

**RECOMMENDATION OF STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS,
REPORT NO 7 - BARRY GRANVILLE WALLER**

Motion

Resumed from 21 August on the following motion moved by Hon Kim Chance (Leader of the House) -

That in accordance with the first recommendation of the Standing Committee on Environment and Public Affairs on the petition of Barry Granville Waller, this House now orders that -

- (1) not later than 5.00 pm on Tuesday, 26 August 2003, Michael James Murphy deliver to the Clerk of the Legislative Council at his office in Parliament House, Perth, any documents or other material in his possession or under his control that is evidence of the facts and allegations contained in his affidavit sworn on 13 June 2002 and tabled in this House on 18 June 2002;
- (2) the President, on request made by Mr Murphy at a time before the time fixed under paragraph (1), have power in his discretion to extend the period by a number of days not exceeding seven;
- (3) the Clerk is required to retain in his possession anything delivered to him under this order until further order of this House; and
- (4) the President inform this House at the sitting following the last day for complying with this order whether or not the Clerk has taken delivery of any document or other material delivered to him under this order.

HON DERRICK TOMLINSON (East Metropolitan) [10.55 am]: In my remaining time, I will indicate that the request for Mr Murphy to produce documents is a vain request. Mr Waller's petition, dated 10 September 2002, which is contained in the report of the Standing Committee on Environment and Public Affairs, focuses on a grievance that Mr Waller had knowledge of or was involved in the Perth Mint gold swindle and that he was alleged to have confessed to Mr Murphy that he had knowledge of that event. Mr Waller says that those allegations are false and scandalous.

The committee has already attempted to get from Mr Murphy documentary evidence of his allegation. The committee wrote to him and requested documentation. Appendix 5 of the report to which I have already referred contains Mr Murphy's reply, which was sent to Ms Mia Betjeman for the committee. I guess that was via a fax, and a hard copy was received by the committee office on 15 July. Mr Murphy says -

In response to your Committee's letter of June 28 2002 I advise I no longer personally retain contemporaneous documentation related to background to captioned Subject.

Having been asked for the documentation, he said that he did not have it. On page 2 of Mr Murphy's letter, he goes on to say -

I stated that although I no longer held documentary evidence as to said crime, documented evidence thereof would still exist within banking, various WA State government, records, the latter including those of WA State Police - Mr Ryan having to my informed knowledge, repeated Mr Waller's statement without I understand identifying him, to patrons of the Sir John Forrest Tavern in Glen Forrest the same evening.

What are Mr Murphy's allegations about Mr Waller's knowledge of the Perth Mint swindle? I turn to Mr Murphy's affidavit, sworn on June 2002, which is contained in appendix 2 of the committee's report. Mr Waller has said that the first 15 paragraphs are patently false. I am not particularly interested in the matters dealing with the so-called company that Mr Murphy alleges was established by himself, in partnership with Mr Kenneth Frank Ryan. Neither am I interested in the matters relating to Mr Waller, Mr Bryer or Mr Steven Chew regarding a company that was to do something with some process that Mr Murphy says he had purchased an interest in. Those matters are dealt with, in my opinion, quite adequately in the series of statutory declarations or statements that were gained by Mr Bernard Marinus Iriks, an investigator. I want to focus on the matters that relate particularly to the Mint swindle. I draw members' attention to paragraph 8, which states -

A few days before execution -

That is the execution of the alleged agreement with the Chew company -

myself and Ryan attended Chew's office to settle some contractual points with Waller. Waller greeted us in some obvious subdued excitement saying -

This is significant -

“did you hear that they did the mint over this morning” stating some details which I can not recall of the stated incident.

On the day of the visit, Mr Ryan said that Mr Waller said, “Did you hear that they did the mint over this morning?” Paragraph 9 states -

Other than remarking that I had not heard of it on the news (echoed by Ryan) I was not much interested until the following day, or two days later (I cannot recall which, when the swindle was announced on the news as having occurred that day that is the day of the public announcement. No longer being a criminal investigator I merely filed the oddness of the sequence in my mind.

The most telling words in that are “the oddness of the sequence”.

We know that the Mint swindle occurred between 1.00 pm and 2.30 pm on Tuesday, 22 June 1982. Armoured guards took cheques to the Mint, received the gold and took the gold to an office in Subiaco. The following day, on 23 June 1982, at about 10.45 am, one of the security officers who had been engaged by persons unknown to guard the gold at the office in Subiaco, disclosed his unease about the events. The Mint set in train a review of the sale and the release of gold that occurred the previous day between 1.00 pm and 2.30 pm, because the couriers arrived at different times. The first courier arrived at about 1.00 pm and the swindle had been executed by 2.30 pm.

I do not know when the swindle was announced, but I do know that Detective Sergeant Don Hancock was assigned the investigation on Thursday, 24 June 1982. Let us assume that the swindle was announced on the afternoon of 23 June, which means that it was possible that Mr Waller had heard about it on the afternoon of 23 June. It is also possible that Mr Ryan heard Mr Waller ask, “Did you hear that they did the mint over this morning?” He would have made the assumption that because the discovery had been made that morning, the crime had been committed that morning. However, the crime had been committed the previous afternoon. Then Mr Ryan said -

... I was not much interested until the following day, or two days later (I can not recall which, when the swindle was announced on the news ...

If Mr Waller had made that statement on the Wednesday afternoon, and it was announced the next day - or perhaps even two days later says Mr Murphy - it was only then that Mr Murphy put two and two together. The sequence is difficult to follow. Let us say that that is an imperfect recall of a man some 20 years after the event. It is highly credible that his recall is imperfect. Paragraph 11 of the affidavit shows that Mr Murphy said there had been delays in the matter of the contract being finalised. In paragraph 11 he states -

On one such visit - I can not recall date but it occurred during the period referred to immediately above - on arrival at Chew’s offices of myself and Ryan, Waller was not in evidence but Byers was sitting alone at the conference table holding his head in both hands in some obvious distress. On our approach he took his head from his hands, looked at us and in most agitated manner, burst out in terms “My partner (who not having heard he had another I [and Ryan said the same later] took to mean Waller) is going to get me sent to jail, the wrong people are being or are going to be (I can not recall which) charged, I’m going to give it all back”, and having so enunciated he rushed from the room. I have not seen him since.

Let us go back to the chronology of the events. The swindle occurred on 22 June; it was discovered on 23 June; and on 24 June Detective Sergeant Hancock was assigned to the investigation. On 15 July Ray Mickelberg was charged with using a false name - Peter Culley - and he was found guilty and charged. On 26 July 1982 Peter Mickelberg was interviewed at the Belmont Police Station. Ray Mickelberg and Brian Mickelberg were arrested later that afternoon and they were charged at about 6.00 pm on 26 July. Mr Murphy says that Bryer said, “My partner is going to get me sent to jail, the wrong people are going to be charged”. Mr Bryer had prior knowledge about the detention and interview of Peter Mickelberg at the Belmont Police Station. He had prior knowledge that Brian and Ray Mickelberg would be charged. He said that the wrong people would be charged and he said that he would give it back. Again, I question the veracity of Mr Murphy’s recall. Somebody knew the wrong person would be charged, whether or not it was the Mickelbergs. I am simply drawing that inference because in paragraph 14 when Mr Murphy refers to Bryer in the Mint swindle, he states -

In relevantly short time after Byers’ outburst, rough gold ingot was clandestinely delivered to journalist Allison Fay. At a later date, apparently most if not all of the remaining stolen gold bullion it was announced by the public media, was clandestinely deposited in altered form over the fence of Channel Seven television studios in Osborne Park.

I now return to the chronology. Ray, Peter and Brian Mickelberg were charged on 26 July. On 28 March 1983, Ray, Peter and Brian were found guilty and sentenced. Ray was sentenced to 20 years imprisonment, Peter to 16 years and Brian to 12 years. There was a series of appeals. Brian’s was the first, and on 4 November 1983 he

successfully appealed against his conviction. Appeals to the High Court were rejected. Peter Mickelberg was released on 27 October 1989. On 11 April 1991, the then Attorney General, Joe Berinson, remitted the sentence of Ray Mickelberg and he was released.

The statement mentions that a “rough gold ingot was clandestinely delivered to journalist Allison Fay”. A gold ingot - a 20-ounce bar of gold - was delivered by POSTpak to Alison Fan at Channel Seven studios on 11 July 1989. That clandestinely delivered rough gold ingot was in fact a small and unaltered ingot from the Perth Mint. The gold ingot was unaltered - unchanged - and it was not rough. I have never bought a gold ingot from the Perth Mint -

Hon Peter Foss: They are very smooth.

Hon DERRICK TOMLINSON: I do not care whether they are rough. It was said that it was clandestinely delivered. I have never heard of POSTpak parcels being delivered clandestinely. That event occurred on 11 July 1989, some seven years after the event. The statement states -

At a later date, apparently most if not all of the remaining stolen gold bullion it was announced by the public media, was clandestinely deposited in altered form over the fence of Channel Seven television studios . . .

Gold in the form of droplets was deposited near the fence at Channel Seven. A first and preliminary fingerprint of the gold indicated that it came from Namibia. Perth Mint does not deal in that type of gold. Unfortunately, more sophisticated fingerprinting could not be conducted because the gold was melted, returned to the Mint and disposed of.

I put to the House that Mr Murphy’s sequence of events - the times that he claims - is incomprehensible. It is either, to put the best construction on it, imperfect recall or, to put the worst construction on it, delusional.

Hon Peter Foss: I thought “fabrication” was better.

Hon DERRICK TOMLINSON: I will not use that. I will use the term “delusional”. I suggest that it is impossible to get documentary evidence of this imperfect recall because the facts of the Mint gold swindle deny the veracity of Mr Murphy’s recollections.

I do not know whether the committee looked closely at the events of and the public information about the Perth Mint swindle, but, if it did, I am surprised that it did not identify what is obvious and call upon Mr Murphy to apologise for the slander. This House is asking Mr Murphy to do the impossible; that is, verify that which is unverifiable and produce documentary evidence of what is obviously an imperfect recollection of events. Mr Murphy has claimed that somewhere in the public records are documents that will prove he had some form of business dealings with people who deny in statutory declarations they even knew him. I am not suggesting that Mr Murphy may not have been subject to some sort of swindle, not necessarily involving those people, and that he is therefore making these sorts of delusional connections. However, I suggest that those documents that Mr Murphy says exist somewhere in the public record will not substantiate anything other than that he may have had those dealings that other people deny through statutory declarations.

I think the House could short-circuit the whole business - the committee could have short-circuited the whole business - by simply requiring Mr Murphy to apologise for the slander of Barry Waller.

Amendment to Motion

HON KIM CHANCE (Agricultural - Leader of the House) [11.17 am] - by leave: I move -

Paragraph (1), to delete “not later than 5.00 pm on Tuesday, 26 August 2003” and insert “not later than seven days from which this order is made”.

Honourable members may have noticed that the first paragraph of the motion contains a specific time for reporting that is no longer appropriate.

Amendment put and passed.

Motion, as Amended

Question put and passed.