

**REPORT ON AN INQUIRY CONDUCTED BY
MR R V HANSON QC INTO THE ALLEGED UNAUTHORISED
DISSEMINATION OF INFORMATION CONCERNING
OPERATION WALLAH**

DECEMBER 1995

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CRIMINAL JUSTICE COMMISSION

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20 December 1995

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and Minister for the Arts
Parliament House
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The Hon Jim Fouras MLA
Speaker of the Legislative Assembly
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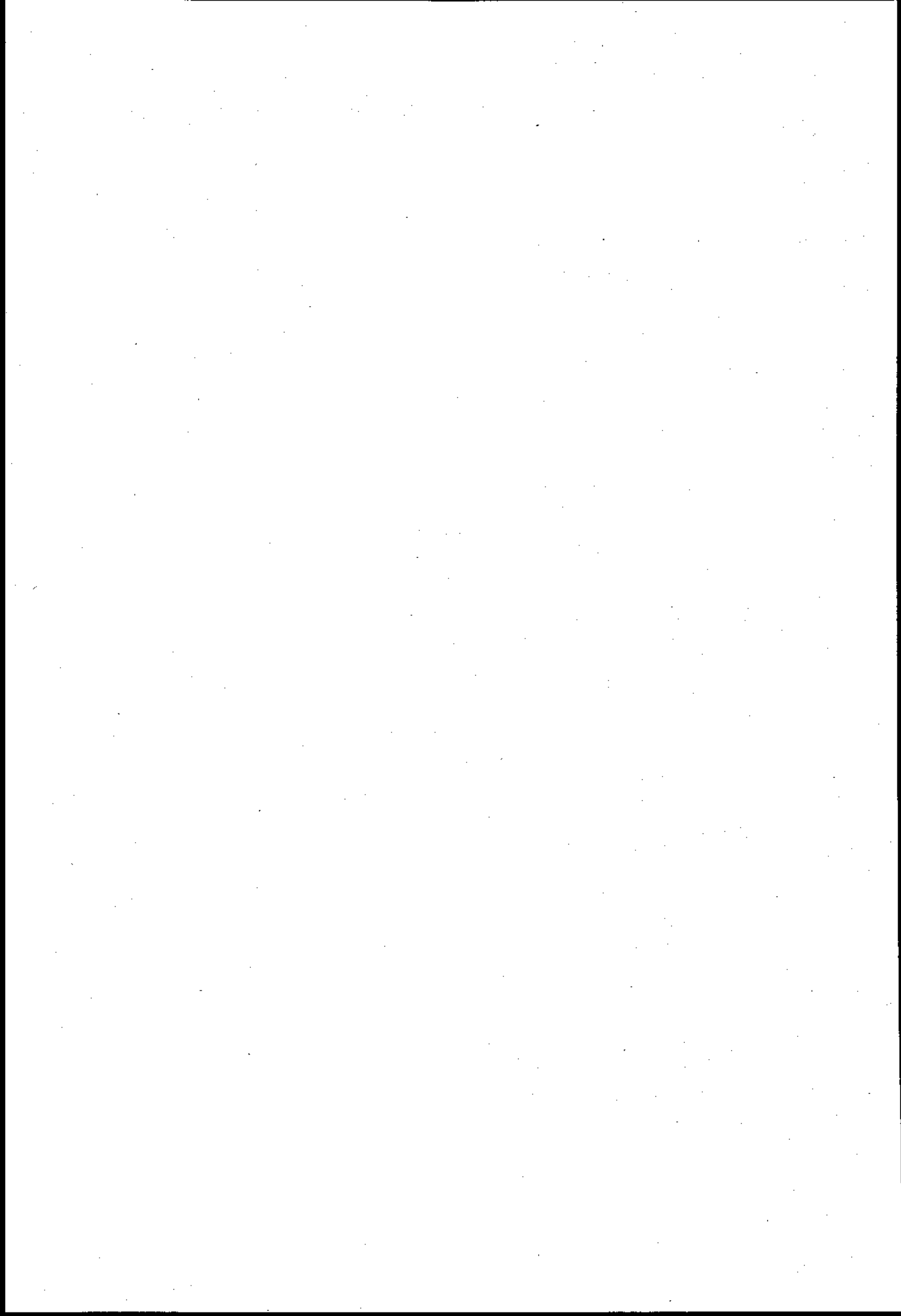
Mr Rod Welford MLA
Chair
Parliamentary Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sirs

In accordance with Section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you its Report on an inquiry conducted by Mr R V Hanson QC into the alleged unauthorised dissemination of information concerning Operation Wallah.

Yours faithfully

L F WYVILL QC
Acting Chairperson



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20 December 1995

Mr. L.F. Wyvill Q.C.
Acting Chairman
Criminal Justice Commission
557 Coronation Drive
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Dear Mr. Wyvill,

I refer to your authorisation to me dated 5 June 1995 authorising me to constitute the Commission to conduct a hearing for the purpose of discharging its functions or responsibilities allotted to the Official Misconduct Division in relation to the matters specified in the schedules therein referred to which are set out in full in my report.

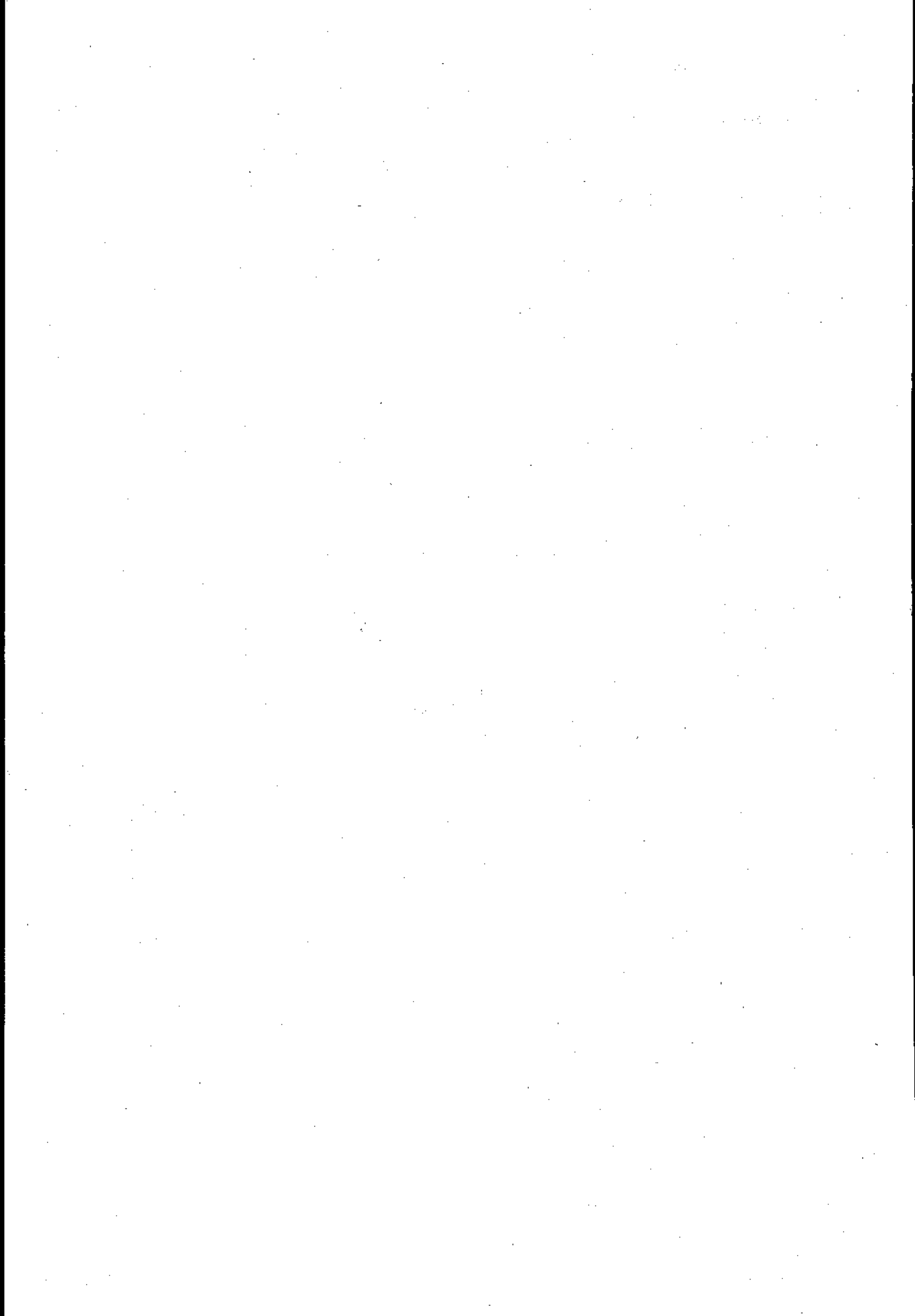
I wish to advise you that I have today forwarded to the Director of the Official Misconduct Division of the Commission my report of my investigation in relation to this matter, in order that he may report to you in the discharge of his responsibility under s.33 of the Criminal Justice Act 1989.

Yours sincerely,



R.V. HANSON Q.C.

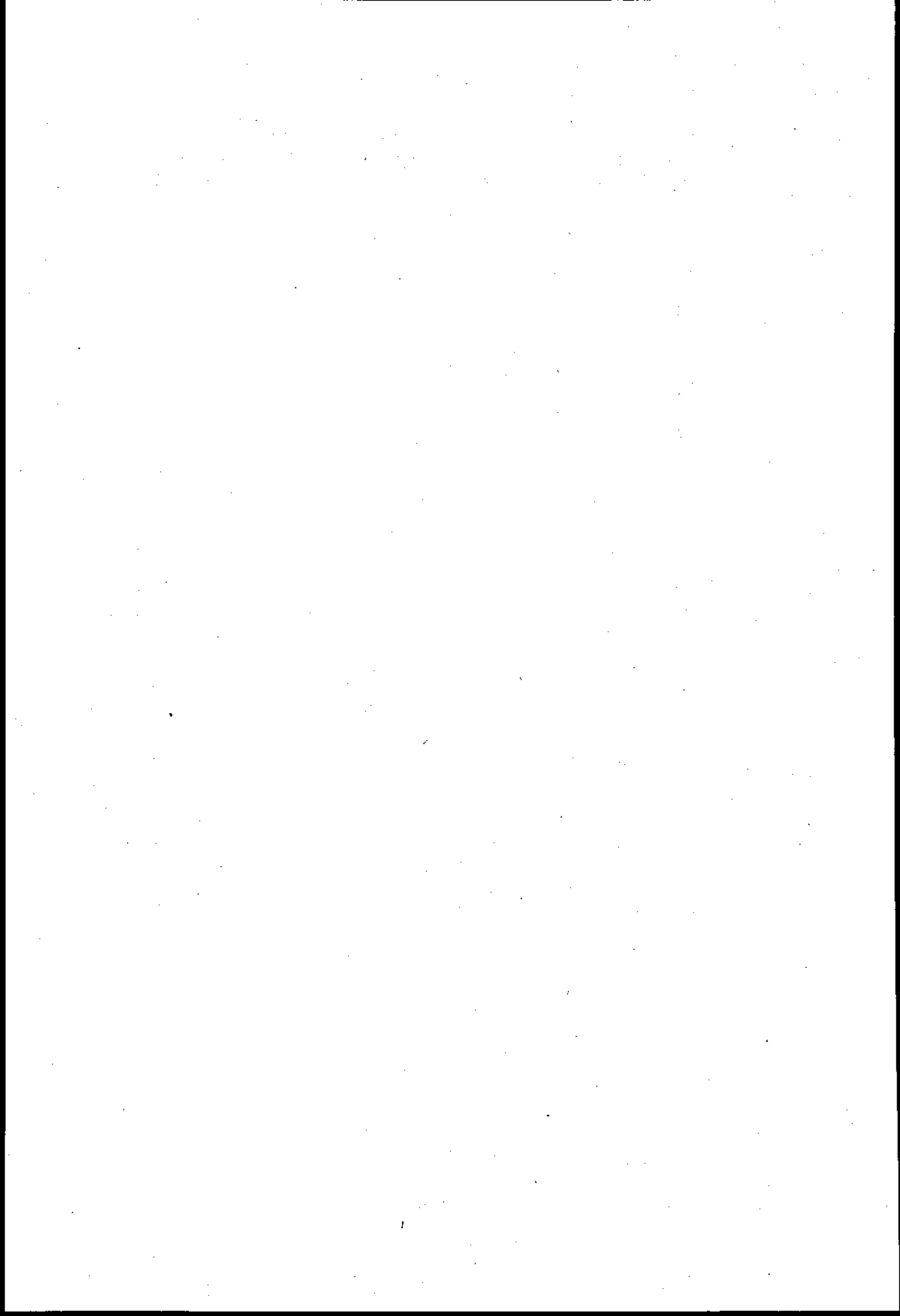
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RELEASE OF INFORMATION CONCERNING OPERATION
WALLAH**

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**REPORT UPON INQUIRY INTO THE ALLEGED UNAUTHORISED
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WALLAH**

PRELIMINARY

I have been authorised under s.25(2)(d) of the *Criminal Justice Act* 1989 to constitute the Commission to conduct a hearing for the purpose of discharging its functions or responsibilities allotted to the Official Misconduct Division in relation to the matter specified in the following schedules -

"SCHEDULE 1

An investigation as to whether:

- (1) any officer or Commissioner of the Criminal Justice Commission has, contrary to the provisions of the *Criminal Justice Act 1989*, released the information concerning Operation Wallah which was published in the Courier-Mail and Australian newspapers between 11 March 1995 and 25 March 1995 as specified in Schedule 2;
- (2) any of the members or staff of the Parliamentary Criminal Justice Committee have, contrary to the provisions of the *Criminal Justice Act 1989*, released the information concerning Operation Wallah which was published in the Courier-Mail and Australian newspapers between 11 March 1995 and 25 March 1995 as specified in Schedule 2;
- (3) any officer of the Queensland Police Service has, contrary to the provisions of the *Police Service Administration Act 1990*, released the information concerning Operation Wallah which was published in the Courier-Mail and Australian newspapers between 11 March 1995 and 25 March 1995 as specified in Schedule 2.

SCHEDULE 2

11 March 1995	Weekend Australian	"Richardson tried to help businessman" and "Richo met US defence supplier"
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13 March 1995	Courier-Mail "FBI probes Richo mate" and "Richo mate centre of FBI arms probe"
14 March 1995	Courier-Mail "CJC slams 'slow' feds - Richo 'mate' case delayed"
15 March 1995	Courier-Mail "Top crime bodies in bitter row"
16 March 1995	Courier-Mail "CJC feared radiation at ex-shopping centre"
17 March 1995	Courier-Mail "Storm over CJC 'leaks'"
18 March 1995	Courier-Mail "Push on for Senate Richo-link inquiry"
25 March 1995	Courier-Mail "Richo report ruckus" and "Row over Richo report".

Investigative hearings took place on 24, 25, 26, 27, 28 and 31 July, 1, 2, 3, 4, 7, 8, 9, 11, 14, 15, 17, 18, 21, 22, 23, 24, 25, 28 and 29 August, and 19 and 20 October.

Mr. A.J. MacSporran was counsel assisting. Legal representatives appeared for the Criminal Justice Commission and officers thereof, the members of the Parliamentary Criminal Justice Committee and its staff and the Clerk of Parliament, the Queensland Police Service, the journalist Paul Whittaker, the Australian Federal Police and certain officers thereof, and the National Crime Authority.

Legal representatives sought to appear for "Businessperson A" and

"Businessperson B". I refused both of them permission to appear because I was not satisfied that either of them was a "person concerned" within the meaning of s.95 of the *Criminal Justice Act*. Each of those persons was the subject of investigations conducted during Operation Wallah. In fact, each has been charged with an offence by New South Wales Police. Since their conduct was not under scrutiny in this investigation, and since they were not at risk of an adverse finding, I ruled that they did not fall within the terms of s.95 of the Act.

All evidence was taken at public hearings, although on 29 August 1995 there was a brief in camera session during a discussion about a possible witness and on 19 October 1995 there was another in camera session following an order I made under s.103. On occasions, it was necessary to utilise the power in s.88 to prohibit the publication of certain items of evidence. This power was exercised on a number of occasions on the basis that it would be unfair to a particular individual on the grounds that it had been necessary to mention in evidence certain operational material which indicated that that person had been the subject of investigation and had been suspected of criminal conduct. On several occasions I thought it necessary to exercise the power on the basis that it would have been contrary to the public interest to publish. This occurred when investigative procedures had been mentioned in evidence.

Forty-eight witnesses were called to give evidence.

Two hundred and seventy-two exhibits were tendered. Of those many were made confidential exhibits with access restricted to legal representatives appearing, together with necessary consultations with their clients.

BACKGROUND FACTS

In 1993 the Queensland Police Service conducted an investigation into organised prostitution on the Gold Coast. The operation was codenamed "Hacker VI". Because the investigation determined that prostitutes had been procured for a prominent Federal politician by persons believed to have criminal connections, the Criminal Justice Commission was briefed by Queensland Police investigators.

In February 1994 the CJC took over the investigation insofar as it related to matters other than pure prostitution. It codenamed the investigation "Operation Wallah". Mr. Russell Pearce and Mr. Tim McGrath had the conduct of the investigation. The Queensland Police Service continued with its investigation into prostitution.

The CJC then conducted investigative hearings at which a number of prostitutes confirmed on oath what the CJC had been told by the Queensland Police investigators. The politician was identified as Senator Graham Richardson, a one time Minister in the Government. Two men were said by the witnesses to have procured prostitutes for Richardson - "Businessperson

C" and "Businessperson A". Both were Gold Coast businessmen and were associated with each other.

The supply of prostitutes to Richardson was said to have gone on for a number of years.

The CJC then set out to investigate why these businessmen were paying for prostitutes for Richardson. To that end, an investigation was launched into the business affairs of both men.

In the case of "Businessperson C", nothing of any significance was discovered. He was in the seafood restaurant business on the Gold Coast. He was thought to have associations with Sydney criminals, but nothing of any significance to the investigation was discovered.

In the case of "Businessperson A", certain facts aroused the suspicions of the investigators. He was found to be associated with two businesses -

- (i) "Company A", a company engaged in manufacture and sale of computer memory modules or components;
- (ii) "Company B", the principal business of which appeared to be conducting a restaurant, although the company had been the recipient of international transfers of funds which exceeded US\$28 million in a twelve month period to 31 March 1994.

It was discovered that "Company B" was trading in high technology computer componentry, purchasing its stock from a Japanese supplier in Australia, Mitsubishi Electric Australia Pty Ltd, and onselling the product to companies in the USA.

However, many aspects of the way in which "Company B" conducted its business were thought to indicate that there was some lack of commercial reality, giving rise to suspicion that the company was either onselling the components to prohibited destinations, or engaging in money laundering.

The business activities of Businessperson A's other company, "Company A", also gave rise to suspicion.

It was discovered that in 1991 the company had purchased high technology plant and equipment from McDonnell Douglas Corporation. This consisted of a facility called a Printed Wire Board which was used to manufacture printed circuit boards for use in missiles, aircraft, spacecraft and guidance and surveillance systems. The CJC came to suspect that the sale of this facility to "Company A" was used unlawfully by McDonnell Douglas to obtain defence offset credits under the Commonwealth Government's Offset Credits Programme. Under that programme a supplier of defence equipment to the Australian Government is required to utilise a percentage of Australian product. It was suspected that a credit was falsely claimed for the value of the

sale of the Printed Wire Board facility to "Company A" in order to gain credits which would then be offset against sales of equipment to the Australian Government. The suspicion was that a substantial fraud was being perpetrated upon the Australian Government.

Once these suspicions crystallised it became apparent that any criminal activity the companies may have been engaged in was probably outside the jurisdiction of the CJC and fell within Commonwealth jurisdiction, and/or, the jurisdiction of United States law enforcement agencies. For this reason the information gathered by the CJC was passed on to the Commonwealth in the form of the National Crime Authority and the AFP, and to the United States authorities in the form of the FBI.

At first the NCA decided to investigate the matters and went as far as obtaining search warrants to search premises associated with "Businessperson A". However, on 20 June 1994 when the warrants were about to be executed, it was stated that the head of the NCA had decided that the matter was not within the jurisdiction of that organisation.

The events leading up to the withdrawal of the NCA in this exercise are canvassed in some detail in a memorandum from Mr. Pearce to Mr. Le Grand 17 March 1995. This material includes an account by Mr. McGrath of the circumstances in which he was personally informed by Mr. Sage of the NCA

of the chairman's decision to withdraw NCA support - exhibit 9, appendix 1.

The matter was then brought to the attention of the New South Wales Police Department because there was evidence of secret commissions paid by one of "Businessperson A"'s companies to a New South Wales employee of Mitsubishi. The New South Wales Police Department then took over that aspect of the matter. As a result, the manager of "Company B", "Businessperson B", was arrested, and a warrant was issued for the arrest of "Businessperson A".

By November 1994 the CJC had passed the information it had gathered to the Queensland Police, the NCA, the Australian Federal Police, Australian Customs, Australian Department of Defence, New South Wales Police and the American FBI. Information was conveyed both orally and in writing. There had been oral briefings. Briefing papers had been delivered and retained by each of those organisations. By November 1994 the CJC had ceased to play an active role in information-gathering since all matters appeared to be out of its jurisdiction. Likewise, the Queensland Police Service had, for the same reasons, nothing to do with the matter beyond pursuing the allegations of organised prostitution and associated State matters. By November 1994 the CJC regarded the matter as having been handed over to the Federal authorities, in particular, the Australian Federal Police.

This position had been reached following attempts to revive the involvement of the NCA. The relevant correspondence between the CJC and the NCA is in evidence at exhibit 9, appendix 5. The correspondence of September and October 1994 makes it clear that the CJC strongly believed that there were matters falling within the NCA's jurisdiction and perhaps more importantly that the investigation could only be advanced by the use of compulsive powers such as those possessed by the NCA. It is equally clear that for its part the NCA was not convinced that the Wallah matter came squarely within any aspect of its jurisdiction and advised the CJC that the matter was more appropriately one for the AFP.

The AFP were given a comprehensive briefing in respect to this matter on 2 November 1994. The briefing paper provided contained information current to 13 September 1994 and is an example of one of the initial or earlier briefing papers.

Between November 1994 and February 1995 the CJC formed the view that the AFP was proceeding far too slowly with the matter, if at all, leading to several oral and written urgings from the CJC to the AFP to expedite its investigation. See exhibit 9 appendix 6. These urgings culminated in a visit on 10 March 1995 by the Chairman of the CJC, Mr. O'Regan Q.C., to the head of the AFP in Canberra, Mr. Palmer. Mr. O'Regan was accompanied by the CJC's principal investigator in the Operation Wallah matter, Mr.

Russell Pearce. Mr. Palmer was accompanied by Mr. Whiddett, Mr. Mills, Mr. Tyrie and Detective Ross.

What happened at that meeting is a matter of dispute between the CJC and the AFP. I will return to this later.

The Parliamentary Criminal Justice Committee had been briefed on Operation Wallah from time to time. These briefings had consisted of fairly concise briefing notes, together with concise oral briefings, all delivered at the monthly meetings between the PCJC and the CJC. The briefings did not include operational material. In November 1994 the Committee was asked whether it wanted a full written briefing on the operation and a briefing paper in terms identical with that which had been delivered to other law enforcement agencies was offered to the Committee. This offer was declined.

Some of the members of the Committee thought that the Committee should be better informed about the operation. Accordingly, they decided to inspect the CJC's material. For that purpose, three of the Committee members, Mr. Lester, Dr. Watson and Mr. Turner, attended at the CJC's premises at Toowong on 23 February 1995 where they spent several hours inspecting the briefing paper. They took no copies and no notes.

THE PUBLICATIONS

The publications with which I am concerned occurred on 11 March 1995 and in the fortnight following.

Those publications contain facts gathered during the operation, together with some details of the activities of each of the CJC, the NCA, the AFP, the PCJC, and their dealings with each other.

Comparison of the content of the publications with the CJC's material enables three (3) propositions to be stated with confidence -

- (i) the journalists had access to information gathered after 8 September 1994 (the material dealing with defence department off-set credits);
- (ii) the amount of detail is such that if the journalists did not gather the information themselves, then they had access to the bulk of the information gathered by the CJC;
- (iii) in the case of the publications in the Courier-Mail, the language used in places is almost identical with language which appears in the CJC briefing papers and in correspondence passing between the CJC and the FBI, leading to the conclusion, beyond any doubt, that the journalist had access to the correspondence, and/or the text of a CJC briefing paper.

Since these propositions greatly narrow the field of suspects and allow a large number of people to be immediately eliminated, I will discuss each of them in detail.

The CJC investigators' suspicion that a fraud may have been perpetrated upon the Commonwealth with respect to off-set credits sought by McDonnell Douglas Corporation did not crystallise until after they had interviewed a "Businessperson D" (business partner of "Businessperson A" and a director of "Company A") on 6 September 1994. He delivered documents to the investigators over the next two days and it was that interview and those documents which enabled the investigators to formulate their suspicions. Although there is mention in the CJC papers before 8 September 1994 of McDonnell Douglas claiming offset credits (briefing paper 24 August 1994 - exhibit 135, p.7, it was not until 8 September 1994 that, in Mr. Pearce's words, "the picture was complete" (see exhibit 9 p.14.3 to 14.4) and the investigators came to suspect a fraud upon the Department of Defence.

Because the assertions concerning suspected fraud with respect to off-set credits appear in the publications, if the journalists drew, directly or indirectly, upon the CJC's material, it could only be material created after 8 September 1994. This eliminates persons whose access to the material predated 8 September 1994, at least as a source of that part of the publications.

As to the second proposition above, a mere perusal of the published articles reveals that the journalists were possessed of a great deal of detail. This means that if the source was a single person, then that person had to have access to almost the whole of the material gathered by the CJC. It also means that the information could only be imparted to the journalist by means of a CJC briefing paper (or an extract or a summary thereof), or by a person who was so familiar with the matter that he was able to reproduce those details from memory.

As to the third proposition above, the point is demonstrated by comparing certain passages in the newspaper articles with the briefing papers and with the correspondence between the CJC and the FBI. (Words underlined correspond).

Courier-Mail, 13 March 1995 (exhibit 20), paragraphs 36 and 37 are as follows -

"Shortly before ["Businessperson A"] became involved in ["Company A"], the company acquired a high tech defence plant and equipment from McDonnell Douglas.

The equipment, known as a Printed Wire Board facility, had been used by McDonnell Douglas in the manufacture of printed circuit boards for missiles, aircraft, spacecraft and surveillance and guidance systems."

The initial CJC briefing paper (exhibit 9, appendix 2) at p.21 is in the following terms -

"It is recalled that ["Businessperson A"] and ["Businessperson D"] became involved with ["Company A"] in December 1991. Prior to

that time, the sole shareholder and director and (sic) ["Company A"] was Rovazzini who, although a United States national, was resident in Australia.

Shortly before ["Businessperson A"] and ["Businessperson D"] become (sic) assumed their interests in ["Company A"], that company acquired certain high technology plant and equipment, namely a Printed Wire Board facility ("PWB"), from McDonnell Douglas Corporation ("McDonnell Douglas"). Until its disposition to ["Company A"], the PWB had been used by McDonnell Douglas in the manufacture of printed circuit boards for use in missiles, aircraft, spacecraft, and guidance and surveillance systems."

There is also a correspondence, perhaps a closer correspondence, between the text of the newspaper article and the following extract from a letter of 14 September 1994 from the CJC to the FBI in Canberra (exhibit 9, p.8.2) -

"Shortly before ["Businessperson A"] become (sic) involved in ["Company A"], that company had acquired certain high technology plant and equipment, namely a Printed Wire Board facility ("PWB"), from McDonnell Douglas Corporation ("McDonnell Douglas"). Until its disposition to ["Company A"], the PWB had been used by McDonnell Douglas in the manufacture of printed circuit boards for missiles, aircraft, space craft, guidance systems and surveillance systems. In particular, the PWB had also produced "layered" printed circuit boards for the Harpoon Missile and the F/A-18 tactical fighter".

The correspondence of language and expression between the newspaper and the CJC papers is too close for coincidence.

Courier-Mail, 18 March 1995 (exhibit 43 and exhibit 12 p.11), second last paragraph is in the following terms -

"Evidence has been gathered confirming that throughout 1993 representatives of ["Company A"] made attempts to sell the PWB to

parties in China and the Middle East."

The initial CJC briefing paper (exhibit 9, appendix 2) at p.23 is in the following terms -

"Evidence has been gathered confirming that throughout 1993 representatives of "Company A" made various attempts to sell the PWB/SMT to parties in China and the Middle East."

The letter to the FBI (exhibit 9, annexure 8, p.3) is in precisely the same terms as the briefing paper.

The only difference between these texts is that, firstly, the newspaper article omits the word "various" (but when this paragraph is repeated in the Courier-Mail of 10 April 1995, exhibit 89 and exhibit 9, p.28.2, the word "various" is included); secondly, the newspaper article refers to "PWB", whereas the briefing paper and the letter refer to "PWB/SMT".

Again, the correspondence between the texts cannot be coincidental.

Also, compare the last paragraph of this newspaper article with the briefing paper and the letter. The article is in the following terms -

"The PWB had previously been used by McDonnell Douglas to manufacture such as the Harpoon Missiles and FA-18 tactical fighter."
(There is obviously a typographical error)

The briefing paper at exhibit 9, p.2.2 is in the following terms -

"The PWB produced "layered" printed circuit boards to defence specifications for use in the Harpoon Missile and F/A-18 tactical fighter aircraft".

The letter is in the following terms -

"A PWB also produced "layered" printed circuit boards for the Harpoon Missile and the F/A-18 tactical fighter."

Again, the text of the newspaper article has obviously come from the letter or the briefing paper.

Courier-Mail, 16 March 1995 (exhibit 12, p.8), at paragraph 11 is in the following terms -

"CJC investigators allege fraudulent representations were made to the Australian Defence Department as to the value of the PWB and its intended use by "Company A"."

Courier-Mail, 10 April 1995 (exhibit 89 and exhibit 9, p.28.2), at paragraph 8 is in the following terms -

"Operation Wallah, a top level Criminal Justice Commission report, alleges false representations were made to the Australian Government as to the worth of the PWB and its intended use by "Company A"."

The initial CJC briefing paper (exhibit 9, appendix 2) is in the following terms at p.22 -

"On the basis of the evidence gathered, it is contended that "Company A" and McDonnell Douglas deliberately made false representations to the Australian Government both as to the worth of the PWB and its

intended use by "Company A". As a result of these fraudulent representations, both "Company A" and McDonnell Douglas benefited."

The CJC letter to the FBI (exhibit 9, p.8.2) is in the following terms -

"In essence, the evidence discloses that "Company A" and McDonnell Douglas deliberately made false representations to the Australian Government as to the worth of the PWB and its intended use by "Company A". As a result of these fraudulent representations, both "Company A" and McDonnell Douglas benefited."

Again, the correspondence between the texts is striking. While the Courier-Mail article of 16 March 1995 uses the word "value" instead of the word "worth" which appears in the CJC text, when the item is repeated in the Courier-Mail article of 10 April 1995, the word "worth" is used. The word "value" is used earlier in both the briefing paper and the letter of 14 September 1994 to the FBI.

Courier-Mail, 10 April 1995 (exhibit 89 and exhibit 9, p.28.2) at paragraphs 13, 14 and 15 is in the following terms -

"The Operation Wallah report alleged McDonnell Douglas sold the plant to "Company A" for the nominal fee of \$1.00 in exchange for Australian Defence Department "off-set credits" totalling several million dollars.

Under this arrangement McDonnell Douglas as a major supplier of defence equipment to Australia is expected to sub-contract part of its business to Australian companies.

The report says the off-set credits were utilised for the benefit of McDonnell Douglas in securing contracts with the Australian

Government for the supply of a mast-mounted sighting system."

The initial CJC briefing paper (exhibit 9, appendix 2) is in the following terms at p.21 -

"The precise value of the PWB remains, at this point in time, unclear. It was, in any event, sold by McDonnell Douglas to "Company A" for the sum of \$1.00 (US\$1).

On the basis of various representations (some of which were deliberately false and misleading) made to the Australian Government by both "Company A" and McDonnell Douglas, the Australian Government granted McDonnell Douglas defence off-set credits totalling several million dollars, which were then utilised by McDonnell Douglas in their efforts to secure contracts with the Australian Government for the supply to the Royal Australian Navy of a high technology mast-mounted sighting system.

The Defence Off-sets Programme has been developed by the Australian Government to encourage foreign owned manufacturers of defence product, in essence, to sub-contract aspects of the manufacture of their product to Australian industry."

The CJC letter to the FBI (exhibit 9, p.8.2) is in the following terms -

"The precise value of the PWB remains unclear, but it was nonetheless sold to "Company A" for the sum of \$1.00 (US\$1). On the basis of various representations (some of which were deliberately false and misleading) made to the Australian Government both by "Company A" and McDonnell Douglas, the Australian Government awarded McDonnell Douglas certain offsets credits pursuant to the Defence Offsets Credits Programme. The offsets credits, which totalled several million dollars, were then utilised for the benefit of McDonnell Douglas in securing contracts with the Australian Government for the supply of a navy mast mounted sighting system".

Again, there is a correspondence of expression which cannot be coincidental.

The correspondence with the letter is closer than with the briefing paper

because:-

- (i) the briefing paper does not contain the phrase "for the benefit of", whereas the letter does;
- (ii) the letter and the newspaper article use the expression "in securing contracts", whereas the briefing paper uses the expression "in their efforts to secure contracts";
- (iii) the expression "supply of a Navy mast mounted sighting system" appears in the letter but not in the briefing paper; it is not produced precisely in the article of 10 April 1995 (the word "navy" being omitted), but it is reproduced precisely in the article of 13 March 1995 at paragraph 40.

To my mind, the use of the expression "for the benefit of" in the context in which it was used in the newspaper article is conclusive that Whittaker had access to the FBI correspondence.

Courier-Mail, 7 June 1995 (exhibit 9, p.28.5), at the fourth last paragraph is in the following terms -

"The Operation Wallah report said evidence had been uncovered which indicated "Company A" had paid a corrupt secret commission of at least US\$10,000 to a McDonnell Douglas employee under the guise of a consultancy fee."

The CJC initial briefing paper (exhibit 9, p.2) at p.23 is in the following terms -

"Corrupt Secret Commission

During the course of the investigation, evidence has also been discovered which indicates that "Company A" has paid at least AUD 10,000 to a senior officer of McDonnell Douglas. That same officer is known to have been intricately involved with negotiations with "Company A" in respect of the transfer of the PWB in 1991.

It is contended that good reason exists to assume that this payment represents a corrupt secret commission paid by "Company A" to the senior officer of McDonnell Douglas."

The CJC letter to the FBI (exhibit 8, appendix 8, p.4) is in the following terms -

"Furthermore, evidence has also been discovered which indicates that "Company A" has paid a corrupt secret commission of at least AUD10,000 to a senior officer of McDonnell Douglas."

Again, there is a correspondence of expression which is impossible to accept as coincidental.

The newspaper article corresponds more closely with the letter than with the briefing paper. The claim in the article that the Operation Wallah report said that the secret commission had been disguised as a consultancy fee is incorrect. Neither the briefing paper, nor the correspondence says any such thing. However, it is in fact true, that the commission could be disguised as a consultancy fee, as appears from exhibit 53. Whittaker could have obtained this information from "Businessperson D" whom he claims to have interviewed in March 1995 (Courier-Mail, 16 March 1995, 10 April 1995 and

7 June 1995). "Businessperson D" gave this information to the CJC during his interview in September 1994 (exhibit 111).

Some, but not all, of the above extracts from the CJC papers were reproduced by the Australian Federal Police in their report, exhibit 93. However, that report could not be the source of these extracts because the authors did not commence work on the report until May (pp.2081-2082), and an earlier draft (exhibit 159) did not contain all of these extracts.

In summary, these comparisons show that Whittaker has copied sentences and phrases from the FBI correspondence and perhaps from the briefing paper, but certainly from the former.

In addition to the above exercise of comparing expressions which appear in the newspaper articles with the CJC papers, it is also instructive to compare facts stated in the articles with facts which appear in the FBI correspondence.

- (i) The article of 13 March 1995 says in paragraph 1 -

"The US Federal Bureau of Investigation has requested a full briefing ..."

This information appears in the letters from the FBI to the CJC of 23 September 1994 and 31 January 1995;

- (ii) The article of 13 March 1995 at paragraph 2 is in the following terms -

"The FBI has received a report of evidence uncovered

by the Criminal Justice Commission and Queensland Police which alleges a multi-million dollar fraud involving Australian Government Defence contracts."

This is an accurate summary of information contained in the letter from the CJC to the FBI of 14 September 1994;

- (iii) The article of 13 March 1995 at paragraph 3 is in the following terms -

"The FBI's legal attache in Australia has reviewed the evidence and has told investigators the laws of both countries may have been broken."

This information appears from the letters from the FBI to the CJC of 23 September 1994 and 31 January 1995;

- (iv) The article of 14 March 1995 at paragraph 3 is in the following terms -

"The FBI's former Australian legal attache, Stephen Ramey, expressed fears crucial evidence could be destroyed because of delays in the briefing and investigation."

This information appears in the letter from the FBI to the CJC of 31 January 1995;

- (v) The article of 14 March 1995 at paragraph 5 is in the following terms -

"The FBI and US Customs have invited the Commission and Queensland Police to a full briefing ..."

This information appears in the letter of 31 January 1995 from the FBI to the CJC and also the letter of 23 September 1994;

- (vi) The article of 14 March 1995 at paragraph 9 is in the following

terms -

"Federal Police were first briefed by the CJC in early November ..."

This information appears in the letter of 31 January 1995 from the FBI to the CJC.

Items (iv) and (v) are not to be found in the CJC briefing paper.

I note also that the articles of 13 and 14 March 1995 focus in tone and content upon the FBI and its role in the investigation.

Because some of the exchanges between the CJC and the FBI were reported by the CJC to the AFP, it is necessary to have a look at the correspondence between the two latter agencies in order to see whether that correspondence, rather than the correspondence between the CJC and the FBI, could have been Whittaker's source. That examination, for the reasons set out below, leads me to conclude that it was not -

- (i) The article of 13 March 1995 in paragraph 1 says that the US FBI has requested a full briefing. This fact could have been sourced from the CJC letter of 6 February 1995 to the AFP at exhibit 9, p.6.14;
- (ii) The article of 14 March 1995 at paragraph 3 says "the FBI's former Australian legal attache, Stephen Ramey, expressed

fears crucial evidence could be destroyed because of delays in the briefing and investigation." That part of Mr. Ramey's letter of 31 January 1995 to the CJC in which those fears were spelled out was quoted in the CJC letter of 6 February 1995 to the AFP at exhibit 9, p.6.15;

- (iii) The article of 14 March 1995 at paragraph 4 says -

"The FBI has reviewed a detailed CJC report and has identified possible violations of Australian and US laws".

Extracts from Mr. Ramey's letters in which those views were expressed were quoted in the letter of 1 February 1995 from the CJC to the AFP at exhibit 9, p.6.10, 6.14 and 6.18;

- (iv) The article of 14 March 1995 at paragraph 5 says -

"The FBI and US Customs have invited the Commission and Queensland Police to a full briefing but protocol dictates that the AFP must make the approach because the matter is out of CJC jurisdiction."

While Mr. Ramey's invitation to the CJC and Queensland Police Service to visit the USA for the purpose of briefings was relayed to the AFP in the CJC's letters of 1 February 1995 and 20 February 1995, neither of those letters mentions the fact that the invitation was to fully brief the FBI and the United States Customs Service - see Mr. Ramey's invitation at exhibit 9, p.8.10;

- (v) The article of 14 March 1995 at paragraph 9 says "Federal Police were first briefed by the CJC in early November but

only started an enquiry in recent weeks." This fact appears in Mr. Ramey's letter at exhibit 9, p.8.11 and in the CJC letter of 16 January 1995 to the AFP at exhibit 9, p.6.6.

The above examination indicates that, with the exception of one fact, the facts reported by Whittaker could have been sourced from either the correspondence between the CJC and the AFP, or the correspondence between the CJC and the FBI. That exception is the fact that the CJC had been invited to brief the FBI and the US Customs Service. This fact appears only in the correspondence with the FBI. In addition to that, the AFP letter of 28 February 1995 to the CJC informs the latter that it is free to go ahead and brief the FBI. This is inconsistent with the thrust of Whittaker's articles of 13 and 14 March 1995 to the effect that the FBI was still waiting for a full briefing but that "protocol dictates that the AFP must make the approach because the matter is out of the CJC jurisdiction." (14 March 1995 at paragraph 5). Having regard to these matters, I am quite satisfied that Whittaker had access to the correspondence passing between the CJC and the FBI, and not to this part of the correspondence between the CJC and the AFP.

The above comparisons, seeking a source for phrases, sentences and facts which appear in Whittaker's articles, leave me in no doubt that Whittaker had access to the FBI correspondence.

Whether or not he also had access to a briefing paper is not quite clear. There are facts asserted in his articles which could have been lifted out of the briefing paper, or which could have been ascertained by search in other quarters. The following are examples -

- (i) The article of 13 March 1995 at paragraph 5 contains the following -

"CJC and Queensland Police investigators have ... uncovered attempts to sell prohibited technology to countries in the Middle East, the former eastern bloc of Europe and China";

The only reference I can see in the first briefing paper to selling goods to the former eastern bloc is in exhibit 9, appendix 2 at p.14, but in another context. The matter is mentioned again in the Courier-Mail, 7 June 1995, from which it appears that the information could have come from "Businessperson D". The Courier-Mail of 16 March 1995 and 10 April 1995 claim that "Businessperson D" had been interviewed in March. It could therefore be that this assertion in a newspaper came from "Businessperson D" rather than the briefing paper (see exhibit 111);

- (ii) The article of 13 March 1995 at paragraph 34 says -

"Company A" has its head office and production unit at Research Park, Bond University"

This information could have been lifted directly from the briefing paper exhibit 9, appendix 2 at p.3. Alternatively, it

may have been possible to obtain that information by independent search and inquiry;

- (iii) The Courier-Mail article of 13 March 1995 at paragraph 35 says -

"["Businessperson A"] bought into the company in 1991 and resigned his directorship in February 1994";

This information could have been lifted from the briefing paper at exhibit 9, appendix 2, page 3. Alternatively, it could have been ascertained by independent search;

- (iv) The Courier-Mail article of 13 March 1995 at paragraphs 38 and 39 says

"Company A" is believed to have negotiated with McDonnell Douglas to become part of its Australian "offset credit" arrangement with the Defence Department.

Under this arrangement, McDonnell Douglas is expected to sub-contract part of its business to Australian companies."

This information could have been lifted from Wilkinson's article of 11 March 1995 at paragraph 17 (which uses identical words), or from the briefing paper exhibit 9, appendix 2, p.21 (where the wording is different). Alternatively, it might have been ascertained by enquiries about how the offset credit programme works.

I have not been able to detect any information in the newspaper articles which

must have come from a briefing paper. All that can be said is that there is information there which could have come from a briefing paper, but might have been ascertained elsewhere. Much of Whittaker's information came from or was confirmed by Sergeant Sullivan of the New South Wales police force (see his evidence at p.1026 et seq); and there could have been even more that he conveyed to Whittaker - p.1071. However, as I have said above, it is beyond doubt, to my mind, that Whittaker had access to the correspondence passing between the CJC and the FBI.

Unfortunately, I did not have the benefit of evidence from the FBI officer handling the matter in Canberra, Mr. Ramey, since he returned to the USA some time between 6 February and 1 March 1995 (exhibits 137 and 160). A recent invitation to make submissions produced an uninformative response - see miscellaneous correspondence, letters of 18 and 19 December 1995.

These findings combined with the fact that the detail in the articles could only come from a person who had physical custody of a briefing paper or an extract (or a photographic memory) lead to the conclusion that all persons who did not have access to the FBI correspondence and who were unable to carry away (or send) a copy of the briefing paper are eliminated as possible sources for the Courier-Mail journalist, Paul Whittaker. This means that I can, at this stage, make some findings with respect to some of the questions I am directed to investigate. I set them out below. I deal separately at a later

stage with the article published in the Australian on 11 March 1995.

THE QUEENSLAND POLICE SERVICE

The evidence shows that, while several very senior members of the Queensland Police Service, including the Commissioner, Mr. O'Sullivan, were acquainted with Operation Wallah material by means of oral briefings, no briefing paper was taken away. It was intended, and thought, that Assistant Commissioner Williams had been given a copy of the briefing paper code numbered 4 (exhibit 11). In fact, when Mr. Williams produced what he had taken away, it turned out to be a bundle of supporting documents which accompanied the briefing paper. This bundle became exhibit 136 before me. The information in that bundle is not sufficient to be the source of the articles in the Courier-Mail.

The briefing paper meant for Mr. Williams was found by Mr. Pearce in his cupboard.

As to the correspondence between the CJC and the FBI, Mr. Williams was a co-signatory of the letter of 14 September 1994 to the FBI and, therefore, presumably kept a copy. However, there is no suggestion that he or any other member of the Queensland Police Service had access to the balance of the correspondence passing between those two bodies.

The result is that the Queensland Police Service have never had physical custody of the documents on which Whittaker drew, and so cannot be a source for the Courier-Mail journalist.

THE PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE

Similar considerations apply to the PCJC.

No member of the committee or its staff has ever had access to the FBI correspondence or custody of a full CJC briefing paper. Three of the committee members, Mr. Turner, Mr. Lester and Dr. Watson were given an opportunity to read the briefing paper at the CJC's premises on 23 February 1995. They took no copies and no notes. They could not have carried away in their heads sufficient detail and text to be the source of those parts of Whittaker's articles which contain operational material from Operation Wallah.

With regard to each of the articles in the Courier-Mail on 13, 14, 15, 16, 17 and 18 March 1995, I find that, with the exception of Dr. Watson, no member of the PCJC or its staff was the journalist's source of information.

The article of 25 March 1995 stands in a special category because it contains both operational material and non-operational facts about the committee's business which the journalist should not be aware of. I deal with this

publication later.

In the case of Dr. Watson, as I have already said, he was given access to the briefing paper for some hours on 23 February 1995, but took no copy and no notes. As I have already observed, he could not have taken away in his head sufficient detail and text to be the source of all of the facts and expressions published by Whittaker. However, he gave evidence that he had met with Whittaker on Friday, 10 March 1995, i.e., three days before the first of Whittaker's articles was published. He said that he had spent about 15 to 20 minutes speaking with Whittaker about Operation Wallah. During this discussion Whittaker revealed to Dr. Watson that he knew a lot about Operation Wallah and put questions to him seeking to have him confirm the information for him. Dr. Watson's evidence was that he told Whittaker he could not confirm or deny what Whittaker was putting to him. See his evidence at p.481-483. But, at p.494-495, Dr. Watson agreed that a response to a journalist's question which did not amount to a denial will be taken by some as an affirmation. Whittaker is just such a journalist (see exhibit 9, p.29.5). Dr. Watson says he gave such responses either by saying that he would neither confirm nor deny, or by merely smiling.

As I have already said, I am satisfied that Dr. Watson could not have given Whittaker the detail and text that appear in his articles, and I do not think that Dr. Watson deliberately conveyed to Whittaker any information about

Operation Wallah that Whittaker did not already have, but there is every probability that Whittaker may have obtained from Dr. Watson what he regarded as confirmation of information he already had.

The article of 25 March 1995 contained not only operational material from Operation Wallah, but also contained an account of events at a PCJC committee meeting on 14 November 1994 and an account of events when Mr. Turner, Mr. Lester and Dr. Watson inspected the Operation Wallah papers at the CJC premises on 23.2.95.

Those passages are in the following terms -

"Parliamentary Criminal Justice Committee Chairman Ken Davies restricted the way three non-labour committee members could view a secret CJC report of an investigation involving former Senator Graham Richardson.

The Coalition PCJC members - David Watson (Lib, Moggill), Vince Lester (MP, Keppel) and Neil Turner (MP, Nicklin) - are understood to have been angered by the restrictions.

They were not told of the restrictions until they arrived to view the report at the CJC's Toowong offices on February 23.

In a written directive from Mr. Davies the opposition members were advised they were not allowed to take notes, copy material, ask questions or receive a verbal briefing about the document on Operation Wallah.

Another condition was that a CJC officer be present to supervise the reading of the report.

It is understood the four labor members of the committee elected not to view the report.

...

The Courier-Mail has also learned that the PCJC refused to allow the Operation Wallah document to be tabled last November.

It is believed members feared they would be blamed if there were any leaks.

...

The group decided against accepting the report from CJC official Mark Le Grand when he attempted to table it at a committee meeting on November 14.

"It wouldn't matter if the document was kept in a safe - if any information got out they'd blame 7 politicians before anyone else", a source said.

It is understood the Committee's four labor members - Ken Davies (Mundingburra), Lorraine Bird (Whitsundays), Darryl Briskey (Cleveland), and Tom Barton (Waterford) - did not ask to see the report."

These passages indicate that Whittaker has been privy to deliberations of the committee, to what occurred on the occasion of the visit of the committee members on 23 February 1995, and to a confidential letter from the Chairman of the PCJC, Mr. Davies, to the Chairman of the CJC, Mr. O'Regan, dealing with how the visit was to be conducted (exhibit 46). A comparison between the text of that letter and the text of Whittaker's article demonstrates that he either had a copy of the letter or was given a detailed account of its contents. Likewise, the description of events at the committee meeting on 14 November 1994 is reasonably accurate.

I regarded the publication of these details as an important piece of circumstantial evidence which indicated that Whittaker may have had a source

of information within the committee or the CJC who could well be the same source for the operational material in the articles with which I am concerned.

However, in the case of the PCJC, in view of my findings above that none of the committee or staff were Whittaker's source for the operational material, it is not necessary to pursue this line of inquiry. In any event, if any member of the committee or staff disclosed the events of 14 November 1994 or 23 February 1995 to Whittaker or anyone else, it would not be a disclosure of "information that has come to the person's knowledge from the Commission" so as to offend against s.132(3) of the *Criminal Justice Act*. It may be a breach of some obligation over which Parliament would have jurisdiction, but it is not a matter with which I am concerned.

The fact that the committee members were going to visit the CJC on 23 February was known in advance - see the evidence of Mr. Grice. It would be perfectly permissible for the committee members attending to inform others of what had happened during their visit. The fact that restrictions had been imposed by the Chairman of the committee in a letter to the Chairman of the CJC does not seem to me to be "information that had come to the person's knowledge from the Commission". For what it is worth, Whittaker claims in his statement (exhibit 202) that he had not obtained a copy of the letter but had picked up the information because it was a matter of discussion in general political circles. A comparison of the text of his article with the text of the

letter does not demonstrate that he necessarily had a copy of the letter, although I am mindful of the evidence of Mr. Laurie to the effect that when Whittaker rang him he obtained the impression that Whittaker had a copy of the letter. Mr. Davies' impression was that he did not have a copy (p.292). Whittaker argues that if he had had a copy of the letter, it would not have been necessary for him to have contacted Mr. Davies while the latter was in Hong Kong. I do not find it necessary to resort to Mr. Whittaker's statement in coming to my conclusions.

In the result, I do not find that any member of the PCJC or its staff gave Whittaker a copy of the letter or unlawfully informed him of its contents.

As to the events of 14 November 1994, if any member of the PCJC disclosed those events to Whittaker, it would not be a disclosure of information which came to the committee member from the Commission, so as to breach s.132.

I turn now to the staff of the CJC.

THE CJC OFFICERS AND STAFF

During the investigation, quite a number of the staff had access to the information gathered, in one form or another. These persons include the Chairman, Mr. O'Regan, the Secretary, Mr. Brighton, the part-time

Commissioners and other staff, as well as, of course, the two investigators, Pearce and McGrath, together with the person to whom they reported, the head of the Official Misconduct Division, Mr. Le Grand.

For the reasons given above, only those who had access to the FBI correspondence, or sustained access to the written briefing papers prepared after 8 September 1994, or the ability to make a copy thereof, can be regarded as possible sources for the operational material in Whittaker's articles.

This immediately allows the Chairman, all Commissioners and staff to be eliminated other than Pearce, McGrath, Le Grand and support staff.

The support staff, Roger, Mackay, Trewin, Brain, Siemon and Nuttall all had an opportunity, to a greater or lesser extent, to make a copy of a briefing paper or the correspondence.

Any security system is only as good as the integrity of those who administer it. Having observed these people in the witness box and having regard to the security safeguards in place, I am satisfied that none of those persons was responsible for supplying Whittaker with the necessary documents.

I turn now to the three remaining possible sources, Le Grand, Pearce and McGrath.

Dealing firstly with Mr. Le Grand, he has made his career in law-enforcement agencies and has occupied responsible positions in a number of such organisations.

It is obvious that any person who supplies confidential information gathered during a CJC investigation to a journalist not only breaches the law but commits a gross breach of faith to his employer. But more importantly, that person then gives that journalist a hold over the person giving the information, unless the information is supplied anonymously.

Having regard to these factors, I would think that a person such as Mr. Le Grand who is in a position to commit these breaches of the law and of confidence, and so to put himself in the hands of a journalist, would need to have a strong motive and/or be extremely foolish. I did not see any sign of these factors in Mr. Le Grand's case.

In Federal Parliament on 30 March 1995 a Mr. Peter Cleeland, Member for McEwan said -

"Frankly, the Queensland Criminal Justice Commission should be charged. It leaks like a sieve, and the person doing the leaking is Mark Le Grand. He should be brought to this House to justify his behaviour and that of the Criminal Justice Commission because there is something smelly, dirty and stinking about a law enforcement body that would leak material to politicians in this House in order to attack Australian citizens."

One would expect such a specific allegation to be based upon specific and firm evidence. That evidence would be highly material to the present investigation. Since Mr. Cleeland is out of the jurisdiction, he is not amenable to a summons to attend, otherwise I would have requested a summons be issued to procure his attendance. He was invited to attend (exhibit 26).

He declined to attend and declined to elaborate on his statement in Parliament.

His response (exhibit 27) is worth quoting -

"I thank you for your invitation to give evidence at the hearings on the alleged leaking of confidential information (CJC Queensland). I have nothing further to add to the matters raised by me in the Parliament. It is not my intention to attend the hearings or to give evidence."

One would have thought that if he possesses specific evidence of such a breach of faith on the part of a high-ranking official of the CJC, he would come forward and present the evidence to this investigation, especially since his allegations were a factor in the establishment of this enquiry.

In the circumstances, I ignore his statement in Parliament.

Mr. Whittaker has said on a number of occasions that Mr. Le Grand is not his source. He says he regarded the naming of Le Grand in Federal Parliament as an injustice and was moved to remedy that injustice by saying that Le Grand was not his source. This he did in a letter to Le Grand's solicitors

(exhibit 25), in an interview with me on 19 April 1995 which was tape-recorded (see transcript at exhibit 208) and in his statement before me, exhibit 202 at paragraph 13.

However, in view of my findings upon Mr. Whittaker's credibility which I discuss below, I regard these exculpatory statements from Whittaker as of dubious value. I am also mindful of the possibility that a journalist who has received information in breach of the law and in breach of an employee's obligation of confidence to his employer could well lie in order to protect his source.

I thought it necessary to examine the circumstances surrounding a leak of information gathered during Operation Wallah in early 1994 to a politician. On 11 May 1994 Senator Chapman from South Australia, revealed in Parliament that he had what was obviously material gathered during Operation Wallah. On 27 May 1994 he appeared on TV with a document which made it plain that he had obtained access to a report prepared by the Queensland Police Service (the BCIQ report). This was confirmed by Inspector Oliphant's investigation - exhibit 238.

That document could only have come from the CJC or the Queensland Police Service, as Senator Chapman himself confirmed in a radio interview on 7 June 1994 (exhibit 9, p.16.5). Senator Chapman referred to "the FBI

connection" in Parliament on 30 May 1994 (exhibit 249). It was submitted to me by counsel for the AFP that this information could only have come from the CJC. However it is apparent from the minutes of the joint CJC/QPS meeting of 18 and 26 April 1994 (exhibit 225) that the FBI connection was information in the possession of both the CJC and the QPS. It is therefore in the same category as the BCIQ report leaked to Chapman.

For the same reason that I disregard Mr. Whittaker's statement exculpating Mr. Le Grand, I place no weight upon his letter of 21 March 1995 to the CJC recorded at exhibit 9, p.13.6 declaring that he had no reason to believe that the documents had come from the CJC.

I decided to examine this issue because discovery of the person responsible for that leak may have shed light upon the issues with which I am concerned.

The whole matter was extensively investigated by Inspector Oliphant of the Queensland Police Service and his report is exhibit 238 before me.

Mr. Le Grand had had access to the BCIQ report and had made a copy of part of it. A description of his copy appears in his interview with Inspector Oliphant at Appendix 15 of exhibit 238.

Inspector Oliphant's investigation also revealed that there had been extensive telephone contact between Mr. Le Grand and a member of Senator Chapman's

staff, a Mr. Nicholls.

Curiously, what appears to be a copy of the document Senator Chapman had was given to Mr. Le Grand on 31 March 1995 after he rang one of his contacts at the Courier-Mail seeking information on Mr. Cleeland's naming of him in Parliament as the source of the CJC leaks. That document is Document 11 to Inspector Oliphant's report.

A comparison of that document with the copy Mr. Le Grand produced to Inspector Oliphant shows that the person who compiled the document Senator Chapman had (by dictating part of the contents of the BCIQ report) had a complete copy of that report and could not have been reading from Mr. Le Grand's abbreviated copy.

Mr. Le Grand's extensive telephone contact with Nicholls appears at first sight to be highly suspicious. However, he explains this contact during his interviews with Inspector Oliphant, Appendices 15 and 30; and see exhibit 252. Briefly, he says that he was acquainted with Mr. Nicholls through his duties earlier in his career in South Australia as that State's representative on the National Crime Authority. He says the contact from Nicholls on 4 March 1994 was immediately following the bombing of the NCA Headquarters in Adelaide. Nicholls spoke about that event and then later moved on to urging Le Grand to disclose information about Operation Wallah.

Mr. Le Grand's explanation is confirmed by a letter from Nicholls (see Document 18 to Inspector Oliphant's report). However, because Mr. Nicholls did not give evidence and because of my previously expressed view that the beneficiary of a leak would be quite capable of lying to protect a source, (particularly where that beneficiary is a politician or a person attached to a politician) I give little, if any, weight to this confirmation.

Senator Chapman visited the CJC in July 1994 to voice some complaint about the handling of the Operation Wallah investigation. That seems inconsistent with the CJC having favoured him with confidential information about Operation Wallah.

I had the opportunity to observe Mr. Le Grand in the witness box. He indignantly denies Mr. Cleeland's allegation and any other suggestion that he is the source of the journalists' information (pp.146-149). He was prevented by Parliamentary privilege from calling into question his accuser's motives, so that I was presented with the farce of a politician having slandered a man under Parliamentary privilege, and that person then being hampered by the same Parliamentary privilege in fully defending himself. I dismiss Mr. Cleeland's allegations with contempt.

From my observation of Le Grand in the witness box combined with the improbability of a person in his position being so foolish as to put himself in

the power of a journalist, I am satisfied that he is not the source of the operational information published in any of the articles.

I turn now to Mr. Russell Pearce.

Mr. Pearce was the principal investigator. He was the one who compiled the information and had custody of his reports and all other supporting documentation. He thus had ample opportunity to supply the journalists with the requisite information, if he were so inclined.

He also had a motive. By November 1994 he had taken the investigation as far as he could. By then it was apparent that the investigation should advance into areas where the CJC had no jurisdiction. For that purpose, Federal law enforcement agencies were briefed, together with the New South Wales Police and the United States FBI. Mr. Pearce became impatient with the pace at which the Federal authorities were proceeding with the investigation (see the correspondence between the two bodies at exhibit 9, appendix 6).

On 10 March 1995 the AFP investigators informed him that, so far, they did not think that there were any offences against Commonwealth law (see exhibit 68). He had also been told by Wilkinson on 13 February 1995 that the AFP would not be doing anything and that the matter would not be investigated (exhibit 9, p.10.15).

These factors (delay and disappointment with the Federal findings) could be seen as giving Mr. Pearce a motive for giving the information to a journalist, as he freely admits.

I had the opportunity to observe Mr. Pearce over many days in the witness box, some of which involved close questioning. Subject to a qualification I will deal with in a moment, I accept his evidence that he did not supply either of the journalists or any other person with any information that had been gathered during Operation Wallah.

The qualification is as follows.

Prior to the publication of the articles with which I am concerned, he had had contact with Wilkinson.

Mr. Pearce had the following contacts with the journalist, Marion Wilkinson, prior to the publication of her article on 10 March 1995.

16 December 1994 - by phone

20 December 1994 - in person for 3 hours

17 January 1995 - by phone

19 January 1995 - by phone

7 February 1995 - by phone

13 February 1995 - in person

15 February 1995 - in person

3 March 1995 - by phone

9 March 1995 - by phone.

There were other contacts after her article appeared on 11 March 1995. For details of all these contacts see exhibit 9, annexure 10.

Mr. Pearce had the following contacts with the journalist Paul Whittaker in the period during which his articles were being published.

13 March 1995 - by phone

14 March 1995 - by phone

15 or 16 March 1995 - by phone.

There were other contacts, all by phone, after the last of Mr. Whittaker's articles on 25 March 1995. For details of all these contacts see exhibit 9, annexure 29.

All of these contacts were with the knowledge and consent of Mr. Pearce's superiors.

Mr. Pearce says that the purpose of these contacts was to listen to the journalists with a view to seeing how much they knew and, of course, picking up any information that was then unknown to the investigators. He says that

the journalists were told that he could neither confirm nor deny what they had to say. Nevertheless, I find it impossible to accept that there was no occasion during any of those contacts when the particular journalist regarded a question or proposition as being affirmed, either by silence or by manner. This must particularly be so with regard to the three hour person to person interview with Marion Wilkinson on 20 December 1994. To my mind, it would be impossible to avoid conveying an impression of assent either by silence or by manner for the whole of that three hour period. In the case of Whittaker, Mr. Pearce reports in his file note of the telephone contact with Whittaker on 13 March 1995 (the date of publication of the first of Whittaker's articles) that Whittaker said -

"He interpreted the Commission's failure to deny the matters as confirmation of his suspicions."

See exhibit 9, annexure 29.5.

I have little doubt that by means of these contacts both by telephone and (in the case of Wilkinson) in person the impression must have been conveyed to the journalists in some instances with respect to some matters that there was affirmation of the journalist's question or proposition.

Whether that affirmation applied to information already known to the journalist or not cannot, of course, now be ascertained, and no further light can be shed on the matter while Whittaker and Wilkinson refuse to answer

questions.

I have no first-hand experience of how the investigative process adopted by the CJC and other law enforcement investigators works in practice. No doubt those who have such experience regard it as useful to speak to a journalist who is also investigating the same matter, with the hope of, perhaps, picking up some information from the journalist. Mr. Le Grand explained this in evidence at p.2652. However, the dangers of this process are (to me) obvious. Whether assent to a journalist's question or proposition is intended or not, it is obvious that there will be a tendency for a journalist to readily infer assent from silence or manner.

If the CJC chooses to maintain contact with journalists and urgers who attach themselves to politicians, then it will have to bear suspicion that falls upon it when leaks such as these occur.

For these reasons, I am of the view that Mr. Pearce in these contacts with the two journalists must have provided some affirmation for some of their questions or propositions.

In the case of Whittaker, the evidence is that the first contact between Whittaker and Pearce was on the afternoon of 13 March 1995, the date of the first publication of Whittaker's articles. Whittaker's interest in the matter was

known to the CJC through an advice to that effect from Detective Sergeant Sullivan of the New South Wales Police - see exhibit 102. Pearce's diary notes of what he says are his first contacts with Whittaker on 13 and 14 March 1995 are at exhibit 9, pp.29.5 and 29.1 respectively. If there had been contact between Pearce and Whittaker prior to the publication of Whittaker's first article on 13 March, such that Pearce was Whittaker's source, then these diary notes would have to be a clever concoction.

An attempt was made by counsel for the AFP to demonstrate that Whittaker had possession of documents which could only have come from the CJC. This exercise was based upon an affidavit from a Mr. Weller, an employee of McDonnell Douglas in the USA, (exhibit 253). I decided to receive this statement for the purpose of seeing whether it raised any issues which would justify the expense of either bringing Mr. Weller to Australia for the hearing or arranging a satellite link to examine him in that form. As it turned out, for reasons which appear below, I do not find it necessary to take oral evidence from Mr. Weller.

Mr. Weller's statement recites that Whittaker came to see him in the USA and claimed to be in possession of many documents dealing with Operation Wallah. He showed Weller some of them and Weller is able to give a description of some of them.

Pearce was then cross-examined upon the assumption that Whittaker had those particular documents, with a view to demonstrating that he could only have got them from Pearce - see transcript p.2715 et seq.

In my view, it was not demonstrated that the documents which Weller describes could only have been given to Whittaker by Pearce. Further, the weight of Weller's description of those documents is weakened by the circumstances in which that statement was taken from him by a solicitor from the Australian Government Solicitor. In the course of taking that statement, Weller was shown a number of documents. I appreciate that it may not have been practical to interview Weller in any other way. However, his identification of documents said to be in Whittaker's possession is thereby weakened. But this is not determinative of the matter. I decided against taking evidence from Weller on the basis that it could not be demonstrated that the documents he describes as being in Whittaker's possession could have come only from Pearce.

I was pressed with many arguments about Pearce's credibility. It was said that he was contradicted by witnesses of credit, that he had overstated or misrepresented the strength of the evidence he had gathered, that he had ignored evidence that did not suit his theories, that he had withheld evidence from the AFP and, of course, that he, of all people, had the most compelling motive and the best opportunity.

There is much force in some of these arguments. There is no doubt Pearce had a compelling motive. He obviously felt keenly frustrated at what he perceived to be a dilatory and inadequate investigation by the AFP, coming as it did after the NCA's refusal to act. He had put a lot of time and effort into the case and had taken it as far as he could within the limits of the CJC's jurisdiction. He obviously felt convinced that he had uncovered serious wrongdoing on a large scale and in high places. He was able to infect the Chairman, Mr. O'Regan, with his enthusiasm.

But there are other matters which, to my mind, outweigh these arguments.

Firstly, if Pearce were minded to leak the material, I do not understand why an unknown journalist like Whittaker writing for a local paper would have been favoured, when there was Wilkinson, writing for a national paper, with whom he had had considerable contact and who to his knowledge intended to publish about Operation Wallah (exhibit 9, 10.21). Or, better still, a politician could have been chosen. The matter could then have been published under Parliamentary privilege and the press could have republished with immunity. There was no shortage of politicians eager to act as a mouthpiece.

The material could have been sent anonymously to a politician or a journalist.

I am also mindful of the possibility that Pearce could have achieved a leak

more subtly by letting it be known to the FBI attache, Mr. Ramey, that it would not be a bad thing if the press got hold of the full story. He had a very good relationship with Ramey, who appeared to share his enthusiasm for the case. There is the curious circumstance that Ramey permitted McGrath to draft the terms of a letter that Pearce and McGrath wanted him to send to Mr. O'Regan (exhibit 9, p.8.10 and exhibit 133). And Mr. Ramey left Australia shortly before the articles were published.

But the most important matter, for my purposes, was the opportunity to observe Pearce over many days in the witness box. I feel sure that if he had been responsible for leaking this material, I would have detected some sign of weakness during those days.

With the reservation expressed above, I accept Mr. Pearce's denials and find that he did not supply the journalists, Whittaker or Wilkinson, with any of the operational material which appears in their publications.

There are other aspects of the case, concerning him, which I deal with in discussing Mr. Grice and the publication of 25 March 1995.

I pass on to the other investigator, Mr. Timothy McGrath.

Mr. McGrath seems to have played a lesser role in the investigation than Mr. Pearce; but that aside, the remarks I have made about Mr. Pearce apply equally to Mr. McGrath. He had the opportunity to supply the journalists with information and, presumably, also had a motive derived from frustration at the attitude of the Federal authorities.

He spent some time in the witness box, although not nearly as long as Mr. Pearce did. There was nothing about his demeanour in the witness box, the content of his answers to questions, nor the circumstances of the case which would lead me to suspect that he is the source of the journalists' operational material.

My comments upon the case of Dr. Watson and of Mr. Pearce with regard to the affirmation of journalists' questions or propositions by means of silence or conduct apply equally to Mr. McGrath. He was present with Mr. Pearce on 20 December 1994 when they met with Marion Wilkinson for about three hours. He was also present on 15 February 1995 for part of the time when Pearce met with her.

My comments about the effect of such meetings apply equally to Mr. McGrath.

It is now necessary to deal, with respect to the CJC staff, with certain non-

operational material that appeared in the Courier-Mail articles. I have already mentioned above, when dealing with the PCJC, the article of 25 March 1995 which reports occurrences at a committee meeting on 14 November 1994 and on the occasion of the visit to the CJC premises by three of the committee members on 23 February 1995, together with the content of a confidential letter passing between the chairman of the committee and the chairman of the CJC.

As to Mr. Davies' letter to Mr. O'Regan, in discussing the PCJC, I have already said that I am not prepared to find that any member of that committee or its staff gave a copy of the letter to Whittaker. The same reasoning applies to the staff of the CJC and I am not prepared to find that Whittaker obtained a copy or access to the contents from any member of the staff of the CJC.

On 23 February 1995, some hours after the committee members had completed their inspection of the documents at CJC premises, Mr. Allan Grice MLA rang the CJC seeking to speak to Mr. Le Grand or Mr. Pearce. He ended up speaking to the Deputy Director of the Official Misconduct Division, Mr. David Bevan. He told Mr. Bevan that some members of the PCJC were to have been briefed that day on Operation Wallah but that they were only partially briefed and were not given access to all the documents. See Mr. Bevan's file notes at exhibit 50.