The Lionel Murphy affair was a cause célèbre. But the issues it raised were never openly debated.

Now, for the first time, Wendy Bacon and David Brown both take the stand.
Interrogating The Interrogators

David Brown

In one of the eulogies at the memorial service for Justice Lionel Murphy at Sydney Town Hall, former NSW Premier Neville Wran exhorted us "to try to make some sense out of it all — something rational and positive and constructive" (Sydney Morning Herald, 28.10.86). In that role of the media, and a section of the print media in particular, was decisive in setting the terms of debate over "the Murphy affair", some reflection on journalistic practice is called for.1

Such an exercise is made more urgent by the fact that the "performances" of leading journalistic figures in the media prosecution of the Murphy affair since his untimely death smack of self-justification rather than reflection. And that debate over the role of influential media accounts tends towards two poles: either a unified and conscious conspiracy on the part of the Fairfax press, or a heroic exercise in "whistleblowing" or "investigative journalism". It might be useful then to try to identify some of the main tendencies or themes in influential journalistic accounts of the Murphy affair.

Perhaps the first issue to raise is the fundamental one of the nature of journalistic practice. The journalists most influential in the media prosecution of Lionel Murphy have persistently argued that journalistic practice is purely descriptive. Their task is that of discovering and "facts", conversations, incidents, associations, events, etc. These are understood as possessing a truth and a meaning that already resides within them, prior to the "reported". That is, they exist in a complete form prior to, and independently of, forms of journalistic knowledge and practice, like pebbles on a beach. The task of the journalist is merely to go out and collect them and hold them up to the public gaze.

Even if we were to concede for a moment that "facts" lie pre-formed like pebbles scattered in the social world, clearly the very process of selection, the choice of a particular pebble from among many, imparts, creates or alters meaning, as does the arrangement of the pebbles in relation to each other, their placement in a new structure or form.

In short, journalistic accounts are a representation, a re-presentation, a process of social construction involving both the primary sources (interviews, research, discussion with sources, etc.) and the existing body of knowledge and understanding, journalistic forms of production and work processes. Not mere description.

Awkward Silences

Wendy Bacon

One of the most encouraging signs for socialists throughout the world must be the fact that communist regimes — not only in the Soviet Union, but in Viet Nam, Cuba and elsewhere — are becoming more open to tackling the corruption of officials who have pursued self-interest before socialist policy and principles. As a result, journalists are extending their role from one of propagandists to the role of critic and investigator.

Whatever economic imperatives are encouraging these developments, it is clear that this new openness is being accompanied by the breaking down of "stalinist" methods of disposing of criticism whereby certain leaders and organisations are protected from criticism simply because of who or what they are. Instead of coming to grips with what was said, evidence was ignored or distorted: as a last resort, the critic could suffer character assassination or exclusion.

When one considers the historical legacy of corruption in NSW (that is, before, during and after the Askin era), the fact that a Labor government has been in power for more than a decade, and the highly structured relations and distribution of power between the dominant right-wing machine and the left-wing Steering Committee, it would be surprising if organised crime figures and corrupt businessmen had not concentrated some effort on compromising figures associated with the left wing of the NSW ALP.

When the chance came to find out whether that was so and, even more important, how and why it was done, many on the left (particularly among those in the labor law and radical criminology movements) preferred not to know. In this, their defence of Murphy had many of the hallmarks of Stalinism. The upshot of this, and the affair as a whole, contributed to the current threat to critical journalism and increasing secrecy in Australia.

There were many on the left who privately did not share the views of those who organised the political campaign in defence of Murphy, but such was the atmosphere of hostility and the strength of the demands for solidarity that few spoke up. One left-wing ALP federal parliamentarian from NSW, for example, told me privately that he wished that left MPs from other states had consulted him about the realities of political life in NSW before rushing to Murphy's defence. Needless to say, he did not state this publicly.

The tactics used by the Labor lawyers to defend Murphy varied. Public criticism could at least be met on its own terms, even if it was exasperating in its refusal to deal with issues that had been raised. But less public tactics, including loss of work and social isolation, were used against those who held back from joining the ranks of the
but construction, the assembling of a story against a background of a large number of understandings. Understandings about, for example, what is deemed newsworthy, what are the existing frameworks of meaning and interpretation into which the individual story will be inserted, what sort of language and terminology can be used, what the editor will print, what is or is not defamatory or contemptuous, what will or will not endanger sources and informants, meet the deadline and so on.

A first step in rescuing something positive out of the affair might be for journalists to abandon the "mere description" and "fact gathering" defences of their work and enter into a serious debate about the social processes involved in producing journalistic accounts.

A second major characteristic of many of the leading media accounts of the Murphy affair was the manner in which particular legal practices or decisions were evaluated solely on the basis of whether they assisted the prosecution. Little critical attention was devoted by journalists to the question of whether particular practices or decisions were desirable precedents generally.

Examples of this tendency are too numerous to recount. The lack of criticism or scrutiny of the "Temby doctrine" of criminal prosecution on public interest grounds to "clear the air" is a notable example. The obvious danger which was conveniently ignored in the excitement of the chase is that initiation of criminal proceedings generates its own political and social effects, independently of the legal merits of specific allegations.

The extraordinarily hostile portrayal of criticism of the first jury verdict, labelled as "deplorable" and "violent", was another example. For journalists allegedly running on a "let's open up the criminal justice system to scrutiny" ticket, such a response to criticism of the jury verdict amounted to a defence of many of the very legal practices that deprive juries of the ability to play a greater popular role in the administration of justice, and keep them subordinated to the judiciary.

Justice Murphy's recourse to a dock (unsworn) statement, an entitlement under existing NSW law, sparked a frenzy of journalistic hyperbole. John Sless in the Sydney Morning Herald — aptly dubbed the John Stone of the law by a recent correspondent — was not content with describing the dock statement as "an anachronism" (Sydney Morning Herald, 1.5.86). He went on to argue that Justice Murphy's recourse to a dock statement was itself a ground for his removal under s 72 of the Constitution! (Sydney Morning Herald, 8.5.86). But if a judge can be removed from office for exercising a right provided in law, then judicial independence in terms of protection of tenure of office means absolutely nothing at all.2

A third and allied tendency was the subordination of serious and informed public debate over proposed institutional changes of a permanent and far-reaching nature to the immediate pursuit of the Murphy case. Perhaps the clearest example of this was the media coverage of the Stewart report.

The media, who had promoted and used the material Murphy defenders or, worse still, spoke up in defence of NSW Chief Magistrate Clarrie Briese. The Murphy case turned into a test of political reliability for the left. In my case, people whom I had known for more than a decade walked past me as if I did not exist. One of my most vigorous critics in print sent me a private note accusing me of having "joined the hang 'em and flog 'em brigade".

A long-term effect of the spectacular and passionate campaign to defend Lionel Murphy is that the left has largely played a negative role in the corruption and organised crime debate, seeking to deflect and minimise the issue, but not to come to grips with it.

In recent times there has been plenty of fertile ground for the left to explore the consequences of the close relationships between Labor politicians and businessmen. It could have played a role, not only by popularising the issue but also by linking it to broader shifts in politics and economic policy.

There have been notable exceptions to this general silence. For example, in his speeches against the monorail, Jack Mundey, former secretary of the NSW BLF, and City councillor, effectively raised the issue of Sir Peter Abeles' relationship with members of the NSW Labor government.

The difficulty for the leftwinger defenders of Lionel Murphy is that, once they attach significance to the long friendship between Abeles and Prime Minister Bob Hawke, for example, or Treasurer Paul Keating and wealthy developer Warren Anderson, it becomes more difficult to maintain that there was no inherent problem in a working relationship between another senior ALP figure (Murphy) and a solicitor (Ryan) who was the partner of a major organised crime figure (Abe Saffron), especially when that relationship included discussions about government appointments, controversial property developments, and political advice about how the solicitor should tackle allegations about his activities.

There was a moment during the 1985 NSW ALP Conference, when sections of the NSW Labor Left broke with the past and called for an open judicial inquiry into corruption in NSW — an inquiry which would have explored leftwing faction leader Frank Walker's denial that he had been on a "love boat" with one of the accused in the Enmore ALP branch vote-rigging case. At the last minute, the Walker faction withdrew their support for the motion and the proposal was easily defeated. The right took the opportunity to admonish those who dared publicly to break ranks.

In the rest of this article, I want to deal with some of the issues raised by the Murphy affair as I perceived them; then I will answer some of the arguments raised by David Brown.

The material in the National Times about the Murphy case was just a small part of a much bigger body of work on the illegal tapes, organised and corporate crime, and political corruption in NSW, Victoria and Queensland. The journalistic techniques used were similar throughout the body of work. No one, including the police themselves decided to target Murphy. He simply turned up, along with a number of other public figures,
from The Age tapes from the outset and argued for action on the basis of the substantive content, generally heralded the Stewart report as a vindication of their campaign against Justice Murphy. More than any other section of the news media, the National Times had condoned this operation by giving overriding weight to the alleged content of the tapes material while virtually ignoring questions of its illegality, the conditions under which it was carried out, and the full implications of such police practices.

It is appropriate to ask what responsibility does a newspaper have in relation to the public discussion of such issues? Newspapers, after all, are in a privileged position to place such issues in the public arena and to structure the terms of debate. From a news angle, it may be advantageous at some point to criticise developments which the debate has generated — as when Brian Toohey in the National Times criticised proposed extensions of phone-tapping powers — but does the news have no history at all, and journalists no responsibility for its structure and effects?

A fourth tendency in certain media treatment of the Murphy affair was the sustained treatment of it as individual scandal rather than as raising more general questions of institutional processes for dealing with allegations of judicial impropriety. In his 1983 Boyer Lectures, The Judges, Justice Michael Kirby remarked on the development in the United States of "institutions and procedures for the impartial examination of complaints against the judiciary" which "do not rely upon the sledgehammer of constitutional removal." He noted that calls have been made in Australia for a more regular system for handling complaints against judges in a way that would provide both the presentation of judicial independence, including the protection of original and unorthodox judges and the provision of adequate redress for citizens with a legitimate grievance.

But, largely because allegations of impropriety in relation to Farquhar, Murphy, Schneifer and Foord were pursued by way of continually recycled allegations of individual impropriety followed by calls for Royal Commissions of inquiry, Kirby's call was largely ignored. Most media accounts made little constructive contribution to debate about the development of regular institutional processes to regulate judicial behaviour and misbehaviour. So that, when the Judicial Commission proposal was suddenly unveiled, seemingly overnight, by the NSW Attorney-General Mr. Sheahan, the necessary preparatory groundwork of public and professional discussion, debate and consultation over the competing principles of judicial independence and accountability and the exact details of an acceptable scheme, simply had not taken place. The result was a slanging match between the NSW Attorney-General and the Chief Justice, general confusion, and a lost opportunity to put forward a scheme that was the result of carefully researched and developed proposals as a matter of party policy, preceded by extensive debate and consultation to build a supportive climate of opinion.

A fifth tendency was the repeated and uncritical on the illegal tapes. In practice the question about whether Murphy's behaviour should be examined or not arose in this form: should he be excluded from examination because of his long association with progressive causes.

On the High Court, Murphy stood for a more socially conscious approach to the law. He advanced the cases of the underprivileged and those who were the victims of injustice. But in fact after his appointment, Murphy continued to play two roles — one as a judge and one as a senior political figure. His supporters insisted that he was only doing in less ruling class style, what other judges do. And yet, I imagine that if there had ever been a suggestion that Sir Garfield Barwick had not only interfered in the events that led to the sacking of the Whitlam government, but had also involved himself in the appointment of magistrates and public servants, these same supporters would have been the first to demand an inquiry.7

One of the frustrating aspects of the radical criminologists' criticism of the Fairfax press for its handling of the massive NSW police illegal taping operation was that (while accusing others of having a hidden agenda) critics have failed to say exactly how they think the affair should have been handled.

It is useful to look at the practical position from the point of view of the journalist (who happened to be Marian Wilkinson) who first received the summaries of the taped conversations. From her contacts with police, she knew that, while they might not be entirely accurate, they were authentic. Was she supposed to sit on them, never mentioning their contents to another soul? Or was she supposed to hand them over to the NSW or Federal police, knowing that there would be no proper investigation (as turned out to be the case). And, after that, was she supposed to destroy the tapes and forget the incident had ever occurred?

What she did was outline some of the contents which demonstrated the most crucial issue — that a solicitor who was clearly involved in a variety of criminal activities, including the exploitation of illegal immigrants, was having regular dealings with a number of public officials, including a judge. The issue was presented as a political one — the focus was on the hidden network used by the solicitor to influence decisions and gain information. This, not the question of whether the illegally taped conversations revealed a criminal offence by Lionel Murphy, was always the central issue. I find it difficult to understand how anyone who supports openness and equal opportunity in public affairs would not consider that this should have been exposed. Yet, to my knowledge, none of Murphy's defenders have ever addressed themselves to this issue.

The implications are that journalists should actively censor material if it does not fit with their political interests — a precarious exercise at best, and one which would leave journalists in an even more privileged position as arbiters of the flow of information than they are already.

The editorial position of the National Times, and my own personal view, was in support of an open Royal
utilisation of notions of guilt by association and "network of influence". The dangers of such techniques and concepts include an inherent vagueness and ambiguity. Their meaning depends on implications of impropriety and conspiracy lurking beneath any association or contact. Their use wilfully misrecognises the role of lawyers in our society. To expect criminal lawyers and judges who have practised in the field of criminal law never to have come into contact with people charged and convicted of criminal offences makes about as much sense as expecting surgeons never to have come into contact with people requiring surgery. Underlying the notions of guilt by association and networks of influence is a 19th century conception of "criminality" as a form of "taint" which spreads or can be caught on contact. It is extremely damaging to the development of more progressive social conceptions of crime and criminal behaviour to see journalists with former civil libertarian credentials championing such notions.

Here again, a certain selective amnesia was evident. David Marr's book The Ivanov Trail provides a careful and compelling critique of the very similar (ASIO) doctrine of "agent of influence". And Wendy Bacon, in her response to Judge Williams' attack, said that she did not see how her previous criminal convictions and associations were relevant to the question of her journalistic competence. Indeed, it is necessary to point out that recognition of the dangers of guilt by association techniques should not depend on the identity of the target.

One of the deleterious political effects of the sanctimonious moralising that has characterised certain media accounts over the last few years has been the generation of a cynical climate of suspicion that forecloses on cultural traditions of openness and equality. One does not need to embrace the mythology of Australian mateship and egalitarianism or to deny the pernicious divisions of class, race, and gender to acknowledge certain national cultural traditions. In Britain, for example, it is inconceivable that the judiciary and other members of the elite would ever rub shoulders and intermingle with "the crowd" (including "criminals" and "prominent racing identities"). For class divisions and stratifications are so highly developed that the "wrong sort of people" are filtered out of social contact with the elite in the establishment clubs and Inns of Court.

Does this make the British judiciary more substantial bearers of "integrity" than their Australian counterparts? To answer this in the affirmative is to celebrate the values of the high Tory cloister. And much of the recent media treatment of legal and judicial issues in Australia has strongly promoted precisely these high Tory values as the touchstone of appropriate judicial conduct, as did the conclusions of the abandoned Special Commission of Inquiry. On the question of appropriate judicial conduct, John Slee went as far as to compare unfavourably Justice Murphy's image to that of a judge who was reputed to "Keep Fearne on Contingent
Reminders (two volumes) under his pillow at night” (Sydney Morning Herald, 15.5.86). In welcome contrast to this sort of nonsense, a Sydney Sun editorial following Justice Murphy’s death put the issue of judicial style this way: “Justice Murphy perhaps retained more zeal and political style than we are used to seeing in a judge. It may be that one price of reform and public concern is a more public judicial style.” (Sun, 22.10.86.)

These are only a few of the general tendencies that can be drawn from influential media accounts of the Murphy saga. They are identified, not to prove a generalised conspiracy, but to raise questions about so-called “investigative”, “specialist” or “quality” journalism. What exactly do these terms mean, other than longer articles?

As a society, we might take one step towards “making sense” of the Murphy tragedy if prominent journalists and media organisations ceased responding to criticism of selectivity, sensationalism, prejudice and inaccuracy with highly generalised claims of “free speech”, a public “right to know”, “the facts” and “the truth”. Such arguments are a complete evasion of serious and specific issues of media accountability. The public is entitled to a better response from those whose access to the means of communication makes their persistent calls for others to “answer questions” very influential. Or are the interrogators themselves beyond question?

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contain the affair, combined with the determination of a few journalists that this would not occur, produced an unsatisfactory mess. Instead of an open inquiry, there were secret inquiries and a trial which pursued the narrow and subsidiary question of whether Murphy had been guilty of perverting the course of justice in a case against Ryan. For its part, the press had now power to obtain information and was hamsrung by the limitations of defamation and contempt law.

Potential defamation problems were necessarily minimised on the advice of Fairfax lawyers in a way which encouraged straight reports of allegations and evidence rather than a free ranging discussion of the implications of the tapes material. The issue for example of Ryan’s reputation in the seventies and what Murphy knew of that reputation was never canvassed by the media. This enabled his supporters to project images of Ryan as just any solicitor and Murphy as socially naive — images which though quite unrealistic were never frankly challenged. (Even now inhibitions imposed by defamation law make it difficult to explore this issue.)

The legal restrictions on the press, the determination of the NSW government to avoid the issue and Murphy’s right to a fair trial when he was charged, meant that a central issue — the attempt, successful or otherwise, by an organisation engaged in profiting out of illegal activities, to make use of a High Court judge, who was also an influential political figure, was never confronted.

If there was a central figure in the tapes affair, it should have been organised crime boss Abe Saffron and yet for two years he remained a shadowy figure on the side lines. As the record of the conversation showed,
Ryan and Saffron were involved in illegal business activities for which they required protection. Saffron was well aware of Ryan's connection with Murphy: indeed the two discussed how “the judge” could be used to advantage. On another occasion, Ryan talked about how “the judge” would use his political influence in favour of an illegal casino operator. None of this implies that Murphy was involved or knew of these activities but one might have imagined that he would have been as enraged by the way in which Ryan had abused his friendship as he was by the illegal tapping of Ryan's phone (Ryan's phone was tapped because he was suspected by police of fixing drug cases.) One might also have imagined that Murphy supporters would have wanted the issue clarified, if only to demonstrate his lack of knowledge of Ryan's partnership with Saffron.

In fact Murphy was at least aware that Ryan was one of Saffron's regular solicitors. This, you would imagine, might have been sufficient to turn him off pursuing frequent social and professional contact with Ryan, let alone consulting or assisting him in matters of public appointment or property developments. How much further his knowledge of Ryan's activities went remains unanswered. Was he aware of the almost daily contact between Ryan and Saffron? Did he have an independent relationship with Saffron? Had Saffron compromised him, as he had many others, by supplying him with sexual services?

In the earlier days of the affair, Murphy's name was not linked to Saffron's for defamation reasons. This meant that political support for an open inquiry was the only way to resolve the issue.

The advantages such an inquiry might have had over a criminal prosecution as a means of exploring the issues raised can be seen by comparing two sets of proceedings relating to the disappearance of anti-development campaigner Juanita Nielsen. Initially, three men were charged with conspiring to kidnap her. While some factual matters were settled in the trial which followed, the three men could have been acting in a vacuum. It was only later in a more open coronial inquiry into the death of Juanita Nielsen that the connections between the three men, their immediate employer Abe Saffron's night club manager Jim Anderson, and developer Frank Theeman could be filled in. The murder might not have been solved but at least the context in which it occurred was revealed. It was this sort of background which was lacking in the official inquiries into allegations against Lionel Murphy.

What the Fairfax press called for, and what NSW Chief Magistrate Clarrie Briese wanted when he gave evidence at the first Senate Committee inquiry into Murphy's behaviour, was a Royal Commission into the hidden networks which influence political decision making in NSW. What he achieved, and what Murphy and his supporters were the first to demand, was a criminal trial.

The prosecution could have raised the issue of Murphy's knowledge of Ryan's relationship with Saffron during a cross-examination relevant to Murphy's credit. It chose not to do so on the grounds that it could unfairly prejudice a jury against him. By the second trial, the prosecution was aware of evidence from independent sources which indicated that Murphy had had his own relationship with Saffron. This time Murphy chose not to go into the witness box. This and other evidence was being pursued by the secret Commission of Inquiry which followed his acquittal when Murphy became too ill for the inquiry to continue. His death meant that the unanswered questions about Murphy's relationship with Saffron will never be fully answered.

One issue that would have been raised was Saffron's role in an attempted settlement of the Sankey case, itself a cause celebre in the labor movement. The case involved a private prosecution by Sydney solicitor Danny Sankey against ex prime minister Gough Whitlam, Jim Cairns and Lionel Murphy for their role in the 1975 loans affair.

I share the view that this was a political prosecution with little merit which could easily be defeated. I was therefore surprised to learn during an interview with Saffron's ex manager Jim Anderson well before the illegal tapes surfaced that he had been involved in negotiations on behalf of the defence to settle the case. When I spoke to Sankey he confirmed that he had indeed met with Anderson and as a result spoke on the phone about the case to a person whose voice he recognised as Saffron's. Anderson's evidence would have been that he was instructed to approach Sankey about settling the case by Saffron who in his presence had spoken to a man he was told was Murphy. Even if you reject Anderson's word on this point, the issue remains — how on earth did Saffron become involved in assisting the defence? Perhaps it was through Ryan, who was acting for Cairns. I am convinced from other inquiries that neither Whitlam or Cairns had any idea of these negotiations. Would Ryan have independently approached Saffron when on his own and Murphy's account he discussed tactics in the case with Murphy? The negotiations were unsuccessful when Sankey displayed no interest in further dealings with Saffron.

The Sankey case is now history. There will be some who say so what — an unjust case can be settled by any means! To those who would support such extreme pragmatism in a case which could be won by more straight forward tactics, the best answer can only be a reminder of how much political damage to an already tarnished labor movement would have been done if Sankey had chosen to reveal these events at the time they occurred. He did not do so and as a result for several more years, Saffron, either directly or indirectly through Ryan and senior corrupt police, remained dangerously close to events on the Labor side of politics.

The Criminal case against Murphy

A criminal trial is not a vehicle for discovering the truth. It is conducted according to strict rules designed to protect usually powerless defendants. The contradictions which emerge in the unusual case where the investigation arm of criminal justice system directs itself towards public
officials is one of the historical reasons for Royal Commissions.

My view was that there was a criminal case against Murphy on the evidence raised by Briese. (There is no room here to canvas the case in detail.) I also believed that the conversations took place so long ago and conspiracy law is so uncertain that it was the least satisfactory way for the tapes issue to be resolved.

Once the charges were laid, public debate was stopped. This achieved, the supporters went further and behaved as if the issues should be confined to those admissible in the case. This was quite contrary to the usual left wing approach to criminal law which would seek to take a broader view than the artificially created parameters of the rules of evidence.

The case depended on whether Briese's account and interpretation of conversations with Murphy was accepted by a jury beyond a reasonable doubt. The defence cast sufficient doubt on Briese's account to obtain an acquittal.

There were a number of reasons why I believed Briese was telling the truth to the best of his ability and that Murphy was not. One reason had a compelling effect on me at the time and illustrates some of the complications of journalism never considered by our critics.

There was one witness in the case, himself a senior Labor figure, who told several people including myself a different account of events than the one he gave in court, both well before and after the Murphy trials. According to his off the record version, Murphy had contacted him several times about Ryan in a manner in which he interpreted as an attempt to get him to help Ryan. If this evidence had been given it would have added enormously to Briese's credibility and probably have been fatal to Murphy.

Those to whom the witness confessed this other account were bewildered by his openness. He is a person known for his integrity who did not relish the uncomfortable compromise he made for Murphy. His own confused actions were a perfect illustration of the cost of demanding loyalty to person rather than principle on which support for Murphy seemed to depend.

This witness not only told people his off the record version but also mentioned the names of others, including myself to whom he told the truth. The situation reached farcical proportions when one of the confessors told the full story to the Commission of Inquiry, including the names of others who had heard both versions.

Just after a decision to subpoena, all those involved as well as the witness were made, the inquiry was terminated. Had it not been terminated an extraordinary and disastrous chain of events would have unfolded. People would have been forced to given evidence against the witness — except for those who could claim journalistic privilege, they could have been jailed for contempt of court.

If Murphy had been an ordinary accused facing prison, I would have sympathised for his predicament. In fact, police and accused mislead courts every day. But in this case, Murphy's defence necessarily involved a savage and unfair attack on Briese (one of the other contradictions of the case was that Briese had also been a reformer in his administration of courts in NSW) and a dangerous test of loyalty for others. Yet in the entire affair, there was no indication that Murphy had any misgivings about a massive campaign which identified his own career with the struggle for civil liberties and law reform in Australia.

This campaign idealised Murphy and gave the impression High Court work could only have been done by him. In fact his judgements typically reflected a worldwide movement around civil liberties in the 1960s and 70s. There were others who could have performed his role as there were always others to adequately replace him. Why, one wonders, was a similar and less dangerous campaign not waged for Justice Jimmy Staples when he was prevented by the Fraser government from sitting on the Arbitration Commission. It was his refusal to relinquish any notion that there is a deviding line between employer and worker that had irritated the government. His contribution to the fight for a just legal system had been just as great.

The Korean Conspiracy Case

Murphy was found not guilty. Even so, it was clear that he was prepared to go out of his way to assist Ryan on a charge arising out of an illegal immigration racket. (An immigration racket is profiteering out of the demand for residency.) One might have imagined that labor lawyers might have been curious about this. Instead the Korean immigration case was one of the great untold stories of the tapes affair.

For the entire period, Ryan remained on a charge of conspiring to assist illegal Korean immigrants. No public canvassing of his case was therefore possible. Once again only a public inquiry could overcome this legal restriction and answer why Murphy was prepared to assist Ryan. (Without such an inquiry and in the space available, I can only signpost relevant events.)

Ryan's work with Korean immigrants went back at least to 1974. Junie Morosi, who will be remembered as one involved in the political events which led to the fall of the Whitlam government, approached the then Minister for Immigration Jim McClelland with a letter in support of the cases of Korean immigrants. The letter was signed by Jim Cairns. Ryan acted for the Koreans. During the remaining months of the government, McClelland played close attention to make sure that the cases of Korean immigrants were properly handled.

Morosi's activities were not restricted to Koreans. During the same period, Morosi was also involved in assisting fellow Filipinos with immigration problems. With her assistance, Murphy obtained some Filipino servants. Not surprisingly, caucus backbenchers were reported to be angry about the obvious political contradictions involved in a Labor MP having servants.

The opposition naturally took advantage of the contradiction. In December 1974, the then shadow Attorney
General Ivor Greenwood asked Murphy questions about his relationship with Morosi. Murphy stalked out of parliament. The questions remained unanswered because by the time parliament resumed Murphy was on the High Court.

His departure from the Whitlam cabinet came shortly after a break-in of Morosi’s house in Sydney. After the case questions were raised about whether the Liberals had organised the break-in as part of a dirty tricks campaign. Several weeks later questions were again asked about Murphy’s knowledge of the break-in, but by then Murphy was on the High Court.

If the Parliamentary Commission papers are ever made public they will reveal a series of statements, one a contemporaneous statement by a senior policeman, which show that Murphy was tipped off about the break-in before it took place by an old friend, Sydney bookmaker Bill Waterhouse. Waterhouse had received the news from Sydney private detective Tim Bristow who told him he was organising the break-in on behalf of right wing enemies of the government. Murphy passed the information on to the police and as a result of the tip-off two men were arrested — only one was charged. Bristow, who was very close to Ryan at the time was prepared to give evidence that as a result of Ryan and Murphy’s intervention, he had one of his men released.

Even if Bristow is lying about Murphy’s intervention the more crucial question remains — did he tell his fellow cabinet members what he know of Bristow and Waterhouse’s role in the affair? If so why wasn’t political mileage made out of the break-in? Any suggestion at this time that the Liberals were involved in dirty tricks could have completely altered the political atmosphere and the interpretation of other political events, including the Loans Affair, which precipitated the fall of the government.

A few months later, Age journalist Ben Hills told a parliamentary inquiry that he was aware of evidence suggesting that Murphy had assisted Morosi in importing Filipino labour into Australia. There were no further investigations. Later, in a defamation case, Murphy admitted that he had received favours from Morosi and husband, David Ditchburn in the form of free air travel on Ethiopian airlines. Under the Liberal government, the immigration rackets continued to flourish.

Eventually, a young Korean who had paid money to those running the racket made complaints about his treatment. He ended up in hospital after a severe bashing. The issue became a public one again. There was even a suggestion that the Korean CIA was involved. A Federal police investigation was ordered.

According to the tape summaries, Murphy wanted to assist Ryan in clearing himself of the police investigation. He even gave Ryan advice about how to clear his name publicly. If the tape summaries were inaccurate one might have expected Murphy himself would wish to clarify the matter.

Ryan was eventually charged, convicted and won an appeal. While he awaited a second trial, the tapes affair began. The records of the illegally taped conversations provided a wealth of material showing a large number of Koreans, Chinese and others were paying money which was distributed between lawyers and immigration officials for permanent residency. Most of the cases involved Ryan but there was a mention too of one case belonging to Morosi.

None of these matters prove anything against Murphy, but they would at least provide a starting point for an investigation into why Murphy was anxious to help Ryan.

In the week after Murphy’s first trial, I wrote a piece which traced Murphy’s career from his early close association with bookmaker Bill Waterhouse, ex premier Neville Wran and Ryan; his rise through his industrial law practice in the NSW ALP, his friendships with Marcos cronies, Babe Ishmael and Junie Morosi; and the events which preceded his departure from the Whitlam cabinet. I wanted to push the discussion beyond that of guilt and innocence to an interest in the political culture which enabled Murphy to reach the High Court. While it solved some immediate problems, Murphy’s presence on the High Court was a time bomb. In those days, opportunities for a Labor government to influence the High Court were rare — his contribution was a valuable one but there were others waiting in the wings who could have made an equally outstanding legal contribution.

The article was a failure and the debate remained stuck.

Previously, Brown had called for journalists and others to examine “the political preconditions for crime networks . . .” This he argued would “involve among other things, an attempt to transform sections of the left in the ALP from a closed, defensive, manipulative “numbers” style of politics . . .” It never apparently occurred to him that his is precisely how marxist criminologists could have tackled the Murphy case.

In defending the National Times treatment of the Murphy case, I have also demonstrated some of its limitations. Those legally imposed limitation contributed to obscuring the issues. Some of this could have been explained by media commentators at the time, but to my knowledge they were never really concerned with the practical problems of reporting the issue. Instead they projected an image of journalism which bordered on caricature.

Dave Brown treated the press, especially the Fairfax press, as if it was a unified whole. Internally the image he presented was a contradictory one. He persistently ignored the specifics of material raised but failed to spell out how journalists should have acted.

Journalistic accounts are constructed, he argues, by assumptions and ideologies which are not always clear. This of course is true but not very helpful in the specific case, as all accounts including his own criticism are equal-
ly constructed. Journalistic criticism which exposes the way in which accounts are constructed and the hidden agendas of which they are part are nevertheless valuable. Brown has precisely put forward two propositions about the assumptions informing Australian investigative journalism.

The first is that journalistic practice put itself forward as purely descriptive (SMH Dec 27, 1986). In my own experience this is not correct. Many journalists are painfully aware of the power they have to select the facts to be printed or the quote to be televised. Increasingly, journalists both consciously engage in both the presentation of information and comment — the two are often mixed. The more interesting exercise is to examine what political comments are possible and which are discouraged.

Journalists do deal in information and whatever the selection process, information still has to be tackled on its own merits. This is what Brown fails to do. An analysis which focuses all attention on the subjective nature of journalism could be dangerous if it lifted the responsibility off journalists to be accurate in presenting the facts they choose. This is especially so as journalistic accounts often form the basis of a deeper analysis.

Brown's other proposition is that the SMH and the National Times had a thesis that "crime is immorality". (SMH 27 Dec 1986). I agree with Brown's criticism of the inherent moralism of Bob Bottom's books on organised crime. (Martin Mowbray and myself have spelled this out in more detail in a soon to be published second edition of The Criminal Injustice System.) The problem is that although he sweepingly applies the argument to all Fairfax publications no examples he has so far given are from the National Times. I would think it would be hard to find any. On the contrary, during the period we are discussing there were articles in the National Times which deliberately departed from the moral "law and order" emphasis. We canvassed whether heroin should be legalised; criticised Costigan's punitive approach to SP bookmaking; discussed how Sydney's "property game" was riddled with hidden standover practices; show how corruption in the Transport Workers Union was affecting rank and file workers. None of these distracted Brown from his determined image making.

Brown also draws attention to the media's tendency to individualise issues. Once again one can only agree with him (perhaps the best example being Sixty Minutes, which can turn any issue into three case studies.)

There is however value in individual case studies. You can't discuss corruption in the property game for example without at some point focussing on individual property developers. In preferring the structural view, Brown ends up avoiding the role which individuals play. One valuable role which radical criminologists might have played is in wedding case studies with a structural approach.

Brown's most telling point is that by focussing on corruption in the criminal justice system, journalists have deflected attention from more systemic issues such as racism or class discrimination, and the conditions of ordinary prisoners.

I think there is some truth in this. Certainly, in recent years, it has been more difficult to get liberal views about criminal justice system or the cases of ordinary people publicised. This has more to do with a general political shift to the right and the decline of prisoner action groups than it does with the corruption debate. In the publicity attached to the issue of corruption in the police force, there was plenty of scope to raise the implications for the cases of prisoners who had been locked up on the word of ex detectives Roger Rogerson and others. Unfortunately this did not happen.

The problem with Brown's argument is that corruption in the NSW criminal justice system is itself systemic. "Doing business" is embedded in the way the system works, as Bob Milliken and I illustrated in a series of articles in the National Times in 1984. The lack of access to contacts and money is just one more way in which class, sexual and race discrimination work. The temptation to resort to "doing business" have played a part in neutralising the prison and police reform movements which grew in the 1970s.

My own political attitude to corruption was formed through experiences in the Victoria Street resident action group struggle when we confronted a violent organisation protected by the same police who were part of its late night drinking and prostitution rackets. These experiences were later reinforced when I saw prison militants neutralised by the supply of heroin and court deals. In the end, hidden deals reinforce inequality and increase the powerlessness of those who seek change through open means.

On the day Murphy died a well known feminist lawyer sent me a telegram congratulating me on my contribution to the criminal justice system. There will be many who will think I have been excessively harsh on Murphy. It is likely that the stress of the last two years contributed to his early death. His death was a reminder, if I needed one, of the pain you can help cause as a journalist — not that I believe I was the cause of his misfortune. But the point could equally be made about the entirely innocent child of Roger Rogerson who had been wounded by accusations against her father. In the end, journalistic activity — or equally political activity — would become paralysed if you stopped everytime you were going to cause pain.

The opportunity to gain some more understanding of the political network in which Murphy was just one cog, has passed. The network itself has been bypassed by new political friendship and deals on an even bigger scale. There is still plenty of scope for the left to popularise these new connections and show what relevance they have to the shifting political scene. But that cannot be done in NSW until the left is prepared to brave the anger of the political establishment.

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