

House of Representatives

Committee of Privileges

**Report concerning disruption of mail services
to Members electorate offices**

JUNE 1994

MEMBERS OF THE COMMITTEE

MR R W SAWFORD, MP (CHAIRMAN)

HON A S PEACOCK, MP (DEPUTY CHAIRMAN)

MR K J ANDREWS, MP

HON R J BROWN, MP

MR P R CLEELAND, MP

HON A C HOLDING, MP¹

HON L S LIEBERMAN, MP²

MR P J McGAURAN, MP

HON M J R MACKELLAR, MP³

HON L B McLEAY, MP

HON D W SIMMONS, MP

RT HON I McC SINCLAIR, MP⁴

MR A M SOMLYAY, MP⁵

1. Nominee of the Leader of the House
2. Mr Lieberman was replaced by Mr Sinclair during consideration of this reference
3. Nominee of the Deputy Leader of the Opposition until 18 February 1994
4. Appointed by the House to serve in place of Mr Lieberman during consideration of the matter referred on 15 December 1993
5. Nominee of the Deputy Leader of the Opposition from 24 February 1994

1. The subject of this reference was raised in the House by the Hon. J.W. Howard, MP, on 13 December 1993. He referred to action taken by the Communication Workers' Union which resulted in bans on the delivery of mail to Members' offices. He also said that he understood that in many cases a ban had also been placed on the despatch of mail. Mr Howard said that it seemed to him that the matter was a very clear breach of privilege in that the actions were directed specifically towards members of Parliament -as he put it "members of Parliament are being singled out for the purposes of the ban..." - Attachment A ¹.

2. On 15 December the Speaker responded on the matter. The Speaker said that he had also received representations from the Leader of the National Party of Australia, Mr Fischer, the Honourable Member for Adelaide, Ms Worth, and the Honourable Member for Braddon, Mr Miles. The Speaker said that he had concluded that a *prima facie* case existed and that he would be justified in allowing precedence to a motion. He said however that he had been informed that normal mail services to and from Parliament House (a matter which had arisen after the initial complaint was raised on 13 December by Mr Howard) were to be resumed from 16 December and that mail to the electorate offices of Members was to be released immediately on receipt of a union branch circular. The Speaker said that it might suit the interests of Members if no further action was taken in order that the apparent resolution of the matter could proceed. Mr Howard spoke by indulgence and expressed the view that there was an important issue of principle involved, and said that even if the industrial dispute was going to end that should not terminate any consideration of the matter from the point of view of parliamentary privilege. Mr Lieberman also spoke by indulgence on the matter. He said that he felt very strongly that it was time for a parliamentary committee to examine these sorts of matters and to report on them. The Speaker stated that as he had concluded that a *prima facie* case existed he would be justified in allowing precedence to a motion - Attachment B. Mr Howard subsequently moved—

That the matter of bans by the Communication Workers' Union on the delivery to and dispatch of articles from the offices of Members be referred to the Committee of Privileges.²

This motion was agreed to without debate.

The relevant parliamentary law

3. The House of Representatives has the undoubted power to punish for contempt. A contempt is an act which obstructs or impedes the House in the performance of its functions or which obstructs or impedes a Member or officer in the discharge of his or her duty, or which has a tendency directly or indirectly to produce such a result³.

Both *House of Representatives Practice* and *May* refer to a category of contempt under the headings of obstructing Members in the discharge of their duty, although neither work lists precedents relevant to the present matter.

Section 4 of the Parliamentary Privileges Act 1987 provides:

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a Member of the Member's duties as a Member.

This provision can be read as re-affirming the powers of the Houses in respect of contempt, but it also constitutes a limitation on the discretion they enjoy - in effect it sets a threshold before a finding of contempt can be made.

Precedents

4. The committee is not aware of any occasions on which the Committee of Privileges of either the House or the Senate has considered a similar matter. Our attention was drawn to two occasions on which complaints were made in the House of Representatives as to the effect of industrial disputes. One case arose in 1978 following the cessation of mail services to the provisional Parliament House. On that occasion the strike was apparently not directed at the Parliament but affected the larger Canberra area. In 1985 a complaint concerning mail services was also raised but it appears that the bans in question were not directed specifically at Members. Serious disruption was caused to the House of Commons in London in 1975 when employees in the building mounted a picket line around the Palace of Westminster. Some inconvenience was caused - the gas supply was switched off, and Hansard and other documents were not able to be delivered. The House was however able to carry on and some mail was apparently delivered and despatched. In none of these cases was the matter referred to the relevant Committee of Privileges for inquiry.

Conduct of inquiry

5. The committee understands that during the dispute which gave rise to the complaint by Mr Howard in fact some disruption was also caused to mail services to Parliament House. Nevertheless, the motion agreed to by the House on 15 December which constituted the reference to the committee was moved on the basis of complaints concerning services to electorate offices, and was phrased accordingly. The committee, whilst aware of these other and related matters which arose after the initial complaint was made, proceeded on the basis that the matter before it concerned services to electorate offices. The committee wrote to the National Secretary of the Communication Workers' Union inviting a submission on the reference. In addition, the committee invited submissions from Messrs Fischer, Howard, Lieberman, Miles and Ms Worth

because of the comments that had been made by, or attributed to, those Members.

6. Written submissions were received from Mr Fischer and from Ms Worth and from Mr Paul Watson, National Secretary of the Communication Workers' Union. In addition, oral evidence was received from Hon. L.S. Lieberman on 24 February 1994. A memorandum on the reference was received from the Clerk of the House - see Attachment C.

Evidence received by the committee

7. Mr Fischer's submission dealt with the effect of the ban on the delivery of mail to his electorate office. He said that on Thursday, 9 December his electorate office staff attended at Albury Post Office to find, for the first time ever, no mail in the box. On proceeding to the counter they were advised by postal staff that a ban had been placed on the box. Mr Fischer said that on Friday, 10 December he had gone to the box to find that it was again empty with a paper stuck across the back preventing mail being placed in the box. When he went to the counter and asked for his mail he was informed that there was a ban on its delivery. Mr Fischer said that he pointed out to the postal staff the sections of legislation concerning interference with mail and again asked for his mail. Again, delivery was not forthcoming. Mr Fischer said that when he asked whether he could remove the piece of paper blocking the delivery of mail to his box he was told that it would be in order to do this but it would make no difference and the mail would not be delivered. Mr Fischer said that he returned to the box, unlocked it and removed the paper although he learned later in the day that some masonite had been nailed across the back in place of the paper. Mr Fischer said that his electorate office staff continued to ask for his mail on 13 and 14 December and later that day the Post Office finally advised that the ban would be lifted and the mail would begin to flow again. Mr Fischer said that over 100 items of A-Grade mail were delayed, along with a considerable quantity of B-Grade mail. His views may be summarised as follows—

I submit [the ban] was a manifest restriction on electors' access to Members of Parliament and as such restricted Members of Parliament from carrying out their duties on behalf of electors.

8. Ms Worth referred to the relevant legislation and said that by the withholding of her mail for more than a week many constituent inquiries, some of them of an urgent nature, went unanswered. She said that important research material and general and business correspondence could not be accessed and the need to respond to deadlines to attend Christmas events was missed. She also said that by refusing to take mail from Parliament House her written communication with constituents during the sitting week was paralysed. She said that the option of telephone or facsimile communication was not entirely appropriate in many cases. She felt that the perceptions created when she failed to respond to urgent written calls for help or invitations to local events

because mail was not delivered was that she did not care about fulfilling her duties conscientiously. Ms Worth said that she had no doubt that her capacity to carry out her duties as a Member of the House of Representatives was severely impeded and that the actions which led to it were improper. She referred to financially disadvantaged groups in her electorate, stating that most members of the public do not have private access to fax facilities, that some members of the public do not have access to telephones, and she said that many people who obviously preferred to write to her did not know about the ban and consequently had no reason to know why she "ignored" their requests for help or invitations. Ms Worth stated—

"..... The action of the Communication Workers' Union prevented ordinary Australians access to their Members of Parliament for help and assistance. There is no industrial problem that can justify interfering with an integral part of Australia's democratic process. Therefore I deem that this action was in fact improper".

Ms Worth said that she felt that those that took part in the industrial action should not be punished because the consequences of their actions were not fully understood. She felt, nevertheless, that members of the Communication Workers' Union should be made to understand that industrial issues cannot be resolved in that particular manner. Ms Worth also indicated that the CWU may have breached legislative requirements under the *Australian Postal Corporation Act 1989* in not providing a "reasonably accessible" service on an equitable basis.

9. In his oral evidence Mr Lieberman outlined in detail the effect of the bans on his two electorate offices (one at Wangaratta and one at Wodonga). Mr Lieberman presented to the committee copies of correspondence that had been held up on account of the bans. He also said that he had been told by the Manager of the Post Office at Wangaratta that if mail was delivered to his electorate office services to the whole of the city would be stopped. This was a matter of particular concern to him. Mr Lieberman said that in the event he did not believe that serious problems had arisen as a result of the delay in the delivery of mail but that the potential had been there for a very serious problem indeed to have been caused to a constituent. Mr Lieberman emphasised that he was not complaining that he had suffered in a personal sense but rather that the real and very serious offence was in the restriction on the ability of constituents to communicate with their Members - the key point was not the inconvenience or disruption to him or to other Members in any personal sense, it was the rights of citizens which were being affected. Mr Lieberman stated—

"..... it is not so much me personally but it is depriving people that I represent of what I think is a fundamental right in a democracy to communicate with their elected representatives since communication in Australia, although it is changing dramatically with technology, traditionally is still by postal services".

10. Mr Paul Watson, National Secretary of the Communication Workers' Union, told

the committee that the action taken by the CWU—

"..... was not intended as, or taken in the knowledge of it being considered a breach of privilege".

He said that the CWU had "expressed dismay" at the Cabinet decision in relation to the Industry Commission Inquiry into mail, courier and parcels services. He said that the union's National Conference initially contemplated widespread industrial action which would have caused great public disruption and concern during the pre-Christmas period. Mr Watson said that the union subsequently decided on a more limited form of action which would nevertheless have an impact and demonstrate the level of concern amongst its membership. The action was—

"..... intended to draw to Members and Senators attention in a practical and first-hand way the impact the Cabinet decision to deregulate some aspects of Australia Post's reserved services would ultimately have on the postal services available to the community".

Mr Watson said that the Industry Commission report itself clearly identified that deregulation by reducing the level of cross-subsidy would result in a reduction of services and/or increased charges. Mr Watson stated—

"..... we believe that Members and Senators were not fully aware of these consequences and felt that our action would bring home our concerns in a meaningful way".

He went on to say that the action was of limited duration and that he was not aware of any hardship resulting from it. He said that the union did co-operate in requests to locate and deliver urgently required articles of a personal nature. He concluded that the CWU did not intend to breach privilege.

Key facts

11. The committee notes that the key facts are not in dispute. Essentially these are that commencing on 8 December 1993 the delivery of mail to the electorate offices of certain members of the House ceased. It is not known whether in fact the delivery of mail to the electorate offices of every Member was affected, however the committee is satisfied that the normal delivery of mail to a significant number of Members' offices was prevented for a period. It is not disputed that this situation arose as a result of decisions taken by members of the Communication Workers' Union.

Issues for determination

12. The committee was required to consider the effect of these actions, and then to determine whether or not a contempt had been committed by any of those persons responsible.

13. There is no suggestion that the actions complained of involved a breach of any particular right or immunity enjoyed by Members collectively or by Members individually. Each House of the Parliament does however have the ability to punish those who may commit contempts - that is, those who may commit actions which, whilst they may not breach any particular right or immunity, are found to amount to improper interference with the free exercise by a House or a committee of its authority or functions, or with the free performance by a Member of the Member's duties as a Member.
14. For many years now there has been a good deal of support for the belief that the House's penal jurisdiction should be exercised sparingly and only in those cases where its use is necessary to protect the House or its Members from actions found to amount to substantial interference. In the House of Commons the Committee of Privileges appears to have always sought to establish whether there was any link between an action complained of and "proceedings in Parliament", so that in the House of Commons, for example, matters arising in connection with an electorate office would only be found to amount to a contempt if it were established that the actions complained of had a connection with a Member's participation in "proceedings in Parliament".
15. In the Commonwealth Parliament it has been considered that the ability to punish contempts would enable a House to act in respect of an action which was found, for example, to obstruct or impede a Member in the performance of his or her duties as a Member, even if this action did not affect in any direct way the ability of Members to participate in "proceedings in Parliament". Reports by the Committee of Privileges of the House which indicate its willingness to entertain such complaints include the 1986 report concerning Mr Peter Coleman, MP. Mr Coleman had complained about false advertisements placed in a major newspaper in which his electorate office telephone number had been listed, with the result that the work of his electorate office was disrupted. The Committee of Privileges concluded that in the particular case no contempt should be found, but it clearly reserved the right to make such a finding in different circumstances.
16. In the 1992 report concerning the threat of legal action against Mr P. Nugent, MP, and in its 1994 report concerning the initiations of proceedings against Hon. C. Sciacca, MP, the committee considered actions arising from letters by Members to Ministers, letters which did not form part of "proceedings in Parliament". In such cases, the committee has presumably demonstrated its acceptance that a contempt can be found in respect of a matter concerning the performance by a Member of his or her duties as a Member even where the matters in question are not connected directly with the proceedings of the House in a technical sense. It would be consistent with this line of reasoning to conclude that a finding of contempt could be made in respect of actions affecting the electorate work of a Member.
17. Accepting that the nature of the House's power to punish contempts is such that it is open to it to make a finding of contempt in such circumstances,

decisions as to when such findings should be made clearly call for the exercise of very careful judgment. In the first place, regard should be had to the well-recognised philosophy of restraint in these matters. Secondly, although technically it is not necessary to have regard to intent, it is appropriate to have regard to the intention of those involved and to any knowledge they may have of the relevant parliamentary law. Finally, it is necessary to consider the consequences of actions complained of.

18. In this case the committee is satisfied that the ability of several Members to perform what they accepted as their duties to constituents was impeded as a result of the actions complained of. The committee is not aware that in any case what may be regarded as substantial harm or damage was caused to any Member or to any constituent but it is clear that the bans in question had the potential to cause a serious problem - and in any case any obstruction which prevents constituents from communicating with Members is serious. The range of issues concerning which constituents and other persons approach Members is very considerable, and often constituents may need urgent assistance in matters where the Member may be, or may be presumed to be, able to provide some assistance. The House must, in our view, be willing to ensure that its Members are never prevented from performing their duties in assisting constituents. We repeat the words of our predecessors in the Coleman case—

.....The realities of political and public life are such that Members from time to time are subjected to various forms of inconvenience or irritation as a consequence of being Members of Parliament. The difficulty is to distinguish between what may be regarded as reasonable or acceptable forms of expression and protest on matters of public interest, and actions which go beyond this and constitute harassment or obstruction of a Member in the discharge of his or her duties. Those who would interfere with the work of a Member, or a Member's office, should remember that it is not only the Member and the Member's staff who may suffer but more importantly constituents and other citizens who may need to contact the Member and who may in fact suffer serious disadvantage if they are prevented from, or experience delays in, communicating with the Member, or if the Member or the Member's staff are obstructed in attending to the concerns or needs in question.

The view of the committee on the present matter is that the actions taken by union members are to be deprecated - they caused inconvenience to Members and to ordinary citizens, and do not represent an acceptable means of expression of concern. Nevertheless, having regard to the apparent ignorance of the relevant law on the part of those responsible for the actions complained of, to the apparent absence of any intention to offend against the law which protects the House and its Members and to the fact that the disruption caused was of a limited duration, a finding of contempt should not be made. The committee affirms the views expressed by the committee in 1986 to the effect that when it is necessary to do so the House should be willing to act to protect Members, and their constituents, from serious obstruction in such matters.

Finding

19. The committee finds:
- (1) that actions taken in December 1993 by and on behalf of members of the Communication Workers' Union caused the delivery of mail to the electorate offices of a number of Members of the House to be stopped;
 - (2) that the actions complained of resulted in disruption of the work of electorate offices of a number of Members of the House;
 - (3) that the actions complained of impeded the ability of constituents of a number of Members of the House to communicate with those Members; and
 - (4) that the actions complained of were not taken with any specific intention to infringe the law concerning the protection of the Parliament.

Conclusions

20. On the basis of the information before it, the committee has concluded that, while the actions complained of ought not to be regarded as an acceptable means of expression and are to be deprecated and although it would be open to it to make adverse findings in respect of those responsible, for the reasons outlined in this report such a finding should not be made.

ROD SAWFORD
Chairman

9 June 1994

NOTES

1. House of Representatives *Hansard*, 13 December 1993, p. 3785.
2. House of Representatives *Hansard*, 15 December 1993, pp 4067-9.
3. *House of Representatives Practice*, 2nd Edition, 1989, p. 686.

Monday, 13 December 1993

Mr **SPEAKER** (Hon. Stephen Martin) took the chair at 2 p.m., and read prayers.

PRIVILEGE

Mr **HOWARD** (Bennelong—Manager of Opposition Business)—I rise on a matter of privilege arising out of a communication sent by the Communication Workers Union to a number of members of this House and action taken by that union consequent upon that communication. The effect of it is to place an indefinite ban on the delivery—and I understand in many cases the dispatch—of mail articles in and out of members' offices.

This seems to me to be a very clear breach of privilege. I have been able to establish that questions of privilege have been raised in this House on two previous occasions: once in 1978 by the former member for Maranoa relating to a general ban, and on a second occasion in May 1985 the right honourable member for New England (Mr Sinclair) raised a question of privilege in relation to the banning of express *Courier Mail* articles to Queensland. On that occasion Madam Speaker Childs declined to grant the matter priority on the grounds that the ban affected members of the public generally and was not specifically directed towards members of parliament.

On this occasion the ban clearly falls into the latter category. Members of parliament are being singled out for the purposes of the ban and it does seem that it is a breach of the privileges of members of both sides of this House. Mr Speaker, I therefore ask you to take the action which is appropriate under the standing orders.

Mr **SPEAKER**—As is normal practice, I will look at the issue which has been raised by the honourable member and I might just inform him that I have also received communication from the Leader of the National Party on the same issue. I will report back to the House a little later.

MINISTERIAL ARRANGEMENTS

Mr **KEATING** (Blaxland—Prime Minister)—I inform the House that the Minister for

Development Cooperation and Pacific Island Affairs, Gordon Bilney, will be absent from question time this week.

Opposition members interjecting—

Mr **KEATING**—Are you running a raffle? Mr Bilney is away on government business. In his absence questions should be addressed to the Minister for Industry, Technology and Regional Development, Alan Griffiths.

I also inform the House that the Hon. Andrew Theophanous has resumed his duties as Parliamentary Secretary to the Minister for Housing, Local Government and Community Services and Parliamentary Secretary to the Minister for Health. Mr Speaker, you might recall that Dr Theophanous had voluntarily stood aside from his position on 1 November of this year following allegations which appeared in a Sydney-based Chinese language newspaper. After inquiries by the Australian Federal Police, the Minister for Justice issued a statement the day before yesterday confirming that no evidence had been found to support the allegation. Hence, Dr Theophanous has been cleared of the allegation and I welcome him back into the chamber with the resumption of his full duties as parliamentary secretary.

QUESTIONS WITHOUT NOTICE

Mabo Legislation

Mr **TIM FISCHER**—My question is addressed to the Special Minister of State. Is it a fact that at the weekend the chief executives of 15 major Australian mining companies described the Mabo legislation as 'extraordinarily complex' and 'unworkable' and said that the continuing uncertainty generated by it would 'jeopardise development, diminish and delay investment and reduce economic growth and employment opportunities'. Why is the government trying to railroad this legislation through parliament this year when so many Australians have such deep concerns about its impact?

Mr **WALKER**—It is a fact that such advertisements did appear in the national press. There is nothing new about that, of course; there have been campaigns in the past by the mining industry with respect to land

from interstate, I am pleased to say that I will be making representations at the national level of our organisation for the limitations to be lifted on the delivery of mail to politicians who have given a commitment in writing to defend our national postal service.

So not all honourable members are affected or will be affected by the ban, as was implied by the right honourable member for New England.

Mr HOWARD (Bennelong—Manager of Opposition Business)—Mr Speaker, I wish to make a personal explanation.

Mr SPEAKER—Does the honourable member claim to have been misrepresented?

Mr HOWARD—I do.

Mr SPEAKER—Please proceed.

Mr HOWARD—Like the honourable member for Mayo (Mr Downer), I admit openly to having interjected during an answer being given by the Minister for the Environment, Sport and Territories (Mrs Kelly). As a result of that interjection, the Prime Minister (Mr Keating) rose and made the totally false, cowardly, sexist and erroneous claim that we on our side of the House—

Mr Beazley—Mr Speaker—

Mr HOWARD—No. He started this.

Mr SPEAKER—Order! The honourable member for Bennelong should not get too excited.

Mr HOWARD—I am not getting excited at all. He will blow up if he gets any more excited.

Mr SPEAKER—The honourable member will resume his seat.

Mr Beazley—The honourable member lives in a world of his own. My point of order, Mr Speaker, is that a personal explanation goes very specifically to where a person has been personally misrepresented. The person states the misrepresentation and corrects it without directing any epithets at anybody else. In neither this case nor the previous one has that been observed.

Mr HOWARD—This is what the Prime Minister said:

... it cannot be a coincidence that the cacophony of voices which comes from the opposition comes whenever the minister is on her feet.

That is totally wrong. There is no cacophony of voices.

Mr SPEAKER—Order! The minister and the honourable member for Bennelong will resume their seats. The honourable member for Bennelong is now taking this to an extreme degree, in my view. The point has already been made by the honourable member for Mayo. The honourable member for Bennelong is endeavouring to use this point to take it a step further. We have got the message and, as far as I am concerned, the matter stops there.

PRIVILEGE

Mr SPEAKER—On 13 December the honourable member for Bennelong raised as a matter of privilege actions taken to withhold mail services from the offices of honourable members. Yesterday the right honourable member for New England (Mr Sinclair) also drew my attention to a media release issued by the Communication Workers Union on 13 December. I have also had representations from the Leader of the National Party of Australia (Mr Tim Fischer), the honourable member for Adelaide (Ms Worth) and the honourable member for Braddon (Mr Miles). The basic position in relation to contempt is that actions found to amount to, or to be intended or likely to amount to, improper interference with the free performance by honourable members of their duties as members can be found to be contempts.

The honourable member for Bennelong mentioned two precedents of similar complaints having been raised, one in 1988 and one in 1985. In neither case was precedence given to a motion. I have to advise the House, however, that, on the information available to me, the actions complained of by the honourable member for Bennelong were directed quite specifically at honourable members and would have been affecting their capacity to perform their duties as members.

I had concluded that a prima facie case existed and, accordingly, that I would be justified in allowing precedence to a motion.

However, I am pleased to be able to report that I have been informed that, first, normal mail services to and from Parliament House are to be resumed on the afternoon of Thursday, 16 December 1993 and, second, that all mail to the electorate offices of federal politicians is to be released by members immediately upon receipt of a union branch circular.

Opposition members—That is tomorrow.

Mr SPEAKER—I know what it is. I am just reporting. In the circumstances, I suggest that it may suit the interests of honourable members if no further action is taken at this stage on the complaint in order that the apparent resolution of the problem can proceed.

Mr HOWARD (Bennelong—Manager of Opposition Business)—Mr Speaker, with your indulgence: I appreciate the thought that you have given to this matter and I do not wish this comment to be misunderstood. I certainly agree with the conclusion that you have reached. Quite plainly this ban was directed specifically at members of parliament.

I have to say, as the person who raised this matter, that I am not prepared to accept that the matter rests at that. I think there is an important issue of principle involved. I am not aware that the doctrine of privilege operates on the basis that, no matter what has happened in the past, once it is stopped that is it. That may be relevant to penalty and to damages, as it is in relation to many matters that appear before the courts, but the concept is that one can put a ban on members of parliament, blackmail the performance of their duties and then, as soon as it is finished, say, 'Let's forget about all of that'. A lot of people in the community would like that kind of privilege and that kind of benefit extended to their conduct.

I am speaking ad hoc, but I am certain that my colleagues would strongly support me on this matter. We are simply not prepared to accept that, simply because the industrial dispute is, conveniently, going to end tomorrow afternoon, that should terminate any consideration of this matter as a breach of privilege. It was a breach of privilege when it was put on; it is still a breach of privilege.

The fact that it is ending tomorrow is no excuse.

Mr LIEBERMAN (Indi)—Mr Speaker, with your indulgence, I wish to comment on the same matter. I listened with interest to your ruling and I certainly agreed with you when you said that you believed that a prima facie case had been established. In respect of the second part of your ruling, I believe that—

Mr SPEAKER—I have not given a ruling.

Mr LIEBERMAN—I refer then to your comments. I believe that the nature and extent of the prima facie breach of privilege is one that goes to the very tenets of the successful operation of our democracy and the work and performance of elected members of parliament from both sides.

I have some difficulty in saying what I want to say because I am a member of the privileges committee and I want to indicate that I am trying to keep an open mind. Nevertheless, I feel that it is in the interests of the parliament and the nation that this matter be investigated by the committee. If anyone has concerns about what I have just said, I naturally will not sit on that committee of inquiry.

I feel very strongly that it is time for a parliamentary committee to examine these sorts of actions and to report back to parliament so that people know what it thinks about the sort of behaviour that prevents constituents—not members of parliament—from communicating their concerns to their elected members. I think that is absolutely fundamental to the success of our democracy, and, of course, it is fundamental to the operation of the parliament.

Mr Speaker, I have great respect for your position and the way in which you deal with it. I therefore ask that you give consideration to reviewing the matter between now and tomorrow and to allowing a few more hours consideration for what I regard as a matter vital to the successful operation of the people's parliament.

Mr HOWARD (Bennelong—Manager of Opposition Business)—Mr Speaker, with your indulgence again: could I inquire of you whether you will accept from me a motion, or

give precedence to a motion from me, to refer this matter to the committee of privileges?

Mr SPEAKER—As I said in the statement that I read, I have concluded that a prima facie case exists and, accordingly, I would be justified in allowing precedence to a motion. But I went on to suggest, in view of the pending lifting of the bans, that it might suit the interests of honourable members that no further action be taken. That in no way inhibits members of this place from moving a motion.

Motion (by **Mr Howard**) agreed to:

That the matter of bans by the Communications Workers Union on the delivery and despatch of mail articles from the offices of Members be referred to the Committee of Privileges.

AUDITOR-GENERAL'S REPORTS

Mr SPEAKER—I present the following Auditor-General's audit reports for 1993-94: No. 22, *Efficiency audit—Cash management in Commonwealth government departments*; No. 23—*Efficiency audit—Department of Social Security—Protection of confidential client information from unauthorised disclosure*; and No. 24, *Efficiency audit—Australian Taxation Office—Management of appeals and review*.

Motion (by **Mr Beazley**)—by leave—agreed to:

That:

- (1) this House authorises the publication of the Auditor-General's audit reports Nos 22, 23 and 24 of 1993-94; and
- (2) the reports be printed.

PAPERS

Mr BEAZLEY (Swan—Leader of the House)—Papers are tabled as listed in the schedule circulated to honourable members. Details of the papers will be recorded in the

Australian Meat and Livestock Industry Policy Council Act—Australian Meat and Livestock Industry Policy Council—Report for 1992-93.

Australian Nuclear Science and Technology Organisation Act—Nuclear Safety Bureau—Report for 1992-93.

Australian Sports Commission Act—Australian Sports Commission—Report for 1992-93.

Australian Tourist Commission Act—Australian Tourist Commission—Report for 1992-93.

Council of Financial Supervisors—Report 1993.

Criminology Research Act—

Australian Institute of Criminology—21st report, for 1992-93.

Criminology Research Council—21st report, for 1992-93.

Environment, Recreation and the Arts—Standing Committee—Report—Moving pictures inquiry, 24 June 1992—Government response.

Equal Employment Opportunity (Commonwealth Authorities) Act—Equal employment opportunity program—Snowy Mountains Hydro-electric Authority—Report for 1992-93.

Family Law Act—Australian Institute of Family Studies—Report for 1992-93.

Horticultural Research and Development Corporation Act—Horticultural Research and Development Corporation—Report for 1992-93.

Housing Loans Insurance Act—Housing Loans Insurance Corporation—29th report, for 1992-93.

National Competition Policy Review—Report by the Independent Committee of Inquiry, August 1993.

Primary Industries and Energy Research and Development Act—

Chicken Meat Research and Development Council—Report for 1992-93.

Egg Industry Research and Development Council—Report for 1992-93.

Energy Research and Development Corporation—Report for 1992-93.

Grape and Wine Research and Development Corporation—Report for 1992-93.

Pie Research and Development Corpora-

INQUIRY CONCERNING MAIL SERVICES

Memorandum by the Clerk of the House of Representatives

THE REFERENCE

On 15 December 1993 the House agreed to the following motion:

That the matter of bans by the Communications Workers' Union on the delivery to and dispatch of articles from the offices of Members be referred to the Committee of Privileges.¹

The matter was raised in the House on 13 December 1993² by Mr Howard who said, inter alia, that the effect of actions taken by the Communications Workers' Union was to place an indefinite ban on the delivery to, and in many cases, the despatch of mail from, Members' offices. Mr Howard said that this seemed to him to be a very clear breach of privilege, that the ban was directed specifically towards Members of Parliament - he said that Members were being singled out for the purposes of the ban.

Mr Speaker responded to the matter on 15 December 1993. Mr Speaker noted that he had also received representations from the Leader of the National Party (Mr Fischer, MP), the Member for Adelaide (Ms Worth, MP) and the Member for Braddon (Mr Miles, MP). The Speaker said that on the information available to him the actions complained of were directed quite specifically at Members and would have been affecting their capacity to perform their duty as Members. The Speaker said that he had concluded that a *prima facie* case existed and that he would be justified in allowing precedence to a motion. He went on to say however that he had been informed that normal mail services to and from Parliament House were to be resumed on 16 December and that mail for the electorate offices of all Federal parliamentarians was to be released immediately on receipt of a union branch circular. With the Speaker's indulgence Mr Howard spoke on the matter and made the point that because the industrial dispute was going to end it should not terminate any consideration of the matter as an issue of privilege. Mr Lieberman also spoke on the matter by the indulgence of the Speaker. Mr Howard subsequently moved for the referral of the matter to the Committee of Privileges, and this was agreed to.

THE TASK BEFORE THE COMMITTEE

As I see it, the Committee will need to inform itself as to the relevant parliamentary law and precedents. It would then need to consider the facts in this particular matter.

Having gone as far as it can in seeking to ascertain the facts the Committee would then need to reach some conclusions as to the matter. It would presumably consider the question of intent, although I note that the terms of section 4 of the *Parliamentary Privileges Act 1987* make it clear that it is not technically necessary to establish an intent to cause improper interference. Technically at least, it would seem to be sufficient, in terms of the Act, to establish that certain conduct amounted or was intended or likely to amount to improper interference.

GENERAL PROVISIONS RELATING TO PRIVILEGE AND CONTEMPT

A detailed explanation of the law and practice of the House relating to privilege and contempt is set out in House of Representatives Practice³. The nature of privilege is explained and the area of absolute privilege or immunity described, with particular reference to the *Parliamentary Privileges Act 1987*. Reference is also made to the power of the House to punish contempts and the following definition of contempt is quoted from May⁴:

...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.

More information on this point is set out at pages 701-3 of House of Representatives Practice⁵.

Section 4 of the Parliamentary Privileges Act 1987 provides:

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a Member of the Member's duties as a Member⁶.

In effect this provision sets a threshold: to be a contempt an action must amount to or be intended or likely to amount to improper interference with the free exercise by a House or a committee of its authority or functions or with the free performance by a Member of the Member's duties as a Member etc.

PARTICULAR REFERENCES RELEVANT TO THE PRESENT CASE

May states:

Obstructing Members of either House in the discharge of their duty

The House will proceed against those who obstruct Members in the discharge of their responsibilities to the House or in their participation in its proceedings. Not all responsibilities currently assumed by Members fall within this definition. Correspondence with constituents or official bodies, for example, and the provision of information sought by Members on matters of public concern will very often, depending on the circumstances of the case, fall outside the scope of "proceedings in Parliament" against which a claim of breach of privilege will be measured⁷.

While both *House of Representatives Practice* and May refer to a category of offence of obstructing Members in the discharge of their duties, the descriptions and precedents listed do not include any matters on all fours with the present complaint. They refer to matters such as the arrest, molestation and intimidation of Members and to matters such as improper influence.

PRECEDENTS

I am not aware of any precedents in the House of Representatives or the Senate, or in the British House of Commons where a similar matter has been referred to a Committee of Privileges.

On two occasions complaints of a similar nature have arisen in the House of Representatives - but on neither occasion was the matter referred to the Committee of Privileges.

On 15 March 1978 Mr Corbett raised, as a matter of privilege the cessation of mail services to Parliament House due to an industrial dispute. The Speaker said that he had been informed that the strike was not directed at the Parliament, but involved the whole of Canberra. The Speaker concluded that, although important issues were involved affecting the efficiency and workings of the House and its Members, the matter did not constitute a *prime facie* case of breach of privilege.

On 8 May 1985 a complaint was raised by Mr Sinclair that a union ban on mail despatches would affect Members' mail to their constituents. The Acting Speaker considered the matter but concluded that the union bans in question affected all mail and that Members were not being subjected to particular action in their capacity as Members. Accordingly, the Acting Speaker found that a *prima facie* case had not been made out.

In 1975 the House of Commons was affected by an industrial dispute. Maintenance workers employed in the building went on strike, and pickets asked persons not to cross the line. Inconvenience resulted - the gas supply was switched off, affecting the catering services, and the drivers of vans carrying *Hansard* and other parliamentary documents refused to cross the picket lines. The House did not receive the usual quantity of its papers, but apparently it was able to carry on with its business. It appeared likely that mail might not be delivered, but this service was not stopped. At this stage a complaint of breach of privilege was raised, but the Speaker declined to allow precedence to a motion on the matter, citing in part the general reluctance to extend the limits of contempt.

PROTECTION OF MEMBERS IN SUCH MATTERS

Contempt

Whilst the area of absolute privilege is strictly limited, the House has the power to punish contempts - that is, the power to act to protect itself, its committees and its Members from actions which, whilst they may not breach any particular right or

immunity, are held to obstruct or impede the House, a committee or a Member. This power enables the House to protect itself against actions which may not breach any privilege or immunity but which have the potential to seriously obstruct or impede.

In our Parliament such actions must be tested against the provisions of section 4 of the Parliamentary Privileges Act. To be a contempt an action affecting an individual Member must be found to amount or to be intended or likely to amount to an improper interference with the free performance by the Member of the Member's duties as a Member.

The House has not stated how actions might be judged in terms of the requirement of section 4. Technically, it is open to the House to find that this requirement is satisfied in respect to an action which concerns a Member other than in connection with the Member's participation in "proceedings in Parliament" - ie. the House could find that an action which went to another aspect of a Member's performance of his or her duties as a Member was a contempt - such as by the obstruction of a Member's electorate work (see, for example, the case involving Mr Coleman, when his office work was disrupted by phone calls made in response to false advertisements). In this respect the House of Commons has taken a much more circumspect approach - see May, p. 125.

ASSESSMENT OF COMPLAINT

Possible contempt

The main question for the committee is whether the actions complained of ought to be treated as a contempt. In measuring the complaint against the requirements of section 4 of the 1987 Act, the committee would need to consider the extent to which the action complained of could be regarded as improper interference, what the term "free performance of a Member's duties" means and the term "a Member's duties as a Member".

Members' duties: There is no doubt that when Members are performing their various duties in their electorate offices they would have to be regarded as a part of the performance of their duties as a Member. *House of Representatives Practice* states:

Members provide a direct link between their constituents and the federal administration. Constituents constantly seek the assistance of their local Member in securing the redress of some grievance or help with various problems they may encounter. Many of the complaints or calls for assistance fall within the areas of social welfare, immigration and taxation.

.....
A Member has an important influence and standing outside Parliament and typically has a wide range of contacts with government bodies, political parties, and the community as a whole. Personal intervention by a Member traditionally commands priority attention by departments. If the problem of a constituent is purely an administrative one, the Member may contact the department or authority concerned,

where the case will be dealt with by the relevant section. If the problem is urgent, the Member may approach the Minister direct or, if the Member feels the case requires public ventilation, he or she may bring the matter before the House, for instance, by addressing a question to the responsible Minister, by raising it during a grievance debate or by speaking on it during an adjournment debate. It is more common however for the concerns or grievances of citizens to be dealt with by means of representations to departments and authorities, or Ministers, and for them to be raised in the House only if such representations fail.

Clearly Members use the postal services in order to perform these various duties.

Improper interference: It is difficult to know precisely how the words "improper interference" should be interpreted. The explanatory memorandum to the Parliamentary Privileges Bill in 1986 does not help on this point. The terms need to be looked at in context. The Joint Select Committee on Parliamentary Privilege recommended in 1984 the adoption of resolutions by each House to spell out what might be regarded as contempts. Under a heading "Interference with the Parliament" the committee proposed the following formulation:

A person shall not improperly interfere with the free exercise by a House or a committee of its authority, or with the free performance by a Member of his duties as a Member.

Although this proposal has no direct connection with section 4 of the 1987 Act it is of interest⁸. On 25 February 1988 the Senate adopted a detailed resolution outlining matters that could be found to be contempts, and a provision was included on improper interference, effectively in the same terms as recommended by the Joint Select Committee. The House has not however adopted any such resolution.

In the absence of such guidance from the House, I think regard would need to be had to whether an action was either inherently improper, ie. improper in itself, or, failing this, whether there was something in the circumstances surrounding an action which would cause an otherwise proper act to be regarded as improper. As mentioned above, regard would need to be had to the matter of intent, although it would be open to the House, in any opinion, to find that an action amounted to a contempt even in the absence of any such intent on the part of the perpetrator.



L M BARLIN
Clerk of the House

7 February 1994

NOTES

1. House of Representatives *Hansard*, 15 December 1993, pp 4067-9.
2. House of Representatives *Hansard*, 13 December 1993, p. 3785.
3. House of Representatives Practice (2nd edition), AGPS, Canberra 1989 (chapter 19).
4. May (21st Edition) p 115.
5. Op cit pp. 701-3.
6. Act No. 21 of 1987.
7. May, p 129.
8. PP 219 (1984), pp 136. Note that 'conduct as a Member' is not expressed as being confined to participation in 'proceedings in Parliament'.

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Friday, 17 December 1993

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Andrews;
Mr Cleeland; Mr Holding; Mr Lieberman; Mr McGauran;
Mr Price; Mr Quick

The meeting opened at 9.47am.

Minutes

The minutes of the meeting held on 14 December were confirmed.

Correspondence

The Chairman presented extracts from the *Votes and Proceedings* Nos. 42 and 43 of 15 and 16 December respectively informing the committee of the reference to it concerning mail services and of the appointment of Mr Sinclair in place of Mr Lieberman for that inquiry.

.....(section deleted)

Reference concerning mail services

Resolved (on the motion of Mr Holding) that the committee invite:

- (a) a memorandum from the Clerk of the House on the matter;
- (b) a submission from the principle officers of the Communication Workers' Union; and
- (c) a submission from Messrs Howard, Fischer, Miles, MP and from Ms Worth, MP.

The committee deliberated.

At 2.05pm the committee adjourned until 8.00pm on Friday, 17 December 1993.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Tuesday, 8 February 1994

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Brown,
Mr Cleeland; Mr Holding; Mr Lieberman; Mr McGauran;
Mr MacKellar; Mr Quick; Mr Simmons

The meeting opened at 5.30pm.

Minutes

The minutes of the meeting held on 21 December were confirmed.

.....(section deleted)

Reference concerning postal services dispute

Chairman presented a letter dated 25 January 1994 from Ms P. Worth, MP.

Resolved (on the motion of Mr McGauran) - That Ms Worth's submission be received as evidence.

Resolved (on the motion of Mr Cleeland) - That the committee accept Mr Lieberman's request to give oral evidence.

Resolved (on the motion of Mr MacKellar) - That the committee await a submission from Communication Worker's Union before proceeding further.

The committee deliberated.

At 5.45pm the committee adjourned until 11.00am, Thursday 24 February 1994.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Tuesday, 24 February 1994

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Andrews; Mr Brown,
Mr Holding; Mr Lieberman; Mr Quick; Mr Sinclair

The meeting opened at 11.05am.

Minutes

The minutes of the meeting held on 8 February were confirmed.

.....(section deleted)

The Chairman presented the following items of correspondence concerning the postal services dispute:

- letter from Mr T.A. Fischer, MP, Leader of the National Party, and
- letter from the Communication Workers' Union.

Resolved (on the motion of Mr Quick) - That the letters be received as evidence.

.....(section deleted)

Reference concerning postal services dispute

Hon. L.S. Lieberman, MP, Federal Member for Indi, was called, sworn and examined.

Mr Lieberman presented the following document to the Committee:

"Limitations on Mail to Federal Politicians", Communication Workers' Union, Notice
to all CWU members, dated 7 December 1993.

Mr Lieberman showed the Committee items of correspondence addressed to his office and affected
by the dispute.

The committee deliberated.

At 12.25pm the committee adjourned until 9.00am, Thursday 3 March 1994.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 3 March 1994

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Andrews;
Mr Brown, Mr Cleeland; Mr Holding; Mr Lieberman;
Mr McGauran; Mr Quick; Mr Simmons; Mr Somlyay

The meeting opened at 9.05am.

Minutes

The minutes of the meeting held on 24 February were confirmed.

The Chairman advised the Committee that Mr A.M. Somlyay, MP, had been nominated by Dr M.R.L. Wooldridge, MP, Deputy Leader of the Opposition, to serve on the Committee.

.....(section deleted)

Reference concerning postal services dispute

The committee deliberated. _____

At 10.04 the committee adjourned until 11.00am, Thursday 24 March 1994.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 5 May 1994

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Andrews;
Mr Brown, Mr Cleeland; Mr Holding; Mr Lieberman;
Mr McGauran; Mr Simmons; Mr Sinclair

The meeting opened at 11.06am.

Minutes

The minutes of the meeting held on 3 March were confirmed.

Reference concerning postal services dispute

The committee deliberated.

.....(section deleted)

At 12.16pm the committee adjourned until a date to be fixed.

Confirmed.

CHAIRMAN

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