

**RECENT PRIVILEGE CASES**

This note is to provide the committee with information concerning two parliamentary privilege cases.

**Search warrants: members' documents**

Following the Court of Appeals judgment, which held that documents seized in the search of Congressman Jefferson's office that related to his legislative functions should not be available to prosecutors in the corruption prosecution against him, the congressman attempted to argue that the entire prosecution should be thrown out as being in violation of his legislative immunity. This claim (not supported by his House) was not successful, and his trial will now proceed based on evidence obtained by the prosecution and unrelated to his legislative functions.

In another case involving prosecution of a former member for alleged corruption, the House of Representatives has submitted to the court that evidence gained by means of telephone interceptions and interviews should not be allowed to be used in the prosecution because it included material about the member's legislative activities. If successful, this submission would make it clear that the principle applying to search warrants extends also to the interception of telephone conversations and the conduct of interviews. The case is as yet unresolved. (*US v Renzi*)

A great controversy broke out in Britain in November 2008 when police searched the offices, including the Westminster office, of an Opposition member, Mr Damian Green, and seized computer files and other documents. The police were investigating leaks of information from a government department which appeared to be finding their way to Mr Green. It subsequently transpired that the police had no search warrant for the raid on the Westminster office, and the Sergeant at Arms had given permission for the search after consulting the Speaker but not the Clerk of the House of Commons. Mr Green was also arrested and questioned by police, but has not been charged with any offence.

In the voluminous press reports and commentary on the incident, there have been references to "breach of parliamentary privilege", but seemingly no realisation that at least some of the material seized from the offices could be immune from seizure by virtue of parliamentary privilege, if the law from across the Atlantic, and the acceptance of the essence of that law by the executive government in Australia, is followed. I wrote to the Clerk of the House of Commons to draw attention to this issue, but at the time of writing it had still not been mentioned in the continuing publicity about the matter.

The Speaker has appointed a panel of members to inquire into issues arising from the police actions. The Home Secretary has said that she will review the case when the police inquiries have concluded.

***Committee on the Judiciary v Miers (the “fired” prosecutors case)***

There was an investigation by the Inspector General of the Justice Department into the matter of the termination of appointments of prosecutors, which concluded that there had been politicised hiring and other improper actions in the appointment and dismissal of prosecutors. Some material was referred for possible criminal prosecution. This report lends support to the inquiry by the House of Representatives Committee on the Judiciary into the matter, and is likely to facilitate the handing over of relevant documents to the committee by the new administration. The District Court judge dealing with the case on 13 January 2009 made a consent order that the documents in dispute are to be secured pending a decision by the incoming President.