent that the premature communication of a committee's proceedings or evidence may constitute contempt.

In 1984 the Joint Select Committee on Parliamentary Privilege presented its final report to the House of Representatives. Recommendation 29 supported the proposition that the premature publication of a committee's proceedings would constitute contempt. There is however no precedent which requires that acts or omissions previously determined as contempt should automatically be applied to contemporary society. As society is not of itself static neither should the Parliament be. At page 29 of the Final Report of the Joint Select Committee on Parliamentary Privilege is reported a question by the Chairman of the 1967 Commons Committee to the Clerk of the House of Commons.

> "I ought to ask you this. There is this practical difference, that if a matter is judged to be a breach of privilege it must fall within one of the already existing cases of breach of privilege. In the case of contempt, however, the House has got a complete discretion to decide without legislation what is or is not contempt of the House?
>
> Answer: Yes"

In other words contempt is what the Parliament of the day, without reference to precedent, determines it to be. This presents difficulties for any Member of Parliament, and indeed for any citizen of Australia, in determining by examination of historical precedents the breadth and depth of what is or what is not to be contempt.

There is no certainty in the determination of what is contempt. New values may emerge, challenging the existing order or clamouring for recognition. Other legal orders exist, based upon different assumptions and yet securing the allegiance of men. In all such cases the student of law is made painfully aware of the limits of his or her "certainty". There must be an admission that the ultimate ground of the validity of law can lie only in the values which it embodies.

Use of such an undefined power of contempt is unquestionably a limitation on that freedom of expression which is essential to the achievement and maintenance of a democratic society. The extent to which the limitation is warranted by the need to maintain the integrity of the Parliament is a question of great public importance.

As the contempt powers of the Parliament and of Superior Courts were born in the same period and for the same purpose it is of interest to compare decisions of Courts in handling contempt of court matters. In Gallagher v Durack 152 CLR p.238 the late Mr Justice Murphy said:

> "The law of criminal contempt in scandalising the courts is so vague and general that it is an oppressive limitation on free speech. No free society should accept such a censorship. The absence of a constitutional guarantee does not mean that Australia should accept judicial inroads upon freedom of speech which are not found necessary or desirable in other countries. At stake is not merely the freedom of one person; it is the freedom of everyone to comment rightly or wrongly on the decisions of the courts in a way that does not constitute a clear and present danger to the administration of justice.

In Bridges v California 1941, 314 US 252 the United States Supreme Court stated:

> "The substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."

The minority, in addressing the history of the contempt powers said,

> "as in the exercise of all power it was abused. Some English judges extended their authority for checking interferences with judicial business actually in hand, to 'lay by the heel' those responsible for 'scandalising the court', that is, bringing it into general disrepute. Such foolishness has long since been disavowed in England and has never found lodgement here."

If one exorcises the word court and replaces it with the word Parliament it is clear that the same principles should be applied.

In Gallagher's case and in Victoria v BLF (1981-2) 152 CLR 25 at p.99 the High Court held that to constitute a contempt the Acts charged must have a real and definite tendency as a matter of practical reality to interfere with the functions of the Court.

It is my view that the House of Representatives should not find that a contempt has been committed unless it is satisfied beyond reasonable doubt that the publications complained of caused or were likely to cause a substantial interference with the functions of the Committee.

This approach is consistent with the well-established proposition that the Parliament should use its contempt powers only when it is essential to provide necessary protection for the House or for one of its Committees.

(May E., Parliamentary Practice, 20th Edition, paragraph 143, Report of Select Committee on Parliamentary Privilege H.C. Paper, para. 124, Joint Select Committee on Parliamentary Privilege, June 1984, para. 6.13).

On the evidence presented to the Committee I am not satisfied that the publications complained of caused or were likely to cause, a substantial interference with the functions of the Joint Select Committee on Telecommunications Interceptions. Indeed, the evidence of the Chairman of the Committee, Mr S. Martin, MHR, is to the contrary.

For the reasons outlined I dissent from the majority report of the Committee.

P.R. CLEELAND
Member for McEwen

DISSENTING REPORT OF THE HON MICHAEL HODGMAN QC MP

1. I dissent from Recommendation 2 of Paragraph 33 of the Report. I am of the view that the Committee of Privileges should have proceeded to dispose of the matter, and that it was unnecessary for the Committee to 'seek the guidance of the House as to its attitude to penalties'. The House saw fit to refer the matter of complaint to this Committee; we have conducted a detailed and lengthy Inquiry; we have made all necessary findings of fact, and, for my part, I find it demeaning that the Committee should want to go back to the House seeking some sort of a lead on the question of penalty. I would have proceeded to recall the three persons in question to show cause why they should not be dealt with, and to be given the opportunity to be heard on their own behalf, or through Counsel, on the question of penalty.

2. I strongly dissent from Paragraph 35 of the Report. The three witnesses who refused to provide certain crucial information requested by the Committee were all well aware of the seriousness and gravity of their actions. They had the benefit of advice from two of the most eminent Counsel in Australia, and having heard the position carefully and fairly expressed with clarity and precision by the Chairman of the Committee - they deliberately chose to obstruct the Committee in its Inquiry. I am firmly of the view that the Committee, having witnessed these most serious contempts during the actual Inquiry, should not now decline to make recommendations to the House on the question of penalty. To do so would be weak and inexcusable. The contempts were deliberate and occurred - in the face of the Committee. As with a contempt of Court, the matter could have been dealt with instanter. Alternatively, the Committee could have taken the action of advising those concerned that they would, at a time and place to be fixed, be called upon to show cause why they should not be committed for contempt.

Sadly, the Committee had no alternative - in the proper performance of its duty - but to call upon the three witnesses to show cause, and to be heard on their own behalf, or through Counsel, on the vital question of penalty.

In my judgment, to now remit this matter back to the House (even with the recommendation that the House refer the matter back to the Committee for the consideration of an appropriate penalty) is an abdication of our fundamental responsibility. I do not relish having to adjudicate as to the appropriate penalty to be applied in the case of each of the three persons concerned, but if I am not prepared to perform my duty, however painful that might be, I should not remain a Member of the Committee - let alone hold the office of Deputy Chairman of the Committee. I have served on this Committee from 1976 to 1980 and from 1983 to the present date, a total of over eight years. In addition to my service in this Parliament I served for three years on the Privileges Committee of the Legislative Council in the Parliament of Tasmania. I am not prepared to be party to a recommendation which passes the responsibility back to the House, with at least the possibility that the House - with its great pressure of business - might fail to act. It would be a monstrous injustice if this matter were held over to the Budget session. It would be grossly unfair to the three persons concerned, and would warrant the condemnation of all right thinking people on the fundamental premise that 'Justice delayed - is justice denied'. From the point of view of the Committee, and its standing, it would be a damning indictment of us. The Committee would be demeaned.

The position is all the more difficult, bearing in mind the comparatively small range of penalties available. (I take the view that the Parliamentary Privileges Bill, which has just passed the Parliament, can not apply in this case).

The Committee can recommend imprisonment - but has no power to impose a fine. The Committee can recommend the withdrawal of the Parliamentary Press Gallery passes of the three persons concerned for whatever period of time is considered appropriate. The Committee can recommend that the persons concerned be reprimanded, or that the House, in order to maintain its dignity, take no further action.

For my part, all the aforementioned penalties are open at this point of time. I wish to hear what the three persons concerned have to say on their own behalf - either personally or through Counsel. As I am not prepared, at this stage, to exclude any of the penalty options - including imprisonment - I give no indication whatsoever as to what my ultimate conclusions may be. That will depend, to a large extent, on what is put on behalf of the three persons concerned when they are summonsed back before the Committee and the attitude they display to the Committee at their next appearance.

For the above reasons I would have proceeded to dispose of the matter in accordance with the principles of Natural Justice, and after giving the three persons concerned the fullest opportunity to put everything they wished before the Committee. I do not need, nor would I seek to rely upon, a recommendation from the House referring the matter of penalty back to the Committee. The House has appointed this Committee to act on its behalf. The House gave us a job to do - and we should proceed to do it. Our proper course of action was to fully complete the function entrusted to us, and to recommend to the House the appropriate penalties to be imposed - however painful and unpleasant that might have been. I express my profound disappointment that the majority of the Committee has not seen the enormity of the consequences of the action it has proposed. It is almost as if the majority of

the Committee is seeking the reassurance of the House before taking the final step of performing its duty, however distressing, of recommending the penalty to be imposed on each of the three persons concerned. Reassurance from the House was neither necessary - nor desirable. We should have had the courage to make the appropriate recommendations on penalty, and to be judged, in turn, by our peers - and the people of Australia. To the extent that we have failed to bring this matter to finality, and failed to articulate the penalties to be imposed on the three offenders, I believe we have failed the House, and let down the Parliament.

HON. MICHAEL HODGMAN QC MP
Deputy Chairman

6 May, 1987

DISSENTING REPORT OF MR R.E. TICKNER, MP

I dissent from the report of the committee. I believe it is founded on a misunderstanding of the role of the committee when considering an alleged breach of privilege or contempt.

I acknowledge as accurate the often quoted summary of section 49 of the Australian Constitution to the effect that Parliament has been strictly limited to the powers, privileges and immunities of the House of Commons as at 1 January 1901, the date of establishment of the Commonwealth (see page 3 of the memorandum from the Clerk of the House - Appendix 2 of the majority report, although I note that since the inquiry was completed legislation has been passed in this area - and see below).

However, 'this is not to say that a recurrence now, or in the future, of any act or omission which is the same or very similar to acts or omissions held by the House of Commons to be contempts in the years before 1901 must be determined in the same way. It is the power to punish contempts which is inherited, the application of the power is for the judgement of the House, usually in light of advice from the Committee of Privileges.' (See memorandum from the Clerk of the House - Appendix 2 to report of main committee, emphasis added).

I believe that in deciding the application of the law of privilege and contempt to the present case I should have regard to a number of matters:

Firstly, the principles of natural justice do not operate before the Privileges Committee and despite the passage through the Parliament of the Parliamentary Privileges Bill consequent upon the recommendations of the Joint Select Committee on Parliamentary Privilege, Parliament is still in effect the prosecutor, judge and jury in matters of privilege.

I note with approval that for the first time in the history of the House counsel were able to tender limited advice to a witness before the Committee of Privileges of the House. I note also with approval that for the first time since Federation the committee has met in public.

I do, however, consider these minor improvements to be totally inadequate in protecting the rights of witnesses and accused parties in privilege matters.

I note that although the committee resolved to exclude hearsay evidence, this area of law is difficult to apply in practice and there were in my opinion a number of occasions when questioning ventured into the realms of hearsay and had the effect of asking irrelevant questions, or questions of dubious relevance, about the private lives of witnesses before the committee.

I refer to the Clerk's memorandum: it is my view that in deciding the application of the law of privilege in the area of publication of a leaked committee report regard ought to be had to the practice of the United Kingdom House of Commons. While there is no automatic application of Commons practice, in my view, we can gain some very useful insights from the House of Commons. The United Kingdom House of Commons Committee of Privileges in 1985 made detailed recommendations for the consideration of such matters and recommended a new mechanism which provided, inter alia, that when such problems arise -

> '. the committee concerned should come to a conclusion as to whether the leak was of sufficient seriousness, having regard to various factors, to constitute substantial interference, or the likelihood of such, with the work of the committee, or the functions of the House;
>
> . if the committee concluded that there had been substantial interference or the likelihood of it, it should report to the House and the special report would automatically stand referred to the Committee of Privileges, and
>
> . if the Committee of Privileges found that a serious breach of privilege or contempt had been committed, and confirmed that substantial interference had resulted or was likely and was contrary to the public interest, the committee might recommend that appropriate penalties be imposed on members or other persons.' (See Clerk's memorandum).

On 18 March 1986 the House of Commons adopted the proposed mechanism.

The first case to be dealt with under the new procedures involved a report in The Times revealing contents of a draft report on radioactive wastes prepared by the Chairman of the Environment Committee.

The Environment Committee examined the matter, and reported to the House that the publication had caused serious interference with its work. The report stood referred to the Committee of Privileges which heard evidence from the Chairman of the committee, and from representatives of The Times. By a majority of 11 to 1, it agreed that damage was done by the leak and that this constituted substantial interference, and it found that a serious contempt had been committed by both the person who was responsible for the disclosure, who remained unknown, and by the journalist and by the editor.

The committee rejected an argument that the publication was in the public interest, observing that the interests of The Times were being equated with the public interest the journalists had been claiming to uphold. The committee recommended the reporter be suspended for 6 months from the parliamentary lobbies and that

The Times should be deprived of one of its lobby passes for the same period. The report came before the House for consideration, but the House did not agree with the recommendations, resolving instead:

> ' That this House takes note of the First Report of the Committee of Privileges; believes that it would be proper to punish an honourable Member who disclosed the draft report of a select committee before it had been reported to the House; but considers that it would be wrong to punish a journalist merely for doing his job.'

(See Clerk's memorandum).

I adopt for present purposes the views of the House of Commons and the mechanism adopted by the United Kingdom House of Commons Privileges Committee and subsequently by the Commons itself.

I note also that the Commons mechanism concerning committee material follows in part from a 1977 inquiry of its Committee of Privileges and the subsequent resolution of the Commons of 6 February 1978, agreeing with the recommendations of the inquiry to the effect that -

> 'the House should follow the general rule that its penal jurisdiction should be exercised (a) in any event as sparingly as possible and (b) only when the House is satisfied that to exercise it 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.'

It is clear to me that on the application of the law of privilege according to current circumstances the whole case in the matter before the committee simply has NO foundation and the basic prerequisites of breach of privilege or contempt have not been made out.

Mr Martin said in his letter dated 26 November (see Appendix 3 of main report) and in evidence before the committee that he did not believe that 'publication of the resultant revelations would in any way intimidate a member of the committee' or in any way impede the committee's work.

Thus as Mr Martin has advised that the matter did not obstruct or impede his committee, this case would fail the test now applied in the United Kingdom and would not even go to the Committee of Privileges.

Thus it follows that all attempts to insist that journalists disclose their sources were in my view quite unwarranted and had effective legal representation been permitted this fact would I believe have been pointed out to the committee.

It follows from all this that I do not find that the various acts of publication revealing the confidential deliberations constituted contempts by Messrs G. Greene, A. Fewster and M. Cockburn. To conclude otherwise as the committee has done without affording to the journalists concerned the legal representation which would be taken for granted in a court of law is in my respectful view reprehensible.

It is in relation to disclosure to these persons of the contents of the report and the subsequent denial of this leak (under oath or affirmation) to the committee that I find the greatest cause for concern. Regrettably the source of this leak or the name of the person or persons who lied to or misled the committee has not been ascertained.

I note that Mr Fewster gave evidence on 5 March 1987 that 'it is quite clear that I did not get any information from the staff of the committee, except that I am not going to say whether I did from Mr Gibson or not' (transcript p.278).

I adopt the views of the majority report on the evidence of Mr Gibson and it follows from this that a cloud has been placed over the heads of the members of the select committee. It will be obvious to all that any member responsible for the leak has thereby and by viture of their subsequent compounded deceit inflicted damage on the institution of Parliament and the reputations of their fellow parliamentarians. It is this person or persons who is or are at fault in this matter and not journalists who have in my view given truthful evidence on oath, and conducted themselves honestly and with integrity in accordance with the professional rules governing their calling.

I note the following cases of journalists refusing to reveal their sources and action taken as a result:

<u>The Daily Telegraph Case (1971):</u>

Mr David McNicoll refused to name a source (there had been a leak from the Committee of Privileges itself). The report only records -

> 'The committee takes a serious view also of the repeated refusal of Mr McNicoll to state the source of the reports received by his organisation'.

The Sun Case (1973):

Mr N. O'Reilly had written a report giving details of a draft report of the Prices Committee. The Committee of Privileges report records only that Mr O'Reilly -

> '... informed the committee that a copy of the draft report had been shown to him on the morning of ... but declined to name the person who had made the report available'.

No action was recommended on Mr O'Reilly's refusal.

The National Times Case (1984):

The Senate Committee's report records inter alia merely:

> 'The Committee asked whether the Fairfax witnesses would reveal their sources of information ... Neither Mr Toohey nor Ms Bacon would answer any questions in relation to sources ...'.

I am therefore reinforced in the view that in my respectful conclusion the committee is at odds not only with the House of Commons but also with the practice of the Australian Parliament in such cases.

I note the committee's recommendation that the House 'consider and make decisions on the many important issues concerning privilege and contempt on which the Joint Select Committee on Parliamentary Privilege made recommendations in 1984.

I endorse this view but believe it requires elaboration. The public and the media may have been given a false sense of security as a result of the passage of the Parliamentary Privileges Bill through the Parliament.

The enactment of this Bill does little to improve the law and practice of the House as it applies to cases such as the one at hand. The only changes that would have an impact on cases such as this are the power to impose a longer jail sentence on an individual and the new power to impose a fine on a corporation or individual.

Parliamentary privilege as currently practiced in the Australian Parliament is in my respectful view an anachronism. Nothing will change until the Parliament accords to those threatened with an assertion of breach of privilege minimum standards of natural justice. The mechanism for removing this obvious injustice and embarrassment to the Parliament is for the House to pass the resolutions tabled by the Attorney-General on the occasion of his second reading speech on the Parliamentary Privileges Bill. I urge that this be done as a matter of urgency.

My dissenting view is not intended to reflect on the sincerely held views of other members of the committee but I do not shirk from my responsibility to express my equally sincerely held outright opposition to those views which I consider, in various respects, out of step with the past practice of the Australian Parliament, the practice of the House of Commons and with informed and considered public opinion.

I would hope that this report on this reference of the committee will stimulate the public and media debate necessary to achieve this long overdue law reform.

ROBERT E. TICKNER, MP

12 May 1987