
Corruption in High Places: The Key Witness in the Justice Murphy Scandal Gives His Side of the Story, by Clarrie Briese. Australia: Noble Books, 2021, pp. 416, Paperback RRP \$34.95 ISBN: 9780645010404

Rod Tiffen

Emeritus Professor, Department of Government and International Relations, University of Sydney.

When Clarrie Briese became the chief magistrate of New South Wales in 1979, he was probably looking forward to a career of considerable professional achievement and quiet but substantial institutional reform. Michael Kirby, former High Court judge and head of the Australian Law Reform Commission, captured this side of his achievement when late in Briese's career he praised him: 'The growth in the quality and reputation of the magistracy in New South Wales has been a remarkable phenomenon—and you must take much credit'.

But the title of this memoir points to his career's particular importance. Briese played a central role as a whistleblower in controversies over the administration of justice in the 1980s. The Murphy scandal in particular, one of the most contentious and convoluted episodes in 1980s Australian politics, dominated his life and career for some years. As the journalist David Marr declared at the release of previously secret parliamentary commission files in 2017, the scandal only came to light because 'a new kind of man was appointed, New South Wales chief stipendiary magistrate Clarrie Briese, who is the real hero of all this. Not the press. Not the brave politicians who stood up to the pressure to keep quiet. Clarrie Briese is the real hero'.¹

¹ 'The Murphy Scandal', ABC TV Four Corners 20 November 2017. All other quotations in this review are from Briese's book.

After Brieese was appointed chief magistrate, the incumbent, Murray Farquhar, invited him to a small farewell dinner. Almost immediately afterwards, Brieese was confronted with evidence that three of the four other diners that night were corrupt.

One of his first tasks as the new chief magistrate was to report to Attorney-General Frank Walker on Farquhar's last case, which involved two drug-runners, Roy Cessna and Tim Milner. The pair had been represented by another of Brieese's dinner companions, Morgan Ryan, who was also the lawyer for Abe Saffron, Sydney's notorious Mr Sin. Ryan was developing a reputation as a Mr Fix-It for organised crime. Farquhar dealt with Cessna and Milner summarily rather than going to a full trial, which was only possible because Brieese's third dinner companion, police chief Merv Wood, had radically reduced the estimated value of the drugs involved. The two men received very light sentences as a direct result of the corrupt collaboration between the three diners.

However, it was his meeting with the fourth dinner companion – Lionel Murphy – which was most fateful for Brieese. A couple of years later when Ryan himself was arrested on two charges, his good friend Murphy used subtly coded language to try to convince Brieese to fix the case.

Brieese's suspicions about Murphy were confirmed in early 1984 by the dramatic publication of what came to be known as the 'Age tapes,' which were based on transcripts and summaries of illegally obtained phone taps by NSW police. Although initially anonymous, it soon emerged that the transcripts were of Ryan's phone calls, and that one of the people he spoke to was Murphy. When Brieese read the transcripts he not only realised the extent of the corruption around him but also had the disconcerting experience of reading Ryan and Murphy's observations about himself. He decided to speak up about Murphy's attempt to influence the Ryan trial. Judge Paul Flannery would later make a similar statement about his experience with Murphy.

Brieese's testimony set in train a complex series of events, all focused on Murphy. A Senate inquiry was convened in late March, and reported in August, split along party lines. A second inquiry was formed in September, and this four-person committee split three ways, with the chair, Labor's Michael Tate, and the Australian Democrat Senator Janine Haines concluding that Murphy, on the balance of probabilities, was guilty of misbehaviour sufficiently serious to warrant his removal from the bench.

On the basis of testimony given to the Senate committees by Brieese and Flannery, the federal director of public prosecutions, Ian Temby, decided to lay charges against Murphy. The first trial began in June 1985, and in July the jury found Murphy guilty of one charge but not the other. After Murphy won an appeal, a second trial began in April 1986. He was found not guilty, but only after controversially choosing to make an

unsworn statement—a procedure introduced to protect the illiterate—which allowed him to avoid cross-examination.

On the basis of that acquittal, Murphy wanted to return to the High Court, but several of his fellow judges resisted. To resolve the deadlock, a parliamentary inquiry began looking at allegations of misbehaviour against Murphy, but the process was aborted when he was diagnosed with cancer. All the inquiry documents were locked away for thirty years.

Murphy's approaches to Briese were relatively indirect and light-touch. 'Now, what about my little mate?' is the most widely quoted of his remarks. When a District Court judge, John Foord, sought to influence Briese, he was direct and heavy-handed: 'Neville' (presumably Premier Neville Wran) 'wants something done about Morgan Ryan' were his opening words. Foord was charged with trying to pervert the course of justice but found not guilty. (In what might be seen as poetic justice, he resigned from the bench in September 1986 after criminology professor Tony Vinson documented a pattern of Foord giving lenient sentences to Ryan's drug clients.)

Briese's testimony against Murphy earned him the wrath of Wran, whose rhetoric against the *Age* tapes and Briese became increasingly reckless. Having begun by calling the police operation 'the most illicit, illegal and despicable affair in Australian history', he soon declared that 'We're heading in the direction of McCarthyism, of Germany in the thirties'.

After Briese's evidence to the second Senate committee, Wran redoubled his attacks. Brieses's evidence 'raises grave questions about him, his conduct and his future', he said. 'Obviously a very large question must now be hanging over him and his position as chief magistrate'. Even though Briese and his family were Labor supporters, Wran speculated about connections between him and the Liberals.

Wran delivered another barrage of invective in April 1986, saying he would like to sack Briese but didn't have the power under the *Local Courts Act* of 1982. This brought substantial blowback, however. The Magistrates Institute of NSW immediately defended Briese, as did Labor's federal Attorney-General Lionel Bowen and, in a joint letter to Wran, several justices of the NSW Supreme Court. This was Wran's last rhetorical assault on the chief magistrate before he retired as Premier three months later.

Wran's attacks would undoubtedly have affected Briese's view of the Premier, but his doubts dated much further back. In 1978, when Briese arrived back in Sydney after a period in Britain, fellow magistrate Kevin Waller described to him what the magistrate thought was a miscarriage of justice. The previous year, Murray Farquhar had directed

that rugby league chief Kevin Humphries be let off a charge of embezzlement, ostensibly on the orders of the Premier. One day, said Waller, Wran and Farquhar will go to jail.

The Humphries case became famous five years later when a *Four Corners* investigation led to a royal commission. Although it exonerated Wran, the commission recommended that Farquhar and Humphries should be charged. Both men were found guilty. Most of the telling testimony at the commission came from magistrates, several of whom—like Waller—had believed for some years that Wran and Farquhar had behaved corruptly.

For Briese and others, Wran's resentment at the magistrates' testimony explained why the *Local Courts Act* of 1982, which they saw as crucial to the independence of the judiciary, was not enacted until 1985.

When Briese became chief magistrate, Farquhar had asked mysteriously whether he would be willing to do favours for the Premier and indicated that such requests would come through Ryan. Briese very quickly suspected that Farquhar and Ryan were corrupt, but seems to have taken them at their word when they talked of their closeness to Wran.

Over time, Briese's view of Wran seems to have hardened. In *Corruption in High Places*, he says that he, along with Wran's successor Barrie Unsworth, and investigative journalist Bob Bottom, 'came to suspect that Wran himself was part of the problem of corruption in NSW, and for that reason was not interested in a conclusion'.

Nor was Briese alone in his suspicions. Long after the Murphy trials were over, he and Flannery became friends. Later they lunched regularly with Waller and former prosecutor Darcy Cluff, the prosecutor in the Humphreys case, who was deeply frustrated that the case had not been heard on its merits. Another prosecutor whose sense of professionalism and integrity had been damaged—in his case during the Cessna–Milner hearing—was Wayne Evans. It is easy to imagine such a group, all with strong reasons for their attitudes, nursing their sense of injustice and speculating about the links between their enemies.

When Briese's book was published in March this year, some accompanying news stories concentrated on its new revelations. The *Sydney Morning Herald* headline was 'Bombshell corruption claim about former Premier Neville Wran'.

In fact, these revelations, far from being the most interesting part of the book, are the weakest. They are unsubstantiated accounts of trivial events into which Briese reads far too much. For example, it quotes Evans as seeing Wran in the car park behind the courts the day of the 1977 Humphrey hearing. Even if this is true, it proves nothing. If

Wran had fixed the case through Farquhar, why would he risk being seen near the courts when he could do nothing to affect the outcome?

Claims such as this owe much to the shared siege mentality of Briece and his colleagues who bristled against the miscarriages of justice they had seen. Briece the magistrate would see how far short these claims fall of being convincing evidence.

This book does not substantially further the debate about whether Wran was corrupt. It does provide convincing examples of how badly Wran acted towards Briece and through these scandals involving the administration of justice. It demonstrates in fine detail how Briece acted with principle, and gave honest evidence against Murphy and Foord, when he had nothing to gain and much to lose by doing so. It is a valuable memoir of an important and dramatic period in state and national judicial politics.