1978

VICTORIA

REPORT

OF THE

BOARD OF INQUIRY

INTO

ALLEGATIONS AGAINST MEMBERS OF THE VICTORIA POLICE FORCE

VOLUME 1

PRESENTED TO BOTH HOUSES OF PARLIAMENT BY HIS EXCELLENCY'S COMMAND.

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To His Excellency the Honorable Sir Henry Winneke, K.C.M.G., O.B.E., K. St. J., Q.C., Governor of the State of Victoria.

MAY IT PLEASE YOUR EXCELLENCY:

I, BARRY WATSON BEACH, one of Her Majesty's Counsel, having been constituted and appointed by Order in Council made on the 18th March, 1975, and published in the *Victoria Government Gazette* on the 19th March, 1975, to be a Board for the purpose of inquiring into and reporting upon allegations against members of the Victoria Police Force in accordance with the terms of reference recited in the said Order, which terms of reference were amended by further Orders in Council made on the 16th May, 1975, and the 25th May, 1976, and published in the *Victoria Government Gazette* on the 16th May, 1975, and the 26th May, 1976, respectively, HAVE THE HONOUR TO REPORT that, pursuant to and in accordance with the said Orders in Council, I have inquired into and I herein report upon the matters to which I have been directed.

BARRY BEACH

Owen Dixon Chambers,
1st October, 1976.

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CHAPTER 1

APPOINTMENT OF THE BOARD

Following allegations made by Dr. Bertram Barney Wainer that certain members of the Victoria Police Force had been guilty of corruption and other malpractices, and following a preliminary investigation into such allegations by Mr. C. Villeneuve-Smith of Counsel (now Mr. C. Villeneuve-Smith Q. C.), by Order in Council made on the 18th day of March 1975 and published in the *Victoria Government Gazette* No. 20, dated the 19th day of March 1975 this Board of Inquiry was appointed.

The Order in Council appointing the Board was expressed in the following terms:

BOARD OF INQUIRY INTO ALLEGATIONS AGAINST MEMBERS OF THE VICTORIA POLICE FORCE.

At the Executive Council Chamber, Melbourne, the eighteenth day of March, 1975.

PRESENT:

His Excellency the Governor of Victoria.

Mr. Meagher	Mr. Rossiter
Mr. Smith	Mr. Dixon.

WHEREAS it is deemed expedient that a Board of Inquiry be appointed for the purpose of inquiring into and reporting upon matters contained in the undermentioned terms of reference concerning members of the Victoria Police Force:

NOW THEREFORE, His Excellency the Governor of the State of Victoria, by and with the advice of the Executive Council thereof, doth by this Order constitute and appoint BARRY WATSON BEACH, Esquire, one of Her Majesty's Counsel, to be a Board for the purpose of inquiring and reporting:

Whether there is any credible evidence raising a strong and probable presumption that any and, is so, which members of the Victoria Police Force have been guilty of:—

(*a*) criminal conspiracy, perjury, subornation of perjury, extortion, fabrication of false evidence, compounding a felony, aiding and abetting the commission of any offence or demanding or soliciting or accepting any money or any other reward directly or indirectly from any person or persons in breach of any regulation under the *Police Regulation Act* 1958 or in circumstances involving the commission of any criminal offence;

(*b*) harassment or intimidation of any member of the public;

(*c*) failing to observe or comply with any of the provisions of the Chief Commissioner's Standing Orders relating to—

(i) the investigation of complaints and grievances of members of the public;

(ii) the conduct of identification parades;

(iii) the investigation and obtaining of evidence from suspected persons.

AND it is hereby directed that the said BARRY WATSON BEACH shall, with as little delay as possible, report under his hand his opinion resulting from this inquiry:

WHEREOF the said BARRY WATSON BEACH and all other persons whom it may concern are to take notice and govern themselves accordingly.

And the Honorable John Frederick Rossiter, Her Majesty's Chief Secretary for the State of Victoria, shall give the necessary directions herein accordingly.

TOM FORRISTAL,
Clerk of the Executive Council.

Mr. C. Villeneuve–Smith of Counsel and Mr. John Coldrey of Counsel were appointed to assist the Board and Mr. John Day was appointed Secretary to it.

Appointment of the Board

On the 16th day of May 1975 and following an incident which occurred in the precincts of the Board involving a witness before the Board, one Peter Robert Gibb, (see Chapter 19 of the Report) it was deemed expedient to extend the Board's Terms of Reference.

The Order in Council extending such terms was expressed as follows:

BOARD OF INQUIRY INTO ALLEGATIONS AGAINST MEMBERS OF THE VICTORIA POLICE FORCE.

At the Executive Council Chamber, Melbourne, the sixteenth day of May, 1975.

PRESENT:

His Excellency the Governor of Victoria.

Mr. Rossiter | Mr. Houghton.

WHEREAS by Order made on the Eighteenth day of March, 1975, and published in the *Government Gazette* on the Nineteenth day of March, 1975, Barry Watson Beach, Esquire, one of Her Majesty's Counsel, was appointed to be a Board for the purpose of inquiring into and reporting upon matters contained in the terms of reference recited in the said Order:

AND WHEREAS it is now deemed expedient that the said terms of reference be extended:

NOW THEREFORE, His Excellency the Governor of the State of Victoria, by and with the advice of the Executive Council thereof, doth by this Order extend the said terms of reference:

(1) By inserting the figure 1. before the word " Whether ".

(2) By adding after sub-paragraph (c) (iii) of the said terms of reference the following paragraph:

2. Whether there is any credible evidence raising a strong and probable presumption that any and, if so, which person or persons whether or not members of the Victoria Police Force have at any time before or during the inquiry by the Board been guilty of harassing or intimidating or attempting to harass or intimidate any witness who has given evidence before the Board or any person summoned, directed or intending to appear to give evidence before the Board.

And the Honorable John Frederick Rossiter, Her Majesty's Chief Secretary for the State of Victoria, shall give the necessary directions herein accordingly.

TOM FORRISTAL,
Clerk of the Executive Council.

On the 25th of May 1976 it was again deemed expedient to extend the Board's Terms of Reference.

BOARD OF INQUIRY INTO ALLEGATIONS AGAINST MEMBERS OF THE VICTORIA POLICE FORCE.

At the Executive Council Chamber, Melbourne, the twenty-fifth day of May, 1976.

PRESENT:

His Excellency the Governor of Victoria.

Mr. Scanlan | Mr. Granter
Mr. Jona | Mr. Haddon Storey.

WHEREAS by Order made on the Eighteenth day of March, 1975, and published in the *Government Gazette* on the Nineteenth day of March, 1975, Barry Watson Beach, Esquire, one of Her Majesty's Counsel, was appointed to be a Board for the purpose of inquiring into and reporting upon matters contained in the terms of reference recited in the said Order:

AND WHEREAS by Order made on the Sixteenth day of May, 1975, and published in the *Government Gazette* on the same day, the terms of reference recited in the Order of the Eighteenth day of March, 1975, were extended:

AND WHEREAS it is now deemed expedient that the said terms of reference be further extended:

Appointment of the Board

NOW THEREFORE, His Excellency the Governor of the State of Victoria, by and with the advice of the Executive Council thereof, doth by this Order extend the said terms of reference by adding after the expression " AND it is hereby directed that the said Barry Watson Beach shall, with as little delay as possible, report under his hand his opinion resulting from this inquiry:" the words: "and any recommendations he considers appropriate as a consequence of this inquiry."

And the Honorable Vance Oakley Dickie, Her Majesty's Chief Secretary for the State of Victoria, shall give the necessary directions herein accordingly.

TOM FORRISTAL,
Clerk of the Executive Council.

CHAPTER 2

INTRODUCTION

On the 29th October, 1974, Doctor Bertram Barney Wainer produced to the Solicitor General Mr. Daryl Dawson, Q.C., and Assistant Commissioner of Police Mr. William Desmond Crowley, a tape recording of a conversation he alleged had taken place on the 23rd October, 1974, between a criminal named David Hinkler Keeley and a Senior Sergeant of Police, Bert Atherley Gaudion.

The allegation made by Doctor Wainer was that the conversation between the two men established that Senior Sergeant Gaudion had accepted a bribe from Keeley at a time prior to the date of that conversation, and that as at the date of the conversation he was prepared to enter into a conspiracy with Keeley to pervert the course of justice (see Chapter 22 of this Report).

It was further alleged by Doctor Wainer and other members of the public whose complaints were investigated in due course by Counsel appointed by the Chief Secretary for that purpose, that a number of members of the Victoria Police Force had been guilty of various acts of malpractice, in certain cases such acts involving the commission of criminal offences, in other cases such acts involving breaches of the Regulations under the *Police Regulation Act* 1958, and/or the provisions of the Chief Commissioner's Standing Orders.

Ultimately the allegations made by Doctor Wainer were brought to the attention of the then Chief Secretary, the Hon. John Frederick Rossiter.

During the month of February, 1975, Mr. C. Villeneuve-Smith (now Mr. Villeneuve-Smith, Q.C.)—a member of the Victorian Bar—was appointed by the Chief Secretary to make a preliminary investigation into the complaints of Doctor Wainer and the complaints of those other persons who had by then come forward with complaints of a similar nature.

The primary purpose of such preliminary investigation was to determine whether any and what further action should be taken in respect of the matter.

Following that preliminary inquiry, and on the 18th March, 1975, this Board of Inquiry was appointed to investigate and report upon allegations made to it against members of the Victoria Police Force, and which fell within the limits of its Terms of Reference.

In all the Board sat on some 227 days and took evidence from 240 witnesses. The names of those witnesses together with the appropriate transcript references appear in Appendix " A " to this Volume of the Report.

In addition to taking oral evidence from witnesses, some 766 exhibits were received in evidence, (see Appendix " B " to this Volume of the Report), and inspections were made of Police Headquarters at Russell Street, and a number of suburban Police Stations, to enable the Board to obtain a better understanding of the evidence presented before it.

Initially the Board sat to take evidence at premises formerly occupied by the Liquor Control Commission at 632 Bourke Street, Melbourne. On the fourth day of the proceedings before the Board, viz. 30th April, 1975, an incident occurred in the precincts of the Board Room involving a prisoner, Peter Robert Gibb. Gibb had commenced his evidence on the 29th April and on the morning of the 30th April was being escorted by Prison Officers into the Board Room when a scuffle occurred in the corridor immediately adjacent to the Board Room involving Gibb and a number of Prison Officers. As a consequence of that incident the proceedings before the Board on that day were aborted.

The view I formed of the matter at that time, was that as that incident had occurred in the precincts of the Board, and involved a witness giving evidence before the Board, it was incumbent upon the Board to investigate the circumstances surrounding the incident with a view to determining whether or not the incident itself was an attempt to harass or intimidate Gibb with a view to discouraging him from giving evidence before the Board.

With that purpose in mind, and on the 1st May, 1975, I commenced to take evidence from Gibb and other witnesses concerning the matter.

On the 2nd May, 1975, application was made to the Supreme Court on behalf of one of the Prison Officers involved in the incident, that an Order Nisi be granted for a writ of prohibition, and an interim injunction be granted, restraining the Board from further inquiring into that incident. The basis on which such application was made, was that any investigation of that nature was outside the Board's Terms of Reference.

On that day the Order Nisi sought was obtained, and an interim injunction granted.

Introduction

On the 5th May, 1975, the matter was fully argued before the Honourable Mr. Justice Dunn by Counsel for the Board and Counsel for Prison Officer Hecker. On the 7th May, 1975, His Honour indicated that he proposed to make the Order Nisi absolute and to grant the injuction sought. The Judgment delivered by His Honour on the 7th May, 1975, appears as Appendix " C " to this Volume of the Report.

The consequences of the incident of the 30th April, were twofold. In the first instance the Board lost one week of valuable sitting time. In the second instance, and of far more significance so far as the day to day running of the Board was concerned, thereafter Prison Officers refused to bring prisoners to the Board Room at Bourke Street to give evidence. The view expressed on behalf of Prison Officers was that security facilities at 632 Bourke Street were inadequate, and that the risk of further incidents occurring similar to that which had involved Gibb, was so great as to justify the adoption of that course of action.

The net result of the stand adopted by the Prison Officers—a stand I hasten to add I considered fully justified in the circumstances—was that much time was lost thereafter in transferring the operations of the Board backwards and forwards from the Board Room at Bourke Street to the County Court Building, as and when persons in custody were called to give evidence, and as and when a Court with appropriate security facilities was available in that building.

Although I shall advert to these matters when making recommendations relating to a Board of Inquiry of this nature, I consider they were some of the better examples of the inadequacy of the provisions of the Evidence Act concerning Boards of Inquiry, and for that matter Royal Commissions. The fact that the Board was fettered in the manner indicated by Mr. Justice Dunn, and that it had no power to deal with witnesses for contempt, insolence and sheer rudeness, are matters the legislature may well feel worthy of consideration hereafter, and such as to necessitate amendment of the relevant legislation. As I propose to deal with the matter in more detail in Chapter 9 of the Report, I say nothing further concerning it at this juncture.

As a consequence of the view His Honour took of the matter, it was deemed expedient to extend the Board's Terms of Reference to give it power to investigate any instance of harassment or intimidation of any witness who had given evidence before the Board, or any person who had been summoned or directed to give evidence before the Board, or who intended to give evidence before the Board.

The Order in Council extending the Terms of Reference in such manner was made on the 16th May, 1975.

As events transpired, the incident concerning Gibb became the subject of criminal proceedings in the Magistrates' Court at Melbourne, and this Board did not further investigate the matter. I should perhaps add, that from the evidence already placed before the Board before His Honour expressed the view he did, it was quite clear to my mind that whatever else could be said concerning the incident, it could not be construed as an attempt on the part of any person to harass or intimidate Gibb in his role as a witness before this Board.

On the 14th May, 1976, the Board concluded its hearing so far as the receipt of oral evidence was concerned. At that stage I took the view that having regard to the detailed examination the Board had made into Police procedures and practices over a period of some fifteen months, and the expenditure of public monies involved in such proceedings, it would be regrettable if this Board did not have the power to convey to the Executive Council any recommendations it considered appropriate consequent upon its findings. I might add that from evidence given before the Board by certain Senior Police Officers, it was apparent that the Police Department anticipated such recommendations would be made by the Board, and in fact was awaiting the publication of the Board's Report, in the expectation it would be of assistance to it, insofar as the improvement of Police procedures was concerned.

My request to have the Board's Terms of Reference further extended in that fashion was granted, and the necessary Order In Council made on the 25th May, 1976.

I now return to say something of the chronological sequence of events following the appointment of the Board.

On the 22nd March, 1975, advertisements were inserted in the *Age* newspaper, the *Australian* newspaper and the *Sun* newspaper setting out the Terms of Reference of the Board of Inquiry as at that date, and

inviting any member of the public who believed he had information which might assist the Board to communicate with the Secretary of the Board with a view to conveying such information to him. On the 24th March, 1975, a similar advertisement appeared in the *Herald* newspaper.

For the reasons spelt out in Chapter 4 of this Report, and on the 27th May, 1975, advertisements were inserted in the *Age* newspaper, the *Australian* newspaper and the *Sun* newspaper, informing persons desirous of placing material before the Board, that they should supply a signed statement to the Secretary of the Board in which the substance of that material was set out, by the 13th June, 1975. A similar advertisement appeared in the *Herald* newspaper on the 27th May, 1975, and the *Truth* newspaper on the 31st May, 1975.

In all 131 complaints were received either by Counsel assisting the Board or by the Secretary of the Board. Again and for the reasons appearing in Chapter 4 of this Report, only twenty-one of those complaints were fully investigated.

Whilst I trust that aspect is satisfactorily dealt with in Chapter 4 of the Report, let me say at this stage that many of the complaints received were outside the Board's Terms of Reference, a number were received from persons presently inmates of Mental Institutions and which, on investigation, disclosed no malpractice on the part of members of the Victoria Police Force; a number related to matters which had allegedly occurred at such a point of time that it would have been impossible for the Police Officers accused to have called evidence enabling them to rebut the allegations made, e.g. complaints relating to incidents which in some cases were alleged to have occurred in the period 1950–1960 (in some cases, where Police Officers concerned were now deceased). In addition there were complaints which lacked corroboration where in the event the malpractice alleged had occurred, corroborative evidence should have been available, or where the malpractice had occurred in such circumstances that it was not possible for the complainant to produce corroborative evidence. Although on the face of it these complaints disclosed serious malpractice on the part of Police Officers, Counsel Assisting took the view that the complainant would not have been able to satisfy the burden of proof laid down by the Board as being appropriate, before an adverse finding could be made against a member of the Police Force.

In the latter connection, and in supporting the view Counsel assisting the Board took of the matter, as I did, I was mindful of the observations of Colonel Sir Eric St. Johnston, C.B.E., Q.P.M., which appeared in his report on the Victoria Police Force dated the 22nd February, 1971 (see Chapter XIV, Paragraph 23):—

> "The Policeman is entitled to just and proper treatment, and the morale of the Force would undoubtedly suffer if some outside organisation was put in charge of investigations as to how he has done his work or how he has conducted himself, whether on or off duty. Moreover the Policeman, like any member of the public is entitled to the benefit of the doubt and where it is solely the word of the civilian against the word of the Policeman —and it often is in complaints of incivility—it would be inequitable, as a general rule, to accept the word of the member of the public rather than that of the Policeman."

(I should add that the underlining is my own.)

In addition, a number of complaints which on the face of it appeared quite valid, were withdrawn by the complainant, and a number of complaints which again, and on the face of it, appeared quite valid, were not dealt with by the Board by virtue of a decision I made during the course of the Board's proceedings not to investigate complaints where the complainant had already instituted civil proceedings against the Police Officer or Officers concerned.

I should perhaps point out at this early stage, that throughout the Report I use the term Police Officer quite loosely and merely as a matter of convenience. By definition Police Officer only includes the Chief Commissioner, the Deputy Commissioner, and any Assistant Commissioner, Chief Superintendent, Superintendent, Chief Inspector, Inspector, or Station Officer (see Regulation 3 of the Police Regulations 1957). If one was to deal with the matter in a strict sense, one would differentiate between Police Officers (as such) on the one hand, and members of the Force not Officers (as defined), on the other. As I indicated, I have found it convenient to generally refer to those members of the Force who featured in any way during the course of this Inquiry, simply as Police Officers.

Thus, although the Board did peruse a large volume of material relating to allegations made against members of the Victoria Police Force, and the transcripts of various criminal trials held in the State of Victoria since the

1st January, 1972, the fact is that in the period of approximately 15 months during which the Board received oral evidence, it made an in-depth investigation into only 21 individual complaints.

Having regard to the factors which resulted in the Board investigating only 21 complaints, it will perhaps not come as any surprise to the reader of the Report, to find that in the majority of cases, the complaints made were substantiated.

In view of the manner in which complaints were either culled from the much larger volume of complaints made to the Board, or fell by the way-side—in the sense that the complainant either withdrew his complaint or I ruled it should not be dealt with,—it could not be said that the Board only investigated the "hard-core" of complaints made to it. It is to be borne in mind that those complaints which were investigated in depth, were the complaints in respect of which strong evidence was available corroborative of the allegations made. Thus the high percentage of adverse findings against the Police Officers involved.

In expressing an overall view in respect of the matter, one could say that the complaints investigated by the Board fell into two broad categories —those by hardened criminals against members of the Homicide Squad, the Armed Robbery Squad and the Consorting Squad, and those by persons with generally little or no criminal background against individual members of the Force stationed (with two exceptions) at inner suburban stations.

As the following Chapters will indicate, complaints against members of the Homicide Squad were by and large without justification. Although I have voiced criticism of the actions of a handful of members of that Squad in relation to two or three particular matters, my findings against those particular Officers justify nothing more than criticism—they certainly did not justify a finding of serious malpractice so far as those members of the Force were concerned.

The disturbing feature of this whole inquiry concerned the behaviour of a number of Police Officers who were members of the Armed Robbery and Consorting Squads during the years 1972–1975, the actions of certain senior Police Officers into whose hands the investigation of complaints made by members of the public against Police were placed, and the behaviour of individual Police Officers attached—with two exceptions—to inner suburban Stations.

I turn now to indicate in broad outline the nature of the complaints I considered to be substantiated.

Insofar as those complaints made against members of the Armed Robbery and Consorting Squads were concerned, having carefully considered the evidence called in relation to them, I was satisfied that certain officers—

(*a*) had in a particular case conspired with a known criminal with a view to having a person charged and convicted of a serious criminal offence;

(*b*) had concocted false evidence against particular individuals and committed perjury at their trials;

(*c*) had assaulted a criminal by kicking him whilst he was lying on the floor of an Interview Room at Russell Street, thereby fracturing two of his ribs;

(*d*) having accidentally caused serious injury to a criminal in the course of seeking to apprehend him, conspired together to suppress and distort the circumstances in which he sustained such injury;

(*e*) had committed perjury at the trial of various criminals; and

(*f*) had deliberately concealed and suppressed evidence favourable to accused persons.

So far as allegations made against senior Police Officers in relation to their failure to properly investigate complaints made by members of the public against members of the Force were concerned, I merely state at this juncture that I was satisfied the bulk of those allegations were substantiated; so much so that in the Chapter of this Report dealing with the recommendations I have made as a consequence of my findings, I have suggested certain steps be taken in addition to those taken during the course of this inquiry, viz. the formation of the Bureau of Internal Investigation (B11), to ensure such situations do not arise in the future (see Chapter 8).

The complaints made against individual members of the Force stationed at suburban Police Stations established instances of assault upon innocent members of the public, the unlawful apprehension and detention of members of the public, conspiracy and perjury designed to conceal

such malpractices, the harassment and intimidation of members of the public, and behaviour which can only be described as acts of arrogance and rudeness.

I was obliged to find as a fact, that a substantial number of those Police against whom allegations were made and who gave evidence before this Board, conspired together to give false evidence before the Board, and in fact did so. In this connection and although I have adverted to it in various Chapters dealing with individual complaints investigated by the Board, and the Chapter dealing with recommendations based on the Board's findings (Chapter 8), I cannot but observe at this point, that it was with regret that one observed what has been described in other reports of a like nature, as the "brotherhood syndrome", or the "ghetto mentality" of a number of members of the Force called to give evidence before this Board. In other words, the attitude adopted by Police was that of "it's them against us" and "the team must stick together".

To instance but three examples, one had the case of Sergeant Fraser in the Keeley Matter *re* Wren (Chapter 18), Senior Constable Tamblyn in the Sellers Matter (Chapter 25) and Sergeant Dennis in the Whyte Matter (Chapter 30).

In each case, and for reasons I spell out in the respective chapters, I was quite satisfied those members of the Force deliberately gave false evidence before the Board with a view to assisting their colleagues. In other words, not only were they prepared to condone the misbehaviour of fellow members of the Force, they were prepared to perjure themselves in an endeavour to aid them. That this type of behaviour occurred in such a large number of cases investigated by the Board, is a matter of grave disquiet.

Further views expressed by Police Officers called before the Board and which can conveniently be adverted to at this juncture, were those to the effect that complaints made against members of the elite Squads of the Force, in particular the Armed Robbery Squad, were the result of a gigantic conspiracy on the part of hardened criminals to discredit the members of those Squads. Indeed such views were not only expressed during the course of a particular Police Officer's testimony, but from time to time were publicly expressed by certain members of that Squad, and/or the Police Association.

Whilst there can be little doubt that hardened criminals would have every motive for discrediting particular Police Officers, particular Squads, or for that matter the Force as a whole, as I have indicated in each chapter in which the complaint was voiced, e.g. the Owen Matter *re* Dam (Chapter 21), the Sellers Matter (Chapter 25) and the Smith Matter (Chapter 26), such complaints were without substance.

I merely add by way of conclusion that it was of interest to note that when such statements were made, they were invariably made by members of the Armed Robbery Squad or Consorting Squad, against whom the more serious allegations had been made, and in which there was ample evidence called before the Board corroborative of such allegations.

When I speak of members of the Armed Robbery Squad or Consorting Squad in that connection, it must be borne in mind that such Police Officers were members of those Squads at the time the alleged malpractice had occurred, not necessarily at the time they gave evidence before the Board. Indeed it was again of interest to note that almost without exception, the members of the Armed Robbery Squad against whom complaints were made to the Board, were no longer members of the Squad at the time they gave evidence before the Board.

With the exception of Inspector Delianis and one or two other members, they had of recent times been dispersed throughout the Force and throughout the State.

Before turning to the more mundane aspect of this Introduction, viz. the outline of the manner in which the Report has been prepared and its content, I consider at this juncture I should make some further reference to Doctor Wainer. As I indicated quite early in this Introduction, it was really as a consequence of Doctor Wainer's activities that this Board was appointed in the first instance.

Doctor Wainer is a crusader and has many of the attributes of a crusader. Before the Board he displayed a zealous desire to expose corruption and malpractice on the part of the Victoria Police Force.

Regrettably however, he has some of the shortcomings one sometimes encounters when dealing with crusaders. In his particular case those shortcomings can be summed up as follows—(*a*) a propensity to exaggerate, (*b*) a propensity to carry on his investigations on the basis that the end justifies the means, and (c) an insatiable desire for publicity.

In the first instance I need do no more than refer to this portion of a report which appeared in the *Truth* newspaper on the 5th April, 1975, (exhibit 759)—

> "So many cases are before the Board of Inquiry resulting from Doctor Bertram Wainer's latest crusade that it would take three barristers three months to sort them out.
>
> Doctor Wainer told *Truth* he has a further 50 cases documented in addition to those put to Mr. C. Villeneuve-Smith, the barrister who made the preliminary investigation into Doctor Wainer's allegations."

In fairness to Doctor Wainer, when questioned concerning that press report he maintained that he had been mis-reported and that the reference to a further 50 documented cases was in fact a reference to the total number of cases documented by him.

In actual fact Doctor Wainer gave and/or produced evidence in four matters investigated by the Board, although it could be said he played some part in having seven further complaints made to the Board and investigated by it.

Again, and in fairness to Doctor Wainer, it became perfectly clear during the Board's inquiry that he had little real conception of what was relevant evidence, what was admissible evidence, and what matters really fell within the Board's Terms of Reference. Therefore, whilst I have little doubt that in his own mind he believed he had fifty matters justifying investigation by this Board, those he did have which fell into that category, fell far short of that number.

I preface the point I am now about to make by saying this—an inquiry of this nature into an organisation such as the Victoria Police Force must in itself have an adverse effect upon the morale of the members of the Force. It also tends to raise doubts in the minds of the public as to the integrity of those members, even though the investigation ultimately establishes that many of the allegations leading to the appointment of the Board in the first instance, are either groundless or exaggerated.

Whilst one would hope that in the event the recommendations set out in Chapter 8 of this Report are given effect to, the occasion will not arise hereafter necessitating an investigation into the Victoria Police Force of this type, in the event that further complaints are made by Doctor Wainer, or for that matter any other person, I simply voice this warning—a great deal of care should be taken to ensure the setting up of a Board of Inquiry of this nature is justified, before that step is taken.

An example of the second short-coming of Doctor Wainer to which I have adverted, viz. his view that the end justifies the means, was his behaviour in having Reginald Joyce tell Rayma Joyce a number of lies, in the hope that Rayma Joyce would meet him, thus enabling him to tape-record a conversation with her. It was his hope that during that conversation he would obtain a confession from her to the effect that she had given false evidence at Lawless' trial. While Counsel appearing for the Police Association submitted that that attempt constituted the harassment of a witness before this Board by Doctor Wainer, and that I should so find, for the reasons appearing in Chapter 19 of the Report I make no such finding.

Finally, Doctor Wainer's public appearances relating to the Board and matters being dealt with by the Board, made whilst the Board was still hearing evidence, were such that I considered the only appropriate course to adopt was to ultimately withdraw his leave to be represented by Counsel. I did however, permit his Counsel to make final submissions on his behalf.

Whilst it is true therefore that as a consequence of Doctor Wainer's activities a number of instances of serious malpractice by Police Officers has been uncovered by this Board, I consider great care should be taken hereafter to ensure that there is substance in the sweeping allegations still being made by Doctor Wainer, e.g. that B11 is itself the subject of internal Police investigation, before another Board of Inquiry of this nature is appointed.

Indeed, as I have already stated, in the event the recommendations appearing in Chapter 8 of this Report are given effect to, that necessity should not arise in the future.

I turn now to say something of the manner in which I have prepared the Report as a whole, and something of its content.

Initially I will deal with the Terms of Reference as such, the number of complaints received by the Board, and the basis upon which the twenty-one complaints dealt with by it in detail, were selected. I shall deal with the manner in which the proceedings before the Board were conducted,

including such aspects as the standard of proof and the receipt of evidence by the Board. In the latter connection I shall advert to matters concerning direct evidence on the one hand, and hearsay evidence on the other.

Each matter investigated by the Board will appear as a separate Chapter in the Report. I consider this to be the most satisfactory method of dealing with each matter having regard to the volume of evidentiary material I have found it necessary to advert to when arriving at a conclusion in respect of a particular matter. The net result of adopting that course, has been that the report will consist of more than one volume.

Volume 1 of the Report will contain the matters to which I have already adverted and a precis only of each of the 21 matters dealt with by the Board. It also will contain the Board's findings, and the recommendations based on such findings, not only concerning Police procedures, etc., as such, but also dealing with the shortcomings of a Board of Inquiry of this nature when confronted with the task this Board was.

As Appendices to Volume 1 of the Report will appear a list of witnesses together with appropriate transcript references, a list of exhibits, a copy of the Judgment of the Honourable Mr. Justice Dunn, the location of " in camera " evidence in the main body of the transcript, the names of Counsel or Solicitors who appeared for various complainants and/or witnesses, and a list of the written submissions received by the Board.

It is my hope that by adopting this procedure, any person who has not the time to read the whole of the Report, will be able to obtain a complete picture of the matters investigated by the Board, the Board's findings and recommendations, by reading Volume 1 only.

Volumes 2 and 3 will contain the chapters dealing with each matter investigated by the Board. To each chapter will be appended those documents I consider it essential to be included in the Report in relation to a particular matter, e.g. various reports prepared by Police Officers, certain statements and transcripts of tape recorded conversations.

At the conclusion of Volume 3 of the Report will appear the more significant of the Chief Commissioner's Standing Orders referred to during the course of the evidence.

By adopting this course, any person interested in one particular matter, will only be required to read the chapter relating to that matter to obtain a fairly detailed picture of the material placed before the Board in connection with it, and the reasoning of the Board for the conclusions it arrived at.

CHAPTER 3

INTERPRETATION OF TERMS OF REFERENCE

In my opinion there was only one aspect of the Board's Terms of Reference which required consideration in this Report, viz. the interpretation of the words " credible evidence raising a strong and probable presumption " that any, and if so which members of the Victoria Police Force have been guilty of the various matters adverted to in the Terms of Reference. It was my view that the criminal offences and other malpractices adverted to in the initial Terms of Reference necessitated no interpretation by this Board of Inquiry. I have little doubt they would be fully comprehended by any person interested enough to concern himself with the content of the Report, and the transcript of the proceedings before the Board. So too would the additions to the initial Terms of Reference adverted to in Chapters 1 and 2 of the Report.

In dealing with the interpretation I consider should be placed upon the words, " credible evidence raising a strong and probable presumption," I shall also, advert to the matter of corroboration of evidence placed before the Board by particular complainants. I shall advert to the matter of evidence as such, when dealing with the manner in which the proceedings before the Board were conducted (see Chapter 5).

The phrase " credible evidence raising a strong and probable presumption " is no term of art, but is in fact a phrase familiar to those who have been involved in Boards of Inquiry in this State to this date. A similar expression was dealt with by the Honorable Mr. Justice Kaye (then Mr. Kaye, Q.C.) in his report into allegations of corruption in the Police Force in connection with illegal abortion practices in the State of Victoria.

In my opinion the expression " credible evidence " means nothing more than evidence of a witness, capable of being believed by this Board of Inquiry. In determining whether evidence is capable of belief it is necessary, of course, to assess the trustworthiness of the witness giving the evidence. As the Honorable Mr. Justice Kaye pointed out—

> " evidence cannot raise a strong or probable presumption of guilt unless it comes from a person or persons capable of being believed. Therefore the expression 'credible evidence' in its context in the Order, sounds a caution to the Board of the degree of proof which it is directed to seek before being persuaded of the existence of evidence connecting a Police Officer with a crime, (and also in this case an act of malpractice within the context of the Board's Terms of Reference) and it emphasises the high standard of persuasion which it is intended the Board should find in evidence raising a presumption of guilt."

(See page 13 of Chapter 4 of the Report of the Board of Inquiry.)

The Order in Council establishing this Board of Inquiry does not suggest that this inquiry is intended to be adjunctive to the administration of the criminal law. One would have little doubt that its function is to provide information to the Executive Government useful to it insofar as the administration and functioning of the Police Force of Victoria is concerned. Whilst this Board may well recommend that criminal proceedings be instituted against certain members of the Victoria Police Force, it must be remembered that the decisions this Board has reached, have not necessarily been arrived at based on facts established beyond reasonable doubt. It must further be remembered that the decisions arrived at are the decisions of one person, based upon the view he, and he alone, has taken of the evidence placed before him. Whilst one would wish to believe that one's judgment in such matters was infallible, experience has demonstrated that that cannot be the case. How often, for example, has a Magistrate or Jury dealing with a criminal matter been satisfied beyond reasonable doubt of an accused person's guilt, only to have it demonstrated by an Appellate Court at a later point of time that that finding was not justified? How often has a Magistrate, Judge, or Jury dealing with an action, the subject of civil litigation, made a finding based on the probabilities adverse to a particular party, only to have that finding reversed on appeal, on the ground that the evidence called before the particular Magistrate, Judge, or Jury, did not justify such a finding? I repeat therefore, that in those cases in which I have made findings adverse to Police Officers I have been satisfied there has been credible evidence placed before me raising a strong and probable presumption of guilt. I do not claim to be infallible.

Interpretation of Terms of Reference

Accordingly, and in fairness to the various Police Officers concerned, I have refrained from making a finding against a particular Police Officer unless I have been satisfied that he has been guilty of the act complained of to the extent which would be required in the given circumstances in a civil proceeding at law. I have further made such findings in the knowledge that the Board's function is solely ministerial, and without penal consequences which might interfere with the liberty of the subject.

Insofar as that civil standard of proof is concerned I do no more than refer to the following passages from the judgment of Sir Owen Dixon in *Briginshaw* v *Briginshaw* 60 C.L.R. 336, at pages 361–3, and the judgment of the High Court in *Rejfek & Anor.* v *McElroy & Anor.* 112 C.L.R. 517, at pages 521–2.

In the former instance His Honour expressed the matter in these terms.

> " The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters " reasonable satisfaction " should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency . . . This does not mean that some standard of persuasion is fixed intermediate between the satisfaction beyond reasonable doubt required upon a criminal inquest and the reasonable satisfaction which in a civil issue may, not must, be based on a preponderance of probability. It means that the nature of the issue necessarily affects the process by which reasonable satisfaction is attained. When, in a civil proceeding, a question arises whether a crime has been committed, the standard of persuasion is, according to the better opinion, the same as upon other civil issues . . . But, consistently with this opinion, weight is given to the presumption of innocence and exactness of proof is expected."

In the latter instance the Court dealt with the matter thus:—

> " The difference between the criminal standard of proof and the civil standard of proof is no mere matter of words: it is a matter of critical substance. No matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge."

Finally and in this same connection I should add that I have borne in mind the decision of the House of Lords in *Armah* v *Government of Ghana* (1968) A.C. 192. In that case, and dealing with the provisions of Section 5 of the Fugitive Offenders Act 1881 which empowered a magistrate to make a committal order only if such evidence was produced as according to the law ordinarily administered by the magistrate raised a strong or probable presumption that the fugitive committed the offence mentioned in the warrant, a majority of their Lordships held that the words " strong or probable presumption " were to be given their ordinary and natural meaning; that in their context that meant that the magistrate must weigh the whole of the evidence put before him and decide whether he—not a hypothetical jury—thought it probable that the accused had committed the offence disclosed in the warrant; and that " probable " did not mean certain or nearly certain, and on the other hand it did not mean a mere possibility.

Interpretation of Terms of Reference

Whilst the matter I next propose to advert to, does not involve an interpretation of the Board's Terms of Reference in the strict sense, it does concern the standard of proof required by the Board before an adverse finding was made in respect of a particular Police Officer, and accordingly can be conveniently dealt with at this juncture.

As will be seen from a perusal of those chapters in the Report dealing with the actual complaints made to the Board, a number of complainants were persons with long criminal records, records which more often than not included convictions in respect of crimes of the most serious nature, e.g. murder, armed robbery and assaults of varying degrees. It further appeared quite clear that on numerous occasions those persons had committed perjury at certain of their trials, and also when giving evidence before this Board. In fact in the Lawless matter alone, one could point to at least five witnesses who had clearly given perjured evidence at his trial or other trials, and perjured evidence before this Board, viz. Leonard Coppin, Peter Robert Gibb, Ivan Alfred Kain, Laurence Joseph Prendergast and Robin Norman Leslie West. In fact, had the matter not been one of such gravity, one could almost have been amused at the earnestness with which such witnesses assured this Board they were telling the truth, even though they conceded they had committed perjury at the Lawless trial and in other criminal proceedings.

That being the situation so far as a number of complaints was concerned, from the outset the Board took the view that no adverse finding would be made against a Police Officer based on the evidence of that complainant alone, but only in the event there was adequate corroboration of his testimony.

In arriving at the conclusion I did concerning corroboration of a particular complainant's testimony, I was very mindful of the warning Judges invariably give juries in those cases, where although it is not essential there be corroboration of a particular witness's evidence, it is highly desirable there be corroboration, and the jury is warned to exercise extreme care in making an adverse finding against an accused person unless such corroboration exists. The most common examples of such situations are those cases where the substantive evidence against an accused is that of an accomplice, or the evidence of a prosecutrix who alleges sexual offences have been committed against her by an accused person.

In cases dealt with by the Board and in which I considered it essential there be corroboration of the evidence of a particular complainant, I considered corroboration was provided where evidence was called which confirmed the circumstances of the complaint alleged against a particular Police Officer, and identified him as the Police Officer involved.

In this instance I was mindful of the following passage from the Judgment of Lord Reading C. J. in R. v *Baskerville* (1916) 2 K.B. 658 at page 667:—

> "We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offences for which corroboration is required by statute. The language of the statute, 'implicates the accused', compendiously incorporates the test applicable at common law in the rule of practice. The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged. It would be in high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused.
>
> The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime."

Interpretation of Terms of Reference

Thus, and to take but one example, I doubtless would not have made an adverse finding against the Police Officers involved in the Hewat Matter, had it not been for the corroborative evidence of Doctor Carman, Mr. Marin, Doctor Wainer, Mr. Hitchings and the other evidence called on Hewat's behalf. That evidence coupled with certain unsatisfactory aspects of the evidence given by the Police Officers most directly concerned, satisfied me of the circumstances in which Hewat sustained injury, and the identity of the Police Officer who had inflicted that injury.

Whilst viewed on its own, one would have ample reason for doubting the veracity of any evidence Hewat gave—he having every motive for fabricating evidence against the Police—corroborative evidence of the nature available in that case, and placed before the Board, had the practical effect of making Hewat's evidence almost superfluous. That this proved to be the situation in other matters dealt with by the Board, will appear from the content of the later chapters of this Report.

CHAPTER 4

COMPLAINTS DEALT WITH BY THE BOARD

I feel it essential to explain to the reader of this Report why it was that of the 131 complaints received by Counsel assisting the Board and/or the Secretary of the Board, only 21 complaints were in fact dealt with in depth by it.

Expressed in broad terms, many complaints fell outside the Board's Terms of Reference, many were complaints in which there was inadequate corroboration, many were vexatious or frivolous, a number were withdrawn by the particular complainant when he was called upon to appear before the Board and give evidence, some fell outside the temporal limits laid down by the Board at an early stage of its investigation, and some I determined this Board should not deal with in view of the fact that the complainant had already instituted civil proceedings against the Police Officer or Officers involved, or the Crown had instituted criminal proceedings against the Police Officer in question.

In fairness to those complainants whose allegations were not investigated by the Board, I consider it incumbent upon me to indicate in some detail the reasons why many complaints were not investigated on the one hand, whilst others were on the other.

In this connection I wish to advert to the findings of the Royal Commission on Tribunals of Inquiry held in the United Kingdom in 1966 under the Chairmanship of the Rt. Hon. Lord Justice Salmon. I must confess it was certain of the findings of that Royal Commission as set out in Chapter VIII of that report, which influenced me in setting down the temporal limits I did in respect of complaints made to the Board. In this connection I do no more than quote the relevant passages—

> " In view of the inquisitorial nature of the proceedings of the Tribunal, the terms of reference require careful consideration and should be drawn as precisely as possible.
>
> As the agitation for an inquiry is very often the result of nothing more than general allegation and rumour, it is necessary to keep the Tribunal within reasonable bounds. It is not of urgent public importance merely to satisfy idle curiosity. The Act (the Tribunals of Inquiry (Evidence) Act 1921) lays down, rightly in our view, that what is to be inquired into shall be a 'definite matter'. Accordingly no Tribunal should be set up to investigate a nebulous mass of vague and unspecified rumours. The reference should confine the inquiry to the investigation of the definite matter which is causing a crisis of public confidence. On the other hand it is essential that Tribunals should not be fettered by terms of reference which are too narrowly drawn.
>
> The Tribunal should take an early opportunity of explaining in public its interpretation of its terms of reference and the extent to which the inquiry is likely to be pursued. As the inquiry proceeds, it may be necessary for the Tribunal to explain any further interpretation it may have placed on the terms of reference in the light of the facts that have emerged."

Having regard to the investigation carried out by Mr. Villeneuve-Smith, Q.C. before this Board of Inquiry was appointed, it could not be suggested it was set up as the result of nothing more than general allegation and rumour. Very concrete material had been placed before Mr. Villeneuve-Smith during the course of his investigation—in particular a transcript of the tape recorded conversation which took place between Senior Sergeant Gaudion and the criminal Keeley at a park in Caulfield on the 23rd October, 1974—a document rightly described by Mr. Villeneuve-Smith Q.C. in his final submissions as " a most deadly and incriminating document so far as Gaudion was concerned " (page 10,828).

As a consequence of allegations of that nature and other specific allegations made to him during the course of his preliminary inquiry, together with the material uncovered by him, the Executive Council had no option but to draw the Board's Terms of Reference as widely as it did.

In fact so wide were the Terms of Reference, they literally invited any member of the public to make a complaint to the Board relating to virtually any aspect of Police conduct that particular individual considered unsatisfactory, and in respect of which he bore a grievance. In this connection one need only consider Term of Reference (1) (*b*), viz. harassment or intimidation of any member of the public.

Accordingly, and at an early stage of the Board's proceedings, it was considered essential that in the first instance some temporal limit be placed on those complaints to be dealt with by the Board.

Complaints Dealt With by the Board

After due consideration the Board determined it would not investigate allegations relating to the behaviour of Police Officers allegedly occurring prior to the Ist January, 1972. Not only was the Board influenced by the time factor which would have been involved in investigating complaints relating to conduct prior to that date, it was also of the view that in fairness to the Police Officers concerned, such matters should not be investigated. The interval of time between the alleged incident, and the date of its investigation by the Board, would have been so great as to seriously prejudice the Police Officer or Officers involved, insofar as their ability to obtain evidence to rebut the allegation made was concerned. Indeed in one or two instances, complaints were received by the Board which related to incidents alleged to have occurred at such an early point of time, that the Police Officers against whom the allegations were made, had long since retired from the Force, and in at least one instance, had been dead for some years.

In the second instance the Board determined it would not deal with any complaint relating to the misconduct of a Police Officer, where the misconduct alleged had occurred subsequent to the 13th June, 1975, or the complaint in respect of Police misconduct was received subsequent to that date.

The view the Board took was that it was essential there be a time limit placed on the receipt of complaints, and a cut-off date set so far as complaints were concerned. Had the Board not adopted that course, the proceedings before the Board would have been never ending. Even at the time of preparation of this Report, the Board is receiving complaints alleging misconduct on the part of Police Officers. In such instances it has adopted the practice of referring the particular complainant to the Chief Secretary's Department, the Chief Commissioner of Police or to the Bureau of Internal Investigation (B11)—that group set up by the Chief Commissioner of Police on the Ist August, 1975, for the express purpose of handling complaints made by members of the public against Police Officers (see the evidence of Chief Superintendent Kellett at page 7304 of the transcript).

For the benefit of the reader I should add that B11 is a completely independent body within the Police Department, is beyond the interference of other Police Officers, and is only answerable to Deputy Commissioner Braybrook (see the evidence of Assistant Commissioner Crowley at pages 9905 and 9908 *et seq.* of the transcript). I might add that I shall make further reference to the operations of B11 when making recommendations consequent upon the findings of the Board (Chapter 8).

Accordingly, and at an early stage of the hearing by the Board, public pronouncements were made to the effect that there would be a cut off date, and that it would be the 13th June, 1975. (See, for example, page 691 of the transcript). On the 27th May, 1975, advertisements were inserted in the *Age* newspaper, the *Australian* newspaper, the *Herald* newspaper and the *Sun* newspaper advising the public that persons desirous of placing material before the Board should supply to the Secretary of the Board a signed statement in which the substance of that material was set out, not later than the 13th June, 1975. A similar advertisement appeared in the *Truth* newspaper on the 31st May, 1975.

In due course five complaints were rejected on the ground that the malpractice alleged had occurred prior to the 1st January, 1972, and ten on the ground that the complaint was received after the 13th June, 1975, and/or that the incident giving rise to that complaint had occurred subsequent to that date. In the latter instance I have only referred to complaints which were received by the Board within a matter of months of the cut-off date. No attempt has been made to collate those referred to B11, after its formation on the 1st August, 1975, or those referred to the Chief Secretary's Department or the Chief Commissioner of Police after that date.

The next group of complaints rejected by the Board were those which fell outside the Board's Terms of Reference. These numbered in all some thirty-eight. There were instances where complaints related to persons other than Police Officers, e.g. complaints against members of the Judiciary, employees of Government instrumentalities and the like.

Into this particular category fell a number of complaints from inmates of mental institutions, and which did not relate to members of the Police Force whatsoever.

Some fifty-two complaints were rejected on the ground that there was insufficient evidence to justify their investigation by the Board, or on the ground that they were frivolous or vexatious.

Complaints Dealt With by the Board

As I indicated in the Introduction to this Report, Counsel Assisting took the view that where a particular complaint required corroboration, and that corroboration was not forthcoming in circumstances in which it should have been, it would have been unfair to the Police Officer or Officers involved to subject them to the rigours of a public inquiry of this nature on the unsupported or uncorroborated testimony of a particular complainant. Counsel Assisting further took the view that where allegations of malpractice had occurred in such circumstances that it was not possible for the complainant to produce corroborative evidence, even though on the face of it those complaints disclosed serious malpractice on the part of Police Officers, this Board should not deal with the particular complaints as the complainant would not have been able to satisfy the burden of proof laid down by the Board as being appropriate, before an adverse finding could be made against a member of the Police Force.

Those were views with which I entirely agreed.

Into this same category fell a number of complaints in which the identity of the Police Officer or Officers involved could never be established —as did any complaint considered by Counsel assisting to be frivolous or vexatious.

The next category into which complaints fell which were not dealt with by the Board, was that in which the complainant declined to proceed with his complaint when required by the Board to either produce evidence in respect of it, or give evidence in respect of it. Some sixteen complaints fell into this category. These were complaints which, on the face of it, appeared quite valid, and which would have been dealt with by the Board had the complainant been prepared to appear and give evidence.

At a stage when the Board considered steps had to be taken with a view to shortening the hearing before it, and bring the Inquiry to a close, it took the view that where a complaint lodged by a particular complainant was also the subject of civil litigation, the Board was justified in requiring the complainant to pursue his remedy in that connection, and not to have the complaint dealt with by the Board. In that connection I was mindful of the observations of Sir Reginald Sholl in *Johns & Waygood Ltd.* v *Utah Aust. Ltd.* 1963 V.R. 70 where at page 75 His Honour had this to say:—

> "If a common law Royal Commission is appointed to inquire into and report upon the very same question as is the subject of an already existing criminal prosecution, and nothing else, presumably the appointment is wholly invalid; the Crown has been wrongly advised, and the whole purpose of the appointment is to interfere with the course of justice within the meaning (as I interpret it) of the observations of Dixon J. in McGuinness' Case, at page 101, which I have already cited. Upon that view, any act of the Commission—even of sitting and inquiring—would be unauthorised, though the Commission's act would only become unlawful if calculated to interfere with the course of justice, as, for example, the exercise of compulsory powers in invitum against a witness, or the publication of the Commissioner's report on the alleged offence. *Presumably the same position would obtain if a common law Royal Commission was appointed solely to inquire into and report upon the very same issue as was the subject of an already existing civil action.*"

Into this category fell five complaints. The ruling I gave in respect of them appears at page 8430 *et seq.* of the transcript.

I again point out that these were complaints which on the face of them were valid complaints, and which in the ordinary course of events would have been dealt with by the Board.

Finally there were five complaints the Board did not deal with for reasons of one description or another apart from those already adverted to.

In one instance the complainant was a senior member of the legal profession well known to the Chairman of the Board. In the circumstances, I took the view that justice could never appear to be done in the event I investigated the subject matter of his complaint. My views in this regard were conveyed to that particular complainant and the complaint made was not proceeded with.

Complaints Dealt With by the Board

Another complaint was not dealt with by reason of the fact that the Police Officer concerned had resigned from the Force, and was presently awaiting trial on charges laid as a consequence of the evidence disclosed following the making of the complaint in the first instance.

I do not propose to trouble the reader with the reasons for the Board's refusal to investigate the remaining three complaints. Save to say it was the opinion of the Board and Counsel Assisting that no good purpose could be served by investigating the matters raised by the particular complainants.

Thus, although the Board did in fact only investigate 21 complaints, as I pointed out in the Introduction to this Report, the cases dealt with by the Board were themselves a selection culled as it were from a much larger number and it could not be said therefore, that the Board only dealt with the hard-core of complaints made to it.

CHAPTER 5

PROCEEDINGS BEFORE THE BOARD

As I indicated in the Introduction to the Report, I consider it desirable to say something of the manner in which the proceedings before the Board were conducted, the manner in which evidence was received by the Board, and the view I took as to the weight to be attached to that evidence, in particular evidence of a hearsay nature.

Generally speaking the proceedings of the Board were conducted in open session. On certain occasions however, it was deemed necessary to take evidence in camera, on other occasions it was deemed necessary to direct that certain evidence received in open session, be not published by the press. To enable the reader of this Report to locate the evidence heard " in camera " in the body of the transcript, I have set out in Appendix " D " to this volume of the Report, the date on which evidence was taken in camera and where it is to be found in the body of the transcript. In other words, I have indicated the page following which the particular passage of " in camera " evidence is to be found. For example, pages 1 to 4 of evidence taken " in camera " are to be found immediately following page 105 of the transcript.

In the latter connection, i.e. those cases in which directions were given that certain evidence be not published, it is to be borne in mind that the provisions of the *Evidence Act* 1958 (as amended), do not empower the Board to give such directions (see Sections 14 to 21 inclusive). I shall deal with this aspect in more detail when making recommendations and observations as to Boards of Inquiry of this nature.

It was only with the co-operation of the members of the press present on such occasions therefore, that such directions, or perhaps more accurately requests, were complied with. I should add that had occasion arisen whereby any such request was not complied with, I would then have heard the whole of the evidence in the particular matter in camera, even though the reality of the situation was that I considered it desirable to merely suppress the name and/or identity of a particular witness. To the credit of the members of the press who attended the day to day hearings before the Board, no situation arose necessitating such action being taken. I repeat however, and for the reasons to which I shall later advert—it may well be thought desirable by the legislature to amend the Act to give Boards of Inquiry of this nature that power in future.

As to the occasions on which it was deemed necessary to take evidence in camera, I feel I need do no more than cite the following instances, which I trust speak for themselves:—

(*a*) On certain occasions it was clear that of necessity, a witness would be required to give lengthy evidence of a hearsay nature during the course of his testimony e.g. the evidence of Robin Norman Leslie West at pages 64 In Camera to 246 In Camera, inclusive. Whilst I shall deal in due course with the view the Board took concerning hearsay evidence, and the use it made of it, although certain hearsay evidence was heard in open session—in which case the necessary direction was given that it be not published—where it was apparent beforehand that hearsay testimony was about to be given, and was likely to be of a contentious nature, it was deemed expedient to have the whole of that hearsay evidence received In Camera.

(*b*) On two occasions medical evidence was called before the Board relating to the state of health of a particular witness on the one hand, and the mental capacity of a particular witness to continue to give evidence before the Board at that juncture on the other. In the circumstances I considered it desirable to have the medical practitioners concerned, appear before the Board and give evidence " viva voce ". The view I took in each instance was that such evidence should not be the subject of any press report, and accordingly I directed that the evidence be heard " in camera ".

(*c*) In a number of instances members of the public of good character and unimpeachable background, were caught up in the net cast by the Board's Terms of Reference. In such cases I considered it appropriate that their identities remain anonymous so far as any press publication was concerned.

(*d*) In certain matters dealt with by the Board, Police Officers against whom allegations were made were either giving evidence in criminal trials then being heard in the Supreme

Court or County Court, or about to be dealt with by such Courts. Similarly, in a number of matters investigated by the Board, mention was made of persons then standing trial, or likely to stand trial in the immediate future. In such cases I considered that in justice to the individuals involved, whether they were Police Officers on the one hand or persons standing trial, or about to stand trial on the other, no reference should be made to them by name in any press report relating to the proceedings of the Board; nor should any evidence be published which might have the effect of disclosing their identity.

Regrettably, in one or two instances reference to an individual who fell within that category appeared in a particular press report. I accept responsibility for the fact that that occurred, and can say no more than that in each instance it was due to oversight on my own part that the necessary direction was not given at the relevant time. Whilst this is not said in an endeavour to justify such omissions, I feel constrained to point out that during the hearing of evidence by the Board, there were many heated exchanges between Counsel, and between Counsel and witnesses. In fact in the latter connection, the obvious hostility displayed by certain Police witnesses towards Counsel assisting the Board, and Counsel appearing for a particular complainant or witness, tended to have a most distracting affect upon one's concentration so far as the particular matter under debate was concerned. It was invariably in circumstances such as that, that the necessary request to the press to withhold publication of a particular individual's name was not made. In this instance I cite the following example from the Sellers Matter (page 4299 of the transcript).

MR. VILLENEUVE-SMITH: At any stage after the 12th August, 1974, did you ever tell Lalor what Prendergast had told you?
SENIOR CONSTABLE TAMBLYN: I went through all that yesterday.

That was a reply expressed in what one can only describe as the rudest and most arrogant fashion, as was the case in a number of other answers given by that witness with which the Board was powerless to deal. A similar example of rudeness occurred in the Keeley/Wren Matter (page 5695 of the transcript).

MR. VILLENEUVE-SMITH: Nor, Mr. Wren, is there the slightest reference to it in your diary?
SENIOR SERGEANT WREN: I do not know, I have not checked that.
MR. VILLENEUVE-SMITH: Do not take my word for it.
SENIOR SERGEANT WREN: I don't, Sir. (After perusal): No, there is not reference in relation to it.

I should add that the inability of the Board to deal with such persons for contempt, rudeness or incivility is a matter I shall also advert to when making observations concerning Boards of Inquiry of this nature.

(*e*) On a number of occasions Counsel appearing for a particular complainant deemed it expedient to discuss matters relating to his client which he felt should not be the subject of any press report. In a number of instances I acceded to that request. I do no more than refer to the following pages in the transcript, viz. pages 281 In Camera; 323 In Camera *et seq.*; and 345 In Camera *et seq.* as illustrations of such matters.

(*f*) As a final example, I instance an occasion where Counsel appearing for a complainant considered that although it was incumbent upon him in the particular circumstances to put matters to a witness, he considered the matters to be of such an outrageous nature, that he doubted they could ultimately be substantiated by evidence from his client or other witnesses. Accordingly he requested that portion of the cross-examination be held in camera. See pages 292 In Camera—310 In Camera of the transcript.

The reality of the situation, however, was that of the 12233 pages of transcript of evidence, discussion and final submissions, only 528 pages related to evidence heard in camera. For practical purposes therefore, the bulk of the proceedings before the Board were heard in open session.

Having regard to the fact that the Order in Council directed the Board to report upon the matters contained in its Terms of Reference with as little delay as possible, the Board first sat on Wednesday, the 26th March, 1975. On that occasion the Order in Council was read and leave given to Counsel to appear on behalf of Doctor Wainer. On that occasion the Board also gave its ruling on the form of its procedure, and then adjourned until the 21st April, 1975, to enable Mr. Villeneuve-Smith to collate the evidence available to him.

Although I shall again advert to this aspect at a later stage of the Report, it is of interest to note that on that occasion, and without dissent from Counsel appearing for Doctor Wainer, having adverted to the material which had already been supplied to him, Mr. Villeneuve-Smith announced to the Board—and I quote—"Moreover, I am informed by counsel for Doctor Wainer, to whom you have recently given leave to appear, that he has sought to assess in terms of time further quite voluminous material, as I understand it, involving some 23 allegations of one kind or another. I have not yet seen this material. He has informed me that the tentative view I had formed myself that some date around the middle of April might be an appropriate time to commence, in his opinion might not allow me sufficient time to collate and put into order all the material upon which the Board will ultimately be called upon to make a finding.

Nonetheless, I would have thought, Mr. Chairman, that you would require some date now and accordingly, subject to what you have to say, I would have thought if the 21st April was hit upon as being the date for the commencement of the taking of evidence, that could be done subject to the warning I sound that circumstances may not permit me to proceed on the 21st April. In other words, there may not be time. In the circumstances as I have outlined, in my submission it is clearly not appropriate for any statement of the facts to be made here today and I ask leave of the Board not to make it." (See pages 2 and 3 of the transcript.)

Indeed the following exchange at page 3 of the transcript indicated the view Counsel for Doctor Wainer had of the matter at that stage.

THE BOARD: I take it that transcripts are being taken from those tapes?
MR. VILLENEUVE-SMITH: Yes.
THE BOARD: Is that a particularly laborious task?
MR. VILLENEUVE-SMITH: It is. I have no first-hand knowledge of it but those who are expert in it tell me it is both tedious and time-consuming. Indeed, there is ample proof of that. On the 13th of this month I received from Doctor Wainer a number of tapes which were made available to the Government Shorthand Writer and, as I understand it, a typist was appointed full-time on those tapes. It was not until the 24th that I was able to receive a typed transcript. I mention that by way of illustrating the difficulty which confronts them, not by way of complaint.
THE BOARD: Has Doctor Wainer made available all the tapes that are to be made available or do I take it that there is still a vast body of material in his possession?
MR. VILLENEUVE-SMITH: I understand that is so. Some of that may well be in the form of tapes. I am seeing Doctor Wainer at a later stage today and I hope to have that matter clarified.
THE BOARD: Mr. Richter, is there anything further you would like to say so far as the length of time you feel will be involved in getting this material together?
MR. RICHTER: In getting the material together?
THE BOARD: Yes, is there anything you could add?
MR. RICHTER: Not really. The difficulty, as Mr. Villeneuve-Smith indicated, is that material is forthcoming all the time. At some stage we have a body of material on hand and the following day it may well have increased dramatically because of some further allegation.
THE BOARD: It is your view it will take some weeks before this material can be properly collated?
MR. RICHTER: Certainly.

As I indicated in the introduction to the Report, the statements made by Doctor Wainer to Counsel assisting the Board were quite misleading. The fact is that Doctor Wainer gave and/or produced evidence in only four matters deemed worthy of investigation by the Board. It must be said however, that he played some part in having seven further complaints made to the Board, and investigated by it.

Nevertheless, and based on the assertions made to him by Doctor Wainer, Counsel assisting the Board requested that the Board adjourn to the 21st April, 1975. That application was supported by Counsel appearing for Doctor Wainer, and in the circumstances as they existed at that date, I considered it appropriate to accede to the application made.

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In granting that application and the application for a further adjournment made on the 21st April, 1975, I was mindful of the views expressed in Chapter IV of the Report of the "Royal Commission on Tribunals of Inquiry" held in the United Kingdom in 1966 under the Chairmanship of the Right Honorable Lord Justice Salmon.

In paragraph (ii) of that Chapter the Commissioners had this to say:—

> "The question arises, how is it possible to ensure that any allegations against witnesses and the substance of any evidence against them will be made known to them so as to give them an adequate opportunity of preparing their case. We believe that the answer to this question lies mainly in less haste. We are under the impression that the tempo of some of the post-war Tribunals, particularly in the early stages of an inquiry, was somewhat too hurried. We appreciate that there should be no dilatoriness in starting the inquiry and pushing it to a conclusion. It is urgent that the truth should be revealed to the public as speedily as possible. Nevertheless, a few weeks more in preparing the material for arriving at the truth is a small price to pay in order to avoid injustice."

Before adjourning to the 21st April, 1975, I did outline the procedure the Board would adopt so far as the proceedings before it were concerned.

In particular, and having regard to statements which had appeared in certain sections of the press to the effect that as the Board was not a Royal Commission, evidence given by a witness could be used against him in subsequent proceedings, I pointed out that for all practical purposes there was no difference between the Board and a Royal Commission, and that Section 30 of the *Evidence Act* 1958 made it clear that no statement made by any person in answer to any question put to him during the course of his evidence before the Board could be admissible in any proceedings, civil or criminal, against him, nor could it be made the ground of any prosecution action or suit against him. The only exception being any statement made by him in the course of his evidence before the Board, which amounted to perjury before the Board.

In the second instance I gave an assurance to any person desirous of giving evidence before the Board that he could be confident of the protection afforded him by that section, and urged any person desirous of placing material before the Board which was relevant to the Board's Terms of Reference, to do so.

I further indicated that any person desirous of appearing before the Board in any matter germane to the Board's Terms of Reference must first supply to the Secretary a signed statement in which the substance of that material was set out. I considered such a course to be appropriate as it thereby enabled Counsel assisting the Board to determine whether a particular complaint fell within the Board's Terms of Reference, and in the event it did, assemble the necessary evidence in relation to it, and through their Counsel, warn the Police Officers involved of the allegations made against them, in sufficient time to enable them to prepare their defence.

Finally, I outlined the procedure so far as the examination and cross-examination of witnesses was concerned, (see pages 4 and 5 of the transcript), and the use the Board would make of hearsay evidence in the event witnesses were permitted to give that evidence. I shall make further reference to the latter aspect at the conclusion of my reference to the proceedings before the Board.

On the 21st April, 1975, and on subsequent occasions, I gave leave to a number of Counsel and Solicitors to appear for complainants and witnesses appearing before the Board including Counsel to appear for one witness Peter John Lawless (see Appendix "E" to this volume of the report). In my view Lawless fell into the category of a witness rather than a complainant in the strict sense of that word, as it was Doctor Wainer who made the complaint relating to him to Counsel assisting the Board, not Lawless himself. Indeed, on the 28th April, 1975, Counsel appearing for Lawless made application to the Board that the Board not investigate Doctor Wainer's complaint concerning Lawless on the basis that on that very day Notice of Appeal had been lodged on Lawless' behalf seeking a new trial in respect of his conviction for murder on the ground that fresh evidence had been discovered in relation to that matter, evidence which would justify the granting of that application.

For the reasons I shall advert to in Chapter 19 of the Report, I rejected the application made on his behalf.

At all events on the 21st April, 1975, Counsel who then appeared for Lawless made application that the hearing of the Lawless Matter be adjourned for one week to enable him to prepare his client's case. As it

was clear Counsel had not sufficient time within which to prepare the Lawless Matter, and as Counsel assisting the Board were not then in a position to proceed with any other complaint, the bulk of their time having been taken up to that date in preparing the Lawless Matter for presentation to the Board, I had no alternative but to grant the application.

It was not until the 28th April that application was then made on Lawless' behalf that the Board not deal with the matter concerning him at all.

As I have indicated, I shall advert to that aspect in greater detail when dealing with the Lawless Matter (Chapter 19).

On the 28th April, 1975, the Board first commenced to hear evidence in public. The receipt of evidence by the Board (apart from a handful of exhibits tendered during the course of final submissions) continued through until the 14th May, 1976.

All Counsel then requested time within which to prepare their final submissions. That request was granted and in the end result such submissions commenced on the 31st May, 1976 and concluded on the 28th June, 1976. Counsel and complainants were given leave to tender any submissions they wished to in writing. A list of the written submissions ultimately received by the Board appears in Appendix " F " to this volume of the Report.

Save for persons who merely produced documents, witnesses called before the Board were examined and cross-examined on their oath. As I indicated on the first day on which the Board sat (see pages 5 and 6 of the transcript), the following procedure concerning the questioning of witnesses was adopted:—

(*a*) In the case in which Counsel assisting the Board called a particular witness to give evidence, Counsel assisting would first examine that witness, such examination being by way of cross-examination if deemed necessary; Counsel appearing for any party having an interest in that witness's testimony or being adversely affected by it, would then have the right to cross-examine the witness, and finally Counsel assisting would have the right to re-examine the witness, that re-examination again being by way of cross-examination if thought desirable. In the event more than one party was adversely affected by the testimony a particular witness gave, the party most affected would have the right to cross-examine that witness last, i.e. immediately preceding re-examination by Counsel assisting. The practical effect of that ruling, was that Counsel appearing for the Police Association were almost invariably in the favourable situation of cross-examining a witness after all other Counsel had done so, and immediately preceding final re-examination by Counsel assisting.

(*b*) In the event a party other than Counsel assisting called a particular witness to give evidence, the only alteration to the procedure set out in paragraph (*a*), was that Counsel calling the witness would first examine the witness (again by way of cross-examination if deemed necessary), Counsel assisting would then have the right to cross-examine the witness, and a final right to again cross-examine the witness after the witness had been cross-examined by all parties concerned in the matter, and re-examined by Counsel who called him in the first instance.

In addition to the receipt of oral evidence, a large body of documentary material was received in evidence, a number of tape recordings were received in evidence, and a variety of miscellaneous material ranging from such exhibits as the overcoats worn by the Whytes at the time the incidents of the 23rd–24th August, 1974 occurred (see Chapter 30), to the rifle of Reginald Joyce from which the shots were fired into the front of his home on the evening of the 24th May, 1975 (see Chapter 19).

Insofar as exhibits generally were concerned I do no more than invite the reader of the Report to have regard to the content of the memorandum immediately preceding the list of Exhibits appearing in Appendix " B " to this volume of the Report.

For the reasons outlined in that memorandum, many exhibits were ultimately returned to the party or parties who had tendered them in the first instance, e.g. the overcoats of Mr. and Mrs. Whyte, the rifle of Reginald Joyce and the box of jewellery produced by the Police following their search of the home of Mrs. Gray (see the Keeley Matter *re* Wren—Chapter 18). Many original documents were returned to the legal representatives of the party or parties who had produced them, to enable them

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to institute further proceedings on behalf of their clients in relation to the matters in respect of which those clients had been convicted and sentenced to terms of imprisonment in the first instance. In this connection I need do no more than refer to exhibits 39, 40 and 41 produced in the Lawless Matter (Chapter 19). On the face of it those documents indicated that Rayma Eileen Joyce had committed perjury at his trial, and were obviously vital documents to be tendered to the Executive Council in support of any petition made on his behalf for a re-trial.

I turn finally to consider the matter of hearsay evidence. At the outset of the Inquiry I indicated that under no circumstances would hearsay upon hearsay evidence be received by the Board (see page 6 of the transcript). Again I confess that on one or more isolated occasions hearsay upon hearsay evidence was given by a particular witness. In such circumstances I completely ignored such evidence, and no reference was made to it in any press report touching upon the matter.

Although the Board was not bound by the Rules of Evidence, I endeavoured to conduct its proceedings as closely as circumstances permitted to those governing proceedings in courts of law.

In accordance with the procedure adopted by the Honorable Mr. Justice Kaye (Mr. Kaye, Q.C., as he then was) in the Inquiry he conducted into allegations of corruption in the Police Force in connection with illegal abortion practices in the State of Victoria, in my search for the veracity of facts, hearsay evidence was from time to time admitted, but such evidence was only used as a means of securing further and admissible evidence (see my observations at page 6 of the transcript).

The ultimate conclusions of the Board however, have been reached after rejecting evidence which would not be admissible in legal proceedings, because such evidence was either hearsay evidence or not strictly proved as required by the Rules of Evidence.

I wish to make it abundantly clear that no adverse finding has been made against any Police Office based on hearsay evidence.

I turn now to advert to the twenty-one matters investigated by the Board, to summarise the findings made in each matter, and to identify the Police Officers against whom adverse findings were made.

CHAPTER 6

SUMMARY OF COMPLAINTS INVESTIGATED BY THE BOARD

Introduction

As I indicated in the general Introduction to the Report, in view of the rather large body of material it has been necessary to include in the Report, it is desirable that in the first volume of the Report, there appears the briefest précis of the 21 matters investigated by the Board, thereby enabling any person interested enough to consider the findings of the Board and the recommendations made by it, to ascertain on what material the Board made its findings and based its recommendations, without being obliged to read the rather lengthy summaries of each matter as appearing in Chapters 11 to 30. (Although 21 matters were investigated by the Board, two matters involved the same Police Officer, viz. the Owen Matter *re* Gaudion and the Keeley Matter *re* Gaudion, and both matters bore such a similarity to each other, that they have been dealt with in the one chapter —Chapter 22, and will be dealt with in the one précis—précis 12.)

I again point out that for the sake of convenience, I have used the term Police Officer quite loosely, and not as that term is defined in Regulation 3 of the Police Regulations 1957.

I should further point out that I shall deal with the matters in alphabetical order as I have in Chapters 11 to 30. I draw that to the reader's attention for this reason. Whilst a particular matter may appear in précis form at an early stage of this chapter, (or for that matter in one of the earlier of the Chapters numbered 11 to 30), the fact may well be that the investigation made by the Board into the particular complaint was made at a comparatively late point of time during the Board's inquiry. As an example of such a situation, the Cox Matter which appears as Chapter 11 of the Report and which will be the subject of the first précis in this chapter, was one of the last matters dealt with by the Board. The point I make is that if the reader does not bear that fact in mind, he may be puzzled to find in an early précis in this chapter, or in some of the earlier chapters of the Report from 11 to 30 inclusive, reference to matters which appear in a later précis or later chapters but which in fact came to the Board's attention at an earlier point of time. For example, the Sellers Matter was investigated before the Gibb Matter. It was partly as a consequence of evidence given in the Gibb Matter relating to communication between Police Officers on patrol with D24, which caused the Board to make a particular finding in the Sellers Matter. Thus, from time to time, one will find reference in an early précis or an early chapter of the Report to matters appearing in a later précis or a later chapter, which were in fact dealt with by the Board at a time prior to the time at which the particular matter under consideration was investigated by it.

I should also point out that in these précis I do not propose to advert to the numerous breaches of the Chief Commissioner's Standing Orders uncovered by the Board during the course of its inquiry, unless the particular breach is of major significance, e.g. the failure of Senior Sergeant Victor Stanley Wren and Policewoman Carmel Joy Johnston to comply with the relevant Standing Orders when dealing with the child Terry Gray (see the Keeley Matter *re* Wren—Chapter 18).

It should further be borne in mind that it has been no part of this Board of Inquiry's function to go behind the conviction or acquittal of a particular complainant.

Certain complainants who appeared before the Board had been convicted of the charge in respect of which they alleged malpractice on the part of Police Officers, others had been acquitted.

This Board had no brief to determine whether a particular complainant was innocent or guilty of the charge laid against him. Its sole function was to determine whether or not there had been malpractice on the part of the particular Police Officers against whom any complaint was made, and to make whatever recommendations it considered appropriate consequent upon such findings.

Finally, in these précis, although I have indicated the conclusions reached by the Board in the various matters investigated by it, I have not enumerated the specific findings made by it in such matter. Those findings are to be found at the conclusion of each of the Chapters numbered 11 to 30 inclusive.

In Chapter 7 however, appears in alphabetical order, a list of the Police Officers against whom adverse findings have been made, the nature of the finding, and the matters investigated by the Board in which that finding was made.

1. *The Cox Matter* (*Chapter* 11).

Summary of complaints investigated by the Board

The complaint investigated by the Board in this matter was one made by a young man named Donald William Cox, to the effect that Sergeant Gomer John Davies and Senior Constable Colin Barry Pavey had fabricated a Record of Interview allegedly between themselves and Cox at Russell Street on the 17th December, 1973, and had later given perjured evidence in relation to it at his trial.

Cox had a criminal record of sorts, although a fairly minor one by comparison with those of some complainants who appeared before the Board.

As a consequence of various threats he alleged were made to him, on the 5th September, 1973, Cox lent his car to two unnamed but violent criminals. His car was subsequently used in an armed hold-up, in which a Melbourne and Metropolitan Board of Works pay-roll was stolen.

Realising the Police would trace the car to him, Cox went to Sydney, where he remained " under cover " for a period of some 3 months.

On his return to Mebourne he saw a Solicitor, Mr. Terry O'Brien, in relation to the matter, dictated a statement to him exculpating himself so far as the robbery was concerned, and indicating that he would not answer any questions asked of him by the Police unless his Solicitor or some independent person was present during the course of the interrogation.

On the 17th December, 1973, and by arrangement with the Police, he was seen at the office of Mr. O'Brien by Sergeant Davies and Senior Constable Pavey, arrested by them, taken to Russell Street, and in due course charged with being an accessory before the fact to the Melbourne and Metropolitan Board of Works robbery.

At his committal, and later at his trial, Sergeant Davies and Senior Constable Pavey produced an unsigned, untaped Record of Interview, incriminating Cox insofar as the robbery was concerned.

One had the situation therefore, where a suspect had done everything in his power to avoid incriminating himself, yet as the Police would have one believe, shortly after he arrived at Russell Street his whole attitude changed, he became co-operative, and answered all questions put to him, including questions which had the effect of implicating him in the crime. It was said however, that he declined to sign the Record of Interview, or read it back, so that the read-back could be tape-recorded.

At his trial on the 23rd July, 1974, he was acquitted of the charge laid against him. For the reasons I have outlined in Chapter 11 of the Report, the Record of Interview was a complete fabrication, and Sergeant Davies and Senior Constable Pavey committed perjury in relation to it when giving evidence at his trial.

In addition to concocting the Record of Interview and giving false evidence at Cox's trial, Sergeant Davies and Senior Constable Pavey also destroyed evidence which would have been of assistance to Cox.

Shortly before Cox was arrested at the office of Mr. O'Brien on the 17th December, 1973, he was given a biro by Mr. O'Brien, and advised to surreptitiously write " Its lies " and sign his name on or under a desk at Russell Street, in the event he considered the Police were concocting evidence against him.

During the course of the interview, and at a time when Cox was left alone in the Interview Room, he carried out those instructions.

On the first day of the hearing of the committal proceedings, application was made to the Court by Mr. O'Brien for an order authorising an inspection to be made of those areas of Russell Street where Cox had been on the 17th December. The purpose of the inspection was to view the desk on which Cox had written " Its lies " and signed his name.

That application was opposed by Sergeant Davies, and no ruling was made in respect of the matter by the Justice of Peace dealing with the committal proceedings on that day.

On the second day of the committal proceedings (some 2 months later) the Police withdrew their opposition to the application, and the order sought was granted. An inspection was then made of the Interview Room at Russell Street where Cox had been interrogated on the 17th December. By then, as the Board found, the Police had removed the desk from the room, and it was never located. An inspection of the room left one in no doubt whatsoever, that a larger desk had been in the room at one point of time, and a smaller one substituted for it.

This Board was satisfied that that was done quite deliberately by Sergeant Davies and Senior Constable Pavey, with a view to thwarting Cox's endeavours to demonstrate that the Record of Interview was a fabrication, as it was in fact found to be.

Summary of complaints investigated by the Board

Two further matters emerged during the Board's investigation into the Cox Matter.

The first was that Sergeant Davies and Senior Constable Trevor Wallace Skan committed perjury at the trial of one Alan Roy McDougall.

In that instance, and in conversation with the Crown Prosecutor prior to McDougall's trial, Sergeant Davies (in the presence of Senior Constable Skan) told the Prosecutor that during the course of their interview with McDougall, they had supplied McDougall with beer, and that it had been necessary to destroy the first two tape recordings they had made of McDougall reading back his Record of Interview, because of the sounds of the beer cans being opened, which could be heard when they were played.

Sergeant Davies assured the Prosecutor however, that if Defence Counsel asked him anything about it at the trial, he would deny such ng ever occurred.

In due course both Sergeant Davies and Senior Constable Skan were cross-examined at the trial by Counsel appearing for McDougall in relation to the matter, and flatly denied that any such thing had taken place.

I should perhaps add at this stage, that when the Crown Prosecutor was first told of the matter by Sergeant Davies, being a comparatively junior member of the Bar, he sought advice from Senior Counsel in relation to it. The course ultimately adopted was to have him led at the trial by a more senior Crown Prosecutor.

When Sergeant Davies and Senior Constable Skan perjured themselves in relation to the matter at McDougall's trial, the trial Judge was informed that the Crown did not wish to proceed with the trial, and the jury was discharged without verdict.

Following consultation with the Solicitor-General a " nolle prosequi " was ultimately entered by the Crown in relation to the matter.

The final aspect of the Cox Matter to which I propose to refer in this précis was the attack made by Sergeant Davies on Mr. O'Brien. Without a shred of evidence to support the statement, Sergeant Davies described Mr. O'Brien as a disreputable Solicitor, both in his evidence before the Board, and in certain internal Police documentation produced to the Board. In respect of this matter he was supported by Senior Sergeant Leo Adrian Lalor and Inspector Gordon Maxwell Williams.

Senior Sergeant Lalor did not give evidence in the Cox Matter, and accordingly I shall leave my comments in relation to him until I deal with those matters in which he did appear.

Suffice it to say Mr. O'Brien is a highly reputable and responsible member of the legal profession, and the attack made on him by those Police Officers was both malicious and scurrilous.

In addition to the adverse findings to which I have adverted, the Board found that Inspector Williams, Sergeant Davies and Senior Constable Pavey conspired together to give false evidence before this Board in relation to the Cox Matter and did so, and that Sergeant Davies and Senior Constable Skan conspired together to give false evidence before this Board in relation to the trial of Alan Ray McDougall and did so.

2. *The Curteis Matter (Chapter 12)*

Geraldine Anne Curteis was a young woman employed as a law clerk by a firm of solicitors carrying on practice in Melbourne. As one might anticipate, she was a person without any criminal background, and in every respect a decent and responsible member of the community.

On the evening of the 6th February, 1975, Miss Curteis and two friends, Jennifer Margaret Mitchell and Lynette Joy Mitchell, were proceeding from a restaurant in Fitzroy Street, St. Kilda, to their cars parked in Loch Street, St. Kilda, when they were intercepted by Constable Larry Paul Proud and Constable Wayne John Harris.

The evidence called before this Board satisfied me that upon seeing the three young women in Loch Street, St. Kilda at about 9 p.m. that evening, and having heard something called out, Constable Proud assumed they were prostitutes, and in accordance with a general instruction issued by his superiors at the South Melbourne Police Station, stopped the three women with a view to obtaining their names and addresses.

Summary of complaints investigated by the Board

When Miss Curteis refused to supply such information, she was arrested by Constable Proud, placed in the rear of the Divisional Van he had been driving, and taken to the South Melbourne Police Station. There she was told she was to be charged with "loitering" (for the purpose of prostitution), and after being duly processed, locked in a cell.

Some hour or more later she was released from the cell, and much to her surprise found that she had not been charged with loitering, but with using insulting words in Loch Street earlier that evening. She was then released on her own recognizance, and left to walk from the South Melbourne Police Station back to her car in Loch Street.

In due course the charge laid against her was dealt with in the Magistrates' Court at South Melbourne, and was dismissed.

This Board had no hesitation in finding the complaint of Miss Curteis fully justified. In particular it found that Constable Proud had harassed and intimidated Miss Curteis in Loch Street, St. Kilda that evening, and later at the South Melbourne Police Station; had unlawfully arrested her; and had falsely imprisoned her. It further found that Constable Proud and Constable Harris had fabricated evidence against Miss Curteis. Finally, the Board found that Constable Proud, Constable Harris and Senior Constable Alexander David Adams had conspired together to give false evidence before this Board, and did so.

3. *The Ebdon Matter* (*Chapter* 13)

Robert William Ebdon was a very foolish young man, misguided enough to approach Senior Constable Victor John McKoy and Senior Constable John Joseph Gangell whilst they were standing in the lounge of the Station Hotel at Prahran on the evening of the 1st June, 1974, and say words to the effect—"there's a rumour going around that you are both a couple of pigs".

Not unnaturally—and indeed quite properly so—Ebdon was arrested, and after a struggle taken from the hotel, placed in a Police car, and driven to the St. Kilda Police Station. There he was charged with using offensive language and resisting arrest, and locked in a cell for the evening.

His complaint to the Board was that he was assaulted by Senior Constable McKoy whilst in the Police car, was pulled out of the car by his hair by Senior Constable McKoy at the St. Kilda Police Station, and was assaulted by both officers at the Police Station prior to being lodged in a cell.

Both Police Officers denied that Ebdon had been assaulted in the manner alleged, and maintained that any injury he sustained was sustained as a consequence of the struggle which took place between him and Senior Constable McKoy in the Police car on the way to the St. Kilda Police Station, during the course of which struggle, Senior Constable McKoy's revolver fell from its holster striking Ebdon on the forehead.

Unfortunately for the Police version of events, Ebdon was examined by a Doctor J. D. Hollaway on the 3rd June, 1974, i.e. two days later.

That examination revealed that Ebdon had four distinct lumps on the forehead, two of which had overlying abrasions; a lump and abrasion on the back of his head; an area of hair loss about ½" across; widespread areas of bruising inside the mouth with areas where the skin was broken; tenderness in the right loin and hip indicating underlying soft tissue damage; a bruise in the area of the right hip about 1" in diameter; and a similar sized bruise on the right side of the scrotum.

By no stretch of the imagination could Ebdon have sustained the injuries found by Doctor Hollaway, in the manner suggested by the Police.

The finding made by this Board was that Ebdon was assaulted in the manner he alleged he was, and that once again the two Police Officers concerned had simply conspired together to give false evidence to the Board in relation to the matter, and did so.

4. *The Erdmann Matter* (*Chapter* 14).

This matter bore a marked similarity to the Curteis Matter (Chapter 12). In this instance however, the victim was a man the Police mistakenly thought was a homosexual.

As with the case of Miss Curteis, Frank Erdmann had no criminal record, and again impressed me as being a respectable member of the community.

On the evening of the 14th March, 1975, he left the rooming house at which he was living in Parkville, and went for a walk along Royal Parade. On the way back he found it necessary to use the toilets located in Royal Parade to the north of the Carlton Football Ground.

As he was leaving the toilet block, he was intercepted by Senior Constable Barry William Howard and Constable Peter Charles Ure. Erdmann was asked for his name and address, and when he queried the request, was told that the Police had to check the place to keep poofters and perverts away, and that if he was found there again he would be charged with loitering.

Following an altercation between himself and the Police, Erdmann was arrested, placed in a Police car, driven to the Carlton Police Station, charged with being found drunk in a public place, and lodged in the cells.

Although Erdmann had had 3-4 pots of beer earlier that evening, when arrested by the Police at about 11.10 p.m. he was quite sober.

Fortunately for Erdmann, he was able to establish quite conclusively so far as this Board was concerned, that he was sober when he left the rooming house somewhere in the vicinity of 10.30 p.m. that evening, and that he was sober when seen in the cells by a friend with whom he was living, Pamela Anne Morrow, at about 1.30 a.m. the next morning.

Those facts being established to the Board's satisfaction, it was clear Erdmann was sober at 11.10 p.m., and that the charge laid against him was a " trumped-up " charge, similar to the one laid against Miss Curteis.

The Erdmann Matter raised one or two other matters worthy of note in this précis.

In the first instance it illustrated the sheer helplessness of the citizen once in the hands of the Police.

From the moment of his arrest, Erdmann proclaimed he was sober, and demanded a doctor be called to establish the fact. By deliberate decision on the part of the Police, a doctor did not see Erdmann until approximately 3.00 a.m. that morning, and then only because Miss Morrow was able to locate one, and bring him to the Police Station. The opinion that doctor expressed, was that Erdmann was sober, and in all probability would have been sober at 11.10 p.m. when arrested.

As Inspector Norman Hamilton Miller, (the duty Inspector called to the station that evening) said in the course of his evidence—If Erdmann had demanded a doctor he'd have done nothing about it but would have formed his own opinion.

As he was duly forced to concede, a person charged with such an offence, has no opportunity therefore, of obtaining evidence establishing his innocence.

I might add that in this particular case Inspector Miller did everything he could to cover up the matter so far as the Police were concerned, and in my opinion told a number of lies during the course of his evidence before the Board.

Inspector Miller's evidence also demonstrated the difficulty of the citizen making a complaint to Police about the conduct of other Police Officers, and thereby obtaining redress.

The second matter which came to light during the course of the Board's inquiry into Erdmann's complaint, was the practice of the Police of arresting a person they considered to be intoxicated, holding him for such period of time as they considered necessary for him to sober up, (usually four hours), then releasing him without bringing him before a Court.

This practice has apparently arisen by reason of a mistaken view formed by the Police as to the effect of Section 458 of the Crimes Act.

As the matter is dealt with in detail in Chapter 14, I merely advert to it at this juncture, and state that it should not be permitted to occur in future.

The findings made in the Erdmann Matter were to the effect that Erdmann had been harassed and intimidated by Senior Constable Howard and Constable Ure in Carlton that evening, and had been unlawfully arrested and falsely imprisoned by them.

It further found that Inspector Miller, Senior Constable Howard and Constable Ure had conspired together to give false evidence before the Board, and did so.

5. *The Gibb Matter (Chapter 15).*

Peter Robert Gibb is one of the more violent of the criminal element in the community. He has a number of convictions for armed robbery and similar offences, and seems destined to become an habitual criminal.

His complaint to this Board was that when apprehended by Police in Princes Street St. Kilda on the evening of the 11th January, 1974, he was deliberately shot by a Police Officer, at a time when he, Gibb, was unarmed.

Summary of complaints investigated by the Board

There is no doubt that on that evening, Gibb was shot by Senior Constable Francis Anthony Kealy. He was shot however, when he jumped out of a vehicle in which he had been seated, with a pistol in his hand, stating as he did so to Senior Constable Kealy's partner, Senior Constable Edward John Krzyskow—" Freeze copper, freeze, I have got you covered ".

Fearful that Gibb would kill Krzyskow, Senior Constable Kealy fired a shot at him wounding him in the chest.

Senior Constable Kealy and Senior Constable Krzyskow were two of the most impressive members of the Force to give evidence before the Board. Not only do I reject Gibb's complaint, I recommend that in the event this has not already occurred, they be commended for their behaviour that evening.

Although I have been critical of certain aspects of the behaviour of other Police Officers involved in the Gibb Matter that evening, the only matter I desire to advert to in this précis, is the evidence given by Senior Constable Jeffrey Bruce Major at Gibb's trial.

In the statement Senior Constable Major made on the 12th January, 1974 at the request of Inspector Tobin, he said that when Gibb jumped from the car, Gibb said—" Freeze, copper, freeze or you'll get it ". In his evidence before this Board he swore that that was what Gibb said.

All other Police who heard what Gibb said, swore that he said—" Freeze, copper, freeze. I have got you covered."

At Gibb's trial Senior Constable Major swore that Gibb had said—" Freeze, copper, freeze. I have got you covered." In other words he brought his evidence into line with that of the other Police witnesses, to ensure there was no discrepancy. I am satisfied that in doing so, he quite deliberately committed perjury. Whilst it may appear to be a small thing in the context of the Gibb Matter, and Gibb's trial, it is the type of behaviour which should not be tolerated in the Victoria Police Force or the Courts in this State.

6. *The Hamilton Matter (Chapter* 16).

That there was significant malpractice and perjury by Police Officers involved in this matter, was most regrettable but equally undeniable. The Police at the relevant time were members of the Armed Robbery Squad, one of the " elite " squads of the Force.

The matter demonstrated the lengths to which those Officers were prepared to go in an endeavour to secure a conviction, the perjury they were prepared to commit in the process, and the unsavoury dealings they were prepared to have with an informer in furtherance of their design.

As I indicated in the Introduction to this Chapter, it was no part of this Board's function to determine whether Hamilton was guilty of the armed robbery of the Thornbury Post Office sub-agency which occurred on the 14th March, 1973. This Board's function was to determine whether or not there had been malpractice on the part of the Police Officers involved. In this case it is my opinion there had been such widespread malpractice on the part of the Police Officers concerned, that in justice to Hamilton he should be granted a new trial.

The complaints Hamilton made to this Board can best be expressed thus:—

(*a*) That he took no part in the robbery of the Thornbury Post Office sub-agency on the 14th March, 1973, but as a consequence of a conspiracy between members of the Armed Robbery Squad and a criminal (and Police informer) named Eric Grant, alias Heuston, was substituted for Grant, Grant being in fact, one of the offenders.

(*b*) That the Police concocted or fabricated a Record of Interview purporting to be between themselves and Hamilton, and gave perjured evidence in relation to it at his trial.

(*c*) That the Police deliberately concealed vital evidence favourable to him, with a view to securing his conviction.

I find many of the complaints Hamilton made fully substantiated by the evidence placed before the Board. Not only that, I find that the bulk of the Police Officers involved in the matter and who gave evidence before the Board, viz. Inspector Gordon Maxwell Williams, Senior Sergeant Richard Ernest Murphy, Sergeant Neil Graeme O'Loughlin, Sergeant Brian Francis Fennessy, Sergeant Maxwell George Rickman and Senior Constable Philip John Tamblyn, conspired together to give false evidence before the Board and did so.

I now propose to say something concerning Hamilton's complaints to the Board.

From the evidence placed before the Board, it is clear that Grant implicated Hamilton in the robbery in question by " planting " the rifle used in the robbery in the house occupied by Hamilton, thereby enabling the Police to apprehend Hamilton in possession of a most damning piece of evidence. At the same time Grant also informed on one Stanley McGowan, and by arrangement had the Police apprehend him, whilst he was driving the car used in the robbery. McGowan never disputed his part in the robbery, and in fact pleaded guilty to the charge in due course.

At the time McGowan was apprehended, Grant and a prostitute, Kim Rita Nelson, were in the car with him.

Although it was known three persons took part in the robbery, and although Grant and Nelson were taken back to Russell Street with McGowan, they were never really interrogated in relation to the matter, and in due course were released without even being put through the Interview Register.

As a reading of Chapter 16 of the Report will indicate—that clearly occurred as part of the bargain between the Police and Grant.

The perjury committed by the Police (particularly Inspector Williams) as to the part Grant played in the robbery, as to whether he was an informer, as to whether he had " set-up " Hamilton and McGowan, and as to why he was released from Russell Street in the manner in which he was when he was clearly a prime suspect, was of the gravest character.

The Record of Interview allegedly made between Senior Sergeant Murphy, Senior Constable Tamblyn and Hamilton fell into the same category as that in the Cox Matter, viz. it was unsigned and there was no tape recording of a read-back of it.

One can only say that the evidence given by those Officers as to why the alleged read-back of it by Hamilton was not tape-recorded, would tax the most credulous mind. The Record of Interview was clearly a fabrication, and the Police concerned not only committed perjury in respect of it at Hamilton's trial, but also before this Board.

Vital evidence relating to the identification of Hamilton (as one of the alleged offenders) was deliberately withheld from the Defence by the Police. Had it been available to Hamilton at his trial, it, of itself, may have been sufficient to secure his acquittal.

Finally, the Police would have this Board believe that virtually the whole Police file in relation to the matter has been lost or destroyed. I am unable to accept this evidence.

7. *The Hewat Matter (Chapter* 17).

This matter was in certain respects similar to the Ebdon Matter (Chapter 13).

Peter John Hewat, a young man aged 20, and a person one might describe as a petty offender, surrendered himself to Constable Paul John Strang and Constable Robert Arthur Clark at the Fitzroy Police Station around lunch-time on the 11th April, 1975.

When he entered the Police Station his face was unmarked. When he was seen by his Solicitor at the Station shortly after 2.00 p.m., it was clear he had sustained injury to his face.

His complaint to this Board was that in the course of being interrogated by Constable Strang, and in the presence of Constable Clark, he was struck in the face 2 to 3 times by Constable Strang.

Both Constables Strang and Clark and various other Police Officers called before the Board, denied Hewat had sustained any injury whatsoever whilst in Police custody. The submission made on their behalf was that Hewat's Solicitor was a liar, Doctor Wainer who saw Hewat shortly after his release from the Police Station and noted the injuries to his face was a liar, and the visible injury observed to his face by the doctor who examined him at St. Vincent's Hospital later in the day (he having been sent to that hospital by Doctor Wainer) was either self-inflicted, or inflicted by a friend who was with him that afternoon, one Alan Roy Stone.

I am afraid the liars in this matter were in fact Constables Strang and Clark. The submissions made on their behalf, amply demonstrated the desperate situation in which they found themselves before this Board.

8. *The Keeley Matter re Wren (Chapter* 18).

David Hinkler Keeley has a criminal record, albeit a comparatively modest one when compared with those of complainants such as Gibb, Hamilton, and Power.

Summary of complaints investigated by the Board

On the evening of the 9th January, 1974, and following a high speed chase by the Police, Keeley was apprehended on the Mulgrave Freeway, Mount Waverley, by Senior Sergeant Victor Stanley Wren and other Police. At the time Keeley was apprehended, a twelve-year-old girl named Terry Gray was in the car with him.

Terry Gray was the daughter of a friend of Keeley's, a quite respectable woman who had no criminal background whatsoever, and who knew nothing of Keeley's.

The complaint Keeley made to the Board was that following his apprehension by Senior Sergeant Wren and other Police, he was viciously assaulted by them, ultimately being rendered unconscious by having his face slammed into the bonnet of a Police vehicle.

He further alleged that he was later assaulted again by Senior Sergeant Wren at the Mount Waverley Police Station.

Despite the fact I was satisfied Keeley committed perjury during the course of his evidence before the Board, I was equally satisfied he was assaulted in the manner he alleged he was.

The Police case was that any injury he sustained was caused when he attempted to attack Senior Sergeant Wren immediately following his apprehension, and of necessity Senior Sergeant Wren was obliged to strike him one blow in the face. The Police further alleged that not only was Keeley conscious when placed in the Police van at the scene, he was behaving so violently that it was necessary to handcuff him.

The fact is however, that Keeley was unconscious by the time the van arrived at the Mount Waverley Police Station, was still unconscious when taken to the Dandenong Hospital some hours later, and did not fully recover consciousness until approximately 30 minutes after his admission to the casualty department of that hospital.

The medical and lay evidence called before this Board made it clear that the injuries observed to Keeley's head were not the product of one blow to the face struck by Senior Sergeant Wren, but could only be consistent with the violence alleged by Keeley. In this connection one ignores the injuries to Keeley's shins observed by the witnesses English and Kok, and in respect of which no acceptable explanation was forthcoming from the Police involved.

Before turning to a further aspect of the matter, let me say that in this case one had a perfect example of the so called " Brotherhood syndrome " which obviously exists in certain sections of the Force, i.e. the false evidence other Police are prepared to give in an endeavour to support any colleague in trouble. In this instance the prime culprit was Senior Sergeant Graham Alexander Fraser. He gave a version of events at the Mount Waverley Police Station and later at the Dandenong Hospital that evening, so contrary to the truth, as to be farcical. In fact his evidence did as much damage to Senior Sergeant Wren's case, as the medical and lay evidence called in support of Keeley's complaint.

It is a matter of profound regret that this type of behaviour occurs in the Force and is suffered to occur by high ranking Officers. It is unfortunate that this Board had so many instances of it, during the course of its inquiry.

The Keeley Matter *re* Wren again demonstrated the helpless situation the civilian is in, once he passes into Police custody. He alleges he has been assaulted. Every Police Officer who has had any contact with him over the relevant period of time, denies any such assault occurred. One has a parade of witnesses from the level of Inspector down, giving evidence to that effect.

In the event the civilian has sustained observable injury, that, it is said, has either been caused by the Police in an endeavour to subdue him (as in this, the Ebdon and the Whyte Matters), or self-inflicted as in the Hewat Matter.

It was the good fortune of Keeley, Ebdon, Hewat, Owen and Whyte that they were all in a position to produce corroborative evidence demonstrating the falsity of the evidence given by the various Police Officers involved.

The final aspect of this matter I wish to advert to concerns the treatment meted out to Terry Gray by Senior Sergeant Wren and Policewoman Carmel Joy Johnston that evening.

In complete defiance of the Chief Commissioner's Standing Orders, Terry Gray was stripped, searched and interrogated without any effort being made to contact her mother, with a view to enabling her mother to be present.

Although the Police knew her correct name and address no later than 11.30 p.m., her mother was not notified of her whereabouts until 2.45 a.m. and even then the unidentified Police involved gained admittance to Mrs. Gray's flat by a ruse, to enable them to search the flat rather than allay her anxieties about her daughter.

Summary of complaints investigated by the Board

No effort was made to take Terry home, and in fact she was taken to Allambie, from whence her mother was able to bail her out at 9.00 a.m. the next morning.

It was not surprising to learn that Terry Gray has been in receipt of psychiatric treatment as a consequence of the events of that evening, and could not be called to give evidence before the Board. I hasten to add I hold Keeley as much responsible for that as I do Senior Sergeant Wren and Policewoman Johnston. Keeley should never have placed Terry Gray in the situation she was placed in that evening in the first instance.

9. *The Lawless Matter (Chapter* 19).

On the 13th June, 1973 Peter John Lawless was convicted of the murder of Christopher John Fitzgerald in Ambrie Crescent Noble Park on the 24th September, 1972.

The complaint made to this Board by Doctor Wainer was that Lawless was innocent of that crime, and had been convicted as a consequence of a conspiracy on behalf of the Police Officers concerned, such Officers including a number of members of the Homicide Squad. That conspiracy involved the bringing of pressure to bear on Lawless' *de facto* wife Rayma Eileen Joyce to give perjured evidence at Lawless' trial, and the bringing of pressure to bear on various other witnesses to ensure those witnesses either did not give evidence favourable to Lawless at his trial or gave evidence unfavourable to him.

After a most lengthy investigation by it, the Board was not satisfied that there was credible evidence before it raising a strong and probable presumption that Police Officers had conspired against Lawless in the manner alleged.

Rayma Joyce flatly denied that any undue pressure had been brought to bear on her to cause her to give the most damning evidence she did against Lawless at his trial; the Board's inquiry revealed that, although the behaviour of certain Police Officers in connection with various witnesses called at the trial (including the wife of a witness who herself was not called to give evidence) left much to be desired, and in fact merited criticism, no undue pressure had been brought to bear on those witnesses so far as their evidence was concerned. Those particular aspects are fully canvassed in Chapters 8 and 19 of the Report.

During the course of its lengthy inquiry into the Lawless Matter however, the Board did uncover certain matters of the gravest moment so far as Lawless is concerned; matters not involving the behaviour of Police Officers but the behaviour of others at his trial and the evidence called, or, indeed, more accurately, withheld, at it. As this Board's Terms of Reference did not entitle it to investigate such matters, nevertheless as a matter of natural justice, I have enumerated the aspects to which I presently refer in Chapter 19 of the Report, with a view to them being brought to the attention of and consideration by the appropriate authorities. Those matters concern the withholding of documentary material which might have been of the greatest benefit to Lawless at his trial; the fact that oral evidence of a vital nature did not come to Lawless' knowledge or the knowledge of his legal advisers, and the fact that since his trial new evidence has come into existence which may well have an important bearing on a finding as to his guilt or innocence in the event it was seen fit to grant him a new trial.

10. *The Olding Matter (Chapter* 20).

Without any lawful justification whatsoever, Douglas Martin Olding, a young man aged 19, and one possessing an unblemished record so far as the Police were concerned, was taken from a pool room at Dandenong to the Dandenong Police Station on the evening of the 25th April, 1975 by Senior Constable Peter Bruce John Ferguson and Constable Alan Paul Francis Williams, was there detained for some 15–20 minutes, and then released.

Whilst at the Dandenong Police Station he was slapped across the face on two occasions by Senior Constable Ferguson.

Not unnaturally he complained about that treatment, first to his parents, then, and in the company of his parents, to Inspector Murray George Burgess the following morning, and finally to this Board.

Despite the false evidence given by the Police Officers concerned, Olding's complaint was made out to the satisfaction of the Board.

The Olding Matter further demonstrated the futility of a civilian making a complaint to Police, about the behaviour of other Police.

Summary of complaints investigated by the Board

Inspector Burgess' investigation fell into the same category as that carried out by Chief Inspector Warnock in the Whyte Matter (Chapter 30). It was worthless. From the outset he never believed a word Olding said, and conducted his investigation accordingly.

It is matters such as the Olding Matter which have caused me to make the recommendations I have as to the handling of complaints made by civilians against Police. (See Chapter 8).

11. *The Owen Matter re Dam (Chapter 21).*

Gregory Francis Owen has probably spent more time in gaol over the last ten years than out of it. He is not a violent man, but simply cannot resist committing offences of dishonesty.

On the 24th May, 1974, and following a chase by Senior Sergeant Leo John Dam, he was apprehended in a block of flats then under construction in South Terrace, Clifton Hill, and taken to Russell Street.

Because he was in possession of information vital to the Police in connection with their endeavours to apprehend a criminal named O'Callaghan, in due course he was taken to an interview room on the 5th floor of Russell Street for questioning.

Owen alleged that because he refused to answer any questions put to him, and whilst being held by Senior Sergeant Dam, he was first struck a number of blows by Senior Constable Paul William Higgins, then pulled by his hair to the floor, and whilst on the floor kicked in the ribs on some 6 to 8 occasions by Higgins—all this taking place in the presence of Senior Constable Melville Francis Melotte.

Having then been left in the room on his own for some short period of time, he alleges Dam and Higgins returned, and that on this second occasion, Higgins kicked him in the ribs 3 or 4 times.

As a consequence of being kicked in the ribs, Owen sustained fractures of the 9th and 10th ribs on the left side of the chest.

So apparent was it to the Police to whom he complained when taken from Russell Street to the Watchhouse that evening that Owen had sustained injury, he was forthwith taken to the Royal Melbourne Hospital, where he was duly admitted.

The Police case in the matter was that Owen sustained the injuries to his ribs as a consequence of being tackled by Senior Sergeant Dam and thrown to the ground with Senior Sergeant Dam on top of him. In the course of final submissions Counsel appearing for the Police Association went even further however, by suggesting that Owen may have sustained injuries to his ribs on a day prior to the 24th May, when he did in fact sustain a cut to his lip, but had not realized that he had.

I hasten to add there was not a shred of evidence to support that latter contention, and indeed the evidence placed before the Board as to the chase in South Terrace and the immediate vicinity, before Owen was apprehended, amply demonstrated that that could not have been the situation.

As to the former suggestion, the evidence as to Owen's condition between the time of his arrival at Russell Street and the time at which he was taken to the interview room, was such as to demonstrate quite clearly he did not sustain fractures of his ribs at South Terrace on the 24th May.

The fact is that as in so many other matters, the Police involved conspired together to give false evidence before the Board and did so.

The evidence called on Owen's behalf established to my satisfaction that he was kicked in the ribs in the manner he alleged he was, and that that was the cause of the fractures to his ribs.

12. *The Owen Matter re Gaudion and the Keeley Matter re Gaudion (Chapter 22).*

These matters were dealt with together because of their striking similarity, and because they concerned allegations made against the same Police Officer, viz. Senior Sergeant Bert Atherley Gaudion. The two complainants were Gregory Francis Owen (see précis No. 11) and David Hinkler Keeley (see précis No. 8).

Owen alleged that on the 9th April, 1974, he was extradited from New South Wales to Victoria by Senior Sergeant Gaudion to face certain charges in respect of which he had absconded whilst on bail in 1972. At

the time, he had a sum of approximately $1,200 in a State Savings Bank account at Malvern. Being desirous of withdrawing that money and using it for his defence, he raised the subject with Senior Sergeant Gaudion.

Summary of complaints investigated by the Board

According to Owen, Senior Sergeant Gaudion agreed to assist him to have the money withdrawn, in return for one third of it, viz. $400.

On the 11th April, 1974, and as a consequence of arrangements made with Owen's Solicitor by Senior Sergeant Gaudion, the sum of approximately $1,200 was drawn from the bank account. Of that sum approximately $800 found its way into Owen's Solicitor's Trust Account. What of the balance of $400?

Senior Sergeant Gaudion declined to give evidence to the Board in relation to the matter.

In this situation the Board had no hesitation in finding that Senior Sergeant Gaudion unlawfully received the sum of $400 from Owen in the circumstances deposed to by Owen and the other witnesses called on his behalf.

The allegation made on Keeley's behalf by Doctor Wainer was a substantially similar one, viz. that on the 11th January, 1974, Keeley paid a sum of $500 to Senior Sergeant Gaudion pursuant to an arrangement between himself and Gaudion whereby Gaudion would charge him with receiving certain property knowing it to have been stolen, rather than with the actual breaking, entering and stealing of the property.

Doctor Wainer further alleged that in a conversation which took place in a park at Caulfield on the 23rd October, 1974—a conversation which Keeley secretely tape-recorded, Senior Sergeant Gaudion agreed to further assist Keeley in relation to certain charges then pending against him, again in return for the payment of a sum of $500.

Indeed it was probably because that particular conversation was tape-recorded and later produced to the Solicitor General, that this Board of Inquiry was ultimately set up.

As in the case of Owen's complaint, the evidence produced in relation to Keeley's complaint against Senior Sergeant Gaudion, was overwhelming, and once again Senior Sergeant Gaudion declined to give evidence to the Board.

The surprising feature of the latter complaint however, was that when criminal proceedings were instituted against Senior Sergeant Gaudion in respect of the matter, the Magistrate before whom the committal proceedings were heard, refused to commit Senior Sergeant Gaudion for trial. As he apparently gave no reasons for his refusal, one can but comment that his failure to do so was puzzling.

In any event it is the recommendation of this Board that Senior Sergeant Gaudion be given Notice of Trial by the Crown in respect of all matters.

13. *The Palmer and Quinn Matter (Chapter 23).*

John William Palmer and Barry Robert Quinn stood trial charged with the murder of two persons at the Car-o-Tel Motel on the 25th March, 1974. Palmer was acquitted, Quinn was convicted.

One aspect of the Crown case was that the two men were close associates, hence their joint involvement in the murders. This allegation was strenuously denied by both men.

In support of its contention, the Crown called two witnesses, a Sergeant Byers and the licensee of the George Hotel at St. Kilda, Francis John Roy Sherrin, who both swore categorically that on the evening of the 7th March, 1974, the two men were drinking together in a lounge bar at the hotel.

The fact is that on the evening of the 7th March, 1974, Palmer was incarcerated in H. M. Gaol at Pentridge. The evidence given by Sergeant Byers and Sherrin therefore was false.

Sergeant Byers' state of health was such, it was not possible to call him to give evidence before the Board. This Board is unable therefore to say whether he deliberately lied about the matter or was merely mistaken.

One cannot but make the following observations:—

(a) As the matter was of such significance to the Crown at the trial, it is a pity the Police investigation into it was so poorly conducted as not to reveal the fact that Palmer was in gaol at the very time Sergeant Byers and Sherrin were swearing he was at the George Hotel.

Summary of complaints investigated by the Board

(*b*) If ever a case illustrated the care which must be taken so far as evidence of identification is concerned, this one did. That Sergeant Byers and the witness Sherrin could assert as positively as they did that Palmer was in the George Hotel when he was in fact in Pentridge, speaks for itself in that connection.

14. *The Power Matter* (*Chapter* 24).

The complaint made to this Board by John Joseph Power was that certain members of the Homicide Squad had conspired together with a view to having him wrongfully charged with the murder of a Mrs. Rosa Rento, in the hope that they might have him convicted of that crime, and thus put out of circulation for the greater part of his life.

Whilst I make no finding to such effect against the Police Officers involved, nevertheless the evidence adduced in this matter demonstrated such an unsatisfactory state of affairs so far as the investigation into the death of Mrs. Rento was concerned, as to justify reference to it in this précis.

The following are the more salient features to which I refer:—

(*a*) As in the case of the more serious matters investigated by the Board—serious in the sense that the complainant concerned had been charged with either murder, armed robbery or offences of the like nature—Eric Grant featured prominently in the Power Matter.

In this instance it was to Eric Grant that Superintendent Kevin John Carton (then the Officer in Charge of the Homicide Squad) turned with a view to solving the crime.

Grant told him the two people responsible were Power and a man named Glenn.

Having arrested and interviewed Power, and ascertained that Glenn could not possibly have been involved, Superintendent Carton went again to Grant for assistance.

On this occasion Grant substituted a criminal named Hutchinson for Glenn.

On the say so of a criminal, Power was arrested and charged with murder, there being no evidence against him whatsoever, apart from a three year old motive he may have had to cause harm to the Rento family, said to exist because some three years previously Mrs. Rento's juvenile son had attempted to interfere with Power's infant daughter —at least so Power thought.

(*b*) At the time of Power's arrest the Police were in a quandary. As Senior Sergeant Peter Noel Thompson conceded, the Police had charged Power with murder, but, had virtually no evidence with which to get their case off the ground.

Notwithstanding this, they chose to apprehend and interview Hutchinson and thus built their case against Power on that somewhat shaky foundation.

Hutchinson at that stage was himself in dire straits. When apprehended by the Police following the information supplied to them by Grant, the Police had sufficient evidence to justify charging him with a number of breakings, enterings and stealings, and a serious assault on a woman named Bosworth.

What the Police then did was to do a deal with Hutchinson. The deal was this:—In return for Hutchinson agreeing to give evidence against Power, he Hutchinson, would not be proceeded against in respect of the numerous offences with which he should have been charged.

(*c*) Hutchinson duly gave evidence against Power at his trial. Power was acquitted. Why was he acquitted? Because the evidence given by Hutchinson was false and demonstrably so. In addition, Power had an alibi.

According to Hutchinson, Power had Hutchinson stop the car he was driving outside the home of Mrs. Rento on the night in question. Power then produced a sawn-off shot-gun from under the front seat of the vehicle, fired it at the home of Mrs. Rento, thereby killing Mrs. Rento who as ill fortune would have it, was standing at the lounge room window at the relevant time.

At Power's trial it was demonstrated beyond doubt that the gun identified by Hutchinson as the murder weapon had in fact been in the possession of the Police for some

6 weeks prior to the shooting. It was further established that the damage to the Rento home and the injuries to Mrs. Rento herself, may not have been inflicted by a sawn-off shot-gun fired from the street, but in all probability by one of normal length.

Summary of complaints investigated by the Board

Not only was Hutchinson's evidence undermined in that fashion, Power produced an alibi.

How did it come about that this regrettable situation occurred?

It occurred, the evidence before the Board suggests, because certain Police are content to do deals with informers rather than undertake the tedium of proper investigative work necessary to solve crime.

Whilst the failure of the Police in this case does not fall within the same category as the behaviour of those Police who find it easier to fabricate Records of Interview than make proper investigation into crime, it nevertheless justifies the strongest criticism.

(*d*) One final matter I wish to advert to briefly in this précis concerned the behaviour of Superintendent Eric Raymond Janetzki.

He swore that he did not instruct Sergeant Frederick Gordon Bird to take no further steps against Hutchinson insofar as the charge relating to the assault on Mrs. Bosworth was concerned, but merely defer the matter until the Inquest into the death of Mrs. Rento was held.

That, in my opinion was a lie. Sergeant Bird was a most impressive and truthful witness before this Board and I accept his evidence without hesitation. He was of the same admirable calibre as Inspector Robert Quentin Broughton in the Olding Matter, Inspector Reginald George Baker in the Sellers Matter, Sergeant Frederick John Seymour in the Owen Matter, and Senior Constables Kealy and Krzyskow in the Gibb Matter.

The evidence given by Superintendent Janetzki was a cynical attempt by him to transfer responsibility for the matter from his shoulders to those of a more junior Police Officer. It did him little credit.

15. *The Sellers Matter* (*Chapter* 25).

Stephen Donald Sellers' complaint to this Board was to the effect that when Police burst into a flat in which he and another criminal named Laurence Joseph Prendergast were on the 2nd July, 1974, Senior Constable Garry John Schipper and another Police Officer he was unable to identify, but which by a process of elimination had to be either Sergeant Brian Francis Fennessy or Senior Constable Noel Charles Thomas, pushed him through the open window of the flat, causing him to fall some 30 feet to a concrete driveway below, thereby sustaining 10 or so serious skeletal injuries.

It was not suggested by Sellers that he was deliberately pushed out the window. His complaint was that the Police entered the room in such a violent fashion (having smashed the front door in with a sledge hammer), that their concerted rush at him coupled with the endeavours he made to protect his head from a blow aimed at it by a pistol in the hand of Senior Constable Schipper, was such as to bodily carry him out through the window.

He further alleged that whilst helpless on the concrete beneath the flat window, a pistol was pointed at his head, his fractured right wrist was handcuffed then tugged causing him intense pain, the Police attempted to move him, one Policeman jeered at him because his nose was split wide open, and before he was removed by ambulance he was photographed.

From the evidence called before the Board I am unable to say one way or the other whether Sellers was photographed whilst lying helpless on the concrete.

I am able to state quite positively however, that all his other ancillary complaints were established to my satisfaction—indeed in most cases by the evidence of the various Police Officers themselves. A gun was pointed at his face whilst he was lying helpless on the ground; his fractured right wrist was handcuffed then tugged causing him such pain that he spat blood over the Officer responsible; efforts were made to move him whilst he was lying in agony on the concrete; and a remark was made concerning the state of his nose although on the evidence called before the Board one was unable to say whether it was made in a jeering fashion.

Did he fall from the window in a suicidal endeavour to escape as the Police allege, or was he pushed in the manner described by him?

Summary of complaints investigated by the Board

Having regard to the nature and extent of untruths told by various Police Officers concerned in the matter, and the probabilities in relation to it, I am satisfied Sellers did not fall from the window as the Police allege, but was in fact pushed through it.

If ever a matter demonstrated the propensity of Police to " close the ranks when they felt trouble was brewing ", it was this matter.

From Senior Sergeant Leo Adrian Lalor (the officer in charge of the raid) down, those men concerned with the entry to the flat that day conspired to give false evidence before this Board and did so. I refer in particular to Senior Sergeant Alfred Gordon Oldfield, Senior Constable Garry John Schipper, Sergeant Brian Francis Fennessy, Senior Constable Noel Charles Thomas, Senior Constable Melville Francis Melotte, and Senior Constable Peter Thomas Wadeson.

Whilst the aspect I am about to advert to concerning the Sellers Matter is of little significance in the overall picture of it, it well illustrates the general attitude of many Police who appeared before the Board and whose testimony was in conflict with civilian—whether criminal or non-criminal—evidence; the central theme running through their evidence was, any such conflict should be resolved in favour of Police, because they cannot, and do not resort to improper practices.

During the course of his evidence, Sellers complained that whilst in the Alfred Hospital following his fall, one of the Police Constables charged with the duty of guarding him, pointed his empty pistol at his head and from time to time pulled the trigger. Sellers was immediately branded a liar by Counsel appearing for the Police Association during the course of his cross-examination.

With the effluxion of time however, Sellers produced a tape recording he had secretly made of the Police Constable concerned doing that very thing. As it was not possible to call that Police Officer to give evidence, I do not feel it appropriate to name him in this summary. I merely point to the matter as being illustrative of the mental attitude of so many of the Police Officers called before the Board, viz. " the whole thing is a conspiracy—all the allegations are false ".

In much the same vein was Inspector Delianis' assertion expressed in internal documentation, that because Sellers played unusual music and burnt incense he was not of sound mind. Here however, one suspects there may have been a deal of motive behind an apparent non-sequitor.

The constant allegation of conspiracy made by members of the Armed Robbery Squad is so much arrant nonsense. The complaints made against it were made at such early points of time after the individual victims had suffered at that Squad's hands, as to make such a suggestion completely untenable.

16. *The Smith Matter* (*Chapter* 26).

Ronald William Smith has the misfortune to be the brother of the notorious criminal James Smith otherwise known as " Jockey Smith ". It was that fact which caused members of the Consorting Squad to search the Pizza Parlour conducted by Smith and his wife at Ocean Grove on the evening of the 11th September, 1974.

On that occasion four Police Officers under the command of Sergeant Rex John Topp and equipped with a warrant issued pursuant to the provisions of the Firearms Act, entered the Pizza Parlour with a view to searching it for firearms or other property which might be of an incriminating nature so far as the Smiths were concerned.

The evidence revealed that in conducting their search the Police Officers involved behaved like hooligans. Panels were prized away from walls, property was strewn throughout the Pizza Parlour and adjacent house, and damage to the extent of some hundreds of dollars caused to Smith's motor vehicle and other equipment at the premises.

That the Police involved blatantly lied about the matter was proven beyond doubt by the inspection this Board made of the Pizza Parlour and Smith's vehicle, and by the report subsequently written in relation to the matter by Senior Sergeant Kenneth Ernest Brown, Sergeant Topp's immediate superior. (I might add it was also proved beyond any doubt by the evidence given in support of the Smiths' complaint by the Officer in Charge of the Ocean Grove Police Station, Sergeant Henry Stringer, referred to by Sergeant Topp at the time of the raid as being " just shit " to them.)

Two examples of the lies told by the Police will suffice.

(a) "We did no damage to the interior door panel of Smith's car. It was held in by studs. We simply unclipped it, searched behind it, and clipped it back again."

Summary of complaints investigated by the Board

The inspection of the car by the Board revealed that the door panel in question was held in by self-tapping screws. The heads of the screws had been pulled through the panel thereby ruining it.

(b) According to the Police who went on the raid, no wall panels were damaged or removed in the manner described by the Smiths.

The internal report later prepared by Senior Sergeant Brown in relation to the matter made specific reference to the fact that panels in the walls were moved for the purpose of examination, but were repositioned.

Later that evening Smith and a friend Trevor Robert Paton were apprehended by Senior Sergeant Brown and three men under his command whilst on their way from Ocean Grove to the home of Smith's mother at Corio.

I say no more in this précis than that the behaviour of the Police on that occasion was no better than the behaviour of Senior Sergeant Topp and the men under his command at the Pizza Parlour.

In my opinion the adverse publicity received by the Smiths as a consequence of the behaviour of the Police that night, and as a consequence of their very proper complaint to this Board, is a matter to be deplored. It is to their credit they have had the courage to adopt the stand they have taken in the matter.

17. *The Stupak Matter* (*Chapter* 27).

Erika Stupak was the very foolish young woman who chose to use a false name and address when she visited Stephen Sellers whilst he was an in-patient at the Alfred Hospital.

She had met Sellers on previous occasions through a mutual friend and had been asked to visit him in hospital by that friend as Sellers had very few acquaintances in Melbourne.

I should hasten to add that Mrs. Stupak and her friend (a criminologist), were perfectly respectable members of the community without any criminal background whatsoever. In fact one could not fail to form the impression that Mrs. Stupak was a highly educated and fairly affluent member of society.

Be that as it may, she chose to use a false name and address when visiting Sellers and was to pay for it thereafter.

On the 12th September, 1974, Police attended the place of business of her brother, a business in which Mrs. Stupak was employed, and conducted a search of those premises and the nearby home of her brother. Having regard to the fact that Mrs. Stupak had concealed from her family her association with Sellers, I have no doubt this visit caused her a great deal of embarrassment.

In the circumstances however, the Police acted quite justifiably, and no criticism can be made of their attendance at Richmond that day. It is in respect of their behaviour, or more accurately the behaviour of Inspector Paul Delianis and Senior Constable David Barry Newton at Russell Street later that day, that this Board is critical.

Although it was quite clear to the Police who attended at Richmond that day who Mrs. Stupak was, acting on instructions from Russell Street she was asked to accompany the Police back to Russell Street to "sort the matter out". This she reluctantly agreed to do.

The fact is that the Police at Russell Street had no intention of sorting anything out. They wanted Mrs. Stupak brought there to see what they could elicit from her as to her knowledge of Sellers and his associates. Accordingly, and at about mid-way through that afternoon, Mrs. Stupak fell into the hands of Inspector Delianis and Senior Constable Newton.

I now propose to list some of the things that happened to her whilst she was in their hands.

(a) When the Police returned to Russell Street they took with them certain papers belonging to Mrs. Stupak, including her bank books. Being dissatisfied with her explanation as to the amount of money she had in the bank (and in fact being called a liar in respect of it), Senior Constable Newton telephoned her bank manager thereby establishing that what she had said was in fact the truth; in the process one would have thought, creating a most embarrassing relationship between Mrs. Stupak and her bank manager.

Summary of complaints investigated by the Board

(*b*) She was shown a number of photographs by Senior Constable Newton. When she failed to identify the persons in them she was told on numerous occasions to " come clean ", and that they had a record of her criminal activities.

(*c*) Inspector Delianis accused her of being sexually involved with a criminal named Marco, of being a gangsters moll, of investing money on behalf of criminals, and of being the biggest liar he had ever met. He alleged she had been in Fairlea, and told her he intended to keep her there all night until she started confessing; further, that she would be put away in Fairlea for ten years.

(*d*) At one stage Senior Constable Newton came very close to Mrs. Stupak and said—" I have not hit a woman for a long time but I would like to smash my fist right in your face ".

I don't believe for one moment Senior Constable Newton intended to do any such thing. I feel that was probably only a procedure he adopted from time to time to gain a suspect's co-operation.

(*e*) Senior Constable Newton threatened Mrs. Stupak that unless she started confessing she would be photographed and finger printed. When Mrs. Stupak continued to maintain she was telling the truth, she was in fact taken to another room, photographed and finger printed.

(*f*) It was alleged by Senior Constable Newton that Mrs. Stupak knew a woman named Val. When this was denied, Senior Constable Newton prepared a list of things Mrs. Stupak was to say, made a telephone call (presumably to Val) and insisted Mrs. Stupak talk to her, saying the things he had written on the sheet of paper.

Val was obviously a criminal. The purpose of the experiment was to demonstrate an association between Mrs. Stupak and Val.

As events turned out the experiment failed. The woman on the other end of the phone said no more than—" Who is it, who is it, hello, who is it?" then hung up.

(*g*) Mrs. Stupak's numerous requests to contact a Solicitor and to have a Solicitor present were denied her.

I do not purport to have covered everything that occurred to Mrs. Stupak during the hours she was detained at Russell Street—such details appear in Chapter 27.

Whilst it was foolish of her to have given a false name and address when visiting Sellers in hospital, nevertheless that fact did not justify the treatment meted out to her at Russell Street. In my opinion that was clear harassment and intimidation of a perfectly respectable woman by Inspector Delianis and Senior Constable Newton. Indeed, having regard to the threat made to Mrs. Stupak by Senior Constable Newton as she left Russell Street that afternoon, viz. that they would get her next time and that she would be hearing from them shortly, one wonders if Mrs. Stupak has heard the last of the matter; one hopes so.

18. *The Wainer Matter re Crowley (Chapter 28).*

Doctor Wainer was convinced that Senior Sergeant Leo Adrian Lalor was a corrupt member of the Force.

On the 6th November, 1974, and at Doctor Wainer's instigation, a meeting was arranged between David Hinkler Keeley (see the Keeley Matter *re* Wren—Chapter 18 and the Keeley Matter *re* Gaudion—(Chapter 22) and Senior Sergeant Lalor. It was expected by Doctor Wainer that at that meeting Senior Sergeant Lalor would say something incriminating in much the same fashion as Senior Sergeant Gaudion had, during the course of his conversation with Keeley in October of that same year, and that once again that coversation would be tape-recorded, Keeley having been supplied with the equipment necessary for that purpose.

Regrettably so far as Doctor Wainer was concerned, Lalor was in some way " tipped off " by a member of the Force as to what was about to take place, equipped himself with a hidden tape recorder, and also tape-recorded the conversation. Needless to say he said nothing during the course of it, which was in any way incriminatory of him.

In a telephone conversation between Assistant Commissioner William Desmond Crowley and Doctor Wainer on the 20th November, 1974, Assistant Commissioner Crowley in effect conceded that Senior Sergeant Lalor had been " tipped off " by a fairly high ranking Police Officer.

Before this Board, Mr. Crowley first swore that he had said that to Doctor Wainer, by reason of the fact that as at that date, he knew that people who had knowledge of the plan to tape Senior Sergeant Lalor, had been in touch with a Police Officer on the 6th November, 1974, that he believed that communication had occurred before the meeting between Keeley and Lalor, and assumed that the Police Officer who had learnt of the meeting, had conveyed the information to a senior Police Officer, who had, in turn passed it on to Lalor, thus putting Lalor on guard and enabling him to tape-record the meeting himself.

Summary of complaints investigated by the Board

Mr. Crowley first swore that it was not until after he had that telephone conversation with Doctor Wainer, that he learnt that the communication between a civilian possessing knowledge of the proposed meeting and the Police Officer concerned, had in fact occurred after the meeting between Keeley and Lalor—and therefore that there could have been no leakage of information to Lalor from any Police source.

It is a matter of some regret that at a later stage during the course of this Board's inquiry, Assistant Commissioner Crowley disclosed that he learnt of the fact that the conversation between that civilian and the particular Police Officer had occurred after the meeting, some days after the 6th November, 1974. It followed from that fact, that what he previously swore before this Board was false.

I say it is a matter of regret because one would expect truthful evidence from an Officer of Assistant Commissioner Crowley's rank.

Assistant Commissioner Crowley was asked what steps he took to investigate Doctor Wainer's very proper complaint, that a Police Officer had " tipped off " Senior Sergeant Lalor, thereby nullifying the meeting between Keeley and Lalor.

The only step Mr. Crowley really took in the matter was to ask Inspector Delianis to look into the matter and give him his word as to whether or not Lalor was " tipped off " by another Police Officer. As he said, Inspector Delianis might tell him a lie if he thought it was good for him, so that on this occasion he asked him to tell him the truth—as Counsel assisting put it " Scouts Honour ". (A most disturbing situation if I may say so, and one which causes one to really wonder what does go on amongst certain Officers of high rank at Russell Street.)

Having regard to the gravity of the matter, it could hardly be described as a satisfactory state of affairs to have had Inspector Delianis investigate the situation on this loose basis.

In this connection Assistant Commissioner Crowley attempted to mislead the Board by swearing that Inspector Delianis had only returned to the Armed Robbery Squad in November, 1974 and thus would be comparatively independent. The fact is that he rejoined it in June or July 1974 and had been closely associated with Senior Sergeant Lalor since that time (see for example the Sellers Matter—Chapter 25).

In due course Inspector Delianis assured Assistant Commissioner Crowley that Senior Sergeant Lalor had not been tipped off by the Police, but had become suspicious himself. The three grounds for his suspicion were these—

(*a*) Keeley had not been in contact with him for over a year. Therefore it was odd he should telephone him and seek a meeting.

(*b*) Keeley had telephoned the Armed Robbery Squad on two occasions whilst Lalor was on leave, seeking to speak to Lalor. The telephone call on the 6th November, therefore was the third call he had made. That, according to what Inspector Delianis told Mr. Crowley, was another factor that made Lalor suspicious.

(*c*) The third matter, and the one described as the " clincher ", was that when Keeley spoke to Lalor on the telephone, although he wanted to meet him, he nevertheless didn't want an immediate meeting but wanted it deferred. This, so it was said, raised the suspicion in Lalor's mind that as Keeley wanted the meeting deferred, he could only be attempting to do that, to enable him to make the necessary preparations to set Senior Sergeant Lalor up.

I offer no observation concerning point number one.

Point number two is another lie. As Senior Sergeant Lalor swore, he did not know of the two earlier calls until after the meeting of the 6th November.

Of far more concern to this Board was the fact that point number three (the " clincher "), was again a lie. Unbeknown to Senior Sergeant Lalor, Doctor Wainer had tape recorded the telephone call made by

Keeley to Lalor arranging the meeting. That tape and its transcript demonstrated that it was Lalor who was seeking to defer the meeting, not Keeley.

Summary of complaints investigated by the Board

Who, then, lied to who, and why? Did Lalor lie to Delianis, and Delianis innocently pass it on to Crowley?, or was that lie one originating from Delianis? I have sought to resolve these questions in Chapter 28.

The material placed before this Board was not sufficient to enable the Board to find that Assistant Commissioner Crowley "tipped off" Senior Sergeant Lalor. Clearly however, some Police Officer did.

What this Board was able to find as a consequence of its inquiry into the Wainer Matter *re* Crowley was that certain high ranking Police Officers will tell lies on oath if the occasion suits them, and no proper investigation was ever made of this complaint when one was clearly called for.

(This matter again demonstrated the extreme difficulty a civilian has, even one of the calibre of Doctor Wainer, in exposing corruption in the Police Force.)

19. *The Wainer Matter re Lalor (Chapter 29).*

Allegations were made throughout the course of this Board's inquiry to the effect that Senior Sergeant Leo Adrian Lalor had received bribes from the criminal (and informer) Eric Grant, in return for favours afforded him by Lalor.

The evidence however, came from such tainted sources that one was not prepared to make any adverse finding against Senior Sergeant Lalor in relation to them.

A further complicating feature was the fact that although a statutory declaration purporting to be sworn by Grant was received by the Board and Grant wished to give evidence to the Board in relation to it, he was throughout the course of the Board's hearing incarcerated in a gaol in New South Wales. Although the Board made endeavours to have him brought to Victoria to give evidence, those endeavours were unsuccessful.

Another factor was that apart from a blanket denial to the effect that he had ever received money from Grant, when questioned about the matter Senior Sergeant Lalor refused to answer, on the spurious ground that his answers might reveal the name of an informer. Had it not been for the fact that that occured on the last two days this Board sat to receive evidence, I would have taken the appropriate steps pursuant to the provisions of the Evidence Act, to compel Senior Sergeant Lalor to answer those questions.

Although I intend to deal with this aspect in Chapter 9 of the Report, it again demonstrates the inadequacies of the provisions of the Evidence Act concerning Boards of Inquiry of this nature.

Senior Sergeant Leo Adrian Lalor was one of the most unimpressive of the Police Officers who gave evidence before the Board. He is clearly a man who will give false evidence whenever the occasion suits him, and I would place no reliance on anything he swore unless it was adequately corroborated. So disturbed was I by the allegations made against him in this matter, that my recommendation is that the matter be placed in the hands of B11, and resolved once and for all. If Lalor has received money from Grant as alleged, let the appropriate charges be laid against him.

If Grant has committed perjury in his statutory declaration, let the appropriate charge be brought against him.

20. *The Whyte Matter (Chapter 30).*

It is somewhat ironical that one of the worst examples of Police malpractice appears in the last précis of this Chapter, and the last chapter of this Report.

What occurred to a thoroughly decent and respectable married couple, Mr. and Mrs Norman Barry Whyte, on the evening of the 23rd/24th August, 1974, and thereafter, was such as should cause this community the greatest revulsion and concern.

That evening Mrs. Whyte went to the Vaucluse Hotel at Richmond to pick-up her husband, he having attended a function there. If ever two persons were behaving responsibly in the circumstances, Mr. and Mrs. Whyte were. Knowing that he would be consuming alcoholic liquor that night, Mr. Whyte took the very sound precaution of having his wife call at the hotel and pick him up. And what were the consequences? I propose to list the more appalling, and invite the reader of the Report to read Chapter 30, in the event he is minded to inform himself of the details surrounding the matter.

(*a*) Both in Swan Street and Docker Street Richmond that evening, Mrs. Whyte was harassed and intimidated by Senior Constable Barry Edward Traynor, Senior Constable Laurence Francis Halvy and Constable Neil Thomas Cuddy.

Without any justification whatsoever, Traynor and Halvy accosted her whilst she was seated in her car outside the hotel awaiting the arrival of her husband, and thereafter behaved in a despicable and disgraceful fashion, as did Cuddy following his arrival on the scene.

(*b*) Upon leaving the hotel Mr. Whyte was foully abused by Halvy and cowardly assaulted by him and Traynor. Without lawful excuse he was seized and placed in a Police vehicle where he was then struck in the face by Cuddy.

(*c*) Without lawful justification Mrs. Whyte was taken to the Richmond Police Station where she was unlawfully detained for a period of time in excess of an hour.

(*d*) Also without lawful justification Mr. Whyte was taken to the Richmond Police Station where he was again foully abused by those three Police Officers, and on a number of occasions cowardly assaulted by them. His hair was pulled, his face slapped, blows were struck to his body and he was kicked in the groin. So severe was that latter injury that in due course it was necessary for Mr. Whyte to undergo an operation, at which operation a blood clot the size of a golf ball was removed from the left testicle. To describe the behaviour of Halvy, Traynor and Cuddy as that of unbridled sadism scarcely overstates the situation. Whyte was then falsely charged with assaulting the Police, using indecent language and insulting words and despite the fact that his wife was present and could have bailed him out, was placed in a cell from which he was not released until approximately 8.30 a.m. later that morning.

I am satisfied the reason he was detained for that period of time was to ensure no person saw him in the condition he was in, immediately following the repeated assaults upon him.

Following the release of Mr. Whyte from the Richmond Police Station that morning, he and his wife consulted their Solicitor in connection with the matter, and that afternoon made a complaint to the Duty Inspector at Russell Street in respect of the treatment meted out to them by Halvy, Traynor and Cuddy.

In due course that complaint was placed in the hands of Chief Inspector Frederick Charles Warnock for investigation. As Counsel assisting the Board rightly pointed out during the course of final submissions, his investigation proved to be no investigation at all.

As did so many other matters investigated by the Board, the Whyte Matter demonstrated the futility of Police investigating complaints by civilians against Police. Chief Inspector Warnock's investigation amounted to nothing more than a " white-wash ". So worthless and misleading was his report that I have included it as an appendix to Chapter 30 of this Report, to enable the reader to judge the matter for himself.

The Whyte Matter was one of the most disgraceful matters to be investigated by the Board.

Not only was it disgraceful because of the conduct of Halvy, Traynor and Cuddy that night, it was disgraceful because of the failure of the Police to make any proper investigation into the Whytes' complaint, and because it disclosed the manner in which those other Police present at the Richmond Police Station that night attempted to cover the matter up. In this instance I refer specifically to Sergeant Malcolm Frank Dennis and Constable Noel Alan Osborne.

I find that Halvy, Traynor, Cuddy, Dennis and Osborne conspired together to give false evidence before this Board and did so.

It is difficult to restrain a feeling of deep indignation at the disgraceful and inhuman treatment accorded the Whytes; it is also difficult not to entertain feelings of the deepest apprehension and alarm that there are present in the Victoria Police Force men who behave thus when clad in the authority vested in Police Officers. I can think of nothing more calculated to destroy public confidence in, and support for, the Force than conduct of this kind concerning the class of persons from whom the Police traditionally have support.

I trust the Board's findings will be seen by Mr. and Mrs. Whyte as a vindication of their character and probity; I fear those findings can never repair the damage suffered by the Victoria Police Force in their eyes.

CHAPTER 7

POLICE OFFICERS AGAINST WHOM SPECIFIC FINDINGS MADE

In this chapter of the Report I propose to set out in alphabetical order the names of the Police Officers against whom adverse findings have been made and the nature of those findings.

I do not propose to enumerate the numerous breaches of the Chief Commissioner's Standing Orders in this chapter unless they are of major significance. I consider it sufficient to have adverted to them in those chapters dealing with the specific matters investigated by the Board (Chapters 11 to 30 inclusive), and Appendix " G " to the last Volume of the Report.

The following members of the Victoria Police Force are those against whom adverse findings have been made. The nature of the finding (or findings) appears alongside the name of the particular member of the Force, together with a reference to the matter investigated by the Board and in which such finding was made.

The member's rank was that held by him at the time he gave evidence before the Board.

Adams, Senior Constable Alexander David

Senior Constable Adams conspired with Constable Larry Paul Proud and Constable Wayne John Harris to give false evidence before the Board and did so (see the Curteis Matter—Chapter 12).

Brown, Senior Sergeant Kenneth Ernest

(1) On the 24th May, 1974 at Russell Street Police Headquarters, Senior Sergeant Brown was party to assaults on Gregory Francis Owen by Senior Sergeant Leo John Dam, Senior Constable Paul William Higgins and Senior Constable Melville Francis Melotte in that he was aware such assaults were to take place, and in fact had invited those Police Officers under his command to indulge in the behaviour they did (see the Owen Matter *re* Dam—Chapter 21).

(2) Senior Sergeant Brown conspired with Senior Sergeant Dam, Senior Constable Higgins and Senior Constable Melotte to give false evidence before the Board and did so (see the Owen Matter *re* Dam—Chapter 21).

(3) On the 12th September, 1974 in Grubb Road Ocean Grove, Senior Sergeant Brown harassed and intimidated Ronald William Smith and Trevor Paton (see the Smith Matter—Chapter 26).

(4) Senior Sergeant Brown conspired with Sergeant Rex John Topp, Senior Constable Paul William Higgins, Senior Constable Eric William Dixon, Senior Constable Douglas Keith Lewis, Senior Constable David Barry Newton and Senior Constable Melville Francis Melotte to give false evidence before the Board and did so (see the Smith Matter—Chapter 26).

Burgess, Inspector Murray George

In breach of the Chief Commissioner's Standing Orders (in particular Standing Order 409), Inspector Burgess failed to properly investigate the complaint of one Douglas Martin Olding (see the Olding Matter—Chapter 20).

Carton, Superintendent Kevin John

In the month of August, 1972, Superintendent Carton conspired with Superintendent Eric Raymond Janetzki, Senior Sergeant Peter Noel Thompson and Sergeant Brian Francis Murphy to obstruct the course of justice (see the Power Matter—Chapter 24).

Clark, Constable Robert Arthur

(1) On the 11th April, 1975 at the Fitzroy Police Station Peter John Hewat was assaulted by Constable Paul John Strang aided and abetted by Constable Clark (see the Hewat Matter—Chapter 17).

(2) Constable Strang and Constable Clark conspired to give false evidence before the Board and did so (see the Hewat Matter—Chapter 17).

(3) On the 11th April, 1975 and without lawful justification Constable Clark and Constable Strang removed a rotor button from a vehicle owned by Peter John Hewat (see the Hewat Matter—Chapter 17).

Cuddy, Constable Neil Thomas

(1) On the 23rd August, 1974 in Docker Street Richmond, Constable Cuddy harassed and intimidated Roslyn Joy Whyte (see the Whyte Matter —Chapter 30).

(2) On the 23rd August, 1974 in Docker Street Richmond, Constable Cuddy assaulted Norman Barry Whyte (see the Whyte Matter—Chapter 30).

Police Officers against whom specific findings made

(3) Between 11.20 p.m. on the 23rd August, 1974 and 12.20 a.m. on the 24th August, 1974, Constable Cuddy repeatedly assaulted, abused, harassed and intimidated Norman Barry Whyte at the Richmond Police Station (see the Whyte Matter—Chapter 30).

(4) Between 11.20 p.m. on the 23rd August, 1974 and 12.20 a.m. on the 24th August, 1974, Constable Cuddy assaulted, abused, harassed and intimidated Roslyn Joy Whyte (see the Whyte Matter—Chapter 30).

(5) Constable Cuddy conspired with Sergeant Malcolm Frank Dennis, Senior Constable Laurence Francis Halvy, Senior Constable Barry Edward Traynor and Constable Noel Alan Osborne to give false evidence before the Board and did so (see the Whyte Matter—Chapter 30).

Dam, Senior Sergeant Leo John

(1) On the 24th May, 1974, at Russell Street Police Headquarters, Gregory Francis Owen was assaulted by being punched by Senior Constable Paul William Higgins whilst being held by Senior Sergeant Dam, and aided and abetted by Senior Constable Melville Francis Melotte (see the Owen Matter *re* Dam—Chapter 21).

(2) On the 24th May, 1974, at Russell Street Police Headquarters, Gregory Francis Owen was assaulted by kicking by Senior Constable Higgins, aided and abetted by Senior Sergeant Dam and Senior Constable Melotte (see the Owen Matter *re* Dam—Chapter 21).

(3) On the 24th May, 1974, at Russell Street Police Headquarters, Gregory Francis Owen was further assaulted by kicking by Senior Constable Higgins aided and abetted by Senior Sergeant Dam (see the Owen Matter *re* Dam—Chapter 21).

(4) Senior Sergeant Dam conspired with Senior Sergeant Kenneth Ernest Brown, Senior Constable Higgins and Senior Constable Melotte to give false evidence before the Board and did so (see the Owen Matter *re* Dam—Chapter 21).

Davies, Sergeant Gomer John

(1) Sergeant Davies and Senior Constable Colin Barry Pavey fabricated evidence against Donald William Cox and committed perjury in relation to that evidence on his trial (see the Cox Matter—Chapter 11).

(2) Sergeant Davies conspired with Senior Constable Pavey to suppress evidence favourable to Cox on his trial and did so (see the Cox Matter—Chapter 11).

(3) Sergeant Davies and Senior Constable Trevor Wallace Skan conspired to commit perjury at the trial of Alan Roy McDougall and did so (see the Cox Matter—Chapter 11).

(4) Sergeant Davies conspired with Inspector Gordon Maxwell Williams and Senior Constable Pavey to commit perjury before the Board and did so (see the Cox Matter—Chapter 11).

(5) Sergeant Davies committed perjury before the Board (see the Cox Matter—Chapter 11).

Delianis, Inspector Paul

(1) On the 12th September, 1974, at Russell Street Police Headquarters, Inspector Delianis harassed and intimidated Erika Stupak (see the Stupak Matter—Chapter 27).

(2) On the 12th September, 1974, Inspector Delianis was guilty of failing to observe or comply with the provisions of the Chief Commissioner's Standing Orders relating to the investigation and obtaining of evidence from suspected persons, viz. Standing Orders 634 (3) and 644 (1) (see the Stupak Matter—Chapter 27).

Dennis, Sergeant Malcolm Frank

Sergeant Dennis conspired with Senior Constable Laurence Francis Halvy, Senior Constable Barry Edward Traynor, Constable Neil Thomas Cuddy and Constable Noel Alan Osborne to give false evidence before the Board and did so (see the Whyte Matter—Chapter 30).

Dixon, Senior Constable Eric William

(1) On the 11th September, 1974, and in company with Sergeant Rex John Topp, Senior Constable Paul William Higgins and Senior Constable Douglas Keith Lewis, Senior Constable Dixon aided and abetted the malicious and unlawful infliction of damage to premises at Ocean Grove occupied by Mr. and Mrs. Ronald Smith and to fixtures, fittings, goods and chattels attached thereto and contained therein (see the Smith Matter—Chapter 26).

Police Officers against whom specific findings made

(2) Senior Constable Dixon conspired with Senior Sergeant Kenneth Ernest Brown, Senior Sergeant Rex John Topp, Senior Constable Paul William Higgins, Senior Constable Douglas Keith Lewis, Senior Constable David Barry Newton and Senior Constable Melville Francis Melotte to give false evidence before the Board and did so (see the Smith Matter—Chapter 26).

Fennessy, Sergeant Brian Francis

(1) Sergeant Fennessy conspired with Inspector Gordon Maxwell Williams, Senior Sergeant Richard Ernest Murphy, Sergeant Neil Graeme O'Loughlin and Senior Constable Philip John Tamblyn to protect a criminal from prosecution and thereby obstructed the course of justice (see the Hamilton Matter—Chapter 16).

(2) Sergeant Fennessy conspired with Inspector Williams, Senior Sergeant Murphy, Sergeant O'Loughlin, Senior Constable Tamblyn and Sergeant Maxwell George Rickman to give false evidence before this Board and did so (see the Hamilton Matter—Chapter 16).

(3) Sergeant Fennessy conspired with Senior Sergeant Leo Adrian Lalor, Senior Sergeant Alfred Gordon Oldfield, Senior Constable Garry John Schipper, Senior Constable Noel Charles Thomas, Senior Constable Peter Thomas Wadeson and Senior Constable Melville Francis Melotte to give false evidence before the Board and did so (see the Sellers Matter —Chapter 25).

Ferguson, Senior Constable Peter Bruce John

(1) On the evening of the 25th April, 1975, at Dandenong, Douglas Martin Olding was harassed and intimidated by Senior Constable Ferguson (see the Olding Matter—Chapter 20).

(2) On the evening of the 25th April, 1975, Douglas Martin Olding was without lawful cause taken to the Dandenong Police Station by Senior Constable Ferguson and unlawfully detained there for some 15-20 minutes (see the Olding Matter—Chapter 20).

(3) On the evening of the 25th April, 1975, at the Dandenong Police Station Douglas Martin Olding was unlawfully assaulted by Senior Constable Ferguson (see the Olding Matter—Chapter 20).

(4) Senior Constable Ferguson and Constable Alan Paul Francis Williams conspired together to give false evidence before the Board and did so (see the Olding Matter—Chapter 20).

(5) By failing to put Olding through the Interview Register and refusing him permission to make a phone call to his mother, Senior Constable Ferguson was in breach of the Chief Commissioner's Standing Orders Nos. 641 and 644 (1) respectively (see the Olding Matter—Chapter 20).

Fowler, Constable Kenneth

Constable Fowler conspired with Senior Sergeant Victor Stanley Wren and Sergeant Graham Andrew Fraser to give false evidence before this Board and did so (see the Keeley Matter *re* Wren—Chapter 18).

Fraser, Sergeant Graham Andrew

Sergeant Fraser conspired with Senior Sergeant Victor Stanley Wren and Constable Kenneth Fowler to give false evidence before this Board and did so (see the Keeley Matter *re* Wren—Chapter 18).

Gangell, Senior Constable John Joseph

(1) On the 1st June, 1974, at the St. Kilda Police Station, Robert William Ebdon was unlawfully assaulted by Senior Constable Gangell (see the Ebdon Matter—Chapter 13).

(2) Senior Constable Gangell and Senior Constable Victor John McKoy conspired to give false evidence before the Board and did so (see the Ebdon Matter—Chapter 13).

Gaudion, Senior Sergeant Bert Atherley

(1) On the 11th April, 1974, Senior Sergeant Gaudion corruptly received the sum of $400 from Gregory Francis Owen (see the Owen Matter *re* Gaudion—Chapter 22).

(2) On the 11th January, 1974, Senior Sergeant Gaudion corruptly received the sum of $500 from David Hinkler Keeley to forego his duty as a Police Officer (see the Keeley Matter *re* Gaudion—Chapter 22).

(3) In the month of October, 1974, Senior Sergeant Gaudion was involved in corrupt negotiations with David Hinkler Keeley with the object of conferring benefits or favours on Keeley in respect of criminal charges then pending against him (see the Keeley Matter *re* Gaudion—Chapter 22).

Halvy, Senior Constable Laurence Francis

(1) On the 23rd August, 1974, in Swan Street, Richmond, Senior Constable Halvy harassed and intimidated Roslyn Joy Whyte (see the Whyte Matter—Chapter 30).

(2) On the 23rd August, 1974, in Swan Street, Richmond, Senior Constable Halvy assaulted, abused, harassed and intimidated Norman Barry Whyte (see the Whyte Matter—Chapter 30).

(3) On the 23rd August, 1974, and without lawful cause or justification, Senior Constable Halvy caused Roslyn Joy Whyte to be taken to the Richmond Police Station and unlawfully detained therein until approximately 12.20 a.m. on the 24th August, 1974 (see the Whyte Matter —Chapter 30).

(4) On the 23rd August, 1974, and without lawful cause or justification, Senior Constable Halvy caused Norman Barry Whyte to be taken to the Richmond Police Station and unlawfully detained therein until approximately 8.30 a.m. on the 24th August, 1974 (see the Whyte Matter —Chapter 30).

(5) Between 11.20 p.m. on the 23rd August, 1974, and 12.20 a.m. on the 24th August, 1974, Senior Constable Halvy repeatedly assaulted, abused, harassed and intimidated Norman Barry Whyte (see the Whyte Matter—Chapter 30).

(6) Between 11.20 p.m. on the 23rd August, 1974, and 12.20 a.m. on the 24th August, 1974, Senior Constable Halvy harassed and intimidated Roslyn Joy Whyte at the Richmond Police Station (see the Whyte Matter —Chapter 30).

(7) Senior Constable Halvy conspired with Sergeant Malcolm Frank Dennis, Senior Constable Barry Edward Traynor, Constable Neil Thomas Cuddy and Constable Noel Alan Osborne to give false evidence before the Board and did so (see the Whyte Matter—Chapter 30).

Harris, Constable Wayne John

(1) On the 6th February, 1975, Constable Harris conspired with Constable Larry Paul Proud to fabricate evidence against one Geraldine Anne Curteis (see the Curteis Matter—Chapter 12).

(2) Constable Harris conspired with Senior Constable Alexander David Adams and Constable Larry Paul Proud to give false evidence before the Board and did so (see the Curteis Matter—Chapter 12).

Hibbert, Sergeant Maxwell Karl

On the 2nd October, 1972, Leonard George Keith Coppin was unlawfully arrested by Senior Sergeant Brian John Ritchie aided and abetted by Sergeant Hibbert (see the Lawless Matter—Chapter 19).

Higgins, Senior Constable Paul William

(1) On the 24th May, 1974, at Russell Street Police Headquarters, Senior Constable Higgins assaulted Gregory Francis Owen—

(*a*) by punching him whilst he was held by Senior Sergeant Leo John Dam;

(*b*) by kicking him.

(See the Owen Matter *re* Dam—Chapter 21.)

(2) Senior Constable Higgins conspired with Senior Sergeant Kenneth Ernest Brown, Senior Sergeant Leo John Dam and Senior Constable Melville Francis Melotte to give false evidence before the Board and did so (see the Owen Matter *re* Dam—Chapter 21).

(3) On the 11th September, 1974, and in company with Senior Sergeant Rex John Topp, Senior Constable Douglas Keith Lewis and Senior Constable Eric William Dixon, Senior Constable Higgins maliciously and unlawfully caused damage to premises at Ocean Grove, occupied by Mr. and Mrs. Ronald Smith and to fixtures and fittings, goods and chattels attached thereto and contained therein (see the Smith Matter— Chapter 26).

(4) Senior Constable Higgins conspired with Senior Sergeant Kenneth Ernest Brown, Senior Sergeant Rex John Topp, Senior Constable Eric William Dixon, Senior Constable Douglas Keith Lewis, Senior Constable David Barry Newton and Senior Constable Melville Francis Melotte to give false evidence before the Board and did so (see the Smith Matter— Chapter 26).

Howard, Senior Constable Barry William

(1) On the 14th May, 1975, Senior Constable Howard wrongfully arrested one Frank Erdmann and without lawful cause or justification imprisoned him at the Carlton Police Station from approximately 11.30 p.m. that evening until approximately 3.30 a.m the following morning (see the Erdmann Matter—Chapter 14).

(2) At Carlton on the 14th May, 1975, Senior Constable Howard harassed and intimidated Frank Erdmann (see the Erdmann Matter—Chapter 14).

Police Officers against whom specific findings made

(3) Senior Constable Howard conspired with Inspector Norman Hamilton Miller and Constable Peter Charles Ure to give false evidence before the Board and did so (see the Erdmann Matter—Chapter 14).

Janetzki, Superintendent Eric Raymond

In the month of August 1972, Superintendent Janetzki conspired with Superintendent Kevin John Carton, Senior Sergeant Peter Noel Thompson and Sergeant Brian Francis Murphy to obstruct the course of justice (see the Power Matter—Chapter 24).

Johnston, Policewoman Carmel Joy

On the 9th and 10th January, 1974, and whilst dealing with Terry Gray, Policewoman Johnston was in breach of Standing Orders 314 (2), 641 and 644 (2). (See the Keeley Matter *re* Wren—Chapter 18).

Lalor, Senior Sergeant Leo Adrian

(1) Senior Sergeant Lalor conspired with Senior Sergeant Alfred Gordon Oldfield, Sergeant Brian Francis Fennessy, Senior Constable Garry John Schipper, Senior Constable Noel Charles Thomas, Senior Constable Melville Francis Melotte and Senior Constable Peter Thomas Wadeson to give false evidence before the Board and did so (see the Sellers Matter —Chapter 25).

(2) Senior Sergeant Lalor committed a breach of Police Regulation No. 95A—sub-sections 17 and 18 (see the Sellers Matter—Chapter 25).

Lewis, Senior Constable Douglas Keith

(1) On the 11th September, 1974, in company with Sergeant Rex John Topp, Senior Constable Paul William Higgins and Senior Constable Eric William Dixon, Senior Constable Lewis maliciously and unlawfully caused damage to premises at Ocean Grove occupied by Mr. and Mrs. Ronald Smith and to fixtures and fittings, goods and chattels attached thereto and contained therein (see the Smith Matter—Chapter 26).

(2) Senior Constable Lewis conspired with Senior Sergeant Kenneth Ernest Brown, Sergeant Rex John Topp, Senior Constable Eric William Dixon, Senior Constable David Barry Newton, Senior Constable Paul William Higgins, and Senior Constable Melville Francis Melotte to give false evidence before the Board and did so (see the Smith Matter—Chapter 26).

Major, Senior Constable Jeffrey Bruce

(1) Senior Constable Major committed perjury at the trial of one Peter Robert Gibb held in the month of December, 1974 (see the Gibb Matter—Chapter 15).

(2) Senior Constable Major gave false evidence before the Board (see the Gibb Matter—Chapter 15).

McKoy, Senior Constable Victor John

(1) On the 1st June, 1974, and whilst in a Police vehicle *en route* from the Station Hotel, Prahran to the St. Kilda Police Station, Senior Constable McKoy assaulted one Robert William Ebdon (see the Ebdon Matter—Chapter 13).

(2) On the same evening and whilst being removed from the Police vehicle at the St. Kilda Police Station, Robert William Ebdon was again assaulted by Senior Constable McKoy (see the Ebdon Matter—Chapter 13).

(3) On the same evening and at the St. Kilda Police Station, Robert William Ebdon was again assaulted by Senior Constable McKoy (see the Ebdon Matter—Chapter 13).

(4) Senior Constable McKoy and Senior Constable John Joseph Gangell conspired to give false evidence before the Board and did so (see the Ebdon Matter—Chapter 13).

Melotte, Senior Constable Melville Francis

(1) On the 24th May, 1974, at Russell Street Police Headquarters, Gregory Francis Owen was assaulted by Senior Constable Paul William Higgins aided and abetted by Senior Constable Melotte (see the Owen Matter *re* Dam—Chapter 21).

(2) Senior Constable Melotte, Senior Sergeant Kenneth Ernest Brown, Senior Sergeant Leo John Dam and Senior Constable Higgins conspired to give false evidence before the Board and did so (see the Owen Matter *re* Dam—Chapter 21).

(3) Senior Constable Melotte conspired with Senior Sergeant Leo Adrian Lalor, Senior Sergeant Alfred Gordon Oldfield, Sergeant Brian Francis Fennessy, Senior Constable Garry John Schipper, Senior Constable Peter Thomas Wadeson and Senior Constable Noel Charles Thomas to give false evidence before the Board and did so (see the Sellers Matter—Chapter 25).

Police Officers against whom specific findings made

(4) Senior Constable Melotte conspired with Senior Sergeant Kenneth Ernest Brown, Sergeant Rex John Topp, Senior Constable Douglas Keith Lewis, Senior Constable Eric William Dixon, Senior Constable David Barry Newton and Senior Constable Paul William Higgins to give false evidence before the Board and did so (see the Smith Matter—Chapter 26).

Miller, Inspector Norman Hamilton

(1) In breach of the Chief Commissioner's Standing Orders (in particular Standing Order 409), Inspector Norman Hamilton Miller failed to properly investigate the complaint of one Frank Erdmann (see the Erdmann Matter—Chapter 14).

(2) Inspector Miller conspired with Senior Constable Barry William Howard and Constable Peter Charles Ure to give false evidence before the Board and did so (see the Erdmann Matter—Chapter 14).

Murphy, Sergeant Brian Francis

In the month of August, 1972, Sergeant Murphy conspired with Superintendent Kevin John Carton, Superintendent Eric Raymond Janetzki and Senior Sergeant Peter Noel Thompson to obstruct the course of justice (see the Power Matter—Chapter 24).

Murphy, Senior Sergeant Richard Ernest

(1) Senior Sergeant Murphy conspired with Inspector Gordon Maxwell Williams, Sergeant Brian Francis Fennessy, Sergeant Neil Graeme O'Loughlin and Senior Constable Philip John Tamblyn to protect a criminal from prosecution and thereby obstructed the course of justice (see the Hamilton Matter—Chapter 16).

(2) Senior Sergeant Murphy and Senior Constable Tamblyn fabricated evidence against one Ronald John Hamilton and committed perjury at his trial (see the Hamilton Matter—Chapter 16).

(3) Senior Sergeant Murphy suppressed evidence vital to Hamilton at his trial (see the Hamilton Matter—Chapter 16).

(4) Senior Sergeant Murphy conspired with Inspector Williams, Sergeant Fennessy, Sergeant O'Loughlin, Sergeant Maxwell George Rickman and Senior Constable Tamblyn to give false evidence before this Board and did so (see the Hamilton Matter—Chapter 16).

Newton, Senior Constable David Barry

(1) On the 12th September, 1974, in Grubb Road, Ocean Grove, Senior Constable Newton assaulted, harassed and intimidated Ronald William Smith (see the Smith Matter—Chapter 26).

(2) On the 12th September, 1974, in Grubb Road, Ocean Grove, Senior Constable Newton harassed and intimidated Trevor Paton (see the Smith Matter—Chapter 26).

(3) Senior Constable Newton conspired with Senior Sergeant Kenneth Ernest Brown, Sergeant Rex John Topp, Senior Constable Melville Francis Melotte, Senior Constable Douglas Keith Lewis, Senior Constable Eric William Dixon and Senior Constable Paul William Higgins to give false evidence before the Board and did so (see the Smith Matter—Chapter 26).

(4) On the 12th September, 1974, at Russell Street Police Headquarters, Senior Constable Newton harassed and intimidated Erika Stupak (see the Stupak Matter—Chapter 27).

(5) On the 12th September, 1974, at Russell Street Police Headquarters, and by virtue of the threats he made to her, Senior Constable Newton technically assaulted Erika Stupak (see the Stupak Matter—Chapter 27).

(6) On the 12th September, 1974, Senior Constable Newton was guilty of failing to observe or comply with the provisions of the Chief Commissioner's Standing Orders relating to the investigation and obtaining of evidence from suspected persons, viz. Standing Orders 634 (3) and 644 (1). (See the Stupak Matter—Chapter 27).

Oldfield, Senior Sergeant Alfred Gordon

Senior Sergeant Oldfield conspired with Senior Sergeant Leo Adrian Lalor, Sergeant Brian Francis Fennessy, Senior Constable Garry John Schipper, Senior Constable Peter Thomas Wadeson, Senior Constable Noel Charles Thomas and Senior Constable Melville Francis Melotte to give false evidence before the Board and did so (see the Sellers Matter—Chapter 25).

Police Officers against whom specific findings made

O'Loughlin, Sergeant Neil Graeme

(1) Sergeant O'Loughlin conspired with Inspector Gordon Maxwell Williams, Senior Sergeant Richard Ernest Murphy, Sergeant Brian Francis Fennessy and Senior Constable Philip John Tamblyn to protect a criminal from prosecution and thereby obstructed the course of justice (see the Hamilton Matter—Chapter 16).

(2) Sergeant O'Loughlin conspired with Inspector Williams, Senior Sergeant Murphy, Sergeant Fennessy, Sergeant Maxwell George Rickman and Senior Constable Tamblyn to give false evidence before the Board and did so (see the Hamilton Matter—Chapter 16).

Osborne, Constable Noel Alan

Constable Osborne conspired with Sergeant Malcolm Frank Dennis Senior Constable Laurence Francis Halvy, Senior Constable Barry Edward Traynor and Constable Neil Thomas Cuddy to give false evidence before the Board and did so (see the Whyte Matter—Chapter 30).

Pavey, Senior Constable Colin Barry

(1) Senior Constable Pavey and Sergeant Gomer John Davies fabricated evidence against Donald William Cox and committed perjury in relation to that evidence on his trial (see the Cox Matter—Chapter 11).

(2) Senior Constable Pavey conspired with Sergeant Davies to suppress evidence favourable to Cox on his trial and did so (see the Cox Matter—Chapter 11).

(3) Senior Constable Pavey conspired with Inspector Maxwell Gordon Williams and Sergeant Davies to commit perjury before the Board and did so (see the Cox Matter—Chapter 11).

Pleitner, Sergeant Alan James

On the 2nd October, 1972, Leonard George Keith Coppin was unlawfully arrested by Senior Sergeant Brian John Ritchie aided and abetted by Sergeant Pleitner (see the Lawless Matter—Chapter 19).

Proud, Constable Larry Paul

(1) On the 6th February, 1975, in Loch Street, St. Kilda and later at the South Melbourne Police Station, Constable Proud harassed and intimidated one Geraldine Anne Curteis (see the Curteis Matter—Chapter 12).

(2) On the 6th February, 1975, Geraldine Anne Curteis was arrested by Constable Proud without lawful cause or justification, taken by him to the South Melbourne Police Station and there unlawfully detained by him for a period of time between one and two hours (see the Curteis Matter—Chapter 12).

(3) On the 6th February, 1975, Geraldine Anne Curteis was falsely charged with using insulting words in a public place by Constable Proud (see the Curteis Matter—Chapter 12).

(4) On the 6th February, 1975, Constable Proud conspired with Constable Wayne John Harris to fabricate evidence against one Geraldine Anne Curteis (see the Curteis Matter—Chapter 12).

(5) Constable Proud, Senior Constable Alexander David Adams and Constable Wayne John Harris conspired to give false evidence before the Board and did so (see the Curteis Matter—Chapter 12).

Rickman, Sergeant Maxwell George

Sergeant Rickman conspired with Inspector Gordon Maxwell Williams, Senior Sergeant Richard Ernest Murphy, Sergeant Brian Francis Fennessy, Sergeant Neil Graeme O'Loughlin and Senior Constable Philip John Tamblyn to give false evidence before the Board and did so (see the Hamilton Matter—Chapter 16).

Ritchie, Senior Sergeant Brian John

On the 2nd October, 1972, Senior Sergeant Ritchie unlawfully arrested Leonard George Keith Coppin aided and abetted by Sergeant Maxwell Karl Hibbert and Sergeant Alan James Pleitner. Thereafter Coppin was unlawfully detained at Russell Street Police Headquarters for some hours (see the Lawless Matter—Chapter 19).

Schipper, Senior Constable Garry John

(1) On the 2nd July, 1974, and contrary to his sworn evidence, Senior Constable Schipper accidentally pushed Stephen Sellers from the window of a flat situated on the third floor of a block of flats at 631 Punt Road, South Yarra (see the Sellers Matter—Chapter 25).

(2) Senior Constable Schipper conspired with Senior Sergeant Leo Adrian Lalor, Senior Sergeant Alfred Gordon Oldfield, Sergeant Brian Francis Fennessy, Senior Constable Peter Thomas Wadeson, Senior Constable Noel Charles Thomas and Senior Constable Melville Francis Melotte to give false evidence before the Board and did so (see the Sellers Matter—Chapter 25).

Skan, Senior Constable Trevor Wallace

(1) Senior Constable Skan and Sergeant Gomer John Davies conspired to commit perjury at the trial of Alan Roy McDougall and did so (see the Cox Matter—Chapter 11).

(2) Senior Constable Skan committed perjury before the Board (see the Cox Matter—Chapter 11).

Strang, Constable Paul John

(1) On the 11th April, 1975, at the Fitzroy Police Station, Constable Strang assaulted Peter John Hewat (see the Hewat Matter—Chapter 17).

(2) Constable Strang conspired with Constable Robert Arthur Clark to give false evidence before the Board and did so (see the Hewat Matter—Chapter 17).

(3) On the 11th April, 1975, and without lawful justification, Constable Strang and Constable Clark removed a rotor button from a vehicle owned by Peter John Hewat (see the Hewat Matter—Chapter 17).

Tamblyn, Senior Constable Philip John

(1) Senior Constable Tamblyn conspired with Inspector Gordon Maxwell Williams, Senior Sergeant Richard Ernest Murphy, Sergeant Brian Francis Fennessy and Sergeant Neil Graeme O'Loughlin to protect a criminal from prosecution and thereby obstructed the course of justice (see the Hamilton Matter—Chapter 16).

(2) Senior Constable Tamblyn and Senior Sergeant Murphy fabricated evidence against one Ronald John Hamilton and committed perjury at his trial (see the Hamilton Matter—Chapter 16).

(3) Senior Constable Tamblyn conspired with Inspector Williams, Senior Sergeant Murphy, Sergeant Fennessy, Sergeant O'Loughlin and Sergeant Maxwell George Rickman to give false evidence before the Board and did so (see the Hamilton Matter—Chapter 16).

Thomas, Senior Constable Noel Charles

Senior Constable Thomas conspired with Senior Sergeant Leo Adrian Lalor, Senior Sergeant Alfred Gordon Oldfield, Sergeant Brian Francis Fennessy, Senior Constable Garry John Schipper, Senior Constable Peter Thomas Wadeson and Senior Constable Melville Francis Melotte to give false evidence before the Board and did so (see the Sellers Matter—Chapter 25).

Thompson, Senior Sergeant Peter Noel

In the month of August, 1972, Senior Sergeant Thompson conspired with Superintendent Kevin John Carton, Superintendent Eric Raymond Janetzki and Sergeant Brian Francis Murphy to obstruct the course of justice (see the Power Matter—Chapter 24).

Topp, Sergeant Rex John

(1) On the 11th September, 1974, in company with Senior Constable Paul William Higgins, Senior Constable Eric William Dixon and Senior Constable Douglas Keith Lewis, Sergeant Topp maliciously and unlawfully caused damage to premises at Ocean Grove occupied by Mr. and Mrs. Ronald Smith and to fixtures, fittings, goods and chattels attached thereto and contained therein (see the Smith Matter—Chapter 26).

(2) On the 11th September, 1974, at Ocean Grove, Sergeant Topp harassed and intimidated Mr. and Mrs. Ronald Smith (see the Smith Matter—Chapter 26).

(3) On the 11th September, 1974, Sergeant Topp harassed Mr. and Mrs. Ronald Smith by unlawfully closing down the pizza parlour business carried on by them at Ocean Grove (see the Smith Matter—Chapter 26).

(4) On the 11th September, 1974, Sergeant Topp breached the authority conferred on him by a warrant issued pursuant to the provisions of the Firearms Act—

(*a*) by ransacking the desk of Mrs. Smith and taking copies of her private and/or business memoranda;

(*b*) by directing that a transistor radio, the property of the Smiths, be seized.

(See the Smith Matter—Chapter 26.)

(5) On the 12th September, 1974, in Grubb Road, Ocean Grove, Sergeant Topp assaulted, harassed and intimidated Trevor Paton (see the Smith Matter—Chapter 26).

(6) Sergeant Topp conspired with Senior Sergeant Kenneth Ernest Brown, Senior Constable David Barry Newton, Senior Constable Melville Francis Melotte, Senior Constable Douglas Keith Lewis, Senior Constable Eric William Dixon and Senior Constable Paul William Higgins to give false evidence before the Board and did so (see the Smith Matter—Chapter 26).

Police Officers against whom specific findings made

Traynor, Senior Constable Barry Edward

(1) On the 23rd August, 1974, in Swan Street, Richmond, Senior Constable Traynor aided and abetted the assault on and the abuse, harassment and intimidation of Norman Barry Whyte (see the Whyte Matter—Chapter 30).

(2) Between 11.20 p.m. on the 23rd August, 1974, and 12.20 a.m. on the 24th August, 1974, Senior Constable Traynor repeatedly assaulted, abused, harassed and intimidated Norman Barry Whyte at the Richmond Police Station (see the Whyte Matter—Chapter 30).

(3) Senior Constable Traynor conspired with Sergeant Malcolm Frank Dennis, Senior Constable Laurence Francis Halvy, Constable Neil Thomas Cuddy and Constable Noel Alan Osborne to give false evidence before the Board and did so (see the Whyte Matter—Chapter 30).

Ure, Constable Peter Charles

(1) At Carlton on the 14th May, 1975, Constable Ure harassed and intimidated one Frank Erdmann (see the Erdmann Matter—Chapter 14).

(2) Constable Ure conspired with Inspector Norman Hamilton Miller and Senior Constable Barry William Howard to give false evidence before the Board and did so (see the Erdmann Matter—Chapter 14).

Wadeson, Senior Constable Peter Thomas

Senior Constable Wadeson conspired with Senior Sergeant Leo Adrian Lalor, Senior Sergeant Alfred Gordon Oldfield, Senior Constable Garry John Schipper, Sergeant Brian Francis Fennessy, Senior Constable Noel Charles Thomas and Senior Constable Melville Francis Melotte to give false evidence before this Board of Inquiry and did so (see the Sellers Matter—Chapter 25).

Warnock, Chief Inspector Frederick Charles

Chief Inspector Warnock committed flagrant breaches of the Chief Commissioner's Standing Orders, in particular Standing Orders 409 and 410, in that he made no proper investigation of the complaints made by Norman Barry Whyte and Roslyn Joy Whyte relating to the conduct of Senior Constable Laurence Francis Halvy, Senior Constable Barry Edward Traynor and Constable Neil Thomas Cuddy (see the Whyte Matter—Chapter 30).

Williams, Constable Alan Paul Francis

(1) On the evening of the 25th April, 1975, at Dandenong, Douglas Martin Olding was harassed and intimidated by Constable Williams (see the Olding Matter—Chapter 20).

(2) Constable Williams conspired with Senior Constable Peter Bruce John Ferguson to give false evidence before the Board and did so (see the Olding Matter—Chapter 20).

Williams, Inspector Gordon Maxwell

(1) Inspector Williams conspired with Sergeant Gomer John Davies and Senior Constable Colin Barry Pavey to commit perjury before the Board and did so (see the Cox Matter—Chapter 11).

(2) Inspector Williams conspired with Senior Sergeant Richard Ernest Murphy, Sergeant Brian Francis Fennessy, Sergeant Neil Graeme O'Loughlin and Senior Constable Philip John Tamblyn to protect a criminal from prosecution and thereby obstructed the course of justice (see the Hamilton Matter—Chapter 16).

(3) Inspector Williams conspired with Senior Sergeant Murphy, Sergeant Fennessy, Sergeant O'Loughlin, Sergeant Maxwell George Rickman and Senior Constable Tamblyn to give false evidence before the Board and did so (see the Hamilton Matter—Chapter 16).

Wren, Senior Sergeant Victor Stanley

(1) On the 9th January, 1974, on the Mulgrave Freeway, Mount Waverley, Senior Sergeant Wren assaulted David Hinkler Keeley (see the Keeley Matter *re* Wren—Chapter 18).

(2) On the 9th January, 1974, at the Mount Waverley Police Station, Senior Sergeant Wren assaulted David Hinkler Keeley (see the Keeley Matter *re* Wren—Chapter 18).

(3) Senior Sergeant Wren, Sergeant Graham Andrew Fraser and Constable Kenneth Fowler conspired to give false evidence before the Board and did so (see the Keeley Matter *re* Wren—Chapter 18).

(4) On the 9th and 10th January, 1974, and whilst dealing with Terry Gray Senior Sergeant Wren was in breach of Standing Orders 314 (2), 641 and 644 (2). (See the Keeley Matter *re* Wren—Chapter 18).

CHAPTER 8

RECOMMENDATIONS OF THE BOARD BASED UPON ITS FINDINGS

Introduction

As a preface to the recommendations the Board makes as a consequence of its findings in the twenty-one matters investigated by it, it is perhaps appropriate to call to mind the views expressed by Colonel Sir Eric St. Johnston, C.B.E., Q.P.M. in his Report on the Victoria Police Force, as to the mutual responsibilities towards each other of the Police and the community.

In 1971 Sir Eric was invited by the then Government of this State to make an inspection and investigation into the Victoria Police Force. In paragraphs 18 and 19 of Chapter 1 of his Report he had this to say:—

> " 18. The community has the right to demand a Police Force which is comprised of men and women—
>
> (*a*) Who are of complete integrity and who conduct themselves as good citizens when off as well as on duty.
>
> (*b*) Who are at all times courteous in their dealings with the public. Courtesy and firmness are not incompatible.
>
> (*c*) Who are enthusiastic and hardworking, and who devote the whole of their energies to Police work.
>
> (*d*) Who are properly trained in the techniques of their job.
>
> (*e*) Who are aware that their work is a vocation in which service to the community gives satisfaction in itself.
>
> 19. In return, each member of the Police Service has the right to expect from the community—
>
> (*a*) Adequate remuneration so that he and his family can live comfortably, in that section of society to which they belong, without getting into debt and without having to take other work.
>
> (*b*) Adequate training facilities.
>
> (*c*) Adequate buildings and equipment.
>
> (*d*) Well maintained houses in which to live, when required to occupy Police premises.
>
> (*e*) Sensible laws to administer.
>
> (*f*) The support of the courts, and judicial procedures that do not hinder the course of justice.
>
> (*g*) Full support from those in authority from the Press, Radio and T.V. and from all honest members of the community in those difficult and often dangerous tasks that it is the duty of the Police to carry out."

There can be no quarrel with those statements of the learned author either pragmatically or philosophically.

By reason of its Terms of Reference, the Board is unable to concern itself with the matters mentioned in paragraph 19 of Chapter 1 of that Report, no matter how much they commend themselves to the Board, and doubtless to all persons having an interest in the existence of a well adjusted, well treated, and efficient Police Force in this State. It may well be that legitimate grievances exist because the reality of Police life in these regards is less than the basic requirements expressed by Sir Eric as being their due. Indeed, on a number of occasions during the course of the Board's lengthy inquiry, various witnesses called before it have adverted to short-comings in that respect.

The Board sat for a period of some fifteen months and heard a vast body of evidence. So far as Police were concerned, it heard evidence from approximately one hundred members of the Force, ranging in rank from Constable to Assistant Commissioner, and in the field of duty, from the most junior Constable to the specialized members of the elite Squads of the Force.

That evidence related to incidents or allegations ranging in gravity from mere loutishness, through to intimidation and violence, and culminating in what might properly be described as sophisticated misconduct concerning corruption, conspiracy, the concoction of false evidence and like matters.

From the evidence called before the Board there is good cause for concluding that, so far as the principles enunciated by Sir Eric St. Johnston in paragraph 18 of Chapter 1 of his Report is concerned, the situation leaves a good deal to be desired. Regrettably, one is left with the

Recommendations of the Board based upon its Findings

uncomfortable conclusion that all is not well with the Police vis-a-vis the public, and that the public expectation of the Police Force comprising men of complete integrity, conducting themselves at all times courteously, and having a competent grasp of the techniques of their job (including an adequate working knowledge of the Chief Commissioner's Standing Orders), has not been fully achieved.

The matters discussed in Chapters 11 to 30 inclusive of this Report (and appearing in précis form in Chapter 6) are illustrative of existing evils and abuses in respect of which it is imperative a solution be found so far as that is humanly possible, and so far as it can be achieved by mere legislation.

As the then Solicitor-General (now The Honorable Mr. Justice Murray) noted in his Report of the 12th October, 1965, " At the outset I may observe that the problems involved are world wide and many hundreds of years old and consequently susceptible of no easy solution ". The force of that observation has not been lessened by the experience of intervening years. In this connection, see generally the Australian Law Reform Commission Report No. 1 published in the month of August, 1975.

The question arises, therefore, whether Police malpractice is a limited phenomenon or whether the cases dealt with by the Board constitute merely the " tip of the iceberg ".

One must, I think, be extremely cautious in generalizing in terms of widespread Police misbehaviour from the particular matters determined by the Board.

Looking at these matters in terms of the number of Police involved, it is clear that they constitute a small percentage of the total of Police personnel, and it may be tempting at first blush to conclude that therefore the problem of existing malpractice is similarly small.

However, it is to be borne in mind that the cases presented before the Board were themselves a selection culled from a much larger volume of complaints.

Many complaints not dealt with were excluded, not because they did not on their face disclose serious misconduct by Police, but because of other factors. For example, because the complainant lacked evidence corroborative of his complaint, and would in those circumstances, in the view of Counsel Assisting, have been unable to satisfy the burden of proof laid down by the Board as being appropriate before an adverse finding could be made against a member of the Force; other matters were excluded because they arose before the 1st January, 1972, or were received after the advertised cut-off point for the reception of complaints, namely the 13th June, 1975; other complainants had invoked civil remedies in respect of their complaints, and I therefore acceded to a submission made on behalf of the Police Association that the Board should not hear those matters; in some cases, because of logistical difficulties in obtaining relevant witnesses, the Board was unable to proceed; other complainants, whether from fear, timidity or a reluctance to become involved in a public inquiry, withdrew their complaints, whilst some Welfare Organisations asserted to Counsel Assisting, particularly in relation to juveniles, that potential complainants had been intimidated in order to stifle a hearing of those complaints.

The matters in fact dealt with by the Board covered a wide spectrum of malpractice, as I have earlier noted in this Report, and I repeat again, involved a wide spectrum of the Force including plainclothed and uniformed Police, and members of the " elite " Squads.

I consider it would be wrong, however, to conclude therefore that it follows from the foregoing that X per cent or Y per cent of the Force is actively engaged in malpractice of one kind or another. In my opinion there is no reason to assume other than that the preponderance of the Force are honourable and decent men. Equally it would, I think, be a little unreal to believe that the whole range of misconduct, and the perpetrators of it have been exposed during the course of this inquiry.

It follows, therefore, that whilst it is virtually impossible on the material placed before the Board to attach percentage figures to Police involved in malpractice, evils have been uncovered which demonstrably require remedy. Indeed some of the abuses exposed in relation to one particular " elite " Squad, namely the Armed Robbery Squad, (or more accurately the members of that Squad at the relevant time), are of themselves so grave as to warrant the most prompt institution of safeguarding reforms.

In considering recommendations, I have endeavoured to contemplate the matter in wide perspective, bearing in mind human nature and behaviour, and the experience and lessons to be derived from the Reports of Commissions and like tribunals in the United Kingdom, the United States

of America, Canada, and those of the Australian Law Reform Commission. It is to be borne in mind that, unlike many Commissions and like tribunals which have given consideration to the matters which have concerned me, the Board over the period of fifteen months during which it conducted its public inquiry, had practical experience of the various problems which arise between the Police on the one hand, and the public on the other. The 240 witnesses called to give evidence before the Board, coupled with the vast body of documentary material tendered to it, have given one a very clear picture of those problems, a much clearer picture, one suspects, than that derived from a consideration of matters on a theoretical basis only.

Recommendations of the Board based upon its Findings

For myself, and bearing in mind the matters previously adverted to in this Report, I would respectfully endorse and adopt the language of the then Solicitor-General appearing at page 5 of his Report of the 12th October, 1965, viz.—

> " The evidence which I have received has led me to the conclusion that the evils which I have referred to take place more often than on occasional or isolated instances ".

I turn now to deal with the recommendations I consider the Board is warranted in making, based upon its findings in the various matters it has investigated.

Let me stress at the outset that in making the following recommendations I am mindful of the need to maintain " a proper balance between protection for individual rights and liberties on the one hand, and the community's need for practical and effective law enforcement on the other." (See the Terms of Reference of the Australian Law Reform Commission dated the 16th May, 1975.)

For convenience I propose to list the matters to be covered seriatim, then deal with each matter individually. In doing so, I propose to deal first with the relationship of the Police vis-a-vis the public outside the Police Station, then move to an examination of that relationship inside the Police Station.

(A) The power of the Police to require a person to furnish them with his name and address.

(B) The power of the Police to direct a person to leave a particular place and proceed to another place, that other place not being a Police Station.

(C) The power of the Police to require a person to accompany them to a Police Station, that person not being a suspect in relation to a particular offence and not being under arrest.

(D) The power of the Police to require a person to accompany them to a Police Station, that person being a suspect in relation to a particular offence but not under arrest.

(E) The power (if any) of the Police to make " an exploratory " arrest or an arrest " on spec ".

(F) The duty of a Police Officer at the time of an arrest.

(G) The duty of the Police towards persons who are in custody or under restraint of one kind or another prior to interrogation.

(H) The interrogation of persons under arrest or other restraint.

(I) The conduct of Identification Parades.

(J) Powers of the Police to photograph and fingerprint persons under arrest or under restraint.

(K) Police practice in relation to the Interview Register.

(L) The investigation of complaints against Police.

(M) Powers of the Police concerning search and seizure.

(N) Standing Orders.

(O) Procedure in relation to persons of otherwise good character charged with street offences.

(P) A Firearms Register.

(Q) The duty of the Police to hand to the Crown copies of all statements obtained by them from witnesses to a particular offence.

(A) The Power of the Police to Require a Person to Furnish them with His Name and Address

During the course of the Board's inquiry, a number of matters were investigated in which it was found that a particular Police Officer had demanded the name and address of a citizen in circumstances where there was no power conferred on that Officer to do so. Three matters which readily come to mind were the Curteis, Erdmann and Olding Matters.

Recommendations of the Board based upon its Findings

In the Curteis Matter (Chapter 12), Geraldine Anne Curteis was lawfully in Loch Street, St. Kilda with two friends on the evening of the 6th February, 1975, when Constable Larry Paul Proud demanded her name and address from her. As the Board found as a fact, Miss Curteis had committed no offence of any nature whatsoever that evening, and accordingly Constable Proud had no power to require her to provide him with her name and address.

In the Erdmann Matter (Chapter 14), Frank Erdmann was intercepted by Constable Peter Charles Ure as he was leaving a toilet block in Royal Parade, Parkville on the evening of the 14th March, 1975. In this instance Constable Ure again demanded his name and address. Constable Ure had no lawful justification for such a demand.

By far the worst instance of this type of Police behaviour occurred in the Olding Matter (Chapter 20).

Douglas Martin Olding, a 19 year old youth with no criminal background whatsoever, was sitting in a pool room at Dandenong on the evening of the 25th April, 1975, chatting to a friend, when he was approached by Senior Constable Peter Bruce John Ferguson, who demanded to know his name and address (i.e. if one accepts the Police account of the matter in preference to the account Olding gave).

When Olding refused to give his name and address (again, if one accepts the Police account of events that evening), he was unceremoniously removed from the pool room and taken to the Dandenong Police Station.

Having there been assaulted by Senior Constable Ferguson, some 15–20 minutes later he was released.

The submission made by Counsel Assisting so far as this aspect was concerned, was that the Standing Orders should be amended to spell out clearly that no right exists in a Police Officer to demand the name and address of a citizen except where the Officer is clad with such power by statutory bestowal. Counsel Assisting expressly rejected the recommendation appearing at page 34 of Report No. 2 of the Australian Law Reform Commission and the provisions of Section 16 of the draft legislation contained in that report. The submission Counsel Assisting made was that the proposed legislation was too wide in its terminology, and opened up possibilities for officiousness and harassment of the individual (page 11,039).

Counsel appearing for the Police Association contended, on the other hand, that Police should have the power to require a person to provide his name and address in the circumstances outlined in Section 16 of that draft legislation, viz. where the Police Officer believes on reasonable grounds that a person whose name and address is unknown to the Police Officer, may be able to assist him in his inquiries in connection with an offence that has been, may have been, or may be, committed.

He further contended that if Police did have a statutory power in appropriate circumstances to obtain names and addresses under penalty, that would invariably lead to:—

(*a*) less arrests in that it would facilitate proceedings by way of summons;

(*b*) less inconvenience to witnesses to a possible offence because having promptly given their names and addresses, they would be entitled to go about their lawful occasions and in the normal course of events make a statement at a later and mutually convenient time (page 11,694).

Having observed something of the friction which occurs between the Police vis-a-vis the member of the public when an unjustified and unlawful demand is made for that citizen's name and address (and I again instance such matters as the Curteis Matter, the Erdmann Matter and the Olding Matter), I consider it would be unacceptable, (because unwise), that Police be given a general power to demand the name and address of a member of the public "under penalty".

The present position is that a Police Officer may request the name and address of any person he considers a witness to a particular matter. That position has obtained for a long time and it was not suggested that the great majority of citizens failed in their civic duty by refusing that co-operation. But to threaten such a person with punitive consequences in the event he declines to give his name and address can only, in my view, lead to further friction between Police and members of the public, can only lead to a lack of co-operation where co-operation is essential, and may well lead to harassment of the individual.

Recommendation

The recommendation I make based upon the Board's findings, is that the Standing Orders be amended to make it clear that no right exists in a Police Officer to demand the name and address of a citizen except where that Officer is clad with such power by statutory bestowal.

Recommendations of the Board based upon its Findings

(B) THE POWER OF THE POLICE TO DIRECT A PERSON TO LEAVE A PARTICULAR PLACE AND PROCEED TO ANOTHER PLACE, THAT OTHER PLACE NOT BEING A POLICE STATION

A clear example of this type of Police behaviour occurred in the Olding Matter (Chapter 20).

Douglas Martin Olding was in no way misbehaving when the Police entered the pool room at Dandenong on the 25th April, 1975. There was no power in the Police to direct him to leave the pool room and "go home". Yet that is precisely what the Board finds as a fact occurred that evening. As a consequence of that unlawful direction, a confrontation occurred between Olding and the Police involved, resulting in Olding being harassed, intimidated and finally assaulted.

Recommendation

I entirely agree with the submission made by Senior Counsel Assisting the Board, viz. the Standing Orders should be amended to make it quite clear that short of the bestowal by statute upon a Police Officer of that power, there is no power in a Police Officer to require a citizen to go to or from any place, unless there be clear evidence of the commission of an offence by that citizen (page 11,040).

(C) THE POWER OF THE POLICE TO REQUIRE A PERSON TO ACCOMPANY THEM TO A POLICE STATION, THAT PERSON NOT BEING A SUSPECT IN RELATION TO A PARTICULAR OFFENCE AND NOT BEING UNDER ARREST.

There is no power in the Police to require a person to accompany them to a Police Station unless that person is under arrest. It was clear from evidence led before the Board that, utilizing the element of bluff as to the extent of their powers, the Police were able to induce members of the public to accompany Police to a Police Station for the purpose of being interviewed. The most noteworthy instances were those involving Carol Margaret Coppin (the Lawless Matter—Chapter 19), Douglas Martin Olding (Chapter 20) and Erika Stupak (Chapter 27).

As Sir Reginald Sholl said in the course of his judgment in *R. v Governor of Metropolitan Gaol: ex parte* Molinari 1962 V.R. 156:

> "Unless a citizen is actually arrested on a stated charge, he is not obliged to go with Police to a Police Station, and if he is questioned in those circumstances he is entitled first to be warned, and may say nothing if he likes. The public generally does not know this, and many people are taken to Police Stations or head-quarters and questioned without any arrest or charge having first been made."

I deal first with Erika Stupak.

When requested by the Police to accompany them to Russell Street to "sort the matter out", she agreed. As she swore before the Board, although she agreed to go, she considered she had no choice. Perhaps her evidence at page 3904 of the transcript adequately sums up the situation.

Q. Did you understand you had no option about going to Russell Street?

A. Well I thought I could refuse to go and then maybe I would be forced to go and I thought I had nothing to hide on me and the sooner we got it cleared up the better.

Q. You were never told you were under arrest?

A. No.

Q. Were you ever told you need not go if you didn't want to?

A. No.

When one considers the number (and physical size) of the Police who confronted Mrs. Stupak that afternoon, it does not require a very vivid imagination to understand how it was she formed the impression that if she refused to go to Russell Street she might be forced to go.

Carol Margaret Coppin was a person without any criminal record, and could fairly be described as being of simple, perhaps even subnormal, mentality.

She clearly did not wish to accompany the Police to Russell Street on the afternoon in question, unless her husband was present.

Recommendations of the Board based upon its Findings

The Police bluffed her into going with them, by telling her they would pick her husband up from the office of his Parole Officer on the way. The Police made no attempt to do so.

Douglas Martin Olding was not bluffed in the way Carol Margaret Coppin was; nor was he overawed by the Police to such a degree as to consent to accompany them, as was Erika Stupak. He was simply taken by the Police to the Dandenong Police Station.

Counsel appearing for the Police Association and the Chief Commissioner of Police (to whom I shall hereafter refer as Counsel appearing for the Police Association), submitted that citizenship involves civil duties as well as civil rights (page 11,678). I doubt if anyone would disagree with that broad proposition.

He further contended that there has never been any general privilege in the citizen to withhold information or assistance from the Police with respect to the incrimination of persons other than himself. Such exceptions as there are, are narrow and well defined; for example, the Solicitor and client relationship. But, as he correctly pointed out, even here there is no privilege when criminality taints the relationship. More importantly, he pointed out that the law has always recognised the duties of a citizen to assist the Police in crime prevention. Referring to the Judges' Rules and Administrative Directions to the Police, he drew attention to the fact that at page 4 of the Home Office Publication issued in London in January, 1964 it was there stated that those rules did not affect the principle " that citizens have a duty to help a Police Officer to discover and apprehend offenders ".

Finally he contended:

> " The duty of the citizen is also reflected in common law offences such as misprision of treason and felony and we submit, although naturally in a bona fide case, a police officer would delay an interview with a witness on the ground of convenience or for some other good and sufficient reason, it is contrary to the public interest that witnesses be told they are not obliged to go to a Police Station. Many witnesses are friends or relatives of the alleged offender or they may be people who although independent of the offender may be subordinates either at his hands or at the hands of accomplices if there are any. In this area it is often vital that a statement be obtained quickly and positively from witnesses and such statements may be relevant either as proof in the Crown Case or by way of exposing untruthful evidence which is later given by such witnesses ". (Page 11,678.)

As Counsel Assisting the Board put it, Mrs. Coppin, Olding and Mrs. Stupak would no doubt come under the general heading of the so-called voluntary attendance at a Police Station. In that connection one cannot but agree with the finding of the Law Reform Commission appearing at page 28 of its second Report, viz. " The concept of voluntary co-operation would appear to be very much stretched in Australian Police practice ". It was certainly very much stretched in the case of Mrs. Coppin and Olding, if not in the case of Mrs. Stupak.

How then does one balance the rights of the citizen on the one hand, and the need for ensuring that the Police may adequately investigate crime on the other?

In my opinion, and in the case of persons who are or may be merely witnesses to an incident and/or an offence, it is perfectly proper for a Police Officer to ask that person to accompany him to a Police Station with a view to assisting the Police in their investigations.

If the person is quite happy to accompany the Police Officer to the particular Police Station, as most responsible members of the community are in such circumstances, well and good. If, however, he is reluctant to do so, as in the case of Mrs. Stupak; or clearly does not wish to do so, as in the case of Mrs. Coppin and Olding, no pressure is to be brought to bear on him to comply with the wishes of the Police Officers involved nor is he to be " bluffed " into attending at the particular Station.

If authoritative support for that conclusion is required, I do no more than quote the following passage from the judgment of Lord Parker in *Rice v. Connolly* 1966 2 Q.B.D. 414 at page 419: " It seems to me quite clear that though every citizen has a moral duty or, if you like, a social duty to assist the Police, there is no legal duty to that effect, and indeed the whole basis of the common law is the right of the individual to refuse to answer questions put to him by persons in authority, *and to refuse to accompany those in authority to any particular place; short, of course, of arrest* ".

It should be made clear to Police Officers, therefore, that although they may invite a person they believe to be, or who may be, able to assist their investigation into a particular matter, to accompany them to a Police

Station, short of arrest, they have no power to compel that person to accompany them, and they must not resort to bluff or trickery with a view to achieving that end.

Recommendations of the Board based upon its Findings

The practical problem which arises in relation to this aspect concerns the enforcement of that direction and the protection of the rights of such a person.

I consider one must draw a distinction between the various categories of witnesses the Police may be desirous of interviewing at a Police Station. Those persons appear to fall into one of three categories. First, the person who is a witness to an incident and who clearly is in no way implicated in it, for example, the witness to a traffic accident. Secondly, there is the person who is a witness to an incident and on the face of it is in no way implicated, but as subsequent events demonstrate, is implicated. One instances the witness to an armed robbery who accepts the Police invitation to accompany them to a Police Station, and who, when interviewed, raises the suspicion in the mind of the interviewing officer that the person he is interviewing may well have been " the look-out man " or the driver of the " get-away " car.

Finally, there is the person who is not a witness to anything, does not fall into the category of a suspect in respect of a particular offence, but is a person whom the Police believe may be involved in illegal activities, or who may be able to provide information about such activities and whom they therefore wish to question at a Police Station. A perfect instance of a person falling into this category was Erika Stupak. Indeed, Carol Coppin probably fell into the same category.

Insofar as the first class of persons is concerned, viz. the witness " simpliciter ", one can do no more than reiterate that although he may be invited to accompany Police to a Police Station, Police have no power to compel his attendance, nor resort to bluff or trickery with a view to achieving that end, and in my view the Standing Orders should be amended to specifically spell this out.

So far as the person falling into the second category is concerned, it is my opinion that at the time a suspicion crystallises in the mind of the interviewing Officer that such person may well be implicated in the particular offence (being an offence punishable by imprisonment), that person must be cautioned, and informed of his rights.

A person falling into the third category is in reality in the same situation as the suspect who is asked by the Police to accompany them to a Police Station for questioning in relation to a particular offence. In my opinion, that person should be told in clear language why it is that he is being asked to accompany Police to a Police Station and the nature of the matter or matters concerning which the Police wish to question him; be informed that he does not have to accompany Police to a Police Station unless he wishes to do so; be warned that he is not obliged to say anything unless he wishes to do so, but that what he says may be put into writing and given in evidence; and finally be required to sign an acknowledgement that he has been advised he does not have to accompany Police to a Police Station and that he does not have to answer any questions relating to the matter.

Failure to produce such an acknowledgement would be prima facie evidence that the advice was never given and would be a prima facie ground for a Court to refuse to admit the evidence of any admission or other damaging evidence that may have been obtained during such interview, because it would again show that the person's participation in the interview was not voluntary.

I suggest a form of acknowledgement to the following effect would be appropriate—

I, A. B. of hereby acknowledge that I have been informed by Constable X. as follows:

(i) That Police wish to question me in relation to (here set out brief description of offence);

(ii) That Police wish me to accompany them to the Y. Police Station;

(iii) That I have been informed that I do not have to accompany Police to the Y. Police Station unless I wish to do so;

(iv) That I have been informed I do not have to answer any questions in relation to the matter unless I wish to do so.

Signed at o'clock on the day of 197 .

Signed A. B.

Signed Constable X.

Recommendations of the Board based upon its Findings

(1) Police Officers be directed by creation of a new Standing Order that although they may invite a person they believe to be, or who may be, able to assist their investigation into a particular matter, to accompany them to a Police Station, short of arrest they have no power to compel that person to accompany them, and they must not resort to bluff or trickery with a view to achieving that end;

(2) That appropriate legislation be enacted to provide that where a Police Officer is interrogating a person at a Police Station, that person having consented to accompany the Police Officer to that Police Station at a time when the Police Officer had no grounds for suspecting that person had committed an offence punishable by imprisonment, and during the course of the interrogation the Police Officer obtains evidence from any source which affords him reasonable grounds for suspecting that person has committed such an offence:

(i) that person shall be warned that he is not obliged to say anything further unless he wishes to do so but that what he says may be put into writing and given in evidence;

(ii) that person shall be immediately informed of his right to communicate with a friend and/or lawyer and given the opportunity to do so if he wishes to;

(3) That appropriate legislation be enacted to provide that where a Police Officer believes that a person may be involved in illegal activities, or may be able to provide information about such activities and wishes that person to accompany him to a Police Station for the purpose of interrogation—

(i) that person shall be told in clear language why it is that he is being asked to accompany Police to a Police Station and the matter concerning which the Police wish to question him;

(ii) that person shall be told that he does not have to accompany Police to a Police Station;

(iii) that person shall be warned that he is not obliged to say anything unless he wishes to do so but that what he says may be put into writing and given in evidence;

(iv) that person shall be required to sign an acknowledgement in a form similar to the form I have suggested to the effect that he has been advised that he does not have to accompany Police to a Police Station and that he has been advised that he does not have to answer any questions relating to the matter;

(v) that failure to produce such acknowledgement shall be prima facie evidence that the advice was never given and shall be a prima facie ground for a Court to refuse to admit the evidence of any admission or other damaging evidence that may have been obtained during such interview.

(D) The Power of the Police to Require a Person to Accompany them to a Police Station, that Person being a Suspect in Relation to a Particular Offence But not Under Arrest

Police have no authority to require a suspect to accompany them to a Police Station. Short of arrest, they may only ask a suspect to do so.

Again it has been the experience of the Board that suspects have been forcibly taken to a Police Station—in most instances to Police Headquarters at Russell Street—without being told the reason for their detention in that fashion.

Two cases which readily come to mind are those of Ann Mawson (nee Gibb), and James Renata (alias Tehei) in the Gibb Matter (Chapter 15).

Although Counsel for the Police Association quite properly conceded that in reality both Mawson and Renata were under arrest when they were taken from the scene of the shooting in Princes Street, St. Kilda on the evening of the 11th January, 1974, I believe I am correct in saying that not one of the Police Officers called to give evidence in the matter agreed that that was the situation. (See the evidence of Inspector Raymond Edward Tobin at page 4858; Senior Sergeant Robert John Pittaway at page 5529; Senior Constable Michael Edmund Williams at page 4920 *et seq.*; Senior Constable Jeffrey Bruce Major at page 4903, and Senior Constable Russell Francis Cook at page 5515 and page 5520).

If one considered the matter in the light of that evidence, it was clear therefore, that here was a case in which two suspects were taken to Russell Street without being arrested, and without being told why they were under suspicion and why they were dealt with in that fashion.

I suppose it could be argued that having regard to the circumstances surrounding the events of that evening, Mawson and Renata knew quite well why they were being taken to Russell Street, viz. by reason of their involvement with Gibb and McDougall; and that had they protested, they would have simply been placed under arrest.

To my mind, that hardly seems to be the point.

Mawson and Renata were forcibly taken to Russell Street because they were suspects. The fact is that no charges were ever laid against them, and in due course (and at the convenience of the Police Officers involved) they were released. Is that an appropriate method of dealing with suspects?

Counsel appearing for the Police Association submitted that in such circumstances the suspect should be told clearly, not necessarily in formal language, what the suspicions of the Police are, and why it is that he is being asked to accompany them to the Police Station (page 11,676).

In my opinion it would be very difficult to contend that that proposition lacked merit.

What Mr. Phillips next contended was:

> " We would submit that if Police Officers in these circumstances use language calculated to make it clear to the suspect that it is a request rather than a demand that is being made, in the absence of any express objection, it is undesirable in the public interest and, in many cases, in the individual's interest, that he should be told that he does not have to accompany the Police to the Police Station if he does not wish to do so." (Page 11,676).

The submission made by Counsel Assisting the Board was to the following effect:

> " A Police Officer should not question a person whom he thinks might have committed a serious crime, being one punishable by imprisonment, nor seek to have that person go to a Police Station or any other place without previously advising him of his right to refuse to answer questions or to go to any place for the purpose of being questioned. A signed acknowledgement on a prescribed form should be prima facie evidence that that advice was tendered to the suspect at the time, and at the date shown on the form. Failure to produce such signed acknowledgement should be prima facie evidence that the advice was never given and would be a prima facie ground for the Court refusing to admit the evidence of any admission or other damaging evidence that may have been obtained during such interview because it would show that the accused's participation in the interview was not voluntary.
>
> We pause at this point to say that in the context of a like recommendation by the Kirby Committee, it was observed parenthetically that criticism could be aimed at such a proposal on the grounds that it added to the volume of paper work which forms the day-to-day part of the Police Officer's duties. The retort made by the Committee was that whilst conceding there would be some validity in such a criticism, nonetheless on a question of balance the additional paper work involved was not too high a price to pay for the preservation of the liberty of the citizen.
>
> In our submission the foregoing proposal should apply to all persons, save those who are demonstrably mere witnesses in any given matter, that is to say, the proposal will apply for example in the case of persons against whom the Police have no evidence but whom they believe could conceivably become suspects as a result of being interrogated in a non-voluntary situation at a Police Station. If it be said that our proposal is imprecise when we say that the proposal should apply to all persons who are not demonstrably mere witnesses, all we can say is that our proposal does throw a mantle of protection around the class of persons most in need of it, and experience would teach us that persons who are in fact demonstrably no more than mere witnesses have always been available to act as witnesses for Police and have given statements to the Police. If it were not so the business of the Courts would not have gone on for as long as it has, so that class of person we suggest does not need any protection." (Page 11,042.)

The point I have difficulty in appreciating in this connection is that made by Counsel for the Police Association, that it is undesirable in the individual's interest, that he should be told that he does not have to accompany the Police to a Police Station if he does not want to.

Recommendations of the Board based upon its Findings

Why should it be undesirable to tell any individual what his common law rights are, namely his right to refuse to accompany a Police Officer to a Police Station unless he has been placed under arrest? (See again *Rice* v. *Connolly* (supra)).

As Counsel Assisting the Board put it at page 11,041 of the transcript:

> " The evidence called before your Board leaves Counsel Assisting with the uneasy feeling that current Police thinking tends to revolve too much around the mere need for securing admissions from alleged offenders, these being then proffered to the court in many cases in lieu of real evidence of the accused's guilt which is the product of proper Police investigation. No-one attempts to gainsay the probative value of an accused's admission of guilt. This should be proffered to the court in addition to, but not in substitution for real evidence establishing the guilt of the accused. It is this pre-occupation with the need to extract admissions, although you will note never or very rarely in the home of the citizen or suspect, or in an office either of a Parole Officer or Solicitor, it is this preoccupation that leads to resort to bluff by Police to get witnesses or suspects to Police Stations in circumstances of or amounting to unlawfulness."

I see no reason whatsoever why a person who is a suspect should not be informed of his rights when being asked to accompany a Police Officer to a Police Station, and why he should not be asked to sign an acknowledgement that those rights have been explained to him before he does so.

Recommendation

The recommendation I make based on the findings made by the Board is substantially the same as recommendation (3) appearing at the conclusion of paragraph (C) of this chapter. Appropriate legislation should be enacted to provide that where a Police Officer has reasonable grounds for suspecting a person has committed a criminal offence punishable by imprisonment but has not arrested him and wishes that person to accompany him to a Police Station for the purpose of interrogation—

(i) that person shall be told in clear language why it is that he is being asked to accompany Police to a Police Station and the matter concerning which the Police wish to question him;

(ii) that person shall be told that he does not have to accompany Police to a Police Station;

(iii) that person shall be warned that he is not obliged to say anything unless he wishes to do so but that what he says may be put into writing and given in evidence;

(iv) that person shall be required to sign an acknowledgement in a form similar to the form I have suggested in paragraph (C) of this chapter to the effect that he has been advised that he does not have to accompany Police to a Police Station and that he has been advised that he does not have to answer any questions relating to the matter;

(v) that failure to produce such acknowledgement shall be prima facie evidence that the advice was never given and shall be a prima facie ground for a Court to refuse to admit the evidence of any admission or other damaging evidence that may have been obtained during such interview.

(E) The Power (if any) of the Police to make " An Exploratory " Arrest or an Arrest " On Spec "

Allied to the problem dealt with in paragraphs (C) and (D) of this chapter is the situation where Police in breach of powers conferred on them by the *Crimes (Powers of Arrest) Act* No. 8247 of 1972 arrest a person " on spec " or for " exploratory " purposes. Such a case was that of Leonard George Keith Coppin who was arrested by members of the Homicide Squad on the evening of the 2nd October, 1972 (see the Lawless Matter—Chapter 19).

Members of that Squad were desirous of interrogating Coppin concerning the movements of Lawless on the night of Fitzgerald's murder.

With that end in mind, and at approximately 6.00 p.m. that evening, two members of the Squad called at the office of Coppin's Parole Officer (having earlier been informed by Mrs. Coppin that that was where her husband was to be found), and asked him to accompany them to Russell Street. Coppin flatly refused to do this and indicated quite clearly he wanted nothing to do with the Police.

Despite the fact that Coppin's Parole Officer invited the Police to interrogate Coppin there, and offered them adequate facilities to enable them to do so, the Police declined the offer and left.

In the vicinity of 10.00 p.m. that same evening, Coppin was arrested whilst walking along Buckingham Street, Richmond and taken to Russell Street. Indeed it would be more accurate to say he was literally " plucked off " the street, and bundled into a Police car.

Although the Police involved endeavoured to contend that between 6.00 and 10.00 p.m. that evening Coppin's status vis-a-vis the Fitzgerald murder had changed from that of merely a witness to that of a suspect, a suspect in the sense that he was conspiring with Lawless to concoct a false alibi, that was clearly not so.

Nothing of any significance whatsoever had occurred between 6.00 p.m. and 10.00 p.m. that evening to alter the status of Leonard Coppin from witness on the one hand, to suspect (in the sense indicated) on the other.

The fact is that Coppin was arrested in the manner described to enable the Police to interrogate him at Russell Street (because it is more desirable to interview people at Russell Street—see the evidence of Sergeant Alan James Pleitner at page 9763 of the transcript), in the hope that something would emerge by way of admission after interrogation, which would form the basis of a charge which could then be laid against him, or as a result of which Lawless' alibi would have been impaired or destroyed.

As events transpired, nothing " turned up " during the course of Coppin's detention. He was ultimately released, and was never charged with any offence. There was no power in the Police to make an " exploratory " or " on spec " arrest of Coppin. Therefore he fell within the category of that person discussed under paragraph (C).

Recommendation

It is pointless recommending that Police cease to commit breaches of the law. I simply refer to and reiterate the recommendations at the conclusion of paragraph (C) of this chapter.

(F) The Duty of a Police Officer at the Time of an Arrest

I confess I did not anticipate it would ultimately become necessary to draw attention to the failure of members of the Force to comply with one of the basic requirements so far as this aspect of procedure was concerned, viz. the duty of a Police Officer to tell a person in clear, but not necessarily formal terms that he is under arrest and why.

Despite the evidence to which I have previously adverted (see paragraph (D)), the fact is that when Ann Mawson and the man Renata were taken from Princes Street, St. Kilda on the night of the 11th January, 1974, they were clearly under arrest, as indeed was Curteis (See Chapter 12) and Olding (see Chapter 20). I am satisfied that in no case were those persons told in clear terms that they were under arrest or why.

In my opinion those were clear breaches of the duty the law imposes upon an arresting Police Officer at the time of an arrest. In this connection I refer to the decision of the House of Lords in *Christie and Anor.* v. *Leachinsky* (1947) A.C.573 and in particular the following passage from the judgment of Viscount Simon commencing at page 587 of the report:

> ". . . . . The above citations, and others which are referred to by my noble and learned friend, Lord du Parcq, seem to me to establish the following propositions.
>
> (1) If a Policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized.
>
> (2) If the citizen is not so informed but is nevertheless seized, the Policeman, apart from certain exceptions, is liable for false imprisonment.
>
> (3) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.
>
> (4) The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is,

Recommendations of the Board based upon its Findings

prima facie, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed.

(5) The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, e.g., by immediate counter-attack or by running away.

There may well be other exceptions to the general rule in addition to those I have indicated, and the above propositions are not intended to constitute a formal or complete code, but to indicate the general principles of our law on a very important matter. These principles equally apply to a private person who arrests on suspicion. If a Policeman who entertained a reasonable suspicion that X has committed a felony were at liberty to arrest him and march him off to a Police Station without giving any explanation of why he was doing this, the prima facie right of personal liberty would be gravely infringed. No one, I think, would approve a situation in which when the person arrested asked for the reason, the Policeman replied " that has nothing to do with you: come along with me ". Such a situation may be tolerated under other systems of law, as for instance in the time of lettres de cachet in the eighteenth century in France, or in more recent days when the Gestapo swept people off to confinement under an over-riding authority which the executive in this country happily does not in ordinary times possess. This would be quite contrary to our conceptions of individual liberty."

See also this passage from the judgment of Lord Simonds commencing at page 591 of the report:

" Putting first things first, I would say that it is the right of every citizen to be free from arrest unless there is in some other citizen, whether a constable or not, the right to arrest him. And I would say next that it is the corollary of the right of every citizen to be thus free from arrest that he should be entitled to resist arrest unless that arrest is lawful. How can these rights be reconciled with the proposition that he may be arrested without knowing why he is arrested? It is to be remembered that the right of the Constable in or out of uniform is, except for a circumstance irrelevant to the present discussion, the same as that of every other citizen. Is citizen A bound to submit unresistingly to arrest by citizen B in ignorance of the charge made against him? I think, my Lords, that cannot be the law of England. Blind, unquestioning obedience is the law of tyrants and of slaves: it does not yet flourish on English soil. I would, therefore, submit the general proposition that it is a condition of lawful arrest that the man arrested should be entitled to know why he is arrested, and then, since the affairs of life seldom admit an absolute standard or an unqualified proposition, see whether any qualification is of necessity imposed upon it.

This approach to the question has, I think, a double support. In the first place, the law requires that, where arrest proceeds upon a warrant, the warrant should state the charge upon which the arrest is made. I can see no valid reason why this safeguard for the subject should not equally be his when the arrest is made without a warrant. The exigency of the situation, which justifies or demands arrest without a warrant, cannot as it appears to me, justify or demand either a refusal to state the reason of arrest or a misstatement of the reason. Arrested with or without a warrant the subject is entitled to know why he is deprived of his freedom, if only in order that he may, without a moment's delay, take such steps as will enable him to regain it. In the second place, I find assistance in the analogous procedure in civil proceedings in olden days and in imprisonment for debt. Upon the former the judgment of Scott L.J. in this case is illuminating. The sheriff, who by judicial writ was directed to bring the defendant before the court, was not left, nor did he leave the defendant, in ignorance of the demand that must be met. Common justice and common sense required that the defendant should know why he should on such and such a day be brought before the King's justices at Westminster or wherever it might be. So also in regard to imprisonment for debt. Upon this subject much information is to be found in *Hooper v. Lane*. I think it necessary only to cite a single passage from the speech of Lord Cranworth. " The sheriff," he said, " is bound, when he executes the writ, to make known the ground of the arrest, in order, among other reasons, that the person arrested may know whether he is or is not bound to submit to the arrest." Here

is a clear illustration of the principal upon which I base this opinion that if a man is to be deprived of his freedom he is entitled to know the reason why.

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If, then, this is, as I think it is, the fundamental rule, what qualification if any must be imposed upon it? The cogent instances given by Lawrence L.J. are conclusive that an arrest does not become wrongful merely because the constable arrests a man for one felony, say murder, and he is subsequently charged with another felony, say manslaughter. It is not enough to say that in such a case the accused man could not recover any damages in an action for false imprisonment. It is more than that. It is clear that the constable has not been guilty of an illegal arrest, if he reasonably suspected that murder had been done. Again, I think it is clear that there is no need for the constable to explain the reason of arrest, if the arrested man is caught red-handed and the crime is patent to high Heaven. Nor, obviously, is explanation a necessary prelude to arrest where it is important to secure a possibly violent criminal. Nor again, can it be wrongful to arrest and detain a man upon a charge, of which he is reasonably suspected, with a view to further investigation of a second charge upon which information is incomplete. In all such matters a wide measure of discretion must be left to those whose duty it is to preserve the peace and bring criminals to justice. These and similar considerations lead me to the view that it is not an essential condition of lawful arrest that the constable should at the time of arrest formulate any charge at all, much less the charge which may ultimately be found in the indictment. But this, and this only, is the qualification which I would impose upon the general proposition. It leaves untouched the principle, which lies at the heart of the matter, that the arrested man is entitled to be told what is the act for which he is arrested."

Recommendation

The recommendation I make therefore is that subject to the considerations set out in Christie's Case, Police be directed to comply with the provision of Standing Order No. 138, viz. that it is their duty to tell a person in clear, but not necessarily formal terms that he is under arrest and why.

(G) THE DUTY OF THE POLICE TOWARDS PERSONS WHO ARE IN CUSTODY OR UNDER RESTRAINT OF ONE KIND OR ANOTHER PRIOR TO INTERROGATION.

Under this heading I propose to deal with the following matters:

(i) The duty of a Police Officer to inform such a person of his rights.

(ii) The right of such a person to communicate with a friend or relation.

(iii) The duty of the Police to answer bona fide enquiries of friends or relations seeking to establish that person's whereabouts.

(iv) The duty of the Police to afford facilities to the person under restraint for consultation with his lawyer.

(v) The right of that person's lawyer to be present during the course of his client's interrogation.

I shall deal separately with the actual interrogation of such persons, identification parades, and ancillary matters such as the fingerprinting and photographing of suspects.

I preface my remarks by observing that, although the provisions of the Chief Commissioner's Standing Orders deal with certain of these topics, for example, Standing Order 643 which provides that a Solicitor or his clerk should be allowed to communicate with a prisoner in custody at a Police Station &c., and Standing Order 644 (1) which provides (*inter alia*) that every person taken into custody by Police or any person who is at a Police Station in connection with the investigation of an alleged offence shall be allowed immediate and ample facilities for communication with friends or legal advisers, I am satisfied from the Board's investigation that there are so many deliberate breaches by Police of their own Standing Orders, breaches which are not regarded seriously by Police, nor sought to be enforced by disciplinary action against offending members, that it is now necessary to preserve and enforce the rights which the Police are unwilling or unable to do as a matter of Police practice, by legislation.

As Counsel Assisting the Board observed, these rights are fundamental in that they go radically to the whole field of rights, powers, and duties, vis-a-vis the Police and the public, where the public is constituted by persons who are in custody or under restraint of one kind or another. That is a view I entirely endorse.

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Into this category fall three classes of individuals. In the first instance, the person who is under arrest. In the second instance, the person who is in *de facto* custody, i.e. the citizen who has not been arrested, even though the Police Officer has a reasonable belief that would found an arrest, but who is asked to go to a Police Station, believes he is obliged to go, does in fact go, and does not feel or believe he is free to leave. In the third instance, (often an extension of the second), the person who provides such information when interrogated at a Police Station, as to found in the mind of the Police the provision of reasonable ground for believing that person has committed an offence, and who is thereafter detained.

I have already indicated that individuals falling into class (2) should obtain initial protection of their rights by means of a written acknowledgement—see paragraph (D), and that individuals within class (3) should be protected by a caution administered immediately upon a reasonable suspicion crystallising in the interviewing officer's mind—see paragraph (C). Persons falling within class (1), i.e. those arrested *ab initio* should, consistent with this philosophy, be immediately cautioned.

I turn now to deal in greater detail with these, subsequent, and associated rights applicable to all three classes.

(i) *The Duty of a Police Officer to Inform Such a Person of His Rights*

It is clear from the vast body of evidence placed before the Board that persons in the situation now under discussion are frequently not informed of their rights, i.e. their rights to refuse to answer questions, to have access to friends and relations, to have access to a lawyer, and their rights in relation to being photographed, fingerprinted, placed in an identification parade etc..

Why is this so? Can it be contended that it is inherently undesirable that the citizen, under restraint in the frequently alien atmosphere of a Police Station, be informed of his rights, in order that he may exercise those rights according to law if he so chooses? Clearly not, unless we are to revert to those earlier and undesirable social situations of which Viscount Simon spoke in *Christie* v *Leachinsky* (Supra.). Why, then, do Police fail, or refuse, to inform persons in their custody of their rights? The Board's investigation drives me to conclude that this occurs as part of a policy deliberately embarked on by the Police.

I unhesitatingly adopt the recommendations set out at pages 147 and 148 of the second Report of The Law Reform Commission.

Persons under restraint should be notified of their rights before any questioning or other form of investigative procedure involving their participation commences. They should be informed of the fact that they are under restraint, why they are under restraint, and what their rights are in the first place in respect to the answering of questions, access to friends and relations, and access to a lawyer. In the event the occasion subsequently arises, they should be informed of their rights in regard to being photographed, fingerprinted, placed in an identification parade and, if it be the case, their right to bail.

Again I agree with the recommendation that that information should be communicated to the citizen in a language he can understand. I see no reason why the information could not be contained in a simple pamphlet or on a roneoed sheet to be handed to the person before interrogation commences. It would then be a simple matter to refer to the fact that that material has been supplied to the person in the first few lines of his statement or Record of Interview.

The only qualification I make is that to which I shall advert in more detail in sub-paragraphs (ii) and (iv) namely, if the matter is one of extreme urgency (e.g. in the case of a kidnapping or where hostages are being held) where it may be imperative to ask questions designed to elicit vital information with no delay whatsoever. In such instance the eliciting of that information would take precedence over a formal notification to a person of his rights.

(ii) *The Right of Such a Person to Communicate with a Friend or Relation*

Standing Order 644 (1) provides (*inter alia*) that every person taken into custody by Police or any person who is at a Police Station in connection with the investigation of an alleged offence shall be allowed immediate and ample facilities for communication with friends or legal advisers. The Police phone may be used for this purpose.

Counsel for the Police Association made a good deal of the provisions contained in that Standing Order and claimed that they afforded the guarantee of protection to every citizen under restraint in a Police Station. He submitted (accurately enough) " Standing Orders under the hand of the Chief Commissioner expressly provide for these contingencies." (page 11,672).

These are, however, Standing Orders more honoured in the breach than the observance. Let me instance the Police reaction when such a request was made by complainants in various matters investigated by the Board.

Curteis (Chapter 12)—pages 6706–7 of Transcript

CURTEIS: I said now I had been arrested I believed I was either entitled to make a telephone call or have one made on my behalf.

QUESTION: When you said that, was something said by someone?

CURTEIS: Yes, the Constable seated at the desk at the left said I had been watching too much television.

. . . . .

CURTEIS: I asked him (a Senior Constable of Police) whether I was or was not entitled to make a telephone call.

QUESTION: What did he say?

CURTEIS: He said—" You have been watching too much television ".

Olding (Chapter 20)—page 5837A of Transcript

QUESTION: Did you ask him if you could do something at about this point of time?

OLDING: Yes.

QUESTION: What was that?

OLDING: Could I make a telephone call?

QUESTION: To whom did you make that request?

OLDING: To my Mum.

QUESTION: To whom did you make that request at the Police Station?

OLDING: The Senior Officer.

QUESTION: The one who struck you?

OLDING: Yes.

QUESTION: Did you tell him whom you wanted to ring up?

OLDING: Yes, my Mum.

QUESTION: Did you tell the Senior Constable where you wanted to telephone her?

OLDING: Yes.

QUESTION: Where?

OLDING: At the Hospital.

QUESTION: At the Dandenong Hospital?

OLDING: Yes.

QUESTION: Did Apex 1 mean anything to you?

OLDING: That is where she works, yes.

QUESTION: What is it?

OLDING: That is the ward.

QUESTION: Did you mention that expression to the Senior Constable?

OLDING: Yes.

QUESTION: What happened? What were you told when you asked if you could telephone your Mum?

OLDING: " No ".

Stupak (Chapter 27)—page 3909 of Transcript

QUESTION: Did you ask whether you could communicate with your Solicitor?

STUPAK: Yes.

QUESTION: What were you told?

STUPAK: No, they were going to keep me there until I confessed. What did I need a Solicitor for? They cost money. I said, " I am prepared to pay ". They said, " You must be guilty if you want a Solicitor ". I said, " You do not believe what I tell you; maybe he can explain it and we can get somewhere ".

Whyte (Chapter 30)—pages 2260–2 and 2363 of Transcript

QUESTION: At this stage did you make any request about a telephone?

MR WHYTE: No, not quite then. This continual, abusive language in regard to my wife went on quite a few minutes prior to my saying, " This is ridiculous, it has to stop. Can I make a phone call? " and the answer was . . .

QUESTION: Stopping there, did you say could you use a phone in relation to establishing who you were?

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MR. WHYTE: That is right. I wanted to make a phone call to establish truly who I was.

QUESTION: Did you say, " I can soon prove who I am? "

MR. WHYTE: That is right. Those are the extact words.

QUESTION: What did he say to that, when you asked about using the phone?

MR. WHYTE: " You don't get the use of a phone here. What do you think this is—Matlock Police? "

QUESTION: Did he make reference to some television show?

MR. WHYTE.—Yes, " Matlock Police, Homicide or some other fucking rubbish ". That was punctuated by another slap in the ear and he said, " This is the real thing ".

QUESTION: Were you told that you watched too much T.V.?

MR. WHYTE: Yes.

. . . . . .

QUESTION: After that did a man in uniform enter the room?

MRS. WHYTE: No. Before this I had asked this young Policeman if I could use the telephone. I noticed there was a telephone behind me. He said to me, " I do not think there is a line on it from the switchboard ". No I am sorry. He said to me, " Why do you want to use the telephone? " I said, " I have a friend in the force and I would like to ring him ". I said, " I have not been in this situation before ". That is when he said, " I do not think there is a line on it from the switchboard ". He did not try to see if there was a line.

During the course of its lengthy investigation, it appeared to the Board that a person taken to a Police Station whether under arrest or not is permitted to exercise few, if any, of the rights conferred by the Standing Orders. The instances I have outlined make clear that such a person is denied the right to make a telephone call.

As Mr. Peter Sallmann a lecturer at the Department of Legal Studies at LaTrobe University, observed in a written submission made to the Board on behalf of the Victorian Council for Civil Liberties, " the basic recommendation of this submission is that the current position in regard to Standing Orders be given legal status so that the rules are in terms of ' is ' statements rather than ' should ' statements ".

In the light of the Board's experience, I agree entirely with that view.

The only qualifications to the basic proposition that a person under restraint should have the right to communicate with a friend or relation before interrogation would be the right of the Police to prevent this if they had a reasonably founded belief that it would result in the escape of an accomplice, or the loss or fabrication of evidence; or that the interrogation of the person was a matter of such urgency (e.g. a case involving the kidnapping of a child or the holding of hostages) that no delay should occur before questions seeking to elicit vital information are put to the individual in question.

(iii) *The duty of the Police to answer bona fide inquiries of friends or relations seeking to establish that person's whereabouts*

During the course of the Board's inquiry, allegations were made from time to time to the effect that when a friend or relative of a person in custody telephoned a particular Police Station seeking to ascertain the whereabouts of the person then in custody, he or she was unable to do so. In one instance it was alleged that persons making the inquiry were told the relation sought was not there when in fact he or she was; in the other instance it was alleged the person making the inquiry was told the person inquired after had already been bailed out, when in fact that person was still in custody.

In addition to the matters actually touched upon by the Board during the course of the inquiry, Counsel Assisting the Board received a number of similar complaints which, for one reason or another, were not dealt with by the Board.

I consider therefore, that the Board is justified in making recommendations it considers may be of assistance to the Executive touching a matter which bears so importantly on Police relations with the public.

In its second Report the Law Reform Commission dealt with the matter thus.

> " An associated problem, which has caused considerable distress in the past, has been the absence in most jurisdictions of any form of obligation upon Police to answer inquiries from friends, relatives

and legal representatives as to the location and status of the person being held in custody. In the majority of cases, such inquiries do in fact appear to be answered, and answered accurately and politely.

There are, nonetheless, occasions, particularly in the context of investigations of serious crime, when for one reason or another such inquiries are frustrated. The Commission believes that it should be mandatory for the Police to answer such inquiries promptly and accurately, provided, of course, they are satisfied as to the *bona fides* of the inquirer. In order to enable such information to be given, there should be an obligation upon any Police Officer making an arrest or otherwise detaining a person in custody to report that fact immediately to a prescribed central point, normally Police Headquarters in the Capital City or the regional centre in question. Further, such Officer should report any subsequent movements, site visits, transport to another Police Station, to a remand centre or a Court or the like, to such central point. Although on the face of it this is an elaborate mechanism, the Commission believes it is a necessary one. We further believe, after taking advice from our Police consultants on the point, that it is unnecessary to hedge such a provision with a qualification of the kind contained in the previous paragraph, namely, that such information not be given when there is reason to believe that the person in custody has, in fact, been arrested."

The submission made by Counsel Assisting the Board was to the effect that Russell Street Police Headquarters should be the central point for the metropolitan area; in other cities such as Geelong, Ballarat, Bendigo, &c., the Police Stations at those centres would suffice.

The question is, would the establishment of such a system require mechanism so elaborate that the benefit to the citizen would be far outweighed by the cost and inconvenience involved?

I cannot envisage any practical difficulty whatsoever in the establishment of such a system. Nor can I foresee any undue expense. To my mind, it would require little more than the keeping of a register at the appropriate centre in which the necessary details would be recorded—details supplied by the Officer making the arrest or otherwise detaining the person in custody as he entered the Police Station if that occurred at Russell Street, or which he would telephone through to Russell Street from another Police Station.

Indeed such a register would be of valuable assistance in an altogether different respect.

During the course of this inquiry the Board noted with surprise the failure on the part of a large number of Police Officers to indicate on the face of a statement taken from a witness, suspect, or person under arrest, the date on which the statement was taken. Of more significance, however, was the absence of times on the face of the document indicating the time at which the particular interview commenced and terminated.

Almost without exception, no Record of Interview produced by a member of the Armed Robbery Squad ever contained the time at which the interview commenced and the time at which it concluded.

Accordingly, much time was often spent during the course of investigating a particular matter in ascertaining not only relevant dates, but also the times between which a person had been interviewed and/or had been at a particular Police Station.

Whilst some assistance was gained from the Interview Register in this connection, the errors on the face of Interview Registers as to dates and times, appeared with such frequency as to make that register a most unreliable source of information.

It would be of the utmost importance that a register of the type under consideration maintained at a metropolitan or regional centre, be accurate in those respects.

The view I have formed, therefore, is that no elaborate or expensive system would be necessary in respect of the matter, and that such a system has a great deal to commend it, as indeed has the proposition that Police should have a clear duty to answer *bona fide* enquiries of friends or relations seeking to establish the whereabouts of a person under arrest or otherwise detained in custody.

(iv) *The Duty of the Police to afford facilities to the person under restraint for consultation with his lawyer*

Much of what has been said in sub-paragraph (ii) is applicable to sub-paragraph (iv).

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True it is Standing Orders 643 and 644 purport to cover the situation. Again, however, they give the individual in question no right which he may positively assert. He is dependent upon the benevolence of the Police Officer or Officers in question.

The finding of the Board in respect to the matter is the same as its finding in sub-paragraph (ii), viz. that those Standing Orders are more honoured in the breach than the observance. Accordingly, in my view, the time has been reached when citizens rights should be protected by legislation.

What right should the citizen under restraint have prior to interrogation?

Subject to the qualification I shall advert to shortly, I consider the individual under restraint should have the right to communicate with his legal adviser by telephone and receive advice from him by telephone before any interrogation commences.

If that practitioner can arrive at the Police Station in question within one hour, and wishes to do so, no interrogation of the person under restraint should commence within that hour, and upon the arrival of the practitioner at the Station in question, he should be provided with facilities to enable him to give his client advice in private.

From evidence given before the Board it would seem that persons either under arrest or under restraint are frequently left sitting in Interview Rooms, Muster Rooms &c. at Police Stations for some hours before interrogation of them commences. Therefore (and subject to the qualification to which I shall hereafter advert) it can hardly be suggested that the above proposal would amount to a delaying or frustrating of Police business. I point to some specific instances in this connection.

The Gibb Matter (Chapter 15)

Following the shooting of her brother in Princes Street, St. Kilda on the 11th January, 1974, Ann Mawson and the man Renata were taken to Russell Street arriving at approximately 10.00 p.m. Ann Mawson was not interviewed until the early hours of the following morning and was duly released at approximately 3.30 a.m. (See the evidence of Inspector Tobin at pages 4858 *et seq.*)

As Renata was interviewed after most of the other Police had made statements to Inspector Tobin in relation to the shooting, and immediately before Mawson was interviewed, the clear inference is that he too was detained at Russell Street for some hours before that occurred.

The Hamilton Matter (Chapter 16)

McGowan was arrested at about 1.30 a.m. on the 15th March, 1973. Although he was spoken to briefly by one Police Officer at about 7.00 a.m., he was not formally interviewed prior to 1.30 p.m.

Hamilton was arrested at 5.00 a.m. that same morning and arrived at Russell Street at approximately 6.30 a.m. The interview with him commenced at approximately 10.30 a.m.

The Lawless Matter (Chapter 19)

Carol Coppin was taken from her flat in Richmond at approximately 5.30 p.m. on the 2nd October, 1972 and driven directly to Russell Street—arriving, one would assume, no later than 6.00 p.m.

Her comparatively short statement was signed at 10.10 p.m.

There would seem little doubt, from the totality of the evidence called in the matter, that it was some hours before she was interviewed.

The Owen Matter re Dam (Chapter 21)

Owen was arrested on the afternoon of the 24th May, 1974 and taken to Russell Street, arriving no later than 4.30 p.m. Indeed by 5.00 p.m. he had already been strip-searched and was then handcuffed to a chair. The interrogation of Owen did not commence until after 6.30 p.m.

The qualification I make in relation to this matter is similar to one of the two qualifications appearing in sub-paragraph (ii), viz. that if the matter is one of extreme urgency, and I again instance the case of a kidnapping, the case in which hostages may be held, the case in which a person is apprehended at the scene of an armed robbery and may well have vital information as to the whereabouts of accomplices, then questions designed to elicit that vital information may be immediately put to him.

However, once the Police have proceeded beyond that point, such an individual should at once be afforded the rights I have adverted to.

(v) *The right of that person's lawyer to be present during the course of an interrogation*

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I am in agreement with the submission made by Counsel Assisting the Board, viz. that if a person under restraint has been given the opportunity to exercise the right discussed in sub-paragraph (iv), to then permit his legal practitioner to be present during the course of his interrogation might have an inhibiting and stultifying effect on the Police conduct of their business which is, ex hypothesi, a lawful interrogation of the suspect (page 11,046).

Those in favour of a recommendation to the effect that the Solicitor be permitted to be present during the course of the interrogation doubtless have in mind that if a third person was present, he could, by his very presence, ensure that the proprieties of the matter are observed.

I doubt if any person would quarrel with that as a general observation.

The view I have formed, however, is that that problem can be overcome to a large extent, if not entirely, if the whole of the interview between the Police and the person under restraint is tape-recorded, a matter to which I shall advert in paragraph (H) when dealing with the interrogation of the person under arrest or other restraint.

The only other matter to which I wish to refer is this.

If a person under arrest or other restraint has had no communication with a legal adviser following his detention and prior to the interrogation commencing, for whatever reason, if a legal practitioner is retained on behalf of that person and arrives at the Police Station in question during the course of the interrogation, the interrogation should be immediately broken off, and that practitioner given the opportunity to confer with his client in private with a view to tendering to him whatever advice he deems appropriate.

If, by legislation that right is given to the person under restraint the following incident drawn to the attention of the Board in the course of a written submission, should not recur—

LAWYER: I would like to see my client Mr. X please.

POLICE OFFICER: You cannot see him.

LAWYER: It is his right to see me.

POLICE OFFICER: You cannot see him, he is being interrogated.

LAWYER: I insist on seeing him now.

POLICE OFFICER: What do you think this is, Perry Mason?

That incident had an all too familiar ring about it. It is virtually in the same category as the matters dealt with in sub-paragraph (ii).

Recommendations

The following are the recommendations I make.

(1) Appropriate legislation should be enacted requiring Police to inform a person under arrest or other restraint of his right to decline to answer questions. Insofar as the three classes of individuals referred to in paragraph (G) of this chapter are concerned, the person under arrest should be informed of that fact immediately after his arrest, the person in *de facto* custody should be so informed immediately he is taken into *de facto* custody, and the person who provides such information when interrogated by a Police Officer as to found in the mind of that Police Officer reasonable grounds for suspecting that person has committed an offence, should be so informed as soon as that becomes that Police Officer's state of mind and that caution not be delayed until the point of time when the Officer has made up his mind to charge him.

In my view the appropriate caution is that appearing in the Judges Rules 1964 published in the *Home Office Circular* No. 31/1964 issued in January, 1964, viz. "You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence".

(2) Appropriate legislation should be enacted requiring Police to inform a person under arrest or other restraint of his right to have access to friends, relations and/or a lawyer, and of his rights in relation to being photographed, fingerprinted, and/or placed in an identification parade. I consider there is great merit in Direction 7 (*b*) of the "Administrative directions on the interrogation and the

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taking of statements" (see again *Home Office Circular* No. 31/1964) which provides "Persons in custody should not only be informed orally of the rights and facilities available to them, but in addition notices describing them should be displayed at convenient and conspicuous places at Police Stations and the attention of persons in custody should be drawn to these notices".

Indeed, I see no reason why a simple pamphlet or roneoed sheet should not be prepared setting out these rights, such pamphlet or roneoed sheet to be handed to the person upon his arrival at a Police Station. The fact that such pamphlet or roneoed sheet was so handed to the person should then be recorded in any Record of Interview.

(3) Subject to the qualifications expressed in sub-paragraph (ii) of paragraph (G) of this chapter, appropriate legislation should be enacted giving such a person the right to communicate with a friend or relation by means of the Station telephone.

(4) The legislation should require that at appropriate centres as outlined in sub-paragraph (iii) of paragraph (G) of this chapter the movements of persons under arrest or other restraint be recorded, and all *bona fide* inquiries of friends or relations seeking to establish that person's whereabouts be recorded and answered.

(5) Subject to the qualification expressed in sub-paragraph (iv) of paragraph (G) of this chapter, appropriate legislation should be enacted giving such a person the right of consultation with his lawyer prior to interrogation.

(6) Appropriate legislation should be enacted providing that the failure of a Police Officer to caution such a person, and/or the behaviour of a Police Officer in impeding that person insofar as consultation with his lawyer is concerned, shall be a *prima facie* ground for a Court to refuse to admit the evidence of any admission or other damaging evidence that may have been obtained during an interview.

Insofar as the breaches of any other provisions of that legislation are concerned, it be left to the trial Judge to exercise his discretion as to whether or not any admission or other evidence obtained in breach of the legislation be excluded.

(H) The Interrogation of Persons Under Arrest or Other Restraint

In my opinion the views expressed at page 70 of the second Report of the Australian Law Reform Commission more than adequately state the problem presently under discussion and are worthy of inclusion at this point of the Report.

"The most frequently contested issues in the criminal trial relate to the confession. Was a confession made? Was it voluntary? Was it obtained unfairly or improperly? Is it reliable? So long as a confession is regarded as an adequate proof of guilt the contest will continue. The Police will seek confessions to conclude an investigation, to save the burden of other inquiries and to provide evidence of guilt. The accused will contest an allegation that he confessed, or he will attack the admissibility or cogency of the confession by seeking to show that the facts bring into play an exclusionary rule (whether the exclusionary rule be stated in terms of voluntariness or in terms of reliability). The lines of contest are drawn. The factual dispute can be foreseen and its ambit predicted in advance. The outcome of the criminal trial will often turn upon the facts relating to the obtaining of the alleged confession and the terms in which the confession is allegedly made. The facts are in dispute, the Police and the accused each rely upon their oral evidence, and there is usually no independent touchstone by which the court can determine where the truth is to be found. When a signed confession is produced the conflict will yet be waged as to the circumstances in which the confession was obtained. A large proportion of the time of the criminal courts, time which is enormously expensive to the public purse, as well as to the pocket of the accused, is spent in resolving these disputed factual issues. If these facts could be placed beyond dispute a large number of trials would not take place—either because the prosecution, unable to rely upon the confession, would have no other sufficient evidence or because the defence, fixed with an unassailable confession, would decline the trial contest. The frequent serious conflict between Police and accused as to confessions tend to sap the confidence of the public and the courts in the integrity of the Police. The court sometimes suspects that the real process of determining guilt occurs in the Police Station. If the court is informed of the events of the investigation by evidence which is not open to dispute or which is less open

to dispute, criminal trial procedures will be improved, the reputation of the police force will be enhanced and the court will feel more confident in reaching its decision ".

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As Counsel Assisting pointed out at page 11,046 of the transcript, the problem is not one of recent origin. He then referred the Board to a case which in all probability constitutes a *locus classicus* in this field of law, viz. *R.* v *Thompson* (1893) 2 Q.B. 12.

That was a decision handed down by the Court of Crown Cases Reserved in the month of April, 1893. A point which arose in that case was the admissibility of a confession. The passage I quote is from the judgement of Mr. Justice Cave appearing at page 18 of the report.

> " I would add that for my part I always suspect these confessions, which are supposed to be the offspring of penitence and remorse, and which nevertheless are repudiated by the prisoner at the trial. It is remarkable that it is of very rare occurrence for evidence of a confession to be given when the proof of the prisoner's guilt is otherwise clear and satisfactory, but when it is not clear and satisfactory, the prisoner is not unfrequently alleged to have been seized with the desire borne of penitence and remorse to supplement it with a confession; a desire which vanishes as soon as he appears in a court of justice ".

Of recent times there have been expressions of judicial disquiet from various quarters concerning confessional evidence; indeed, if my recollection serves me correctly, it was partly as a consequence of a view expressed by Sir Reginald Sholl in Molinari's case that on the 24th June, 1965 the then Solicitor-General (now the Honorable Mr. Justice Murray) was requested by the then Acting Attorney-General to examine and report on the Chief Commissioner's Standing Orders relating to the procedure to be observed by members of the Police Force in questioning suspects and to advise on any changes which should be made in the methods and rules laid down. The Murray Report which I read during the course of the Board's investigation has been of very great assistance to me.

Molinari's case is reported in 1962 V.R. 156. At pages 168 *et seq.* of the report, His Honour had this to say:

> " This case draws attention to, and I have here personally encountered, a difficulty which all too frequently faces juries under the present system of Police interrogation of witnesses at Police Stations or detective offices. It is also encountered by judges who have to rule on the *voir dire* on the admissibility of confessions which the accused person claims to have been extorted by violence or threats. In this country, oral evidence by Police of alleged confessions by accused persons is admissible in evidence if the confession is voluntary, understanding that term as qualified by s. 149 of the Evidence Act; see *R.* v. *Lee* (1950), 82 C.L.R. 133; [1950] A.L.R. 517. So, of course, in a similar way, are confessions written or signed by accused persons. What the Police quite regularly do (as I have observed from listening to many Police witnesses) is to make up a Police " brief ", containing, *inter alia,* typed statements by the Police themselves setting out their conversations with an accused person, and, it may be also, anything he has written or signed. If they have actual notes of the conversations taken at the time, they, of course, ought, as a matter of commonsense and fairness, to keep them, for production if challenged, as they very frequently are. But too often one hears that the notes have been destroyed when the Police brief was prepared, as Montagna says happened in this case. Why they are so often destroyed I cannot imagine; it must be obvious that they may be called for, and it is not to be wondered at if their absence makes judges and juries suspicious as to whether they were actually taken at the time, or really in accordance with a challenged conversation, and sometimes whether indeed there were ever any such notes at all.
>
> Unless a citizen is actually arrested on a stated charge, he is not obliged to go with Police to a Police Station, and if he is questioned in those circumstances he is entitled first to be warned, and may say nothing if he likes. The public generally does not know this, and many people are taken to Police Stations or headquarters and questioned without any arrest or charge having first been made. Interviews take place on Police premises while two or more Police, and sometimes many more, are present or nearby. This alone may, and in some cases probably does, have an intimidatory effect. If a lay interpreter is used to interview a foreigner, one does often find that he or the Police do prepare and produce contemporary written records of questions and answers put to and obtained from the person interviewed by him. In such a case the presence of the interpreter, who is outside the Police Force, gives to judges and

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juries some assurance at any rate, if improper intimidation is alleged, that it would have been less likely in his presence. But in other cases, an allegation of intimidation by threats or violence often puts the tribunal in a real difficulty. The present operation of s. 399 of the Crimes Act means, in effect, that a man with a criminal record is likely to have it disclosed to the jury if he alleges intimidation, and to that extent he would seem, to a Policeman improperly disposed to use intimidation, a safer victim. Many judges, I venture to think, are satisfied that some violence is inflicted by some Police in Police premises from time to time. At all events, when I have to decide questions of fact involving such an allegation, I am entitled and bound, like a juror, to use my own common sense and knowledge of the world, such as it is, and after many years in the law, including some knowledge of the criminal courts, both at the Bar and on the Bench, that is something which I personally bear in mind. No doubt, it is not nearly as common as some persons believe, or as accused persons allege. But a few Police Officers, acting improperly, necessarily affect the standing and credibility of all in the eyes of a tribunal which has to deal with an allegation of intimidation by Police. As is frequently and correctly enough said, such an allegation is easy to make, and difficult to disprove, and is very tempting as a possible means of escape from a genuine confession which a wrongdoer has subsequently—perhaps after obtaining legal advice—repented of having made. None the less, my own approach to such a question is, I am bound to say, now considerably affected by the consideration that Police Officers do not avail themselves of other modern means of recording interviews with accused persons, even in circumstances where such facilities would be available—a course which would go a long way towards reassuring the tribunals to which they are subsequently recounted—certainly judges and, in my own opinion, juries too. For example, the tape recording of such interviews, though used overseas, according to one's reading, has not, to my knowledge, been used here. Or official licensed shorthand writers, not attached to the Police Department, but bound by the obligations of a licensed shorthand writer, might be used to record such interviews. Or again, a magistrate or a justice of the peace might be called in, and could testify by certificate to the correctness of a transcript of the interview. I have heard it asserted that accused persons or their legal representatives could, even if any such means were used, still allege that a tape recording had been tampered with or falsified, or that a licensed shorthand writer, or magistrate, or justice of the peace, had connived with the Police to present a false account of an interview. One might pay attention to the assertion if any such methods had been tried, and any such allegations had been made with respect to them. But, to my knowledge, none has been tried, and I venture to think that such allegations would be rare indeed. One thing I am certain of, and that is that interviews so proved would seem to the courts far more real, and would carry a far more satisfactory assurance of accuracy, than does most of the present verbal testimony of Police Officers relating interviews of which they have recorded their own versions for the Police brief, subsequently learning them by heart, so far as possible, in order to repeat them in court. Speaking for myself, I should certainly feel far more satisfaction with the record of a duly licensed shorthand writer, recording such an interview in accordance with his oath, than I habitually feel with the verbal recounting by police witnesses of oral interviews in a fashion which, as it seems to me, usually cannot be word for word accurate, and which one often suspects is not exhaustive. I have drawn attention to these matters because I regard this case as touching upon a real and important problem in judicial proceedings on the criminal side of the courts. It is one about which I have for a considerable time felt that something should be done, but I have observed no indication of any inclination on the part of the Police administration to adopt what as a judge I should regard as much more satisfactory methods. That there may well be difficulties, I can easily see, especially outside the metropolitan area. But where there are means whereby a court can get an actual verbatim record of Police interviews with accused persons, my own view is that I should much prefer to have it if I am to act on the interview, or advise a jury that it may act on it, especially in a matter involving an accusation of serious crime. One of my brother judges has drawn my attention to the fact that in some of the Indian jurisdictions, though the Police may and do interview suspects, the interviews themselves are not admissible in evidence, but are merely material on which the Police may found further inquiries. In those jurisdictions, a confession, if it is to be made and proved, must be made before a magistrate. The problem is a real one. In this country less radical reforms might go a long way towards solving it.

Under the present system the deportation of an individual might come about as the result of the uncorroborated verbal testimony of one constable, either deliberately false or honestly mistaken, erroneously alleging a confession of any crime within the terms of s. 13 (*a*) or (*b*) [of the Migration Act]. That seems to me a very undesirable state of affairs."

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Of more recent times there have been two decisions of the Court of Appeal (Criminal Division) in the United Kingdom touching upon the matter, viz. *R. v. Pattinson & Laws* (1974) 58 C.A.R. 417 and *R. v. Turner & Ors.* (1975) 61 C.A.R. 67.

In Pattinson's case the Court of Appeal was called upon to consider oral admissions alleged to have been made by a person in custody to two Police Officers who were standing nearby supervising him while he was shaving.

As the Court said in that case, and with reference to the admissions allegedly made by Pattinson:

"There was ample suspicion, but not enough evidence to justify a committal for trial. In these very unusual circumstances luck seems to have been on the side of the prosecution because they were suddenly presented with evidence which, if true and reliable, amounted to a confession of guilt.

This is not the first time in the history of the administration of justice in this country that Police Officers have arrested a man and then shortly before he was due to appear in Court he has of his own volition supplied the evidence which was singularly lacking against him until that moment."

Having dealt with certain other aspects of the case, the Court in dealing with the admissions alleged to have been made by Pattinson concluded by saying:

"The problem for us on this evidence is this: have we got a lurking doubt about this case? I say on behalf of the Court that we have. We do not like this kind of evidence. It follows that the conviction of Pattinson must be quashed."

I shall not trouble the reader with the facts as they existed in Turner's case, but merely cite this passage from the judgment of Lord Justice Lawton appearing at page 76 of the report.

"Apart altogether from the problem of length and expense, there was the particular problem of the evidence of a number of Police Officers as to oral statements (colloquially known as 'verbals') which the accused were said to have made after arrest. Defending counsel had to challenge this evidence if their instructions from their clients made challenges necessary. As almost always happens in this class of case at the Central Criminal Court (but not so commonly on circuit), nearly all the defending counsel challenged the credibility of the Police witnesses giving evidence about oral statements. They were severally accused of lying, bribery, fabricating and planting evidence, perjury in other cases, the theft of £25,000, threatening witnesses, assault and drunkenness. The existing practice followed by the Police for putting this kind of evidence before courts almost inevitably leads to attacks on the credibility of Police Officers. If the evidence is true, as it usually is, the jury is greatly helped. It is a matter of human experience, which has long been recognised, that wrongdoers who are about to be revealed for what they are, often find relief from their inner tensions by talking about what they have done. In our judgment and experience this is a common explanation for oral admissions made at or about the time of arrest and later retracted. But if the evidence of such oral admissions is untrue, as regrettably it sometimes is, defendants are unjustly and unfairly put at risk. In our judgment something should be done, and as quickly as possible, to make evidence about oral statements difficult either to challenge or to concoct."

My experience as Chairman of this Board of Inquiry compels me to endorse the views expressed by Their Lordships, viz. I do not like this kind of evidence, i.e. unsigned and/or untape-recorded confessional evidence, and I consider something should be done as quickly as possible to make evidence about oral statements difficult to challenge or concoct.

What then can be done to remedy the situation?

In an address given by Lord Salmon to the Annual General Meeting of Justices on Thursday, the 27th June, 1974 (reported in the *New Law Journal* of the 4th July, 1974), His Lordship had this to say when dealing with the subject of confessions:

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"The fourth principle for the protection of the accused is that no alleged confession can be used against him unless it is proved to be truly voluntary. The Police do not seem to be impeded by this principle, for they are markedly successful in obtaining confessions with the law as it now stands. Nearly all those who plead guilty, and many of those who do not, have made a confession to the Police before they come to Court. I should be surprised if less than 75 per cent of those sent for trial have confessed, or are alleged to have confessed to the Police. In the great majority of cases the confessions are unchallenged, but in a significant number of cases they are not; and a great deal of time is spent at the trial in investigating the evidence in relation to them.

In these technologically advanced days, it surely should be possible to issue a small electronic device to every Police Officer investigating crime, which he could switch on and obtain a record of every word he speaks or which is spoken to him."

Counsel Assisting the Board submitted (*inter alia*) that the whole of an interview between Police Officers and a suspect be tape-recorded and that at the conclusion of the interview the tape be placed in the custody of an appropriate authority to ensure no allegation can be made subsequently that the tape has been tampered with. Needless to say such a procedure would not apply in the case of minor offences such as traffic offences and the like, but only to indictable offences and others where a term of imprisonment is involved. Even in the latter case he conceded that it would be necessary to limit such offences by some definition; for example, in all probability one would not include the offence of lighting a fire on a day of total fire ban, even though a term of imprisonment can be imposed if that offence is committed.

The objections raised by Counsel appearing for the Police Association to such a suggestion may conveniently be enumerated thus:

(i) Tape recording of the whole interview would not do away with allegations of malpractice. In other words, the suggestion would still be made that the tape was not authentic or had been altered in some way. Counsel referred to the case of *R.* v *Robson* (1972) 2 All E.R. 699. In that case there was a proceeding upon the *voir dire* of some two weeks duration whilst the trial Judge considered the veracity, originality and probative value of some fairly lengthy tapes of conversation.

(ii) Unless the recording was made in ideal circumstances, whereby all extraneous noises were eliminated, the way would be open, firstly, to the dishonest ascribing of noises on the tape to causes other than their true cause, and secondly, the intentional creation, particularly by an experienced criminal, of material on the tape with a view to destroying or impairing its audible value. (I assume what is referred to in this connection is the creation of extraneous noises, e.g., scraping a chair across a floor, etc.)

(iii) Dishonest allegations of duress will persist, both as to alleged events before the taping, or even after it.

(iv) A great deal of time would be taken in the interpretation of tapes of conversation for the reasons (*a*) that whilst people reading a document or answering questions as to aspects of a document, generally speak audibly, a lengthy conversation may be a totally different situation, and (*b*) that part of a conversation may be lost altogether, either because two people speak at once, or because people speak at different volumes rendering some portions of a conversation inaudible and thus a matter for subsequent dispute.

(v) The cost of equipping Police Stations with acoustic recording rooms and the necessary equipment would be immense.

Although I think I am correct in saying that Counsel appearing for the Police Association did not advert to this aspect during the course of his final submissions, another reason put forward by a number of Police Officers during the course of their evidence was that the noise of the typewriter used to type the Record of Interview would drown out the sound of the participating voices.

Before dealing with those submissions in more detail, it may be of assistance to say something of the Board's experience in relation to this problem, based upon its investigation.

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For the reasons I have indicated in the Cox Matter (Chapter 11) and the Hamilton Matter (Chapter 16), I was of the opinion that the alleged Records of Interview with Cox on the one hand, and Hamilton on the other—Records of Interview which were not signed and in respect of which there was no tape-recorded read-back by the accused—were fabrications. That, of itself, was most disturbing.

More disturbing, however, was the very sinister pattern which emerged when one compared Records of Interview, one with another, in other cases where such Records of Interview were unsigned and untaped—untaped, that is, in the sense that when the accused was invited to read back the Record of Interview, he declined to do so. This pattern was described by Counsel Assisting the Board at one stage of the inquiry as the " nothing personal " syndrome, and the " you know all " syndrome.

As I have pointed out in the Hamilton Matter, on one day six Police Officers conducted Records of Interview with three accused men of different backgrounds, intellects and personalities. Yet one found this extraordinary coincidence. Each man having proved co-operative to the point at which he was asked to read back and sign his Record of Interview, when asked to do so, declined, each saying at the time words to the effect, " it's nothing personal ".

Indeed, if one accepts the Police evidence that each Record of Interview concluded at approximately 3.20 p.m., one had Hamilton in one Interview Room, McGowan in another and Gallagher in yet another, each saying, almost in unison, " No, but it's nothing personal ".

A person with a mind quite untouched by scepticism or cynicism might well conclude that this was, indeed, too much of a coincidence.

I turn now to the " you know all " syndrome.

This was best illustrated during the course of cross-examination of Senior Sergeant Leo Adrian Lalor. By way of preface to this aspect, I quote the following passage of the transcript at page 10,075:

Q. In the course of your conducting of Records of Interview, you, I suppose, have interviewed people with vastly differing backgrounds?

A. I would say so, yes.

Q. People of different temperament?

A. I would say so, yes.

Q. Different educational attainments?

A. I would suppose so.

Q. Different work records?

A. Yes, I suppose so.

Q. And, of course, different types of criminal history?

A. I suppose so, yes.

Q. Now, we will just look at a few cases, Mr. Lalor, before I finish. I want to take seven cases you were involved in, Mr. Callaghan, Mr. Gibb, Mr. Harris, Mr. Vitous, Mr. Burns, Mr. Gay and Mr. Rollands?

A. Yes.

Q. You would agree that they are all of different ages?

A. Yes, they are.

Q. Different educational backgrounds?

A. I don't know the exact details of their educational background.

Q. Different family situations?

A. Some.

Q. Some are single, some married, some *de facto*?

A. Yes.

Q. Different work records?

A. I suppose so.

Q. One thing in common about them is that their Records of Interview were all unsigned and untaped, that is so, is it not?

A. Yes.

Q. And another thing in common about them is that at some stage of the game they all disputed the Records of Interview?

A. They have, yes, it is one of the standard defences.

Q. They were all, I suppose, looking at them, experienced criminals, or do you except any of them from that description?

A. I can't say I would accept any of them as being inexperienced criminals, they all have some form of history from memory.

Q. They would all know the penalty likely to be paid by them if they were convicted of armed robbery?

A. They possibly would.

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At page 10,076 *et seq.* of the transcript Mr. Coldrey cross-examined Senior Sergeant Lalor concerning the similarity of phraseology allegedly used by various suspects when being questioned by Senior Sergeant Lalor—phraseology which seems to appear only in Records of Interview which were unsigned and in respect of which there was no tape-recorded read-back. I instance various examples.

Interview with Gay in May, 1971

Q. Do you mean the keys that were stolen from the watchman's van in Camberwell on the 4th May last year?

A. Yes, they were the only keys used in it, you know that.

Q. Was this Turner involved in the robbery on X?

A. Yes, you know that, you've got him charged.

Q. Where did you go to after you took the van?

A. You know that, you know where the van was.

Q. What part did Turner take in this robbery?

A. You know that he did. I know you know a fair amount about this.

Q. Did you go there with your wife and family?

A. You know that, I see you have got some pictures of me there.

And that is how that particular Record of Interview continued. The above extract was but a selection of certain of the questions and answers appearing in it. There were more in a similar vein.

Interview with Rollands in March, 1972

Q. Do you know X?

A. Yes you know I do. That is his car at my place. You know that, that is why, &c.

Interview with Vitous in April, 1972

Q. He has merely told me that you were with him when the car was stolen. Now what part did you play in the theft of the car?

A. I see you know that, &c.

Q. How much cash did you put down on this car?

A. From what you have told me you should already know that.

First interview with Gibb in February, 1974

Q. What I want to know now is whether you say you were involved in it or not?

A. Mr. Lalor you know what I done.

Q. Well what did you do after you left the T.A.B. vicinity in this car?

A. You know that we, &c.

Second interview with Gibb in February, 1974

A. You know Alan and I did it.

Interview with Harris in 1974

Q. Was he the person responsible for cutting down this weapon for you?

A. You know that Mr. Lalor. You know, &c.

After those instances were drawn to Mr. Lalor's attention, the following exchange occurred at page 10,078 of the transcript—

Q. O'Callaghan says: "Haven't you been told that? You seem to know everything else we have been doing. I'd like to know who is giving everyone up down there", and so on. I want to ask you Mr. Lalor, about that phrase. Firstly, that occurs, "You know that" and its slight variations, throughout those Records of Interview taken over a period of four years, or three years. They were the words used on each occasion by those men?

A. Yes.

Q. The mere fact that they are the same is a coincidence?

A. They are the words used by those men.

Q. " You know that ", of course, is not particularly criminal jargon, is it?

A. I wouldn't say it is criminal jargon.

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Q. I want you, in fairness to yourself—you can check it if you want—but I suggest this to you that in the Records of Interview that you have made in that period of time, which are signed and which are taped, that type of comment about your knowledge of what the person did and that phrase, " You know that " does not appear?

A. I do not know.

Q. If you can find any in which it does, I invite you to submit them to Mr. Chairman through your Counsel. Another pattern, I suggest to you, Mr. Lalor, in those interviews relates to accomplices.

To the date of delivery of this Report, no signed Records of Interview or Records of Interview in respect of which the read-back was tape-recorded and in which such phraseology appeared, have been tendered to the Board by Senior Sergeant Lalor or on his behalf.

Senior Sergeant Lalor was then questioned about the similarity of phraseology in unsigned un-taped Records of Interview relating to accomplices. These passages at pages 10,078–9 speak for themselves. The underlining is my own.

Q. In an interview of Burns in relation to his knowledge of Turner he was asked how long he knew him and he gives a single word answer, " Years ". Mr. Vitous was asked the same thing about Clune—the same answer, " Years "? Mr. Sievers also gave the same answer, " Years ". Is that the answer these men gave?

A. Yes.

. . . . . .

Q. If you can find a similar answer in the taped and signed ones would you bring that to the notice of the Chairman? Another pattern involving accomplices, Mr. Lalor, which appears is this: in the interview of Gay, page 2, he is asked, " Was this Turner involved in the robbery on M.S.S.? " Answer: " Yes, you know that "—that phrase again—" You have got him charged ". Mr. Burns is asked in relation to Turner about Turner's involvement and he says, " You know he was " about Mr. Apap, " he was in it too. You blokes know who was in it. You pinched me, you must know who was in it ". in relation to Alfie Gay, " You know that, you have already got him locked up on it ". Mr. Gibb, in his interview, when asked about accomplices says, " You know Alan was with me, you have got him charged ". Mr. Harris says, " You have pinched Tom and Don so you have got to know they were in it ".

That, of course, involves accomplices' material which is excluded in the sense that it is not allowed to be used against the person mentioned when the Records of Interview go into evidence. You understand that, do you not?

A. Yes.

Q. Nevertheless, it is pretty prejudicial stuff to get in front of a jury?

A. It is a matter of practice.

He was then questioned concerning a further pattern which appeared relating to the consequences a person allegedly expected to suffer as a result of his apprehension and/or conviction.

Again this passage at page 10,079 of the transcript speaks for itself.

Q. Another pattern, I suggest, appears in your interviews, Mr. Lalor, is the advertence by these people to the consequences of their crimes. For example, Mr. Gay says, " I knew what I was doing and I am prepared to take the consequences ". Mr. Vitous says, " I know I have been lagged so I have just got to wear it ". Mr. Gibb says, " I want to do my time and be finished with all of this. I have learned my lesson. Deadset, there is no more from me ". Mr. Harris says, " I am going to get a real big holiday for this ". Mr. O'Callaghan says, " I will go to gaol for a thousand years, I reckon. I have just got to learn to adjust and put up with what I have got coming ". All these examples of realist stoicism, Mr. Lalor, on my examination do not appear in any of the Records of Interview that are signed and/or taped?

A. I don't know about that.

Further patterns were adverted to by Counsel. I quote the relevant passage appearing at pages 10,081–2 of the transcript.

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Q. Another pattern in a number of these interviews, Mr. Lalor, is, I suggest to you, this concern with information and having been lagged. Mr. Burns—these men, of course, express it in different ways—says, "I will tell you one thing, you have pretty good oil on us". "Got the oil"—"he has lagged me too"—"Who has lagged me". Mr. Harris says, "I have been pretty well lagged for it. Everyone knows I was in it. Some people just can't help lagging on others". Mr. O'Callaghan says, "You get terrific information down there. Your informants are better than ours".

That pattern, Mr. Lalor, that is just a coincidence?

A. They are the words the men used.

Q. If you can find any signed or taped Records of Interview with these words "Information" or any sign of "Lagging" will you make them available to Mr. Chairman?

A. Yes.

Q. A couple of minor coincidences, Mr. Lalor, and that is the advertence to some of these people having had a good run. Mr. Burns in his interview said, "We have given you a good run around. We knew it was going to end sooner or later". Mr. Gibb says, "I have had a good run and I suppose it had to end". Mr. O'Callaghan said, "I realise I have had a good run. It is over now". That was all said, Mr. Lalor.

A. Yes, it was.

Q. The fact of the matter is, Mr. Gibb had had a terrible run, had he not?

A. Well . . .

Q. From the time you interviewed him in February of 1974 he had been shot, he was on about two armed robberies in New South Wales and about three or four in Victoria, was it not?

A. Yes, it was.

Q. He reckoned he had a pretty good run, did he?

A. Yes.

Q. There is none of that phraseology in the tapes or any of the phraseology I have putting to you of Gibb in the taped Gibb interview which you took in April, 1973?

A. I don't know about that.

Q. When you put to people, "You are involved in a robbery" or "Were you involved" or "Were you a person that took part", the normal answer one would expect, is it not, is "Yes" or "No?"

A. Not always.

Q. Not always. Mr. Burns, and I will read the question and answer on these, has this put to him, "Are you admitting that you were involved in the robbery of M.S.S. at South Melbourne in June last year", that is the question, follow? He does not say, "Yes". He does not say, "No". What he says is, "You know I was"—"You know I was".

Now Mr. Vitous when he is asked about his involvement with the Greythorne T.A.B. says this, "I was in it, you know I was in it".

Mr. Gibb, when he is asked this question, "Now, were you involved in this robbery or not?" he said, "You know I was Mr. Lalor". That was in relation to the Black Rock T.A.B. When asked the question in relation to the Abbotsford T.A.B., "Were you involved in that armed robbery?" he said, "Yes, you know I was There is no point in me saying I wasn't".

Mr. Harris, when he is asked the vital question, "Were you, in fact, involved in this armed robbery that I have mentioned?" said, "You have read them, you know I was in it".

Mr. O'Callaghan, when he is asked this question, "At about 5.15 p.m. on Monday, 15th August, 1974—(reads to)—were you one of these two men who committed this armed robbery?" Do, you know what he said, "You know I was".

Mr. Lalor, all those answers given between 1971 and 1974 in untaped and unsigned records of interview are mere coincidences, are they?

A. They are the words the men used in those cases.

Q. Can you think offhand of one signed taped record of interview you have done where in answer to the question of involvement in armed robberies any person has said, "You know I was"—"You know I was in it" or words to that effect?

Recommendations of the Board based upon its Findings

A. I am unable to say.

Q. If you can find some, will you forward them to Mr. Chairman through your counsel?

A. Yes.

Not only was Senior Sergeant Lalor unable to say whether or not any of such patterns appeared in any signed and/or taped Records of Interview conducted by him, but, as I indicated previously, as at the date of delivery of this Report, no such signed or taped Record of Interview had been tendered by him, or on his behalf, to the Board.

In my opinion, the patterns discernable in those unsigned, untaped Records of Interview, wore a sinister complexion. Moreover, it is to be borne in mind that I had access to but a limited number of such Records of Interview conducted by members of the Armed Robbery and other Squads between the 1st January, 1972, and the 31st December, 1975.

The matters actually dealt with by the Board involving unsigned, untaped Records of Interview were, of themselves, such as to cause a high degree of concern. However, the matter did not end there.

During the course of the Board's inquiry I read various sets of depositions and transcripts of a number of trials; for example, *R. v. McClure & Ors.* (exhibit 652B—see also the depositions in that matter, exhibit 652A); *R. v. Smith* (exhibit 653B—see also the Judgment of the Court of Criminal Appeal in that matter, exhibit 653C); *R. v. Mather* (exhibit 664); *R. v. Clune* (exhibit 666); *R. v. O'Callaghan* (exhibit 669); *R. v. McClure & Meldrum* (exhibit 657); *R. v. Benton* (exhibit 658); *R. v. Prendergast* (exhibit 692) and *R. v. Zuker* (exhibit 668).

The above list is by no means exhaustive. It is but a selection designed to give the reader of the Report some indication of the diverse body of material available to the Board in relation to the matter presently under discussion.

As the Board made no investigation into those matters, it passes no judgment on the Police Officers involved. Indeed, all I need say is this: Those cases were simply looked at so that I might derive as complete a picture as possible of the problem. I cast no reflection on the Police Officers involved whatsoever. I merely say that a reading of them reinforced the view I had formed as a consequence of the Board's inquiry, viz. that an inordinate amount of time is taken up during the course of trials by challenges to that type of evidence, and with it the attendant vast expenditure of public monies.

Not only was that situation clear from the reading of such transcripts, it was clear from the general evidence Assistant Commissioner Crowley gave in relation to the matter, the evidence of Inspector Delianis in the Sellers Matter, the evidence of Inspector Williams, Senior Sergeant Murphy and Senior Constable Tamblyn in the Hamilton Matter, and the evidence of Sergeant Davies and Senior Constable Pavey in the Cox Matter.

As Lord Justice Lawton said in Turner's case, something should be done, and as quickly as possible, to make evidence about oral statements difficult either to challenge or to concoct.

The relevant recommendation in the Murray Report of the 12th October, 1965, appears at pages 12 *et seq.* of the Report and is to this effect.

"In the early stages of the enquiry I was of the opinion that any scheme suggested would have to be capable of being applied to all cases and in all parts of Victoria. On reflection however I have come to the conclusion that there is no sufficient reason why a scheme should not be adopted which will apply only to more serious cases and, in its early experimental stages, to a limited area. When one considers the many thousands of police enquiries—all of which may be classified as "interrogations"—which are made in all parts of Victoria at all hours of day and night it is obvious that the practical difficulties involved in applying any scheme to all of them would probably be insuperable or the scheme would of necessity be of so little consequence that it would not achieve anything. But the class of case in respect of which evils are likely to occur or to be alleged to have occurred is in practice the more serious criminal case and the scheme could be confined for use in respect of investigations into these types of case. This would exclude great numbers of cases of lesser importance in which an elaborate procedure would be unnecessarily cumbersome.

Recommendations of the Board based upon its Findings

I have come to the conclusion that of all the possibilities which have been suggested the tape recorder provides the most practical even if incomplete solution.

At some point in an enquiry into serious cases the police usually commence to write down the questions asked and the answers given or to write down a statement which is the substance of the questions and answers. A tape recorder might very effectively be used to cover this critical part of the investigation.

I have no doubt that many persons who are prepared to talk frankly with Police will refuse to do so when a recorder is produced. There is therefore a real possibility that some suspects will not be charged when they otherwise would have been. A compensating factor, so far as the community is concerned, may be that of those people who do make recorded confessions a greater number will be convicted.

The use of tape recorders requires a little skill and experience. There will be many cases in which inexperienced Police will find that they have not operated them correctly and when these cases occur no doubt a sinister reason for the failure of the recorder to take an audible record will be suggested.

It is obvious that there will need to be a period of trial and error to establish the most satisfactory way in which recorders can be used or indeed if their use will achieve any useful purpose. For this reason I do not propose to make any specific recommendations as to the method to be employed by the Police.

A number of methods could be usefully tried. One method would be for a recorder to be switched on at the stage when the investigating Police decide that they will take a written statement from the suspect or start to compile a written record of question and answer. Another method would be for the suspect to be taken to another Police Officer after an interrogation and his statement or the record of interview recorded at that stage.

I therefore recommend that a number of tape recorders be purchased so that a trial period can be commenced. At my request certain limited experiments have already been carried out at Russell Street and the results, although not spectacular, were good enough to be regarded as encouraging.

In the initial stage I recommend that recorders be issued to Russell Street, a small number of suburban stations and to some provincial centres such as Geelong, Ballarat and Bendigo.

I wish to emphasise however that I do not think tape recorders should be regarded as a substitute for present procedures of taking written records. I believe the use of tape recorders should be in addition to existing procedures."

That, of course, was a recommendation made almost eleven years ago.

Despite that recommendation, a number of Police Officers gave evidence to the Board to the effect that a directive existed that only the read-back of the Record of Interview was to be taped. When questioned about the directive, the Board was first told it was based on the Murray Report, then the St. Johnston Report, and finally that it was a directive from the Chief Commissioner himself. Although a number of Police Officers called to give evidence before the Board were questioned concerning the directive, all swore they had never seen it. Although I sought a copy, one was never produced.

It would seem, therefore, that the Police Force has not progressed as far in this direction since 1965, as has technology and science which have developed and refined silent typewriters and a wide array of electronic devices.

However, it was interesting to note that in the matter of R. v *Mather* (exhibit 664), there was no hesitation on the part of the Police Officers concerned to attempt to tape-record the whole of the Record of Interview; in the matter of R. v *Zuker* (exhibit 668), it was claimed it was a matter for the individual Police Officer as to whether he taped the whole of a Record of Interview or merely the read-back of it.

Why, then, should not the whole of an interview of the type under consideration be tape-recorded?

The arguments advanced against the adoption of such a practice entirely failed to convince me.

As the Honorable Mr. Justice Murray made clear in his Report, tape-recorders should not, and in my experience where they are properly used, are not, a substitute for the very satisfactory procedure of taking written records of interview between Police and suspects. As His Honor again made clear in his Report, they should be (and again, in my experience, are) used in addition to, and as confirmatory of, existing procedures.

Let me instance those cases in which it is only the read-back of the Record of Interview which is tape-recorded. In practice, how often is that Record of Interview challenged? I would venture to suggest, very rarely. Because the use of tape-recorders is designed to be ancillary, or as an addition to, existing procedures, why should it give rise to additional challenge at the trial?

As matters now stand, if the accused challenges the authenticity of the Record of Interview and the read-back of that Record of Interview is tape-recorded, that read-back is played. The procedure suggested will do no more than establish all that took place between Police and suspect during the interview and before the read-back commenced. Whilst the full recording of the interview will not be fool-proof (in the sense that an accused may still make allegations against Police concerning their behaviour towards him prior to the interview), it will go a long way to destroying unfounded allegations of Police malpractice.

What it will do, however, is put an end to the sort of acrimonious debate which has very often occurred between the accused and Police when a member produced an unsigned Record of Interview in respect of which there was no tape-recorded read-back.

I turn now to deal with the arguments put forward by Counsel for the Police Association.

As to the first argument, viz. that the authenticity of the tape would be challenged, I say no more than this. The evidence called in the Keeley Matter *re* Gaudion demonstrated that it is now a comparatively simple matter for an electronic expert to determine whether a tape has or has not been tampered with. I consider, therefore, that such an allegation could be easily proved or disproved. I do not accept the proposition that Police Officers would tamper with or edit a tape in the manner suggested, even assuming they had the expertise enabling them to do so in the first instance. From the evidence to which I have referred, if Police Officers were foolish enough to endeavour to so tamper with or edit a tape, I have little doubt such interference would be easily detected. Further, provisions for the safe custody of the tapes (to which I shall presently advert) will, in my view, effectively protect the tapes from being dishonestly tampered with or edited.

The second argument urged on behalf of the Police Association was that extraneous noises on the tape might be falsely ascribed to the action of Police conducting the interrogation. But that allegation would only possess point or sting if there was, in fact, noise created at a point in the interview whereat, for example, the suspect was in the process of supplying to the Police some account or explanation consistent with his innocence. The Police are scarcely likely to deliberately create extraneous noise at a point in the interview when the suspect is in the course of making admissions of his guilt. But if noise was deliberately created by Police with a view to stifling or distorting an exculpatory answer or explanation by the suspect, its very presence at that particular point of the taped interview would at once attract attention in the context, and call for explanation if the tape was challenged at the trial; and it would be difficult, one imagines, for a dishonest officer to have a convincing explanation for the presence of extraneous noises on the tape at points in the interview when the context indicated that the suspect was endeavouring to provide an answer or an explanation inconsistent with guilt. So far as the intrusion into the tape recording of accidentally created noise is concerned, the prudent Police Officer, (and, one suspects, the great majority of suspects being interviewed) would simply seek the repetition into the tape of such portion of the conversation as may have been the subject of interruption or distortion. Moreover, the chance of extraneous noise occurring does not seem to exist as a deterrent to the taping of read-backs of Records of Interview and, whilst conceding that the former operation is longer in time than the latter, I am far from persuaded that the question of extraneous noise is a problem of the magnitude sought to be depicted by Mr. Phillips.

The other matter about which he expressed concern, i.e. the deliberate creation of noise during the interview by an experienced criminal in order to defeat a true recording of the conversation can, I think, be met in two ways:—

1. The Police must, as a matter of common sense, take all reasonable steps to put it out of the power of the criminal to manufacture noise during an interrogation.

2. If, notwithstanding this, the criminal succeeded in creating noise, the officer conducting the interview would but have to draw attention to that fact in unmistakable terms and thereupon repeat the question and/or answer which had been interrupted or distorted; as that would also appear on the tape as forming part of the Record of Interview, it is difficult to see how, in the ultimate, the criminal would profit at the trial.

Recommendations of the Board based upon its Findings

It must be remembered that the tape of the whole interview will only be played in the event that the accused challenges not only the actual Record of Interview, but also the read-back and adoption of that Record of Interview. I am satisfied in my own mind that the occasions on which that will occur will be rare.

The third argument is no argument at all. Of course criminals may make allegations of what occurred before or after the actual interview. But the fact that the participating voices are preserved "live" on the tape gives the listener a far better opportunity to assess the reality of the situation as it was in the Interview Room at the time, vis-a-vis the suspect and the Police.

I do not think the matters urged by Mr. Phillips in his fourth argument against the proposal to tape-record Records of Interview constitute a serious problem at all. It must not be lost sight of that the tape is merely ancillary to the written (or typed) Record of Interview; that being so, on how many occasions will it be necessary that the whole tape be played?—see again page 70 of the Second Report of the Australian Law Reform Commission. But, in any event, if it did become necessary that the tape be played, in the stage of electronic sophistication now reached, I do not think the problems envisaged by Counsel would occur.

As to the cost factor, in my opinion there would be no necessity for the expense of acoustic recording rooms. First, it is the very presence of some extraneous noise that enables an expert to readily tell whether a tape has or has not been interfered with. (See the evidence of the witness Eaton in the Keeley Matter *re* Gaudion). Second, I do not think that the visual presence of a tape recorder would inevitably have such a totally inhibiting effect on the suspect as to cause his lips to become irrevocably sealed. A man minded to unburden himself by way of confession to the commission of a crime is a man, in my view, who will make that confession by whatever means available to him. I cannot accept the proposition that such a man will confess only to a typewriter, but not to a tape recorder. Indeed, that was the very view expressed by a number of Police Officers to the Australian Law Reform Commission. (See paragraph 156 of the second Report of that Commission). If, however, it was thought necessary that such recording rooms be set up then, in my view, (and allying myself with a somewhat similar view expressed by the Australian Law Reform Commission—Report No. 2), the expenditure involved is not too high a price to pay, for the proper administration of criminal justice.

It was not surprising that no submissions were made by Counsel for the Police Association that there was such disqualifying noise associated with the use of typewriters as would render their use impracticable in conjunction with the tape recording of Records of Interview. The practical demonstration given to the Board at Russell Street during the Inquiry demonstrated that extraneous noise, whether emanating from a typewriter or some other source, caused no real difficulty whatever in one's appreciation of what was said in the conversation. Moreover, there are now, throughout the community, in common use, silent typewriters and I cannot see why existing typewriters cannot be replaced, at least so far as Russell Street is concerned, by silent typewriters at the end of their working lives. The evidence before the Board indicates that there are some 9 or 10 interview Rooms at Russell Street with a corresponding number of standard typewriters; one is, therefore, speaking in terms of an ultimate acquisition of 9 or 10 silent typewriters for use at Police Headquarters. Until the larger suburban, and country stations can be likewise equipped, there is, as I have indicated, no impediment to the use of standard typewriters conjointly with the taping of Records of Interview. There would be no noise from a typewriter when the preliminary conversation between the Police and the suspect was taking place, nor would there be any during the read-back. So far as the actual compilation of the Record of Interview was concerned, one would envisage the Officer in Charge typing the question, then putting the question to the suspect, clarifying it in the event clarification was necessary, obtaining the answer, and finally typing it.

Tape-recordings were tendered to the Board of conversations occurring in all manner of places. In no case was the problem of extraneous noise insurmountable.

I refer to the tape-recordings of the conversation between Rayma Joyce, the witnesses Ryan and English, and various Police Officers at Rayma Joyce's flat on the 28th February, 1975 (exhibit 28); the conversation between Rayma Joyce, Reginald Joyce and Sheena Joyce during the car trip from Chelsea to Pentridge in 1974 (exhibit 30A); the conversation between the witness Ivan Kain and one John Murphy on the 28th May, 1975 (exhibit 91A); the conversation between the witness Ivan Kain and Inspector Ewert on the 23rd May, 1975 (exhibit 92A); the

conversation between Rayma Joyce and the witness Holland (exhibit 160A); the conversation between Rayma Joyce and Police Officers Fry and Pocock on the 26th July, 1974 (exhibit 183A); the conversation between Rayma Joyce and Police Officers Fry and Pocock on the 31st January, 1974 (exhibit 184A); the conversation between Sellers and Police Officers Delianis and Hildebrand whilst Sellers was in the Alfred Hospital (exhibit 280A); the conversation between Keeley and Senior Sergeant Gaudion in a park at Caulfield in October, 1974 (exhibit 342A); and what better example could there be but the conversation between Senior Sergeant Wren and Keeley in the Mountain View Hotel on the 15th January, 1974 (exhibits 346A and 346D)?

My recommendation therefore, is that the whole of an interview of the type under discussion be tape-recorded. I have no doubt that if that recommendation is adopted, there will be not only an appreciable shortening of the length of those trials in which a Record of Interview is vital to the Crown case, with significant consequential saving of public expenditure, but there will be also an alleviation of judicial disquiet about some aspects of confessional evidence.

As to the problem which may arise if there is present on the recording, material inappropriate for presentation or publication at trial, I adopt the views of the Australian Law Reform Commission appearing in paragraph 157 (page 72) of its second report.

> "Second, there may be problems which arise from the presence on the recording of material which is inappropriate for presentation at trial. A suspect may be willing to speak frankly to a police officer about matters in which the Police have an interest but which are irrelevant to the guilt of the suspect. Or he may be willing to implicate others in the commission of the offence under investigation. In cases of this kind the suspect may not wish to be identified as a source of Police information. Indeed it may be unsafe for him or for his family if he were so identified. If a tape recording of the whole interview were automatically to be published at the trial no adequate protection could be given to the suspect. Moreover, the allegations which he makes may be a gratuitous defamation of the people whom he names. The rules for the exclusion of inadmissible evidence would give no adequate protection against unwarranted defamation and scandal if the tape recording were to be played in the court in order that the rules may be applied. The Commission considered as one means of dealing with this problem the suggestion that a referee—e.g. a magistrate or lawyer not connected with the particular case—be empowered after hearing submissions from both sides to eliminate from the copies to be prepared for admission, as evidence, any material thought to be for one reason or another improper to tender. It was felt however that this 'editing' power should be left to the court dealing with the substantive question itself, subject to the condition that the court should be empowered to proceed *in camera* with any question that may arise as to the propriety, in the senses discussed in this paragraph, of admitting any recorded material. The court should also be empowered to make an order prohibiting publication of the deleted material."

If no charge is laid against the person whose conversation is recorded on the tape within twelve months of the interview, the material appearing on the tape should be erased.

The question arises as to what is to be done with the tape at the conclusion of the particular interview. In my opinion, and unless good reason to the contrary can be demonstrated by the Police Officers conducting the interview, at the end of the interview the relevant tape or tapes be marked with the time at which the interview commenced and concluded, the date, the names of the Police Officers involved and the name of the person interviewed. Within the metropolitan area, the tape or tapes is or are to be delivered to a designated member of the Crown Law Department within 24 hours, and kept in safe custody by him pending the trial, or the erasure of the tape. In country areas, and again within 24 hours, the tape (or tapes) is or are to be lodged with the nearest Deputy Prothonotary of the Supreme Court or Registrar of the County Court. In this way allegations to the effect that the tape has been tampered with will be minimised.

Upon payment of a prescribed fee, the Solicitor for the accused shall be entitled to a copy of the relevant tape.

In my opinion the taping of the whole interview between Police and the person interviewed is as ideal a solution to an important problem as can be found, and one which should be welcomed by the Police.

Recommendations of the Board based upon its Findings

It is to be remembered that it is not a procedure to be substituted for the present practice of preparing a written Record of Interview, but is merely ancillary to it. Its practical effect will be to minimise, if not do away with entirely, unfounded allegations that a Record of Interview is a fabrication or concoction.

I turn now to deal briefly with the submissions made by Counsel appearing for the Police Association and which could perhaps be described as submissions relating to an intermediate situation.

Counsel for the Police Association maintained that the whole of the interview should not be recorded but that the situation was best met by: (*a*) the tape-recording of the read-back of the Record of Interview, or (*b*) the tape-recording of a refusal to read back the Record of Interview, together with the reasons therefor, if any are proffered in answer to questions put to the suspect concerning his refusal, together with an assent either as to the total or general accuracy of the Record of Interview if that is obtainable. His further submission was that in those cases where tape-recording facilities were not available or were inoperative, the adoption of the Record of Interview by an accused person should be secured by the intervention of a Police Officer preferably of rank senior to the interviewing officers and unconnected, if possible, with the investigation.

This intermediate situation was also dealt with by Counsel Assisting the Board during the course of his final submissions.

The view he expressed at page 11,052 of the transcript was that if the only portion of the interview taped was the actual read-back of the Record of Interview, that would be at the peril of the interviewing Police, because by so much would they have enlarged a potential field for dispute and recrimination, whereas if the whole of the interview was imprisoned in the tape it would establish the *bona fides* of the interrogation and in advance cut away the ground for baseless allegations made against the Police.

It is clear from the recommendations I have already made that that is a view I share.

Indeed, during the course of final submissions, Counsel Assisting contended that the problem was now of such magnitude that an unsigned, untaped Record of Interview should not be admitted in evidence against an accused person if that Record of Interview was challenged (page 11,051).

It is appropriate to make some observations concerning the intermediate situation. In this respect one can instance three cases. First, where the Record of Interview is untaped but signed; second, where the Record of Interview has been adopted by the tape-recorded read-back of it alone; and finally, where the Record of Interview was not read back, was not signed, but was adopted in the course of an explanation for the refusal to read it back and/or sign it, that adoption being tape-recorded.

In any one of those situations the Record of Interview would be admissible in evidence as the law now stands. The unsatisfactory feature of any one of those situations, however, is that adverted to by Counsel Assisting, viz. that by adopting that course, rather than tape-recording the whole interview, by so much more has the potential field for dispute and recrimination been enlarged.

In my opinion the intermediate situation proposed by Counsel appearing for the Police Association, whilst perhaps better than nothing, is unsatisfactory for the reason set out above.

One objective in taping the whole interview is to introduce an independent element into the situation, viz. the tape-recording. To not tape any of the interview, but merely rely upon the suspect's adoption of the Record of Interview when interrogated by an independent Police Officer, as Counsel for the Police Association contended, merely perpetrates the existing evil, i.e. there is no element present which is independent of the Police.

In looking at the overall situation so far as tape-recording Records of Interview is concerned, one must not lose sight of the fact that admissions made by a suspect are only a small part of the investigative process in solving crime.

If it is contended that the tape recording of a whole interview will have an inhibiting effect on suspects so that fewer admissions of guilt will be made, (a view shared by neither the Police who gave evidence before the Australian Law Reform Commission nor the Commission itself and which I consider to be without foundation), and that therefore Police will be required to do more in the way of detection than in the past, then so be it.

One final observation I make in connection with the intermediate situation relates to a practice adopted by some Police Officers of having a suspect initial a typographical spelling or the like errors in the Record of Interview, even though he has stated he is not prepared to sign it. Once the suspect has done so, it is then claimed that by so doing he has adopted the Record of Interview. In my opinion, this is no more than a device used to trick a suspect when he refuses to adopt a Record of Interview. Under no circumstances should it be tolerated, and such initialling by the suspect should not be treated as an adoption in law by him of the Record of Interview.

Recommendation

It is my recommendation that hereafter the whole interview of suspects in respect of indictable offences, and other defined offences in respect of which the penalty imposed is generally a term of imprisonment, be tape-recorded, such tape-recordings to be dealt with in the manner outlined in paragraph (H) of this Chapter. I further recommend that an unsigned, untaped Record of Interview which has not been properly adopted be not admitted in evidence against an accused person in any case in which that Record of Interview is challenged.

(I) THE CONDUCT OF IDENTIFICATION PARADES

When dealing with the problem of identification parades in its second Report, the Australian Law Reform Commission expressed the following views in relation to the present practice concerning identification parades and the problems inherent in them. (See page 52 of Interim Report No. 2.)

> "Identification parades, or 'line-ups', are an integral part of Police investigation techniques and commonly employed when Police wish to check the identity of a suspect held in custody with witnesses to a crime. Present Australian Police practice with respect to identification parades is governed by Police Commissioner's Standing Orders rather than legislative provision. Such standing orders govern the fairness with which parades are conducted with a greater or lesser degree of thoroughness. It is the Commission's view that identification evidence is so important, and so subject to mistakes, that the conduct of identification parades ought to at least in some respects be governed by the proposed legislation.
>
> There is considerable evidence now accumulated as to the unreliability of identification parades, and an English committee under the chairmanship of Lord Devlin is presently making a thorough investigation of the whole question. A memorandum to the committee from the National Council for Civil Liberties lists fifteen cases over a period of two years in which there was either admitted or strong evidence of persons convicted or remanded as a result of mistaken identification by witnesses. The Criminal Law Revision Committee, in its Eleventh Report, said that it regarded mistaken identification as 'by far the greatest cause of actual or possible wrong convictions'. One of the most notorious English cases was that of Alfred Beck, who was picked out in identification parades by twelve women, served seven years, and was released. As the offences continued he was again picked out by four women, was convicted and was awaiting sentence when the real villian was finally apprehended. Another notorious case was that of Oscar Slater, who served eighteen years for murder owing to wrong identification. The record of these mistakes makes sorry reading for all those concerned about the integrity and efficiency of our system of criminal justice."

The Victorian procedure is governed by Standing Order 651 of the Chief Commissioner's Standing Orders. Although that Standing Order will ultimately appear in the Appendix to the final Volume of the Report, it is convenient to set it out again in this Chapter of the Report.

> 651. When it is necessary to ascertain whether a person detained at a Police Station can be recognised by witnesses, every precaution is to be taken that such identification is carried out fairly, and the following directions are to be carefully observed:—
>
> (1) The member or members of the Force concerned in the case, though present, will take no part in the proceedings connected with the identification, which will be carried out by the Officer-in-Charge of the Station. It is, however, very important that identification should not be hurried, and where the Officer-in-Charge of the Station is much occupied on other matters, it will be desirable that another experienced member of the Force be summoned for the purpose.
>
> (2) A list of the names and addresses of the witnesses to be called for the identification is to be previously supplied to the member of the Force who is to conduct it.

Recommendations of the Board based upon its Findings

(3) Care is to be taken that, as far as practicable, and whenever circumstances permit, the persons assembled do not become aware which of them is the person put up for identification.

(4) The witnesses must not be allowed to see the person before he is placed with others for the purpose of identification, nor should they be shown photographs or be assisted by any verbal or written description.

(5) Before the witnesses are brought in, the person should be placed amongst the others, eight or more if practicable.

(6) No change of clothing or any other acts tending to change his appearance should be permitted.

(7) In selecting the other persons, care is to be taken that they are, as far as possible, of similar age, height, general appearance, and class of life, as the person standing for identification, and that as far as possible the identity of such person is not disclosed to them by anyone.

(8) Members of the Police Force must not be employed for identification unless it is a case in which a member of the Force is involved.

(9) It is important that the place selected for the identification has a good light.

(10) All unauthorised persons are to be strictly excluded from the place where the identification is held.

(11) Persons put up for identification are to be informed prior to the identification:—

(*a*) That they will be placed amongst a number of other persons, as far as possible of similar age, height, general appearance, and class of life as themselves.

(*b*) That they may stand in any position they choose among them; that they may, after each witness has left, change their position if they so desire, and that they may object to any of the persons selected or the arrangements made.

(*c*) That they may, if they so desire, have a solicitor or any friend present at the identification, but that it must be distinctly understood that such person may not in any way interfere by action or words with the proceedings.

(*d*) That no intimation as to their identity will be given to the witnesses.

(12) The chief care of members of the Force must be to see that the proceedings are so conducted that it cannot subsequently be alleged that the interests of the person concerned have been unfairly prejudiced. At the same time, the witnesses should be given full opportunity to make their identification under the most suitable conditions, and the member of the Force carrying out the identification parade should ascertain from them the circumstances of the case, and so conduct the identification that the witnesses' ability to identify is fairly and adequately tested. Thus, they may hear the persons speak, and they may see them with their hats on or off, and from the back or front, or in movement, or in such other way as will give the witnesses a reasonable opportunity of identifying.

(13) The witnesses are to be introduced one by one, and requested to point out the person if they see him. Should the witness indicate anyone, but be unable to identify positively, the fact should be carefully noted by the member of the Force conducting the identification, as should also any other material circumstances connected therewith.

(14) Care is to be taken that the witnesses are to be treated with patience, consideration, and courtesy. It is often found that witnesses, more especially women, and those who have been the object of violence and robbery, are nervous and unable readily to collect themselves.

(15) After a witness has attended the identification he is to be escorted from the room and taken to another part of the building, so that collusion between witnesses may be rendered impossible.

(16) The member of the Force carrying out the identification will, as soon after the identification as possible, make an entry in the Occurrence Book of all the circumstances connected therewith.

(17) In less populous parts of the State it may prove impossible to carry out these instructions in their entirety, but they are to be complied with as far as practicable.

Recommendations of the Board based upon its Findings

On the face of it the Standing Order provides various safeguards so far as the suspect or accused is concerned. In particular, witnesses must not see the suspect before the line-up nor be shown any photograph or assisted by any verbal or written description of him. Persons forming the parade must be as similar as possible in age, height, general appearance and class of life as the suspect. The suspect is even permitted to have a Solicitor present; and so on.

However, as in the case of so many other Standing Orders the administration of this particular Standing Order is unsatisfactory. That this is so emerged very clearly during the Board's investigation into the Hamilton Matter (Chapter 16).

Hamilton's evidence relating to the actual identification parade will be found in that Chapter. I consider it of sufficient importance, however, to set out one short passage from it at this point. To my mind it highlights one of the unsatisfactory aspects governing the present practice of identification parades. The passage to which I refer appears at page 7699 of Hamilton's evidence.

QUESTION: They are the complaints you have about the conduct of that line-up?

HAMILTON: Yes. Also, that I had just been dragged out of bed and it was quite obvious. My hair was everywhere and I looked pretty scraggy in every way.

QUESTION: How were you dressed?

HAMILTON: I had on a pair of check patchwork pants, about 5-inch square of different colours, blue, red, and grey, quite distinct the pants were, and I had a blue and white checked shirt on and a jeans jacket. Everybody else in the line-up—not everybody else but the people I asked for the names and addresses—were all in suits and ties. With the exception of the people I knew in the line-up the rest were in suits and ties.

QUESTION: How many did you know in the line-up?

HAMILTON: Three.

Whatever one may say as to Hamilton's credibility as a witness, that evidence he gave was not challenged, and was in fact borne out by the evidence of other Police Officers as to events that morning, in particular that of Inspector Williams.

The raid at 86 Lord Street, Richmond, had occurred in the vicinity of 5.00 a.m. Although the Police evidence did not indicate that Hamilton had actually been dragged out of bed, it is clear he had been woken when the door to the premises was smashed in by the Police, had been immediately seized, forced to dress in whatever was close at hand, and then taken to Russell Street. At approximately 11.30 a.m. that morning he was placed in the line-up.

At page 7969 of the transcript Inspector Williams was asked about his practice so far as the obtaining of persons to make up an identification parade was concerned. That passage of evidence is also worthy of inclusion in this Chapter of the Report.

Q. What about the people to make up the parade?

A. I usually ring—I cannot recall the number or the name of the person—but through the Personnel in the Public Service part of the Police building and give him the age, height, description, just a general appearance and then he sees what is available and then he will ring me back and say I have two, three, up to eight persons.

Q. Is the situation that you cannot specifically remember doing that on this occasion but that is what you usually do?

A. Yes.

Q. That is the standard practice?

A. Yes, rather than try and find the persons in the street which is a lot of time involved trying to get them there. I do also make arrangements for them to go direct to the seventh floor, that is by-passing us on the the fifth floor.

Q. Is that designed to avoid witnesses seeing them?

A. Yes.

Q. How many people would be available from that source?

A. Well, if they are in the younger age group, when I say the younger age group, say from 30 down, we seem to be able to get more but if it is over the 30 age group it is almost hopeless to get some because they are usually in executive positions and they just cannot spare the time.

Q. But would there be in the order of 20, 30?

A. They have to choose from?

Q. Yes?

A. That I do not know but I would say, from the ones going in and out of the building, there would be more than 30.

Recommendations of the Board based upon its Findings

In my opinion the situation Hamilton found himself in that morning would obviously tend to draw attention to him rather than merge him properly in the line-up from which he might or might not be identified by a person able to do so.

However that was by no means the only injustice done Hamilton that day, and later at his trial, so far as the identification parade was concerned.

As will appear in Chapter 16 of the Report, the two men against whom the Police laid charges in respect of the robbery of the Thornbury Post Office sub-agency on the 14th March, 1973, were Hamilton and McGowan. Hamilton could be described as of rugged appearance and of lean build. McGowan was described by Nola Grant to Sergeant Rickman as " a little fat fellow with beady eyes " (page 9529B). As I have stated in the Hamilton Matter, he was of " ape-like " appearance and once seen, could never be forgotten. (See also the evidence of Sergeant Rickman at page 9259B; the evidence of Senior Constable Tamblyn at page 8405 and the evidence of Senior Sergeant Murphy at page 8241.)

The victim of the Thornbury robbery was a man named Cochrane. I turn now to a consideration of the evidence this witness gave at Hamilton's trial, first in relation to the actual robbery, then the identification parade itself.

At page 49 of the transcript of the trial (exhibit 539) Cochrane swore: " I came out and was confronted by two men, one of whom had a gun pointing at me, and I was told to keep quiet and I would not get hurt. I grabbed the barrel of the gun and pushed it away from me and then one of the men caught hold of me, pushed me into the bedroom and made me lie on the floor and tied my hands ".

At page 51 of that transcript he gave the following account of the identification parade. (It must be remembered that by this stage of the trial, McGowan had changed his original plea of " not guilty " to " guilty " and had been removed from the dock (page 47 *et seq.*) leaving Hamilton to stand trial on his own).

" The next day I went into Russell Street Headquarters and was taken up on to, I think, the seventh floor where there was a line-up of about fourteen men. I was asked to look along the line and see if there was anyone in that line that I recognised. I looked along it two or three times and then I picked out one person. The person I picked out was the person in the box (dock). He looked similar, very similar to the person who had the gun. I think he was the person that had the gun."

In cross-examination he had this to say (page 53 of the transcript of exhibit 539).

Q. " Now you said when you first gave evidence about the man you identified in the line-up that you walked up and down the line two or three times."

A. " Yes."

Q. " And you picked him Hamilton because there was something . . .? "

A. " Familiar."

Q. " Familiar or similar."

A. " Similar."

Q. " But you weren't positive were you? "

A. " Well I was positive in this respect that his hair was done the same and he was approximately the same build. He was dressed differently."

It is clear from those passages of the evidence Cochrane gave at Hamilton's trial, that he was swearing that at the identification parade he identified Hamilton as the person who had the gun and that that was the man in the dock.

The fact is that at the identification parade held on the 15th March, 1973, he did no such thing. Having viewed the line-up he said to the Officer conducting the parade, " He (Hamilton) is similar, but I could not swear to it. He looks like the fellow who tied me up ". (See exhibit 558.)

One could not have more contradictory evidence of identification. If it were known to a jury that the victim of a robbery in which two persons took part, had stated at an identification parade that the accused looked like

the man who tied him up but that he could not swear to it, (the same victim having sworn at the trial that the accused looked very similar to the other criminal, viz. the one with the gun, and that the victim thought he was the one that had the gun), that, to my mind, would have had one effect and one effect only on the mind of that jury, viz. to have destroyed the credibility of the witness so far as a reliable identification of the accused.

Recommendations of the Board based upon its Findings

I stress again it would be virtually impossible to mistake McGowan for Hamilton or Hamilton for McGowan.

The vice of the matter is that what Cochrane said at the identification parade (and which appeared in the formal report prepared by Inspector Holmberg) was concealed by the Police from both the Crown and the Defence, and accordingly the Solicitor appearing for Hamilton at his trial was unaware of the vital inconsistency that existed concerning Cochrane's evidence.

How did this situation arise whereby neither the statement made by Cochrane to Inspector Holmberg at the line-up, nor Holmberg's report (exhibit 558), was brought to the attention of the Police Officers investigating the Thornbury robbery?

s Senior Sergeant Murphy said at page 8249 of the transcript, there was a duty on the part of Inspector Holmberg to convey to him and his colleagues who might be interviewing somebody like Hamilton, what was said by witnesses at an identification parade, but on this occasion he did not do so.

At page 8182 of the transcript it was put to Inspector Williams that as a matter of practice, at a trial where there is an issue involving identity, it is the usual practice for the interviewing officer who conducted the identification parade (in this instance Inspector Holmberg) to be called to give evidence. To that he replied, "Yes it is". When then asked did he know any reason why Mr. Holmberg was not called to give evidence (at Hamilton's trial), he replied, "No".

I do not propose to go into the reasons which caused me to form the view that that evidence was concealed from the Crown and from Hamilton and his advisers; those reasons will be found in Chapter 16 of the Report. I simply state that the grave injustice done Hamilton by that act of concealment was such that, in my opinion, prompt steps must be taken to ensure a like situation does not recur.

Contrary to the submissions made by Counsel for the Police Association to the effect that for the present, there should be no change in existing procedures concerning Identification Parades (page 11,683), I consider appropriate steps should be taken forthwith.

I consider the procedure governing identification parades should be removed from the realm of Standing Orders and become the subject of legislation. Irrespective of the matters dealt with in the Standing Orders, they, in fact, confer no enforceable rights on the individual in Police custody, are constantly breached, and, in the experience of the Board, breached to the knowledge of Senior Police Officers who make little or no attempt to ensure that they are given effect to. It is difficult to recall a matter investigated by the Board in which that situation has not occurred, and in this context I am referring to breaches of Standing Orders of substance, not those of an inconsequential or insignificant nature.

The legislation dealing with identification parades should provide (*inter alia*)—

(i) that a suspect may refuse to take part in an identification parade if he so wishes;

(ii) that a suspect may request that an identification parade be held;

(iii) that a suspect have the right to have a lawyer or friend present if that lawyer or friend can attend the parade within one hour. It would appear that in all probability it takes approximately one to one and a half hours to arrange an identification parade. I do not consider the holding of the parade should be delayed beyond that time, merely awaiting the arrival of the suspect's lawyer or friend;

(iv) that all identification parades held at Russell Street be video-taped. As a matter of urgent desirability, the like provision for video-tapes in the large suburban and country Police Stations be made. One is quite familiar with the present practice of the Homicide Squad to film re-enactments of murders. Having such expertise, I have no doubt the video-taping of line-ups would prove to be no practical problem. If it is suggested it would be expensive, I reply that it would do away with so much debate at trials as to more than pay

Recommendations of the Board based upon its Findings

for itself within a very short space of time. I point to the length of time taken up debating the aspect of identity at the three trials of the man Boland following the Faraday kidnapping (see *R. v. Boland* 1974 V.R. 849—the report itself deals with other matters; a perusal of the transcripts of the three trials establishes the point I wish to make):

(v) additionally that all identification parades should be photographed in colour and a copy of that photograph made available to the accused (if that should become his status):

(vi) that the report of the Officer-in-Charge of the parade should set out the fact that the accused was warned he need not attend the parade, the events of the parade, including all actual conversations, and the name and address of every witness who failed to identify the accused. A copy of that report should as a matter of course be made available to the Crown and to the accused:

(vii) before the Police seek to have a witness identify a suspect that witness be required to provide a written description of the suspect unassisted by any person. That description could well be set out in a *pro forma* on which the witness is simply required to set out his description of the culprit's approximate height, build, weight, colouring, dress, age, together with any visible peculiarities he may possess. A copy of that written description should be supplied to the accused whether the witness is called at his trial or not.

It has been suggested that the names and addresses of those taking part in the parade be noted by the Officer-in-Charge of the parade and that a copy of such list be annexed to his report and handed to the Crown and the accused at the same time as copies of the report and copies of the coloured photograph.

I consider the task of the Police in locating members of the public prepared to take part in identification parades is onerous enough as it is. If a member of the public believed that by disclosing his name and address he ran the risk of becoming a witness at a trial, I think it probable that many persons otherwise prepared to take part in a line-up, would thereupon refuse to do so. Accordingly, I do not make this recommendation.

Further in my opinion the necessity for such persons to be identified by name and address disappears once the parade is video-taped, and the steps outlined above taken.

Recommendation

I recommend that appropriate legislation be enacted dealing with the conduct of identification parades, such legislation incorporating (*inter alia*) the matters I have adverted to in sub-paragraphs (i) to (vii) inclusive.

It is my further recommendation that the legislation provide that in the event of non-compliance with any one of those provisions, any evidence of identification of an accused person so obtained be inadmissible against him at his trial.

(J) Powers of the Police to Photograph and Fingerprint Persons Under Arrest or Under Restraint

During the course of its inquiry the Board came across instances of persons being photographed and fingerprinted although such persons had no prior convictions and were not charged with any offence following their interview by the Police. The best illustrations are to be found in the Lawless Matter (Chapter 19) where Carol Margaret Coppin, although no more than a witness, was photographed; and the Stupak Matter (Chapter 27) where Erika Stupak was both photographed and fingerprinted, she being a respectable member of the public who through her own foolishness, had fallen into the hands of the Police, but who at no stage, so far as evidence before the Board was concerned, ever fell into the category of either a witness, or a suspect.

Standing Order 1678 (2) provides that at the City Watchhouse all offenders *charged* with serious offences who have either no criminal photograph or no recent photograph are to be photographed by the Police photographer.

The Police had no right to photograph Mrs. Coppin and Mrs. Stupak, yet, in complete disregard of the provisions of the Standing Orders, did so. It is, once again, a matter of regret that those in authority in the Victoria Police Force choose to ignore such flagrant breaches.

Recommendations of the Board based upon its Findings

Standing Order 887 (1) provides that the informant shall be responsible for taking the fingerprints of all persons *charged* by him, unless such persons object. Standing Order 889 provides (*inter alia*) that the fingerprints of offenders should be taken on each occasion on which they are charged.

Mrs. Stupak fell within neither Standing Order but was nevertheless fingerprinted; she clearly believed she had no choice in the matter. This episode again demonstrates the readiness with which Police breach the clear provisions of the Standing Orders.

Indeed, in the case of Mrs. Stupak, despite the fact that a letter of complaint was sent by her Solicitor to the Officer responsible, Inspector Paul Delianis, Mrs. Stupak had the greatest difficulty in securing the destruction of the photographs (and negatives of those photographs), and her fingerprint card.

It is of interest to note certain of the views expressed by the Australian Law Reform Commission in relation to this matter. The following views appear in paragraphs 113 and 116 of the Commission's second Report (pages 50–51).

> " The Commission takes the view that the power to take prints, photographs and samples should not be absolute. As the Victorian Chief Justice's Committee put it: ' There is a certain embarrassment and indignity involved in these procedures, to which a person should not be exposed unless there is some overriding necessity '. There is, for better or worse, an aura of real criminality about having one's fingerprints or photograph compulsorily taken. There have also been suggestions made to the Commission that the actual or claimed power to fingerprint has been used from time to time, particularly in the context of arrests following demonstrations, as a means of harassing and delaying the release of arrested offenders in circumstances where the identification of the offender has not in any way been in issue. Bearing these considerations in mind, the Commission's recommendation is that the power to take fingerprints and the like from a person in lawful custody should be limited to situations where such print, photograph or sample is reasonably believed to be necessary for the identification of the person with respect to, or for affording evidence as to, the commission of the offence for which he is in custody. We do not, it is to be noted, suggest any limitation on powers which may exist in relation to the taking of such particulars after conviction.
>
> The taking of photographs and fingerprints involves, as we have said, a degree of embarrassment and indignity. So too does the retention in Police records of such information. In the case of an innocent person, the very knowledge that such information is so stored may be a source of anguish and discomfort. That discomfort may be particularly well founded in the case of photographs. As the Victorian Committee pointed out, one can easily envisage situations where the presence of one's photograph in a Police ' rogue's gallery ', open to the inspection of lay victims and witnesses as well as Policemen, might be damaging to one's reputation. Fingerprints, voice-prints and the like are less obviously a potential source of embarrassment. The objection in principle to their retention still holds, based on the privacy claim that individuals should have control, so far as is possible, over the information which is stored and disseminated about them. Again the Commission is inclined to agree with the Victorian Committee that some of these objections would not have the same force in principle if fingerprints, photographs and other such data were universally rather than selectively collected. Such a situation is not yet the case and may never be so. The Commission's solution to the problem is one which has been propounded many times before, by for example the Victorian Committee, the South Australian Committee and the Criminal Law Review. It involves the requirement that prints, photographs and samples taken in accordance with an alleged offence should be destroyed whenever the matter is not proceeded with or where the person in question is acquitted. This would not apply in the case of previous conviction or in the special situation in which the court finds a charge proved but does not record a conviction. In such circumstances, as in the event of a conviction, it is quite proper that the records be kept for reference. Further, as many persons

making submissions to the Commission expressed themselves concerned about the keeping of copies of prints, photographs and samples the destruction of which is required, it is appropriate to create an offence in this regard."

Recommendations of the Board based upon its Findings

Recommendation

Police have no power whatsoever to photograph or fingerprint a person unless that person has been charged with an offence. In my opinion appropriate legislation should be enacted to this effect.

That legislation should further provide that if the charge laid is not proceeded with within a period of twelve months, or the person charged is acquitted, such photographs (and the negatives of such photographs) and fingerprints should be destroyed. This provision would not apply if the individual concerned had prior convictions. In those circumstances, I consider it not inappropriate for the Police to "up-date" their records in relation to him if that person is charged with a further offence, even though the charge does not proceed, or he is acquitted of the offence in question.

(K) Police Practice in Relation to the Interview Register

One widespread abuse discovered by the Board during the course of its investigation was that relating to the practice of "putting a person through" the Interview Register.

The relevant Standing Order, viz. Standing Order 641 is as follows:—

641. When a suspect is interviewed at a Police Station, the senior interviewing member shall enter in the respective columns of the Station Interview Register (P.B. No. 34) the following particulars:—

(*a*) the date and time of arrival of suspect;

(*b*) name, address and date of birth of suspect;

(*c*) names and rank of members present at the interview; and

(*d*) the reason for the interview.

At the completion of the interview, the senior interviewing member shall further record in the register whether the person—

(*a*) leaves the office;

(*b*) is to be charged; or

(*c*) is to be proceeded against by way of summons.

In each case a reason is to be stated for the action taken, e.g., "explanation accepted and eliminated from the inquiry"; "admits offence, to be charged with larceny"; or "admits offence, summons to be applied for", as the case may be. Where practicable, a member who is senior in rank to the interviewing members or any sub-officer not involved in the investigation, shall ask the suspect if he has any complaints to make regarding his treatment whilst at the Police Station. The questions and any answers thereto shall be entered in the Interview Register and signed by such senior member or sub-officer, together with the time and date of charge or departure.

On its face, it appears a simple procedure and one designed, firstly, to record relevant information concerning a suspect interviewed at a Police Station, and, secondly, to record any complaint that suspect may wish to make regarding his treatment at the hands of the Police whilst at the Police Station.

It will be seen that the Standing Order does not require the Officer concerned to make any inquiry of the suspect whether he has a complaint to make concerning the treatment he has received at the hands of the Police prior to his arrival at the Police Station, nor does it concern itself with what happens after the suspect leaves the Police Station if he leaves it in the company of the Police, apart, that is, from the general complaints procedure, a matter to which I shall refer in due course.

Those matters however, are not mentioned as the basis for criticism of the Standing Order. My criticism is directed at the effect of the procedure as it is applied at the present time, and the injustice it may—and does—cause an accused person from time to time.

Those who practise in the field of criminal law in this State will be not unfamiliar with the sort of situation I now describe.

At his trial an accused person may make allegations that he was assaulted by Police Officers during the course of the interview held at a Police Station, and/or that the Record of Interview produced at the trial is a fabrication.

To rebut those allegations the Crown will often call the Police Officer who put the accused through the Interview Register to give evidence. That Officer, usually a uniformed Inspector or a Senior Sergeant will produce the Interview Register, will swear he has no recollection of the accused, will then swear that the handwriting in the Register is his, and that in answer to the question put to him whether he had any complaints to make concerning his treatment at the hands of the Police, the accused replied, No.

It will then be urged upon the jury by the Crown that no reliance should be placed on the evidence given by the accused at the trial that he was assaulted, or that his Record of Interview was concocted, because when given the opportunity to lodge a complaint to an independent Police Officer (i.e. one who had taken no part in his detention or interrogation) he failed to do so. Thus, it is said, his complaints of ill-treatment and the like are " recent inventions ", sworn to in an endeavour to secure an acquittal.

In the context of a given trial that can constitute damaging evidence against the accused. That it can operate to work injustice to the accused is unhappily clear from the Board's investigations.

During the course of its inquiry the Board perused numerous Interview Registers, including those in which entries related to complainants before it. It would be true to say that over a period of 15 months some hundreds of entries were examined; these included entries in Interview Registers at Russell Street and various suburban Police Stations. On not one occasion did the Board find a complaint recorded.

It was implicit from the evidence given by Police to the Board, and from the general submissions advanced on behalf of the Police Association, that that situation obtained for the good and sufficient reason that there had not been any malpractice of which complaint could be made in the course of arrest and/or interrogation.

Regrettably, that was not the situation disclosed by the evidence.

The Board's inquiries revealed that Police not only fail to record complaints when complaints are made, but go further and insert a direct " No " in the column appropriate to the recording of a complaint when one has been made; further, false entries are made in the Register.

Yet another factor of which regard must be had is that on occasions an individual may be so intimidated or distressed by the treatment meted out to him before he is taken to the independent Officer to be put through the Register, that at that time he does answer " No " to the question, " Have you any complaints ", when in fact he has a number of legitimate grievances.

Indeed, if an individual has suffered observable injury at the hands of the Police, the Board's experience would indicate that he is not put through the Interview Register at all.

I propose to give an instance of each situation based on the Board's findings.

The Stupak Matter (Chapter 27) illustrated the first situation. When put through the Interview Register and asked if she had any complaints, Mrs. Stupak (whose account I unhesitatingly accept) replied, " Most certainly, yes. I was not treated fairly and was denied my rights to see a Solicitor ". Mrs. Stupak alleges that the Police Officer concerned then said, " That has nothing to do with me ", and did not write down what she had said (page 3914).

In due course a photostat copy of the relevant extract from the Interview Register was tendered in evidence (exhibit 378). In answer to the formal question the original entry read—He replied, " No ". At a later point of time a capital " S " had been inserted to make the " He " appear as " She ". This was a clumsy attempt to put the Register in order by the anonymous Police Officer responsible.

The matter best illustrating the second situation was the Curteis Matter (Chapter 12). It will be recalled that Miss Curteis had been arrested in Loch Street, St. Kilda for failing to give her name and address and taken to the South Melbourne Police Station. As the Police involved agreed, Miss Curteis was angry and annoyed at the behaviour of the Police that evening, had been completely unco-operative at the South Melbourne Police Station before being taken to the Watchhouse counter preparatory to being put through the Interview Register and locked in the cells, and, in fact, on one view of the matter, had been abusive towards the Police on the way from the room in which she had been interviewed to the Watch-house; and, on another view of the matter, was continually abusive whilst at the Watchhouse counter and until she was lodged in a cell.

Indeed, according to the Police evidence when Miss Curteis was released from the cells immediately prior to being bailed out, she was still abusive.

Recommendations of the Board based upon its Findings

Yet Senior Constable Adams would have the Board believe that when asked the standard question at the Watchhouse counter, this uncooperative, abusive young woman replied, " It should not have happened but I am happy with the Police now " (page 6922).

Miss Curteis denied that the question was ever asked and that she made any such remark. I accept those denials.

That entry in the Interview Register also contained the statement " Admitted Offence "; as the Police concerned agreed, that was the last thing Miss Curteis did.

In my opinion both entries were clearly false.

The third situation is best illustrated by the Whyte Matter (Chapter 30).

When Mrs. Whyte was asked the requisite question at the Richmond Police Station in the early hours of the morning of the 24th August, 1974, despite the deplorable behaviour she had experienced at the hands of the Police, she replied " No ". When asked, " Why did you say ' No ', having regard to the way you had been treated by these men? ", she replied, " Because I was frightened, I did not trust them ". When then asked, " You tell me that you were frightened at this stage and had been frightened, I take it throughout the course of your being held there; you did not trust any of these men but did you think there might be more trouble in store for you if you started laying complaints about the way they had behaved to you ", she replied, " I had the feeling there might be " (page 2367).

The Whyte Matter also illustrated the dishonest manipulation by Police of the complaints procedure. Mr. Whyte, who had obvious signs of physical injury to his face, was never put through the Interview Register and no satisfactory explanation why he was not, was forthcoming. However, I choose to select another instance independent of the Whyte Matter.

Having been assaulted, as I find he was, both prior to his arrival at the St. Kilda Police Station, and whilst at the Police Station, Ebdon was never put through the Interview Register, but simply lodged in the cells overnight. (See the Ebdon Matter—Chapter 13.)

There were other matters investigated by the Board which illustrated the matters to which I have adverted. I consider the examples I have given are sufficient to demonstrate the point I make.

In dealing with this aspect during the course of final submissions, Counsel Assisting the Board expressed himself thus (see pages 11,055–6)—

> " Now we turn to complaints by persons arising out of a visit to a Police Station. The present procedure is clearly deficient and unsatisfactory, and for a number of reasons. Firstly, as a mere matter of human behavioural probability, it is asking too much of the person who has, ex hypothesi, been a victim of ill-treatment by the Police that he should have any confidence that a complaint about that treatment to another Police Officer who is part, in the victim's eyes, of the same system that has wrought the injustice upon him, will be properly received and investigated. It is analogous, Mr. Chairman, to suggesting that a chicken should complain to one fox about the treatment he has received in the chicken coop from another fox. Mrs. Whyte swore affirmatively before you that she made no complaint at the Richmond Police Station because she had no confidence that the Police could be trusted, having regard to the treatment meted out to her and her husband. The evidence before the Board suggests that the procedure is, as far as Police are concerned, an idle, empty, routine formality. No evidence exists that there ever has been a complaint recorded—although Owen swore before you that he had complaints and made them, but that was not recorded. Notwithstanding this, you will recall, he was forthwith despatched to hospital, and the probabilities are, we suggest, all one way—that he did, in fact, make a complaint.
>
> The situation disclosed by matters before your Board is supported, we suggest, by the views expressed by Mr. Terry O'Brien and Mr. Marin. The matters of Whyte, Erdmann, Olding, Owen, Hewat, Stupak and Curteis all in their several ways highlight the general inutility and deficiencies of the existing procedure and underline the need for urgent reform. But what reform? "

Mr. O'Brien and Mr. Marin referred to in that submission were two members of the legal profession practising in the field of criminal law. During the course of the evidence they gave, they both gave it as their opinion that in their experience the procedure was farcical.

Recommendations of the Board based upon its Findings

I concur with the submission made by Counsel Assisting the Board.

In my opinion the present procedure insofar as it relates to the recording of complaints is worthless in practice and indeed may well cause grave injustice to an accused person at his trial.

Indeed Counsel appearing for the Police Association sought to make use of a complainant's answers to those questions with a view to discrediting that person before the Board. For example, in the Cox Matter (Chapter 11) Cox was cross-examined concerning his failure to complain that the Police had concocted a false Record of Interview when he was put through the Interview Register.

The short answer to the criticism in that case, however, was that at the time Cox was put through the Interview Register he was unaware of the fact that the Police had done that. It was not until an appreciable period of time later that he gained that knowledge.

What reform should take place so far as this aspect is concerned?

Counsel Assisting the Board contended that although the Interview Register should be retained for the purpose of recording the date and time of arrival and departure of a person taken to a Police Station for questioning, his personal particulars, i.e. name, address and date of birth, the reason for his being there, the names of the interviewing Police, and the result of the interview, no question should be put to that person concerning any complaint he may wish to make in relation to his treatment at the hands of the Police. In its stead, that inquiry of a suspect should be made either by the Justice of the Peace who attends the Police Station to deal with that person's application for bail, or by the Magistrate or Justice of the Peace on the first occasion the suspect is before the Court on remand or bail application. Counsel assisting did not advert to a matter I regard as of importance, namely, that when a Justice of the Peace attends at a Police Station to deal with the bail procedure, the questions required to be asked by him of the person charged as to his treatment by Police should be asked in the absence of the arresting and/or interrogating Police.

It was submitted that there should be a standard procedure adopted, and it should be along the following lines.

In the first instance, and because the question of bail is so often to the forefront of a suspect's mind, he should be told that any complaint he may wish to make will be noted, but will not affect his entitlement to bail. He is then to be specifically asked if he has any and what complaint concerning firstly his physical treatment at the hands of the Police, and second, whether he has any and what complaint as to the manner in which any interview was conducted with him by the Police. The answers to those questions should be recorded and form part of the remand or bail proceedings.

As Counsel Assisting pointed out, that procedure would not cater for persons questioned and allowed to leave pending further enquiries, for example, Mrs. Stupak, nor would it cater for those allowed to leave and proceeded against by way of summons. It would, however, cover the majority of serious crimes, which the Board's inquiries would indicate provide the occasions wherein abuses exist and grow. As he further pointed out, persons falling into those two categories could make a complaint through a Solicitor, as in the case of Mrs. Stupak, or through a parent, as in the case of Douglas Olding.

The objection to such a system raised by Counsel appearing for the Police Association was based on the view that it would be inappropriate for the Magistrate or Justice of the Peace to record that complaint, as the Magistrate or Justice of the Peace concerned would be incapable of conducting a meaningful investigation into the veracity of such a complaint (page 11,686).

He further contended that the initial investigation of a complaint could, in meaningful terms, be carried out only by an independent Police Officer, independent of the circumstances giving rise to the alleged complaint, and that providing satisfactory procedures exist for the review of such investigations, the right of the individual is protected.

With respect to Counsel appearing for the Police Association, I fear he misses the point of the proposed alteration. The purpose of the alteration is to overcome the abuses presently existing so far as the Interview Register is concerned and which I have enumerated, viz. that if, for any

Recommendations of the Board based upon its Findings

reason, such as fear, intimidation or sheer dishonesty on the part of the Police Officers attending to the Interview Register, a complaint is not recorded at the time the person is put through the Interview Register, that fact may well be used to that person's prejudice at his trial if he then gives voice to it.

It is not suggested that the Magistrate or Justice of the Peace do more than ask the standard questions suggested and note the answers. In that way, and if the person charged makes a complaint, it can not later be alleged to the prejudice of that person that his complaint is one recently invented.

It is not envisaged, as suggested by Counsel appearing for the Police Association, that the Magistrate or Justice of the Peace take a statement from the suspect in relation to the matter, question him on oath concerning it, or themselves make any investigation.

All that is proposed, in effect, is that the Magistrate or Justice of the Peace be substituted for the Police Officer who presently asks the question and that the questions are asked away from the atmosphere of the Police Station and by a person totally independent of the Police.

I see no disadvantage to such a system being adopted and indeed it has much to commend it. It would put an end to the unsatisfactory situation presently existing whereby a suspect who voices his complaint to a Magistrate or Justice of the Peace is told it is no concern of his and who later may be confronted at his trial with an entry in an Interview Register which may be false, as in the case of Curteis, or which may in fact accurately record the answer given, but which is an answer born of fear or intimidation, as in the case of Mrs. Whyte.

To suggest that the present system merely be amended by ensuring that the Police who arrested and/or interrogated the suspect are not present when the question is asked, and that a series of questions be asked, by the independent Police Officer designed to elicit the true position, does not cure the vice of which complaint is made. The person is still in the hands of the Police and is still detained in a Police Station by Police. To repeat the colourful analogy of Counsel Assisting, it is still the case of a chicken complaining to one fox about the treatment he has received in the chicken coop from another fox.

Recommendation

The recommendation I make is that the existing procedure of " putting a person through " the Interview Register be altered by legislation to provide that inquiries be made by the Justice of the Peace attending to the suspect's bail application, or by the Magistrate or Justice of the Peace on the first occasion when the suspect is before the Court on remand or bail application in the terms set out in paragraph (K).

(L) The Investigation of Complaints Against Police

The number of investigations and inquiries into this vexed topic of recent years, indicates it is an area of increasing public concern, and the accountability of the Police Force to the society it is employed to serve, and, in particular, the resolution of complaints by members of the public against individual Officers has assumed great importance. I have little doubt that one reason for this concern is the growing appreciation that the effectiveness of any Police Force depends in the final analysis upon the degree of public trust and co-operation it enjoys. There is probably nothing more destructive of this relationship than a Force unconcerned with or hostile to an efficient resolution of complaints about its conduct or the service it provides.

As Mr. Arthur Moloney Q.C. stated in his Report to The Metropolitan Toronto Board of Commissioners of Police dated the 12th May, 1975, " That lack of community respect hinders law enforcement, is a proposition that can no longer be disputed ". In that connection he quoted the following passage from an article entitled " Who Shall Watch The Watchman " written by Professor Paul Weiler and published in (1969) 11 Crim. L.Q. at page 420—

> " It (lack of community respect) tends to hurt recruitment and retention of good personnel. People are not as likely to report crimes, even if they are victims, nor to report suspicious incidents, give information, or testimony for the prosecution. Public hostility may either deter Police action or induce unnecessary force or verbal abuse, which itself constitutes a provocation. If enhanced danger to the Police causes an over-reaction, the tension produced gives rise to the disturbances and riots we are always reading about. Even more important may be the damage to what many commentators believe to be the chief condition for the efficacy of

the criminal law, the voluntary acceptance of its claim to moral respect and obedience. We do not easily separate the law from the Police who are the official agents chosen to represent and implement it ".

Recommendations of the Board based upon its Findings

As Mr. Moloney Q.C. continued—

" Good public relations are therefore essential. The unacceptable alternatives are hostility, mistrust, difficulties with recruitment and law enforcement and contempt for all law. Dissatisfied complainants even though few in number, can in conjunction with the media greatly impair the regard in which the Police are held by the public. As a consequence, there must be a procedure available for resolving complaints in a manner that will inspire public confidence in the Police Force. In the interest of maintaining the Police-Public relationship at a high level, justice must not only be done but must be seen to be done. This need was recognised by the Task Force on Policing in Ontario which stated in its report: ' Where a citizen feels that the power of the Police has been abused, he needs a credible avenue through which he can lodge a complaint '."

What then has been the experience of this Board during the course of its investigation? Has there been a satisfactory avenue through which a citizen can lodge a complaint? Is there now an acceptable and credible avenue through which such a complaint can be lodged?

It has been necessary to pose the last of those questions in view of the fact that during the course of the Board's investigation, and on the 1st August, 1975, the Victoria Police Force established its own Bureau of Internal Investigation (B 11), modelled along somewhat similar lines to the Unit A.10 recently established in the United Kingdom.

The findings of the Board demonstrate quite clearly that prior to the 1st August, 1975, there was no satisfactory avenue through which a citizen could lodge a complaint against a member of the Victoria Police Force. Indeed, the Board's inquiry into the Curteis, Olding, Owen, Power, Sellers, Smith and Whyte Matters established beyond doubt the undesirability of Police investigating complaints against Police.

I do not propose to detail the Board's findings in this respect in each Matter investigated by it; it will be sufficient to instance the Olding Matter and the Whyte Matter as but two examples.

The Olding Matter—Chapter 20

Douglas Martin Olding, a young man then aged 19 years and with an unblemished record, was accosted by two Police Officers whilst peacefully seated in a pool room at Dandenong on the evening of the 25th April, 1975, and unlawfully taken by them to the Dandenong Police Station. The Board was satisfied that whilst at the Police Station he was assaulted by one of the Police Officers concerned.

Through his parents he made a complaint later that night, and again the following morning, concerning the manner in which he had been apprehended, and assaulted.

The Inspector of Police responsible for the initial investigation into the complaint swore before that Board that from the outset he did not believe Olding was assaulted, that the whole thing was a put-up job, and that although he took statements from the Police Officers involved, he never interrogated them as he would interrogate a citizen charged with or suspected of some offence (pages 5963-4). He was further of the opinion that the Oldings had over-reacted to the whole matter (page 5956). I am satisfied he said to Olding's father, " All these boys get hit, surely you got hit by a Policeman when you were younger " (pages 5823, 5854 and 5893).

That therefore, was the climate or Police frame of mind in which the complaint made on behalf of Douglas Olding was investigated. The investigation was worthless.

The Whyte Matter—Chapter 30

On the evening of the 23rd–24th August, 1974, Mr. and Mrs. Norman Barry Whyte were subjected to a harrowing experience when, without any cause whatsoever, they were accosted by Police Officers in Swan Street, Richmond, and taken by them to the Richmond Police Station. There they were foully abused, assaulted, harassed and intimidated.

Later on the 24th August, they went to Russell Street Police Headquarters and lodged a formal complaint with the duty Inspector. In due course the matter was placed in the hands of a Chief Inspector for investigation.

Recommendations of the Board based upon its Findings

As in the Olding Matter, that investigation proved to be no investigation whatsoever. The reason for that became clear during the course of that Officer's evidence.

At page 2713 of the transcript he was asked, " Didn't it occur to you Mr. Warnock, as a man of your experience that if the bashings had occurred at the Richmond Police Station as alleged, with Sergeant Dennis in charge, he would have a bit to cover up himself?", to which he replied, " This is true ". He was then asked, " But you relied on what he told you, one of the men who must have been under suspicion, is that right? ", to which he replied, " No one was under suspicion ". At that somewhat surprising answer he was asked, " You do not really mean that do you Mr. Warnock? ", to which he made this incredible reply, " The inference as I read it is an inference of suspicion flowing from a little thing that might have happened at the Station. If we are going to talk about suspicion then the Whytes more properly are under suspicion of making a false report ".

The other noteworthy feature concerning Police investigation into complaints, or, more accurately the lack of investigation, is that apparently no investigation in the true sense is made into a complaint unless there is a formal complaint lodged at a Police Station which then is processed through official channels.

I give two illustrations of this situation.

The Sellers Matter—Chapter 25

Within weeks of Sellers being pushed from the third floor window of the block of flats in Punt Road, South Yarra by the Police, allegations to that effect were made in sections of the press and on television. The Police investigation of those allegations consisted of obtaining statements from three civilians who arrived on the scene shortly thereafter, (and who had seen nothing of Sellers' fall from the flats), from two Police Officers who were on the ground outside the flats, and a report from the Police Officer in Charge of the raid on the flats. But not one of the men who attended on the raid, including the five who entered the flat, were ever interviewed. Nor were written statements ever obtained from Doctor McLelland and Sister Provost; indeed, both claimed that verbal statements attributed to them by the Police were partially inaccurate.

Thus, there was no proper investigation of what was then, on its face, a serious matter, and which subsequent evidence conclusively established was a serious matter.

The Smith Matter—Chapter 26

On the evening following the Police raid on the Pizza Parlour conducted by Mr. and Mrs. Smith at Ocean Grove, film of the damage and mess caused by the Police was shown on a TV News programme.

The most the Police did by way of investigation of the matter was to obtain a report from the Police Officer in charge of the raid (he not even being present at the time the raid occurred). The Senior Police Officers supposedly concerned to inquire into a serious public allegation against Police did not bother to obtain a statement from, or even interview, the local Sergeant of Police who had viewed the damage and mess within an hour or so of the raid; nor was there any interview of the members concerned in the raid, nor any statement obtained from them.

Letters written by Solicitors to the Police making complaints concerning alleged maltreatment of their clients by members of the Police Force, appear from the evidence presented to the Board, to be dealt with in a similar inadequate fashion. I instance the letter written by the Solicitor acting for Geraldine Anne Curteis to Constable Proud on the 5th March, 1975 (exhibit 432); the letter written by the Solicitor acting for Donald Cox to the Chief Commissioner of Police on the 20th December, 1973 (exhibit 618A), and the letter written by the Solicitors acting for Mrs. Erika Stupak to Inspector Delianis on the 7th October, 1974 (exhibit 380).

In no case could it be said that any meaningful investigation was carried out by the Police into the complaints raised in those letters.

In my opinion, the Board's inquiry established beyond any doubt that prior to the 1st August, 1975, there was no satisfactory avenue through which a citizen could lodge a complaint against Police misbehaviour in the expectation it would be thoroughly and impartially pursued. Regrettably, this is apparently due in no small measure to an attitude of the Police mind, which is affronted by the impertinence of the civilian in making a complaint at all, and which then in a defensive reflex, classifies him as

a troublemaker, or as being anti-Police, or motivated by malice or ill-will. That attitude is exemplified by the conduct of Inspector Burgess in the Olding Matter and by Chief Inspector Warnock in the Whyte Matter.

Recommendations of the Board based upon its Findings

Moreover, the "them against us" syndrome which emerged as a pattern from the Board's investigations, and which provokes the instinctive reaction of group loyalty to one of their number under attack or criticism, is a common and constant factor tending to powerfully distort the Police approach to an investigation of a complaint made against Police. A better illustration of this than the behaviour of the Police following receipt of the letter send by the Solicitor acting for Miss Curteis to Constable Proud could scarcely be found.

In that letter Miss Curteis sought no more than an apology from Constable Proud. Upon receipt of that letter the Force closed ranks. Those in any way associated with the matter stood firmly behind Constable Proud (despite the absence of any proper investigation to ascertain whether Miss Curteis' complaint was justified or not), and no appropriate apology was forthcoming.

Whilst it is clear that a number of complaints made against Police are the product of malicious, vexatious or disturbed minds, equally clearly there are a number of complainants who do not occupy any of those categories.

What, then, should be done to remedy the situation?

Counsel appearing for the Police Association submitted that, having regard to the establishment of B 11 on the 1st August, 1975, any hitherto existing problem had now been adequately attended to, and there is no necessity for any further steps to be taken. I consider his submission at pages 11,691 *et seq.* of the transcript of sufficient importance to justify its inclusion in this chapter.

> "We submit there should not be a body independent of the Police established to investigate in a supervisory or direct capacity, complaints against the Police. The present system is working well with the establishment of the Internal Investigations Bureau (B 11) late in 1975. This Bureau is modelled on similar lines to the Section A.10 formed in England by the Commissioner of the Metropolitan Police Force.
>
> At present B 11 is staffed by one Chief Superintendent, a Superintendent, two Chief Inspectors, one of whom has a law degree, and two Inspectors on the staff of B 11.
>
> The Chief Commissioner and Deputy Commissioner select and approve a list of a further 50 Chief Inspectors and Inspectors who may be co-opted to assist in investigations as required. The investigation of all complaints against Police are reviewed by the Chief Superintendent of B 11.
>
> All investigations of complaints such as (*a*) allegations that Police have committed criminal offences involving corruption, conspiracy, perjury, violence involving bodily harm, theft or other serious offences, and (*b*) complaints by persons arrested, intercepted or interviewed, alleging assault, unjust arrest or other mistreatment, are controlled and supervised by the Chief Superintendent of B 11, under the general direction of the Deputy Commissioner.
>
> As a general rule complaints such as (*a*) that Police have been neglectful, rude or otherwise acted improperly, and (*b*) internal matters of neglect or misconduct, are investigated by Officers at district level. However, where the investigation of a seemingly minor matter discloses more serious aspects, or the Deputy Commissioner directs otherwise, the investigation will be conducted by the Internal Investigation Bureau.
>
> All completed investigations are examined by the Chief Superintendent of B 11 and the Deputy Commissioner decides what charges, if any, should be laid and also whether or not any member should be suspended from duty or transferred in the interests of efficiency of the Service.
>
> Where the evidence discloses legal problems or there is doubt as to charges which should be laid, the Deputy Commissioner refers the matter to the Legal Assistant for advice. The Deputy Commissioner also decides whether the Legal Assistant should be asked to prosecute or whether the evidence should be presented by a Police Officer. Depending on the nature of the charges laid and the election of the member charged, such charges will be heard by one of the following tribunals:
>
> (*a*) Chief Commissioner of Police;
>
> (*b*) Police Discipline Board (when constituted by a Stipendiary Magistrate as Chairman);

(c) An Officer of Police not below the rank of Chief Superintendent;

(d) In a criminal court.

Recommendations of the Board based upon its Findings

There are already two independent avenues of investigation outside the Police Force. All completed files of investigation of complaints against Police are examined by an Officer of the Chief Secretary's Department. This gentleman is a retired Stipendiary Magistrate attached to the Chief Secretary's Department and he reviews the files and returns any unsatisfactory files for further attention.

The Ombudsman also investigates complaints, many of which have been investigated by Police Officers already."

Counsel Assisting the Board contended, however, that even taking into consideration the fact that B 11 is now in full operation, that of itself does not provide a complete answer to the problem. He submitted that many responsible law-abiding citizens find existing procedures unacceptable, not only because the investigations take place behind closed doors, but also because the system requires Police to be Judges in their own cause. Moreover, the fact that a complaint about Police has to be made to the Police in the alien atmosphere of a Police Station tended to have an inhibiting effect on citizens desirous of making such a complaint. Further, there were those members of the community who might well have a genuine complaint but who belonged to a class of citizens to whom, through either past unhappy experience of Police or of a Police Station, or natural timidity, the atmosphere of a Police Station was entirely repugnant.

In my opinion there is much merit in that contention; one has only to have regard to the unhappy experiences which befell those complainants who appeared before the Board when they sought to make a complaint to Police about Police misconduct. It would be surprising indeed if any of those complainants would be prepared to complain to the Police in future, even if they had legitimate cause to air a grievance concerning Police malpractice.

The latest investigation into this matter was conducted by the Australian Law Reform Commission under the Chairmanship of The Honorable Mr. Justice Kirby as recently as 1975.

Not only did that Commission have reference to a wealth of material contained in the reports of investigating bodies in the United Kingdom and United States of America, together with much overseas literature on the topic, it also received a great body of evidence oral and written, from persons and groups well qualified to proffer helpful submissions to it, including Police Associations speaking through their authorised representatives. Its survey of the problem, its general conclusions, and the considerations to which it had recourse in reaching its conclusion are to be found in its Report No. 1 dated the 7th August, 1975.

I have studied that Report with the greatest of interest. Based on this Board's practical experience in relation to the problem over the period of its lengthy investigation, (practical in the sense that it has examined actual cases) the shortcomings of a system whereby Police investigate complaints against Police, have become all too apparent, and I am in complete agreement with the conclusions arrived at by Mr. Justice Kirby and the other members of that Commission.

In my opinion, it is no answer to the problem to say that all completed files of investigations of complaints against Police are examined by a retired Stipendiary Magistrate attached to the Chief Secretary's Department and that he reviews the files and returns any unsatisfactory files for further attention. Nor is it an answer to say that the Ombudsman may also investigate complaints, many of which have been previously investigated by Police Officers. His powers are quite limited. As the legislation presently stands, he has no power to investigate complaints of the type made by Miss Curteis, Douglas Olding, Stephen Sellers or Mr. and Mr. Whyte.

In my view the situation can only be attended to satisfactorily if there are two bodies involved in the investigation of complaints against the Police, each body being entirely independent of the other. Ideally those two bodies would be B 11, with its special investigative skills and machinery on the one hand, and the Ombudsman on the other.

In broad outline, one envisages the following procedure operating at the time a complaint is made by a citizen *ab initio* either to the Ombudsman or to a Police Station.

The complaint should normally and preferably be in writing but, having regard to problems arising from illiteracy and language barriers, this should not be a condition precedent to the investigation of the

complaint. Where a complaint is made to a Police Station, not only should the essential content of the complaint be recorded at the Police Station, but the complainant should be given a standard explanatory leaflet setting out the procedure the complainant can adopt in relation to his complaint. (A sample leaflet produced in the United Kingdom appears as Appendix "B" to the No. 1 Report of the Australian Law Reform Commission; with appropriate variations and amendments, it could fit into the scheme so envisaged for Victoria.) It should be prepared, as well as in the English language, in a number of major European languages. It should not only be found in Police Stations, but should be distributed through and available from Legal Aid Offices, community groups, the Victorian Council for Civil Liberties, the Law Institute and relevant Government departments. All complaints by whomsoever received, must be forwarded to the Ombudsman who then becomes a filter or clearing house in respect of such complaints.

Recommendations of the Board based upon its Findings

In all cases the Ombudsman, or the Police concerned, must record the receipt of the complaint. It should be mandatory that the Ombudsman begin his investigation as soon as practicable after it has been received by him.

Undoubtedly, many complaints will, at their best, be without merit or be the product of disordered minds. Others will call for inquiry and investigation. Those matters founded in legitimate complaint, but which may be susceptible of mediation and conciliation by the Ombudsman as between the parties, should be thus mediated, conciliated and resolved. Those matters, that is to say where the matter can be resolved by a simple apology, or the mere clarification in a citizen's mind as to why something happened, offer no problem. Such matters need go no further. Complaints which disclose allegations of brutality, corruption, abuse of authority or the infringement of a citizen's rights, however, should be immediately referred to B 11—B 11 having the special skills and machinery to investigate them.

After its investigation B 11 will be required to report to the Ombudsman the results of its investigation, namely whether there is a *prima facie* case justifying the taking of action against the member or members concerned. If there is, and if the matter has not become the subject of criminal proceedings, the Ombudsman must then refer it for hearing and determination by a tribunal, the constitution and powers of which I shall discuss shortly. If B 11 reports no *prima facie* case is made out, the Ombudsman may yet himself further continue the investigation with his own staff and his own resources, or he may require B 11 to further investigate the matter and to report back to him. If, notwithstanding the fact that those steps have been taken, the Ombudsman feels there are unsatisfactory features about the investigation into and the resolution of the citizen's complaint, he shall refer the matter to the Tribunal for hearing and determination.

In any matter in which the Ombudsman agrees with B 11 adversely to the citizen the latter may appeal to the tribunal sitting at first instance as of right. In any matter in which the Ombudsman declines to order an investigation by B 11 or to conduct an investigation himself, the citizen may appeal by leave to the same tribunal, such leave to be either granted or refused after the tribunal has considered the material contained in the Ombudsman's file, with which it must be supplied.

The Ombudsman should report to the Parliament annually on the matters as they affect his involvement, setting out details of the number of complaints received and their resolution &c. If the Ombudsman is dissatisfied with the quality of co-operation and assistance he has received from B 11, or suspects delay or covering up by B 11, or is dissatisfied with the manner of performance of its duties, he shall report this to the Parliament.

The Ombudsman should be empowered, on a failure or refusal by B 11 to recommend the instigation of criminal proceedings against a member in circumstances in which the Ombudsman thinks that should be done, to refer the matter to the Chief Commissioner for further consideration. Any such episode, together with the result of the referral by the Ombudsman to the Chief Commissioner, should be contained in his annual report to the Parliament.

I turn now to discuss the constitution and powers of the tribunal. I do this in the broadest and most general terms. It will be readily apparent that I have not dealt with a number of matters of an evidentiary and procedural nature. I do not consider it appropriate that I intrude into the field which is properly the province of the draftsman.

(i) *Constitution*

It is recommended that the tribunal be constituted by a County Court Judge and a panel of six senior barristers. Where the tribunal acts at first instance it will be constituted by a single barrister. When it is

discharging its appellate functions to which I shall hereafter refer, it shall be constituted by the County Court Judge and two barristers, neither of whom sat on the matter at first instance.

Recommendations of the Board based upon its Findings

(ii) *Procedure and Powers*

It is envisaged that the procedure and powers of the tribunal shall be those of the County Court. Those whose duty will require them to consider the matter in terms of legislation may well derive considerable assistance from Appendix F to the Law Reform Commission Report No. 1.

It is recommended that the tribunal have and exercise the powers as to penalty presently vested in the Police Discipline Board (to which Board I shall shortly refer in another context), and shall have the power to direct the Chief Commissioner of Police to institute criminal proceedings against any party appearing before it where appropriate.

(iii) *Appellate Jurisdiction*

Any member of the Force aggrieved by a decision of the tribunal at first instance may appeal as of right to the appellate division of the tribunal save and except in any case where the tribunal at first instance has directed the Chief Commissioner of Police to institute criminal proceedings against that member, for in that event, such member will be protected by existing appellate processes.

It is not envisaged that a complainant have a right of appeal from the decision of the tribunal at first instance.

Two consequences flow from the creation of such a tribunal.

In the first instance, the jurisdiction of the Police Discipline Board will be limited to matters of internal discipline and will no longer deal with complaints by members of the public against Police Officers. The rights and options of Police Officers referred to by Mr. Phillips, and relating to internal discipline, will be preserved.

In the second instance, the appellate jurisdiction currently exercised by the Police Service Board on matters of internal discipline will be similarly limited.

I do not recommend involvement of the Police in the composition of the tribunal. That matter was considered by the Law Reform Commission and the view was expressed at page 42 of its first Report that it was unwise to involve the Police, not only because it was difficult for a Commissioner's representative to sit in judgment on a colleague, but also because Police personnel ought not to be exposed to certain "hopeless conflict" situations in terms of intellectual honesty. The Commission pointed out that there was no reason to suspect that the Police who had sat on such bodies in other places had not honourably striven to do their duty, but the fact was that in many cases they were in a "conflict" situation and should not be exposed to it. I would respectfully adopt the reasoning of the Australian Law Reform Commission in this regard.

The scheme I suggest be adopted basically seeks the following:—

(1) to remove inhibitions which may impede the making of a legitimate complaint;

(2) to ensure that there is a permanent record of the receipt of such complaint with an independent body, the Ombudsman;

(3) to retain the investigative skills of B 11 but to make it answerable to the Ombudsman as to the proper discharge of its duty;

(4) to vest in the Ombudsman power to proceed as an independent entity (should he be dissatisfied with the investigation conducted) both in his own right as an investigative entity and, as well, via the medium of his report to Parliament;

(5) to superimpose on these structures the overall scrutiny of a further independent body, the tribunal, to which the Ombudsman may refer, the citizen may in appropriate circumstances appeal, and the aggrieved Police Officer may appeal.

Recommendation

Expressed in the broadest of terms, the recommendation I make is that there be two bodies independent of each other involved in the investigation of complaints against the Police, viz. B 11 and the Ombudsman. Overall there be a Tribunal established along the lines I have suggested.

(M) POWERS OF THE POLICE CONCERNING SEARCH AND SEIZURE

Recommendations of the Board based upon its Findings

It is not my intention to prepare a treatise on the law relating to search and seizure. That is a matter for those of more academic inclination. I merely observe that the law applied in this community appears to have undergone significant changes from the common law as expounded in the Six Carpenters case in 1610 and which reached its pinnacle in the famous case of *Entick v. Carrington* viz. that the person armed with the warrant strayed beyond it at his peril and was held to the letter of it. As Counsel Assisting put it, " the pendulum seems to have swung so far the other way that recent cases in England suggest that if you illegally obtain an entry to premises, nevertheless, and in the event a reasonable suspicion crystallises in your mind that what you find there may be the product of some criminal enterprise, you may seize it " (page 11,063).

Indeed as Counsel appearing for the Police Association accurately put it, " The language of Lord Denning, who has long been a champion of the liberty of the individual, in *Ghani & Ors v. Jones* (1970) 1 Q.B. 693, is quite trenchant in this respect " (page 11,693).

That that was Lord Denning's view appears quite clearly from his judgment.

At page 706 of the report, Lord Denning had this to say:

> " I would start by considering the law where Police Officers enter a man's house by virtue of a warrant, or arrest a man lawfully, with or without a warrant, for a serious offence. I take it to be settled law, without citing cases, that the officers are entitled to take any goods which they find in his possession or in his house which they reasonably believe to be material evidence in relation to the crime for which he is arrested or for which they enter. If in the course of their search they come upon any other goods which show him to be implicated in some other crime, they may take them provided they act reasonably and detain them no longer than is necessary."

But at a later stage of his judgment Lord Denning said:

> " The common law does not permit Police Officers, or anyone else, to ransack anyone's house, or to search for papers or articles therein, or to search his person, simply to see if he may have committed some crime or other. If Police Officers should so do they would be guilty of trespass. Even if they should find something incriminating against him, I should have thought that the Court would not allow it to be used in evidence against him if the conduct of the Police Officers was so oppressive that it would not be right to allow the Crown to rely upon it."

It would seem to me a matter of regret if the former passage from the judgment of Lord Denning accurately expounded the law applicable in this State or for that matter any State or Territory of Australia. But I do not think that situation has been reached. Indeed the Australian Law Reform Commission in its second Report expressed a somewhat sceptical view on the credence that will be afforded to the decision in *Ghani* v *Jones*. (See paragraph 193; page 91.)

The proposition expounded by Lord Denning in *Ghani* v *Jones* (*supra*) appears to me to invite Police Officers to do the very thing the Board found had occurred in the Smith Matter (Chapter 26) and the Stupak Matter (Chapter 27), namely that when on an expedition which it is hoped will yield evidence helpful to Police, and when purporting to act within the provisions of a warrant issued under the Firearms Act, for example, they may enter and search a person's premises, seizing *any* property which they feel may show that person to be implicated in some other unspecified crime.

In the Smith Matter the fact was that on the day Smith's brother (" Jockey " Smith) had been arrested in Sydney, the Consorting Squad determined to go on a foraging or fishing expedition to the homes of Mrs. Smith Senior at Corio, Mr. and Mrs. Ronald Smith at Ocean Grove, and later Mr. and Mrs. Peter Smith at Ocean Grove. As the Police involved agreed, not only were they looking for firearms, they were looking for money (the proceeds of armed robberies) and scuba gear (the proceeds of another robbery).

During the course of that search the Police seized Mr. Smith's shotgun and ·22 rifle (in respect of which he had permits), a transistor radio, and personal and business memoranda belonging to Mrs. Smith.

Indeed, as Senior Constable Dixon swore at page 3210 of the transcript, had he been instructed to take a chair, a canteen of cutlery, or a bowl of fruit, he would have done so.

Recommendations of the Board based upon its Findings

A similar situation applied in the case of Mrs. Stupak. Armed with a warrant issued pursuant to the provisions of the Firearms Act, members of the same Squad descended upon the business premises of Mrs. Stupak and her brother at Richmond. Clearly they were not concerned solely with the seizure of firearms. Again, I think they were on a foraging or fishing expedition.

In due course they returned to Russell Street taking with them Mrs. Stupak, her bank books, passport and personal diaries.

I consider it worthy of note that almost without exception the only class of warrant obtained by Police involved in the matters investigated by the Board was that issued pursuant to the provisions of the Firearms Act.

In my opinion the invasion of citizens' homes or business premises is so destructive of fundamental rights apparently existing in the community (and believed by citizens to in fact exist) that strict limits should be put on the power of the Police to enter premises, search and seize.

I endorse the criticism made by the Australian Law Reform Commission of the decision of the Privy Council in *Kuruma, Son of Kaniu* v *The Queen* 1955 A.C. 197, and the submission of Counsel Assisting the Board, that there should be legislation in existence putting the matter beyond debate.

In Kuruma's case the Privy Council held that the test to be applied both in civil and criminal cases, in considering whether evidence is admissible, is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how it was obtained.

As the Law Reform Commission stated in paragraph 210 of its second Report (page 98):

> "At present in Australia the victim of an unlawful search or seizure has only his tort remedies; an action in damages for trespass, and possessory relief. There is no general or automatic bar on the admissibility of evidence unlawfully obtained; if it is relevant it is almost invariably admitted into evidence. The possibility of excluding the evidence depends solely on the exercise of the judicial discretion to exclude evidence unfair to the accused, and this is rarely exercised. The most that can usually be hoped for by way of redress is the cold comfort of judicial admonishment to the Police Officers involved. The weaknesses of these remedies, which are such that if continued in their present form they would render irrelevant, in terms of their practical effect, the rules proposed above, are discussed further in Part 11 below. We envisage that the primary mechanisms for the enforcement of the search and seizure rules in the future will be, in the first place, a discretionary exclusionary rule, and secondly, a Police discipline code; proceedings under which shall be capable of initiation by external complaints. Both of these mechanisms will be discussed in detail in Part 11."

In my opinion there ought to be legislation to provide for the following matters:

(i) that the warrant, of whatever kind it be, should express the specific purposes of the search to which it relates and the request for the warrant to issue should be accompanied by an affidavit from the informant setting out the reasons why it is thought necessary that the warrant issue. The judicial officer issuing the warrant must satisfy himself by a study of the reasons in the affidavit that the issue of the warrant is justified and endorse it accordingly;

(ii) that the warrant must designate the particular premises and the specific property or article, or class of property or articles, to which it relates;

(iii) where a person is charged in relation to property found pursuant to entry and seizure under a warrant, the accused must be supplied with a copy of the affidavit which generated the issue of the warrant for entry and seizure in the first place, in order that he may, at the trial, see that the issue is confined to matters that fall properly within the provisions of the warrant and that he may not be attacked as to his credit, for example, in relation to property found which fell outside the warrant;

(iv) any property or articles seized which are not expressly within the warrant be deemed to be illegally or improperly obtained and should not be admissible in evidence against an accused person for any purpose;

(v) whether the warrant be a firearm warrant or a search warrant, a copy of the original warrant be given to the householder or occupier of the premises which are the subject of entry and search.

Recommendation

It is the recommendation of the Board that legislation be enacted relative to the powers conferred on Police Officers by a search warrant in the terms of sub-paragraphs (i) to (v) of paragraph (M).

Recommendations of the Board based upon its Findings

(N) STANDING ORDERS

I advert to this matter primarily because of the abysmal ignorance displayed by Police of the provisions of Standing Orders, the frequent breaches of Standing Orders discovered by the Board during the course of its inquiry, and the apparent indifference with which senior Police Officers view such breaches.

I should make it clear at the outset that when I speak of breaches of Standing Orders, I do not refer to breaches of Standing Orders of an inconsequential or minor nature, but of those Standing Orders which have a very real bearing on the relationship existing between Police and the public. It would be imposing far too onerous a burden on the average member of the Force to require him to have a working knowledge of the 2460 Standing Orders. It is not asking too much, however, that he familiarise himself with those concerning the rights of citizens and his own duty to observe and protect those rights. Such Standing Orders, if printed in a convenient form, could be mastered quite simply.

I recommend this be done because it was in respect of such Standing Orders that serious breaches occurred in the matters investigated.

The reasons advanced to explain the breaches were various. For example, the Board was told by Police Officers ranging in rank from that of Constable to Inspector, that members were ignorant of them; in other instances it was claimed they were inapplicable to the given situation when clearly they were applicable; finally, it was suggested they were merely guide-lines and hence of no binding force.

As Counsel Assisting pointed out during the course of final submissions:

> "Those explanations live uneasily with the provisions of Regulation 95A (7) (of the Police Regulations 1957) which appears to create an offence for non-compliance with Standing Orders."

It was disturbing that of the many breaches which occurred in relation to the treatment of accused or suspected persons at Police Stations, no disciplinary action was ever taken, or, indeed, contemplated in relation to such breaches.

Generally, those persons disadvantaged by the breaches were persons unaware of the existence of the provisions in the Standing Orders. Indeed, it may well be for that reason that there is such a fervid desire on the part of the Police to keep the content of the Standing Orders a secret. (See the evidence of Assistant Commissioner Crowley at pages 9561 *et seq.* of the transcript.)

The reasons advanced for the need for that secrecy were singularly unconvincing, especially in relation to those Standing Orders dealing with the rights of the citizen vis-a-vis the Police.

In my opinion, there are two simple means of securing the enforcement of or obedience to Standing Orders. Firstly, by discipline in the Force exerted from the top designed to secure compliance by all members instead of the existing practice of covering up, or turning a blind eye to breaches. Secondly, public access to and therefore knowledge of those Standing Orders dealing with the rights of the citizen when the citizen is in Police custody or restraint.

To suggest that such booklet would be subversive of the Force, or destructive of the fabric of the good order and government of the community, is, to my mind, a suggestion without foundation.

Recommendation

I consider there should be a booklet prepared in a form readily digestible to a junior Constable of Police and member of the public, containing those portions of the Standing Orders dealing with the rights of the citizen inside and outside the Police Station vis-a-vis the Police.

That booklet should be issued to every member of the Force and should be available to any member of the public upon payment of the prescribed fee.

Of course it will be appreciated that if effect is given to the general recommendations I have made, then many of the existing Standing Orders will be translated into legislative enactments and the need for the sort of booklet discussed above less critical.

(O) PROCEDURE IN RELATION TO PERSONS OF OTHERWISE GOOD CHARACTER CHARGED WITH STREET OFFENCES

Recommendations of the Board based upon its Findings

I am prompted to make this recommendation in view of the unfortunate experiences of Miss Curteis, Mr. Ebdon and Mr. and Mrs. Whyte. It will be sufficient for this purpose to instance only what occurred to Miss Curteis at the hands of the Police.

It will be recalled that Miss Curteis, a person of unassailable character, was arrested in Loch Street, St. Kilda on the evening of the 6th February, 1975, and taken to the South Melbourne Police Station. It is adequate for my purpose to accept the Police version of the matter.

According to the Police, Miss Curteis was arrested because she used insulting words to Constable Proud, and then refused to give her name and address when requested to do so.

In due course Miss Curteis was taken to the South Melbourne Police Station where within a short space of time her correct name and address was ascertained (Miss Curteis had her passport and various other documents with her at the time which clearly established her identity). It was also quite apparent to the Police following her arrival at the Police Station, that she was a person without prior convictions.

Instead of releasing Miss Curteis and proceeding against her by way of summons, Miss Curteis was charged, placed in a cell, and remained there for an hour or so before being permitted to bail herself out on her own recognizance. One immediately asks: Why was she not released and proceeded against on summons? Alternatively, why was it necessary to lodge her in a cell? Why could she not have bailed herself out immediately she was charged and thus not been subjected to the indignity of being locked in a cell?

Whilst it is clear to the Board why that happened to Miss Curteis (see Chapter 12) the fact is that it should not happen to any first offender of a like character (apart, that is, from those street offences involving drunkenness).

In my opinion legislation should be enacted to make it clear to arresting Officers, Officers-in-Charge of Police Stations and Watchhouse Keepers that once the identity and address of an offender charged with a street offence has been satisfactorily established (and in the absence of the factors adverted to in Section 2 of Act No. 8247), he should be immediately released and proceeded against by way of summons. In such cases the senior Police Officer on duty at the station at the relevant time should have the power to issue the appropriate summons and serve it on the offender forthwith. This, of itself, would have the benefit of reducing the work-load on members of the Force so far as the service of summonses is concerned. As a Police Officer has the power to arrest a citizen and then release him on bail, why should he not have the power to issue the necessary information and summons?

Recommendation

Appropriate legislation be enacted to provide that persons charged with street offences should be released once their identity and address has been satisfactorily established (and in the absence of the factors adverted to in Section 2 of Act No. 8247) and should be proceeded against by way of summons.

The Officer-in-Charge of the Police Station at the relevant time should himself have the power to issue the necessary information and summons, and have service of it effected on the offender before he is released.

(P) A FIREARMS REGISTER

It was with surprise that I ascertained during the course of the inquiry there was no central register of firearms at Russell Street Police Headquarters.

In my opinion there should be such a central registry of firearms and every firearm recovered by the Police in the course of their investigations into criminal offences should have its description, serial number and any other appropriate information in relation to it, recorded in that register. The register should also indicate the date on which it was acquired by the Police, the date of its lodgment with the bureau, and the date of its destruction if that ultimately occurred.

If such a register was kept, the situation which arose in the Power Matter and at the trial of McDougall would be unlikely to occur in the future, i.e. a person identifying a weapon as being the weapon used to commit a particular crime, when in fact the weapon had been in the possession of the Police at the time the crime was committed.

It would also go a long way towards putting to an end allegations that Police keep unrecorded firearms at Russell Street for the express purpose of "planting" them on criminals. (See the suggestions to that effect in the Sellers Matter and the Smith Matter.)

Indeed, one can see no good reason why such a firearms register should not record every firearm in the hands of the Police and the public in the State of Victoria.

Finally, I am content to quote the submission of Counsel Assisting at page 11,667 of the transcript.

> "We go further in this sense and say generally on the topic of firearms that any recommendation or submissions which Mr. Phillips may care to address to you on behalf of his clients aimed at limiting the availability of sophisticated weapons at large in the community or bringing it under stricter control, will receive the endorsement of counsel assisting. It seems to us that with the exception of certain easily ascertained and defined classes of persons, there is no right at all and no need at all for people in this community to have access to or be in possession of highly sophisticated firearms. It is our belief that the Police are not happy with the existing system. It is our belief they are the persons most called upon to grapple with the evils that arise from it and it is our belief that their voice should be listened to and acted upon."

Recommendation

For the reasons to which I have adverted, it is my recommendation that a central register of firearms be kept at Russell Street.

(Q) THE DUTY OF THE POLICE TO HAND TO THE CROWN COPIES OF ALL STATEMENTS OBTAINED BY THEM FROM WITNESSES TO A PARTICULAR OFFENCE

The matter which caused me a deal of concern in this connection was the Lawless Matter. Although I made no finding adverse to the Police, nevertheless a number of vital statements taken from witnesses by the Police in relation to the murder of Fitzgerald were never made available to Lawless or his legal advisers at his trial, despite a direction to that effect from the trial Judge. It may well be that the responsibility for that lay with the Crown. As it was no part of this Board's function to investigate aspects such as that, I am in no position to make any finding one way or the other, and indeed it would be inappropriate for me to do so in any event.

However, in the light of what occurred in the Lawless Matter, in my opinion Police should be directed to supply to the Coroner (where appropriate) and to the Crown, all statements of whatever kind obtained from witnesses to a particular offence, whether they be in conflict with one another or not, and the Crown should be obliged to make available to the defence copies of all such statements. That the interests of justice require that such a full disclosure of the content of all witnesses statements be made to the defence has been made abundantly clear to me by what occurred in the Hamilton Matter (Chapter 16) and the Lawless Matter (Chapter 19). That experience impels me to state emphatically that legislation should be urgently enacted to achieve such full disclosure by the Crown and to overcome the inhibiting effect of the decision contained in *R.* v *Charlton* 1972 V.R. 758.

I quote the following passage from the Admiralty Memorandum on Naval Court-Martial Procedure dated the 1st August, 1958, applicable to the Royal Navy and concerning the duties of prosecutors. In my opinion, it succinctly states what I would conceive to be the situation so far as the Crown is concerned, in its approach to the proper conduct of a prosecution against a citizen.

> "In a criminal trial the Crown appoints a prosecutor to assist the jury in arriving at the truth. The prosecutor at a court-martial is in a similar position. He must not urge any argument that does not carry weight in his mind or try to shut out any evidence that should properly be before the court and that would be important to the interests of the person accused. It is his duty to see that all relevant facts, those favourable to the accused as well as those unfavourable to him, are brought before the court; that any evidence for the defence is properly tested by cross-examination; that all such facts are made intelligible and properly worked into a correct exposition of the case, and to seek by all proper means to ensure that the court comes to the proper decision, whether that be an acquittal or a conviction. It is thus no part of the prosecutor's duty to press for a conviction, but to establish the truth so that justice may be done. Establishing the truth may or may not be the same thing as pressing for a conviction, but it is not the same thing as pressing for a conviction at all costs".

See also *R.* v. *Lucas* 1973 V.R. 693 at page 697 and page 705.

Recommendation

Recommendations of the Board based upon its Findings

The recommendation I make is that legislation be enacted to provide that copies of all statements obtained by the Police from witnesses to an offence be made available to the Crown, whether they be in conflict one with the other or not, and that the Crown make available to the defence copies of such statements.

CONCLUSION

The recommendations appearing in this chapter of the Report have been based on the findings made by the Board in the various matters investigated by it.

I wish to point out however, that I have studied a number of reports prepared of recent years by other Boards of Inquiry, and submissions made to this Board, not only by Counsel Assisting the Board and Counsel appearing for the Police Association, but those submissions of a general nature made by Mr. Peter Sallmann on behalf of the Victorian Council for Civil Liberties, and by some twenty members of the legal profession practising in this State. Indeed, I consider the submissions made on behalf of the Council for Civil Liberties and those practitioners to be of sufficient importance to justify their inclusion in this Report. Accordingly, they are to be found as Appendices "A" and "B" respectively to this chapter.

Many of those reports have dealt with the matters to which I have adverted in far greater detail than it has been possible for me to do. See, for example, the first and second Reports of the Australian Law Reform Commission.

I, on the other hand, have had the benefit of a pragmatic examination of the problems with which those bodies grappled theoretically.

The fact I consider to be of the utmost significance is that virtually all bodies called upon to investigate matters of this nature of recent years, whether in Australia, the United Kingdom, the United States of America, or Canada, speak with one voice.

It would seem clear that what these voices are saying, is that the problems are universal, and that the need for remedial correction is urgent.

APPENDIX " A "

Submission No. 1

COMPLAINTS AGAINST POLICE

I. INTRODUCTION

1. Policing organisations in western democratic countries have been the subject of intense interest and scrutiny in recent history. One of the most controversial aspects of the phenomenon has been the method by which complaints from citizens should be handled.

2. Complaint procedures have recently been the subject of investigation by the following important study groups:

(i) The Royal Commission on the Police 1962. Final Report H.M.S.O. London, 1962, Cmnd. 1728.

(ii) The President's Commission on Law Enforcement and Administration of Justice. U.S.G.P. Washington: 1967.

(iii) The St. Johnston Report on the Victorian Police Force, Melbourne, 1971.

(iv) The Working Group for England and Wales, Report on the Handling of Complaints against Police. H.M.S.O. London, March 1974, Cmnd. 5582.

(v) The Working Group for Scotland, Report on the Handling of Complaints against the Police. H.M.S.O., London, March 1974, Cmnd. 5583.

(vi) The Second Report of the South Australian Criminal Law and Penal Methods Reform Committee, Adelaide, 1974.

(vii) The First Report of the Federal Law Reform Commission. Complaints Against Police, 1975.

3. So far as underlying or manifest philosophies are concerned, it is by no means clear from the work of these various bodies just what it is that they are trying to achieve by making recommendations for changes. Possibly it is a problem which does not lend itself to a clearly specifiable set of goals.

4. The Task Force (see (ii) supra) has observed that " whatever the method for conducting an investigation, there is no evidence that the complaint procedure has generally served as a significant vehicle for the critical evaluation of existing Police practices and the development of more adequate departmental policies ". It is probably more sensible, then, to consider the problem at a pragmatic level and simply look at it in terms of its being a sub-unit of Police-community relations. A basic aim could well be to improve the degree to which the Police are accountable to the public and to look at the notions of thoroughness and fairness.

5. A third preliminary point which should be made is that regardless of the type of system set up to deal with complaints, its satisfactory working will ultimately depend on the competence, integrity and bona fides of the people involved. To this extent strong endorsement of the Task Force recommendations for an overall improvement in the policing component is urgent. Particularly, this should take the form of higher admission standards, better and broader educational requirements and a high degree of supervision of work done. Increased pay would also be desirable.

6. In respect to the point made in the previous paragraph, it is probably important to note that some Police departments may have complaint procedures which shows defects in an analytical sense but still enjoy the confidence of the community because of the completely fair way in which they are administered. Contrasted with this, of course, is the ideal, defect-free blueprint for complaint processing which is administered by unscrupulous, dishonest and/or sloppy methods. It is important, therefore, to look at the particular Police Force and the community it serves and not to be carried away by ideaology on the matter. In view of the recent history of the Victoria Police Force, it is probably safe to assume, for present purposes, that the general state of affairs is not entirely satisfactory, particularly from the public's point of view.

7. The final, general preliminary point is that there is an implicit assumption that the word " complaint " embraces the full spectrum of grievances from allegations of serious crime to allegations of minor discourtesy or failure of a Policeman to concur with a citizen's point of view on a particular situation.

II. THE COMPLAINTS PROCESS

8. The process, for analytical purposes, seems to break down into four stages:

(i) The reception of complaints.

(ii) The investigation of complaints.

(iii) The determination of the issue.

(iv) The process of imposing a sanction. (This would probably include forms of redress for a successful complainant.)

The broad issue underlying the whole process is whether the matter should be handled entirely within the Police Department, whether there should be a combination of Police and citizen involvement, or whether the process should be placed predominantly in the hands of some kind of civilian review board.

9. The essence of the recommendations made in this submission is that some mechanism to establish the middle position should be set up. Despite the fact that civilian review boards with wide powers have operated in some American cities for some years, notably in Philadelphia, the experience with the New York experiment suggests that the issue is an intense one from a political perspective. Police departments have usually become extremely emotional about the whole problem.

10. At the other end of the spectrum, Victorian experience as well as the theory of the matter, would seem to indicate that there is some need for an independent body to oversee the whole matter. The Police are undoubtedly best equipped to investigate but this is no reason to preclude a body directly responsible to the citizen from receiving complaints, watching and reviewing investigations, making recommendations as to outcome and finally reviewing the whole file. In addition, what is now the Police Disciplinary Board which hears cases could well do with more citizen involvement. This I will mention further on.

11. The most recent Victorian procedure for handling the problem still precludes any direct citizen or independent involvement, with the possible exception of the Ombudsman who appears to have some discretion to review files if he finds cause to do so. The Ombudsman's jurisdiction in this area is apparently none too clear.

12. The proposal, therefore, is to follow the line put forward by the Federal Law Reform Commission and to give the Ombudsman broad powers in the area. The Ombudsman would receive notice of all complaints made and would sort out the "vexatious, malicious, mischievous and trivial complaints". Once sorted, in the case of non-trivial complaints, he would have power to recommend either an internal disciplinary procedure or proceedings before a Victoria Police Tribunal.

13. In addition to the Stipendiary Magistrate and Senior Police Officer who make up the Police Discipline Board, there seems no good reason why a Country Court Judge, Queen's Counsel or experienced layman should not also be a member of the Board. Magistrates are seen by a large segment of the population as having strong relationships with the Police, and there are, of course, good historical and contemporary reasons for this. An additional member of the kind suggested, would add a much greater air of independence and objectivity.

14. Currently appeal from a decision of the Discipline Board is to the Police Service Board. The very title of this body, regardless of composition, still appears to keep the matter in club, so to speak. It may seem trivial but why not provide for an appeal structure to the County Court or to the same body under a different name? Its composition is provided for in section 70 of the *Police Regulation Act* 1958.

15. The suggestion of the Federal Law Reform Commission for an independent, internal investigative unit modelled on the English A 10 system, is to some extent catered for by the recent Victorian introduction of the B 11 system. Provided that the Ombudsman could be given some sort of concurrent jurisdiction in regard to investigations, then the investigation side of the matter should be reasonably acceptable.

16. The above are the suggested elements of the broad scheme of things. The scope of the current submissions does not permit a detailed discussion of all the finer points, some of which are complex. In essence, the suggestion is the adoption of the spirit and thrust of the Federal Commission's recommendation with adaptations to allow for local circumstances.

17. What follows is a brief set of specific suggestions to govern some aspects of the process:

(A) *Reception of Complaints.*

(i) Complaints should be received by the Police and by the Ombudsman.

(ii) They should be accepted by mail, in person, by phone and anonymous complaints should be received and investigated.

(iii) Complaints should be accepted from organisations acting on their behalf or on behalf of citizens.

(iv) All complaints received should be collected at the office of the Ombudsman who would function as a clearing house.

(v) The formalities of a complaint should be kept to a minimum in order not to discourage complainants.

(vi) It seems unnecessary that a complainant should be asked to put his complaint in writing, to sign it and be asked to give an explanation for failure to sign (see Chief Commissioner's Standing Orders O.415). Some of this problem may be avoided by provision of a special complaint form.

(vii) In line with the Federal Commission's recommendations, a leaflet describing the complaints procedure should be provided to complainants and exhibited in Police Stations. (See Appendix "B" to the Commission's Report.)

(viii) Complaints should be lodged within 12 months of the cause of complaint arising.

(B) *The Investigation of Complaints*

(i) The investigative function should basically be carried out by the B 11 Internal Investigations Bureau.

(ii) The Ombudsman should liaise directly with the Officer in Charge of the Bureau and have clear powers to order the re-investigation and review. He may have full powers of independent investigation in some cases. This would be a matter for legislation.

(C) *The Determination of Complaints*

(i) Minor complaints should be dealt with informally, e.g. by an apology in appropriate circumstances. (The current Victorian procedure allows the decision as to what is "minor" to be made at district level. The Ombudsman's jurisdiction should avoid problems of a cover-up at this level.)

(ii) In the case of serious complaints referred on by the Ombudsman, the matter should be subject to the jurisdiction of the Victoria Police Tribunal (modelled on the Federal Commission's recommendations) unless the investigation does not reveal a *prima facie* case. This would be determined by the Ombudsman.

(iii) A hearing would take place before the Tribunal. Features of the hearing should be as follows:

(*a*) it should be open to the public,

(*b*) the complainant and witnesses should be present,

(*c*) the Tribunal should have subpoena power,

(*d*) all parties should be entitled to counsel,

(*e*) the parties should be able to see the investigation report,

(*f*) there should be scope for cross-examination,

(*g*) transcripts should be provided,

(*h*) decisions should be prompt and should be accompanied by clear, written explanations,

(*i*) the Annual Police Report should include all details of Tribunal hearings and decisions.

(D) *The Imposition of a Sanction*

(i) It is envisaged that the Tribunal would have power to dismiss a Policeman from the Service as well as the power to impose lesser penalties.

(ii) The issue as to the respective powers of the Chief Commissioner and the Tribunal in regard to penalty is a difficult one. The writer is not prepared to be committed on this point at this time. (The problem would seem to be that as the person ultimately responsible for enforcement of internal discipline, the Chief Commissioner may be disadvantaged by having lesser powers than the Tribunal.)

(iii) The matter of the citizen's right of redress is more than adequately dealt with by the Federal Commission in its First Report. The Board is respectfully referred to that source for a discussion of those issues.

III. CONCLUSION

18. There is a need for greater civilian involvement in the complaint handling process. This ought to be accomplished by greatly expanding the jurisdiction of the Ombudsman to embrace an overall overseeing function with specific powers to receive investigate and review complaints. He should also have the determining role in deciding which matters ought to be heard by the Tribunal.

19. There should be a Victoria Police Tribunal to replace the Discipline Board. It should have an extra civilian member, in addition to the S.M. Whether it should contain the Police representative is a difficult issue. On balance he should be included because of his expertise. It would depend for its jurisdiction upon matters referred to it by the Ombudsman.

20. The method of appeal should be channelled away from the Police Service Board to the County Court.

21. The best method to achieve clarification and implementation of the whole scheme would seem to be legislation. (See Appendix "F" of the Federal Commission Report.)

Submission No. 2

IDENTIFICATION PARADES

A. INTRODUCTION

1. The Criminal Law Revision Committee, in its Eleventh Report, said that it regarded mistaken identification as "by far the greatest cause of actual or possible wrong convictions". As long ago as 1904, the Royal Commission which reported on the Adolph Beck case observed that "evidence as to identity based upon personal impressions is, unless supported by other facts, an unsafe basis for the verdict of a jury".

2. It goes without saying that in many cases the issue of the identity of the suspect or suspects is a critical one. The issue itself is way beyond the scope of the current submissions which are limited simply to the conduct and procedure governing the identification parade or line-up. It must be kept carefully in mind, however, that the identification parade is usually the standard method of handling an identification problem. Its importance is, therefore, paramount.

3. In Victoria, the identification parade procedure is governed by the Police Standing Order 651. The fact that the matter is governed by the Standing Orders means that the rules are not mandatory. This seems strange in the light of the enormous importance which may attach to issues of identity. This aspect will be the subject of attention further on in this submission.

4. Identification Parades have been the subject of the following study groups in recent times:

(i) The Criminal Law Revision Committee (U.K.) Eleventh Report: Evidence (General). Cmnd. 4991, H.M.S.O. 1972.

(ii) The Chief Justice's Law Reform Committee (Victoria) Powers of Police After Arrest. Govt. Printer, Melbourne, 1972.

(iii) The Criminal Law Reform Committee (New Zealand) Report on the Question of Whether an Accused Person under Arrest should be required to Attend an Identification Parade. Wellington, 1972.

(iv) The Criminal Law and Penal Methods Reform Committee of South Australia. Second Report: Criminal Investigation. Govt. Printer, Adelaide, 1974.

(v) The Federal Law Reform Commission Report No. 2 Criminal Investigation. Aust. Govt. Publishing Service, Canberra, 1975.

(vi) The Devlin Committee on Identification Parades and Procedures ("London Times" reports perused indicate that Lord Devlin's Committee was to report to Parliament in late April or early May this year. The writer has been unable to procure a copy of this Report. Undoubtedly it would be useful for the present purposes of the Board.)

(vii) There are various Memoranda of Evidence from a number of interested bodies to the Devlin Committee. Most of these seem to be unpublished. One of these memoranda which has been published, and which the writer has found useful, is that submitted by "Justice", the British Section of the International Commission of Jurists. It was published in 1974. The Committee was chaired by Lewis Hawser, Q.C. who represented Peter Hain in the recent controversial robbery trial.

B. DISCUSSION OF THE ISSUES

5. There seem to be two main broad issues. Firstly, how are identification parades to be conducted in terms of fairness to the suspect? Secondly, how is the court to treat evidence of identity purportedly resulting from a parade? The two become enmeshed in the overall question of whether you cover the matter by legislation, and, if so, is it to be general or is it to set out at length all of the criteria of fairness which are to be adhered to? If the latter is to be done then what is to be the effect of a failure to conduct the parade fairly, albeit that there may be a very minor breach of the provisions?

6. In response to the problems posed in the preceding paragraph, it is suggested that in essence the recommendation of the Federal Law Reform Commission on these matters be followed. The main paragraphs are 119 and 120. That scheme envisages that a formal statutory requirement be introduced to require a warning from the judge in cases where the issue turns wholly or substantially on the validity of an identification of the accused at a parade. This would extend also to other forms of identification evidence such as photographs. This recommendation is strongly endorsed in this submission.

7. Secondly, the Federal Commission suggests a general fairness clause. This stops short of attempting to specify all the conceivable criteria of fairness to be applied. It would, however, provide specific essential criteria of fairness for the judge to look at in respect to the exercise of his discretion. The present submission also embraces this suggestion of the Commission. Some specific criteria of fairness will be spelled out in this submission under specific, detailed recommendations in paragraphs to follow.

8. The clause suggested in paragraph 7 should be incorporated by statute despite the fact that the Victoria Police are apparently currently reviewing their line-up procedures. Following the above suggestion will allow specific guidance to the Police from the courts as to what criteria of fairness are acceptable.

C. SPECIFIC RECOMMENDATIONS

9. The following are detailed requirements which should be introduced to operate in respect to identification parades:

(1) The suspect ought to be told that the police plan an identification parade and that he has a right to refuse to take part *ab initio*.

(2) The suspect ought to have the right to demand a line-up.

(3) The suspect must be entitled to have his solicitor, solicitor's clerk or other representative present.

(4) If the suspect refuses to participate in a line-up then he or his solicitors should be told that the prosecution may attempt to have him identified by photograph or in court.

(5) Strict precautions should be taken to ensure that witnesses are given no opportunity of seeing a suspect before a parade.

(6) The line-up should be by an officer of the rank of Inspector or above. It should be a member of the Uniform Branch rather than a detective. There seems no good reason why investigating members should actually be present at the line-up.

(7) The names and addresses of all persons taking part in a parade should be supplied to the defence.

(8) The names and addresses of all witnesses who participate in attempting to make an identification should be taken and supplied to the defence. (In this respect the South Australian recommendation is deemed preferable. The Federal Commission's fear that witnesses may be put off participating by this requirement seems unlikely.)

(9) Video-tapes should be made of the parade. If this is not possible then colour photographs should be produced. (The police very often take video-tapes of the re-enactments of alleged crimes. This means that the equipment is available. It should be used for line-ups.)

(10) Dock identification of suspects previously unidentified by a witness should not be allowed.

(11) Police officers who recognise suspects should be required to pick them out at an identity parade and only give evidence to this effect.

(12) Witnesses should not be shown photographs before attending a parade.

(13) At the earliest opportunity after the alleged crime, witnesses should be asked to provide a detailed written description of the alleged offender. They should be asked to sign the description.

(14) Full details of statements made by witnesses who fail to identify the suspect should be supplied to the defence.

(15) The judge should be required to give a statutory warning in all cases of disputed identification and this should cover all the factors relevant to the evidence given.

D. CONCLUSION

10. It is important to note that even if all rules in respect to identification parades are strictly adhered to, all that is proved is that the person picked out looks more like the culprit than anyone else on the parade. The courts, however, tend to assume that identification picks out the guilty man. The margin for error is enormous. It is imperative, therefore, that parades be conducted scrupulously fairly. There is some evidence that this does not always happen in Victoria. To help remedy the total situation, it is recommended that the provisions detailed above in paragraph 9 be made the subject of statute.

11. As to the Standing Orders themselves, no doubt reform would be brought about by the high statutory standards regarding fairness and the power in the judge to exclude evidence not obtained in conformity with the law.

Point of Clarity

As to the effect of breach of these provisions, the suggestion of the Federal Law Reform Commission of a reverse onus of proof should be adopted. Breach of any of the provisions should put the onus on the prosecution to satisfy the court that under all the circumstances the evidence thereby obtained should be admitted.

Submission No. 3

POLICE INTERROGATIONS

A. INTRODUCTION

1. This third section of these submissions concerns the criminal investigation aspect of the criminal justice process. The scope of issues and problems in this area is virtually unlimited. The terms of reference of the current submission are concerned with the interrogation situation as such. Even so delimiting the discussion comments will be cryptic.

2. The general investigative process has been looked at by a number of bodies of late, especially those referred to in the introduction to the submission on identification parades. The Board has no doubt been referred by counsel assisting the Board to the recent Federal Reform Commission Report No. 2 on Criminal Investigation. This report is most useful, and, as with the identification parade submission has been influential in the thinking on the present matters.

3. The basic problem affecting the situation of a suspect at a Police Station for questioning seems to be that the precise nature of the present scope of duties, rights and responsibilities of suspects and Police is very clouded, to put it at best. The law is unsatisfactory. Police practices are unsatisfactory. The clouded nature of the rules of the game benefit the Police in as much as they can hide behind vagaries and ambiguities and bluff citizens into complying with procedures which they are entitled to resist.

4. The basic recommendation of this submission is that the current position in regard to Standing Orders be given legal status so that the rules are in terms of "is" statements rather than "should" statements. As in regard to the suggestions on identification parades, it seems sensible to suggest that, having codified the rules, breach of them should present the prosecution with the problem of having to satisfy the Court that the breach was not such as to cause the Court to reject the evidence purportedly resulting from the questioning.

5. Before proceeding to outline some recommended specific steps, an example of the general sort of problem, no doubt known to the Board, is put up. The writer has had occasion to visit a number of Police Stations to advise clients who were being questioned. On more than one occasion access to the client was refused in flagrant breach of Standing Orders 643 and 644. One exchange was in essence as follows:

THE WRITER: I would like to see my client Mr. So & So please.

DETECTIVE: You cannot see him.

THE WRITER: It is his right to see me.

DETECTIVE: You cannot see him, he is being interrogated.

THE WRITER: I insist on seeing him now.

DETECTIVE: What do you think this is, Perry Mason?

B. SUBSTANTIVE RIGHTS

6. Rights of this kind, such as communicating with friends, relatives and legal advisers are very basic. Our system is after all reputedly an adversary system and not an inquisitorial one.

7. Clearly there should be a legal obligation upon the Police to advise the suspect of all his rights and entitlements as each case demands. This should apply even when people are asked "to accompany the Police to assist them in their inquiries". It is quite clear that in most of these instances the person at the Police Station is "the" suspect and is, in fact, being interrogated. This probably involves extending the commonly understood custody concept. The Federal Law Reform Commission characterises the above situation as "restraint". One of the major problems seems to have been the fact that cautions need only be given under the Judges Rules when a suspect is in "custody" or when a decision to "charge" has been made. The "custody" concept would sometimes seem to produce difficult empirical problems. The decision to "charge" would often seem to require brain surgery to detect. It is yet another aspect of this whole process which is fuzzy and unsatisfactory.

8. The suggested scheme, therefore, is one that would

(*a*) have the force of law, and

(*b*) oblige the Police to present a suspect with a leaflet containing his rights as soon as he is under "restraint".

This leaflet would set out in clear terms entitlements of the suspect. He could be asked to sign it as an acknowledgment of the fact that he had read it.

9. As well as the difficulty experienced by some suspects in gaining access to the outside world, the latter sometimes have difficulty in finding out precisely where the suspect is being held, or indeed, whether he is being held. This is also a subject broached by the Federal Commission. In addition, it is one problem which the writer, acting as solicitor, has had difficulty with. There should clearly be a duty incumbent upon the Police to state precisely the circumstances of a person's detention. There should also be a requirement that the detention be recorded at a central location. Any significant movements of the suspect during the investigation should also be recorded and notified to any genuine inquirers who request information.

10. The next general matter which seems to be important is the hoped for product of the interview situation—a set of admissions, either contained in a Record of Interview or given in a statement. In this context the suggestion is that section 49 of the *Evidence Act* 1958 (Vic.) be repealed. Legislation to deal with this overall area of Police and trial practice should contain a provision to the effect that if a confession is in breach of the voluntariness rule, then it should automatically be excluded.

11. From time to time alleged confessions or statements are submitted in evidence to a trial Court which are not signed or adopted in any way and which are totally denied by the accused. This is the well known allegation of a "verbal". There are also, of course, many intermediate sorts of situations. For instance, a Record of Interview may be made in which the accused freely proffers answers to questions put and signs the record. At the trial he may allege that a number of the questions read out in Court were not put at the interview and that the answers thereto were concocted.

12. The recommendation in this area is that Records of Interview and statements be tape-recorded. Perhaps this should not be a requirement for all types of offences. It may depend on the seriousness of the offence, perhaps assessed by virtue of the penalty attached. In the writer's experience read-backs are the aspect of the proceedings which are commonly recorded. The Homicide Squad appears to tape-record the read-backs in most, if not all, cases. The tentative suggestion is that the full Record of Interview be taped. The suggestion is tentative because of some considerable difficulties which may be encountered. For example, a Record of Interview may take some hours to complete. Also, there may well be opposition from the Police to the idea because deals may be done during an interview situation, especially with experienced or professional criminals. Particularly, concessions may be offered in exchange for information. Manifestly, therefore, the Police may object that the procedure would reduce their effectiveness in combatting crime. The precise form of implementation of the requirement, then, is in doubt. If it were to be introduced as a rule of practice failure to record the interview could go to the weight of evidence and influence the overall, recommended, reverse exclusionary rule.

C. CONCLUSION

13. The above remarks have undeniably been somewhat cryptic. Certain aspects of the questioning and custody process have been seized upon and singled out for comment. Certain features have obviously not been addressed. For instance, the decidedly complex matter of the acceptable duration of the interrogation process has not been dealt with. The writer has ducked this issue mainly because it is felt that it is not just a matter for some theoretical treatment. It is a difficult instance of the perennial balance problem between respective rights and duties of the competing parties. Considerable knowledge of the actual duration of interviews and investigations is needed before categorical statements can be made. The writer does not have this sort of information. The Board may well have it and feel inclined to make some statements based upon it. The arguments are well canvassed in the Federal Commission's Report in paragraphs 87–98. The Board is respectfully referred to those segments of the Report.

14. The backbone of the recommendations contained in this submission is that the present Standing Orders governing procedures be stiffened. Additional requirements as outlined should be introduced. The rules should be enshrined in legislation. They should be interpreted as being mandatory. The Judge should use them as vital factors in determining admissibility of evidence in the light of the overall suggestion that breach of the rules raises the presumption of exclusion. It is then up to the prosecution to convince the Court of the advisability of admitting the evidence.

13th July, 1976.

PETER SALLMANN,
LL.B. (Melb.), M.S.A.J. (American),
Barrister and Solicitor of the
Supreme Court of Victoria.

APPENDIX " B "

The Secretary,
Board of Inquiry into allegations against Members
of the Police Force,
632 Bourke Street,
MELBOURNE.

Dear Sir,

The undersigned seek to put before the Board submissions that may be of assistance to Mr. B. W. Beach, Q. C.

These submissions are based on experience from practice in some cases ranging over many years.

The submission is put forward in an endeavour to obtain better methods for (*a*) conducting identification parades, (*b*) the receiving of confessional evidence in Court and (*c*) investigation of complaints made against Policemen.

It is submitted that it is in the interests of the public the following rules be adopted. However, it is the view of the signatories to this document that the adoption of the suggested procedures is in the interest of the Police Force also as the daily spectacle of attacks being made on the method of conducting line ups or the manner in which alleged confessions of an accused persons were made, aids neither the Police Force nor the judicial system.

Reception of alleged statements in evidence

Where an accused person has been interviewed by the Police and charged with a serious offence the admissions made to the Police should be received in evidence by a Court if

(*a*) its admission is consented to by the Defendant, or

(*b*) there is a tape recording of the words allegedly used by the Defendant, or

(*c*) there is a document in existence signed by the Defendant verifying the statements he is alleged to have made, or

(*d*) there is some independent corroboration of the fact that the Defendant made the statements relied upon to the Police Officer deriving from the source other than the evidence of other Police Officers,

(*e*) the admission was made in the presence of the accused's legal adviser.

It shall be the right of the accused to have his Legal representative as a witness whilst he is being interviewed.

The conduct of identification parades

(*a*) All identification parades should be photographed preferably in colour.

(*b*) The names and addresses of persons constituting an identification parade should be recorded by the Police and the record of those names and addresses maintained and made available if required to the Defendant or his legal representatives.

(*c*) Where there are witnesses to the commission of an offence and the alleged offender or offenders are not immediately apprehended, the Police Officers investigating the matter should be required to take details of descriptions of the offender or offenders from the witnesses and reduce those descriptions to writing and ask the witness to sign the document containing the description. It would be preferable that the description be obtained by filling out a standard form which requires answers to such questions as age, build, height, colour of hair and so on. Any such description obtained from a witness who claims to have seen the offender or offenders should be made available to the defendant, defendants or their legal representative.

The system for taking complaints against Police Officers

(*a*) It should be stipulated that the Officers who have interviewed a suspect should in no circumstances be present when he is asked by another Officer whether or not he has any complaints to make about his treatment.

(*b*) The conversation involved in asking the person interviewed whether he has any complaints should be tape recorded and in the course of that conversation the Officer who asks the person interviewed whether he has any complaints should be required to also ask him a number of other formal questions so that the tape recording should include a fair sampling of the voice of the person who is being questioned. Such questioning might be confined to asking him formal matters such as name, address, date of birth, and so on.

(*c*) The Victorian Government should appoint a person not a Police Officer to the task of taking complaints from members of the public concerning their treatment by the Police. That person would have power to investigate such complaints, have access to Police files, relevant to his task and have the power to lay charges. The proposed function would not replace the existing machinery for taking and investigating complaints now operated by the Victorian Police Force but provide an additional avenue through which members of the public could make complaints.

(*d*) A Justice of the Peace or Stipendiary Magistrate before whom a Defendant is first remanded ask whether he has any complaints to make about his treatment by Police and to record the answer.

(Signed by twenty members of the Legal Profession.)

CHAPTER 9

GENERAL OBSERVATIONS AND RECOMMENDATIONS CONCERNING A BOARD OF INQUIRY APPOINTED IN ACCORDANCE WITH THE PROVISIONS OF THE EVIDENCE ACT 1958.

Introduction

The Board of Inquiry was appointed on the 18th March, 1975.

It sat for a period in excess of fifteen months, during which time it took evidence from 240 witnesses and received in evidence 766 exhibits. The transcript of evidence exceeded some 12,000 pages.

The frustrations the Board experienced over that period of time were such that I feel it incumbent upon me to draw attention to them, in the hope that any Board of Inquiry (or for that matter, Royal Commission) appointed hereafter, may benefit from the Board's experience. It is therefore, my opinion that in due course consideration be given to amend the relevant provisions of the Evidence Act, to ensure that in future no Board of Inquiry of this nature, or Royal Commission, is called upon to face the problems with which I have been confronted.

I should say at the outset however, that I make no criticism whatsoever of the Chief Secretary, the Under Secretary or Officers of the Chief Secretary's Department. So far as it has been within their power, every request I have made has been complied with speedily, efficiently, and with a minimum of fuss. Indeed, I have nothing but the highest praise for the Minister, the Under Secretary and his staff.

Insofar as financial assistance has been necessary to ensure the smooth running of the Board, that has been provided by the Government of the State without demur or qualification.

Finally, despite what was to him, the doubtless distasteful nature of the Board's inquiries, the Chief Commissioner of Police has co-operated in every way possible to ensure that whatever information was required by the Board was provided to it, in its endeavour to arrive at the truth concerning the allegations of malpractice made against members of the Victoria Police Force.

There have been however, very real problems faced by the Board during the course of its lengthy investigation, some of which made what was a difficult enough task in the first instance, one of almost overwhelming proportions.

I advert to them in the hope they will be of practical assistance to the Chairmen of similar Boards of Inquiry (or Royal Commissioners) hereafter.

Before dealing with those problems, it has been suggested it may be of assistance to the Chairmen of future Boards of Inquiry if I first make some observations concerning the appointment of a Board of this nature and its Terms of Reference.

Appointment of the Board of Inquiry and its Terms of Reference

As the Royal Commission on Tribunals of Inquiry held in the United Kingdom in 1966 under the Chairmanship of The Rt. Hon. Lord Justice Salmon stated in its Report:—

> (*a*) In view of the inquisitorial nature of the proceedings of the Tribunal, the terms of reference require careful consideration and should be drawn as precisely as possible,
>
> (*b*) as the agitation for an inquiry is very often the result of nothing more than general allegation and rumour, it is necessary to keep the Tribunal within reasonable bounds. It is not of urgent public importance merely to satisfy idle public curiosity. The Act (*the Tribunals of Inquiry (Evidence) Act* 1921) lays down that what is to be inquired into shall be a " definite matter ". Accordingly, no tribunal should be set up to investigate a nebulous mass of vague and unspecified rumours. The reference should confine the inquiry to the investigation of the definite matter which is causing a crisis of public confidence. On the other hand it is essential that Tribunals should not be fettered by terms or reference which are too narrowly drawn,

(c) the Tribunal should take an early opportunity of explaining in public its interpretation of its terms of reference and the extent to which the inquiry is likely to be pursued. As the inquiry proceeds, it may be necessary for the Tribunal to explain any further interpretation it may have placed on the terms of reference in the light of the facts that have emerged.

General Observations and Recommendations Concerning a Board of Inquiry Appointed in Accordance with the Provisions of the Evidence Act 1958.

As I have been at pains to indicate in earlier chapters of this Report, the nature of the allegations made prior to the appointment of this Board, allegations supported on their face by the evidence obtained by Mr. Villeneuve-Smith during the course of his preliminary inquiry into the matter, necessitated the Board's Terms of Reference being drawn as widely as they were.

On their face however, they invited any member of the public to make virtually any complaint he wished in relation to a member or members of the Victoria Police Force without regard to temporal limits.

In other words, it was open to a member of the public to make a complaint alleging Police misconduct at any time in the past, and indeed such complaints were made. One complaint I call to mind alleged malpractice on the part of certain Police Officers as long ago as 1950–1955. For obvious reasons that complaint was not dealt with by the Board.

At the other end of the scale, complaints of malpractice were received throughout the course of the Board's hearing, such instances of malpractice allegedly occurring after the date of appointment of the Board. As I observed in an earlier chapter, had the Board proceeded to investigate all such complaints, its proceedings would have been interminable.

I make no criticism of the fact that temporal limits were not set by the Executive at the time the Board was appointed. In my opinion that is a matter best left to be determined by the Chairman of the Board and Counsel assisting the Board once they have had an opportunity to evaluate the material being placed before the Board and the time likely to be involved in making a thorough investigation into it.

In this instance the Board determined it would not investigate any complaints where the alleged malpractice had occurred prior to the 1st January, 1972 nor would it investigate any complaint received later than the 13th June, 1975.

The point I make therefore, is that although it may be necessary to appoint a Board of Inquiry speedily, and to have an initial public hearing shortly following the Board's appointment at which the Board's Terms of Reference can be read and the procedure to be adopted by the Board explained, a sufficient period of time should then be available to the Board and Counsel Assisting to determine as accurately as possible what is involved in the inquiry, and to fix temporal limits on its proceedings as may be appropriate.

If temporal, or indeed other limits, on the scope of the inquiry are warranted, a public announcement to that effect should be made as soon as practicable.

Thus, ideally one would have the situation where following the appointment of the Board the following steps would be taken by its Chairman:—

(i) Within a short space of time following its appointment the Board would hold its first public hearing at which its Terms of Reference would be read, the procedure to be adopted by it explained; for example, whether it would sit throughout in public; whether it would receive only oral testimony and documentary evidence or a combination of oral testimony and documentary evidence on the one hand and written submissions on the other; what view it would take concerning matters of hearsay evidence and the like; and finally, at which it would determine what parties would be granted leave to be represented before it. The Board would then adjourn for such period of time to enable the Chairman of the Board and Counsel Assisting to determine the scope of the investigation.

(ii) Upon resumption of the hearing the Chairman of the Board would announce any temporal or other limitations he considered appropriate and the reasons for such decision. If any further interpretation was considered necessary so far as the Board's Terms of Reference were concerned, such further interpretation would then be explained.

On that occasion Counsel Assisting the Board would make his opening address. In a case such as the present he would identify the persons against whom allegations

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were made, the nature of the allegations made and the evidence to be called by him in support of them. In a case not concerned with allegations of the type dealt with by this Board, e.g. an inquiry into aspects of the fishing industry or tobacco industry, he would merely outline the nature of the investigation to be made, and the broad nature of the evidence to be called in relation to it.

In certain cases it may well be necessary to further adjourn the proceedings to enable a person or persons against whom allegations is or are made to have an opportunity to adequately prepare an answer. Such adjournment would generally be for a comparatively short period of time in all probability not more than 7 days.

That this course is desirable, is again supported by the findings of the Royal Commission on Tribunals of Inquiry to which I have referred. I quote paragraphs 49, 50 and 52 from that Report.

> 49. The question arises, how is it possible to ensure that any allegations against witnesses and the substance of any evidence against them will be made known to them so as to give them an adequate opportunity of preparing their case. We believe that the answer to this question lies mainly in less haste. We are under the impression that the tempo of some of the post-war Tribunals, particularly in the early stages of an inquiry, was somewhat too hurried. We appreciate that there should be no dilatoriness in starting the inquiry and pushing it to a conclusion. It is urgent that the truth should be revealed to the public as speedily as possible. Nevertheless, a few weeks more in preparing the material for arriving at the truth is a small price to pay in order to avoid injustice.
>
> 50. Any potential witness from whom a statement is taken by the Treasury Solicitor should be told that, if he so wishes, his own solicitor may be present when the statement is taken. In many cases a witness will not require legal assistance. If, however, he does wish his solicitor to be present he should be given a reasonable opportunity to secure his solicitor's attendance even if this entails a day or two's delay. As soon as possible after he has given his statement, and certainly well in advance, usually not less then seven days before he gives evidence, he should be supplied with a document setting out the allegations against him and the substance of the evidence in support of those allegations.
>
> 52. Further time in preparing for the public hearing would also give the Tribunal a better opportunity of discarding irrelevant evidence. It is of the greatest importance that irrelevant evidence should not be made public, particularly if it contains what are clearly groundless charges against anyone.

The Length of the Inquiry

In the event the Board's Terms of Reference do not require it to deliver its Report by a specified date, I consider that the Chairman of the Board should be conscious of the time factor, and at a time when a fairly accurate assessment of the situation can be made, stipulate that the Board will conclude the receipt of evidence by it, on a particular date. In the present case the 14th May, 1976 was selected as the appropriate date; had that not been done there was a danger that the proceedings may have continued indefinitely.

It is worthy of note that in the Board's experience, once that date was determined on and made clear to the parties involved, the deadline was met without inconvenience and in my opinion without prejudice to any party.

If oral submissions are to be received on behalf of parties represented before the Board, limitations should be placed on the time available to each party within which those submissions are to be made. This was a course successfully adopted by the Royal Commission into the West Gate Bridge and I consider was adopted with success by this Board.

A party should always have the right however, to deliver written submissions; again within a fixed period of time.

I turn now to deal with a very important matter, i.e. the lack of power possessed by the Board which much impeded its efficient functioning.

Lack of Power of a Board of Inquiry

General Observations and Recommendations Concerning a Board of Inquiry Appointed in Accordance with the Provisions of the Evidence Act 1958.

The observations I make in this connection would have been equally applicable had this been a Royal Commission rather than a Board of Inquiry.

For practical purposes the provisions of the *Evidence Act* 1958 relating to the appointment of Commissions and Boards of Inquiry, their functions and powers, are identically the same. The shortcomings of those provisions may be enumerated as follows:—

(i) The Commission or Board has itself no power to deal with a person who fails or refuses to give evidence or produce evidence when called upon to do so. In such a situation it is forced to adopt the very cumbersome procedure laid down in Section 20 of the Act, viz. to certify the facts to a law officer, who upon receipt of such certificate may then apply or cause an application to be made to the Supreme Court or a Judge thereof for an order calling upon such person to show cause why he should not be dealt with for an offence against the Act.

(ii) The Commission or Board has no power to deal with a person for contempt. If a person disrupts the proceedings of the Commission or Board (as occurred on more than one occasion during this Board's inquiry), it can take no effective action whatsoever. In the event a Police Constable is present, as happily was the situation when such incidents occurred, he, of course, would have the power to take appropriate action against such an individual, for example, for using insulting words in a public place, offensive behaviour etc. In the circumstances, it was not considered expedient to adopt such a course so far as the Board was concerned. It does demonstrate however, the embarrassement which can be caused to a Commission or Board and in respect of which the Commission or Board is for practical purposes powerless to act.

(iii) If a Commission or Board of Inquiry sits in public, as is invariably the case, it has no power to prohibit publication of the proceedings before it.

During the course of the Board's inquiry it was often considered desirable that certain evidence be not published in the press. Often that evidence consisted of nothing more than the name and address of a particular Police Officer or civilian witness.

Whilst it is true that the Board could have taken the whole of such a witness' evidence " in camera ", and thereby preserved the anonymity of the particular witness, that was, in my view, a most undesirable course to adopt in a public inquiry. The taking of evidence of the type received by the Board " behind closed doors " tends to be viewed by sections of the public with some suspicion.

To the credit of members of the press present at the relevant times, whenever I requested a particular passage of evidence be not published, that request was complied with. But the basic problem remained, i.e. I could do no more than request press co-operation.

In appointing the Royal Commission to inquire into the collapse of a span of the West Gate Bridge, the legislature saw fit to pass an Act of Parliament giving that Royal Commission all the powers, rights and privileges as are vested in the Supreme Court of the State of Victoria or a Judge thereof, and in particular the powers to which I have adverted and which this Board lacked (see Act No. 7989 of 1970).

It is respectfully submitted that when one considers the task with which this Board was confronted, and the type of witnesses called to give or produce evidence before it (in particular those with criminal records who clearly considered they had nothing to lose by adopting whatever attitude suited them at the time), it would have been clearly desirable to clothe the Board with powers additional to those presently given to it by the existing provisions of the Evidence Act.

I endorse the submission made by Counsel Assisting in relation to this matter. At page 11698 of the transcript, he had this to say:—

> " It occurs to us the Board should not pass up the opportunity of making recommendations in respect to its own provisions and powers or rather the lack of them, which has been highlighted by the sittings of your Board. I need only refer to the absence of power in the Board, such as yours, in contrast with the specific

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bestowal of power on the West Gate Bridge Royal Commission, to illustrate how undesirable it is for a Board of this magnitude grappling with the problems it did, to be so destitute of powers and regulations to properly conduct its own proceedings. Apart from the power to ignore, adapt, amend and from time to time revise as it saw fit the rules of evidence, there was very little power in the Board such as yours. Consideration should be given in the future to Boards and Royal Commissions having powers such as bestowed on the West Gate Bridge Royal Commission by Act No. 7989 of 1970, where the powers are specifically set out."

I can readily appreciate that many Boards of Inquiry do not need such powers. I again instance a Board of Inquiry appointed to investigate a particular aspect of the fishing industry, or some similar industry, or, as of more recent times, the Board appointed to inquire into the price of packaged beer.

In my opinion however, a body, whether it be a Commission or Board of Inquiry appointed to investigate matters of the nature investigated by me, should be clothed with the additional powers to which I have referred.

A simple solution I offer to the problem is this. As the Evidence Act stands at the present moment, the provisions relating to Boards of Inquiry and Commissions are virtually identical. The Act could well be amended to give to all Commissions those powers given to the Royal Commission into the West Gate Bridge.

If a matter of that magnitude, or of the magnitude of the matters dealt with by this Board arose for investigation, a Royal Commission already clothed with the necessary powers could be appointed to investigate it. Matters not involving the need for such powers could be attended to by a Board of Inquiry.

If for some reason, it was deemed inexpedient to appoint a Royal Commission to investigate a particular matter, but it was clear nevertheless that the Board of Inquiry appointed to conduct that investigation would require such powers, then that Board should be armed with such powers. The most suitable manner in which that could be attended to, would be to include in the Evidence Act a provision enabling the Executive to give to a Board of Inquiry those powers given by the Act to a Royal Commission, in the event the Executive considered that course appropriate.

The final matter I wish to advert to concerned the difficulties encountered by the Board in conducting its proceedings from day to day because a Court with appropriate security facilities was not made available to it at the outset.

Appropriate Facilities for Boards of Inquiry

Much time was lost by the Board because an appropriate Court was not made available for its use from the outset. From the nature of the allegations made prior to the Board's appointment, it was clear that persons in custody would be called upon to give evidence from time to time.

Despite the best endeavours of the Prison Officers and Police Officers concerned, it quickly became clear that the premises at 632 Bourke Street, Melbourne, were quite unsuitable for that purpose.

Thereafter the Board was frustrated and its business interrupted by the necessity to shift its venue backwards and forwards from the old Licensing Court at Bourke Street to a County Court with appropriate security facilities whenever it was necessary to call a person in custody to give evidence. Often a Court with security facilities could not be made available at the relevant time; when somewhat grudgingly a Court was made available, time limits were imposed on its occupancy by the Board with a consequent atmosphere of pressure and constraint on the parties.

I would trust that in the future no Board of Inquiry or Royal Commission will be called upon to face such a problem. It is essential that all necessary facilities be made available to it from the outset in order that it may discharge its business without interruption and without being subject to pressures of the kind to which I have referred.

CHAPTER 10

ACKNOWLEDGEMENTS

In my opinion it would not be overstating the situation to say that from the outset the task which confronted this Board of Inquiry and Counsel Assisting the Board was one of formidable proportions.

The fact that the Board has been able to complete its investigation in the manner it has, has been due in no small measure to the assistance given to it by so many persons who participated in so many and varied ways.

In the first instance, I express my sincere thanks to the Under Secretary, Mr. R. L. King. Throughout the course of the inquiry he co-operated with me in every way possible and as far as it was within his power to do so, complied with every request I made of him.

A number of people played a vital role in the day to day operations of the Board and to them I also express my appreciation. Whilst I intend to make specific mention of but a few, I do not intend to derogate from the value of assistance received from others.

In the first instance, my thanks go to the Government Shorthand Writer and his staff. Their efficiency and industry is to be commended and of itself made the task of this Board so much less onerous.

I also wish to express my appreciation to the Government Printer and his staff for the speed and accuracy with which they have attended to the printing of the Report.

To the Director of Prisons, Mr. P. Lynn; the Superintendent of H.M. Prison Pentridge, Mr. J. Van Gronigen; to the Deputy Superintendent, Mr. J. Armstrong; and the Prison Officers who have been caught up in the day-to-day running of the Board, I also express my appreciation. They have afforded me the fullest co-operation under what were clearly difficult conditions, and carried out their unenviable task with the greatest efficiency.

Finally in this connection, I wish to express through the Chief Commissioner of Police my gratitude to Sergeant Graham MacAllister and those men under his control for the efficient and courteous manner in which they attended to the security aspects of the Board's inquiry. By the very nature of the inquiry, theirs was an unenviable task. It is to their credit they performed it in the commendable manner they did.

I turn now to say something of the part played by Counsel and Solicitors who were given leave to appear before the Board, in particular Mr. J. H. Phillips Q.C. and Mr. John Walker. Mr. Phillips and Mr. Walker bore the heavy responsibility of appearing for the Police Association and, at a late stage of the inquiry, the Chief Commissioner of Police. Their great experience in criminal law and their patient and skilful cross-examination were of great assistance to the Board.

To those Counsel and Solicitors who appeared on behalf of complainants and witnesses, I also express my thanks. This Board was well assisted by the part they played in the cross-examination of witnesses, and by the final submissions made by those who chose to do so.

To Superintendent J. Darley who acted as Liaison Officer between the Board and the Police Department I also express my appreciation. In the circumstances his, too, was an unenviable task. Nevertheless it was a task he carried out with courtesy and efficiency. When one considers he was often called upon to produce material which he believed may have been turned against his colleagues, he is to be highly commended for his co-operation.

I also wish to express my thanks to Inspector K. S. Robertson for his assistance in arranging transport for the Board on those occasions that was necessary, and for conducting the Board on its inspection of Russell Street and a number of suburban Police Stations.

Before adverting to the role played by the Secretary of the Board and Counsel Assisting the Board, I consider it appropriate to make reference to three members of the Crown Solicitor's staff who gave so much assistance to Mr. Villeneuve-Smith and Mr. Coldrey during the course of the inquiry. I refer to Mr. John Murphy, Mr. Timothy Holt and Mr. Peter Kistler. It was clear to me that the efficiency and industry of those gentlemen made the task of Counsel Assisting the Board less onerous than it otherwise would have been.

Of the Secretary of the Board, Mr. John Day, I can say no more than this. His task has been one of the most difficult the Secretary of a Board of Inquiry of this nature has been called upon to perform. The very nature

Acknowledgements

of the inquiry, the length of time taken by the Board to investigate the matters it was called upon to investigate, and the very volume of documentary and other material he has been called upon to deal with, speak for themselves. His task has been fulfilled with the greatest patience, courtesy and efficiency. I also express my appreciation for the assistance afforded the Board by Mr. Day's Secretary, Miss Tania De Amicis.

In respect of Mr. Villeneuve-Smith Q.C. and Mr. John Coldrey I say this. I cannot recall any member of the Victorian Bar being required to undertake a task as demanding as the task undertaken by Counsel Assisting this Board. In some respects their task too, has been an unpleasant one. It has, however, been fulfilled by them with the greatest diligence and efficiency. Their assistance to this Board is worthy of the highest praise.

Finally, I should like to express my sincere appreciation to my Secretary, Miss Shirley Reynolds, on to whose shoulders fell the task of typing the drafts of this report. Miss Reynolds carried out her task with outstanding loyalty and dedication.

APPENDIX "A"

ALPHABETICAL LIST OF WITNESSES

Name.	Transcript Reference.
Adams, Alexander David	6920–6962, 7518–7524
Andriske, Peter Charles	7361–7371, 7416–7421, 8794–8806
Ashley, David John	6966–6980
Atkins, Robert	858–864, 869–882
Baker, Reginald George	1751–1756, 9001–9017, 9307A–9309
Bartholomew, Allen Austin	328–330 In Camera
Beeson, Leslie Edward	4633–4649
Belson, David James	9177–9198
Bird, Frederick Gordon	7152, 7154–7176
Blake, John Thomas	7109–7114, 7128–7151, 7176–7183, 7185
Boland, Kathleen Mary	1530–1535, 1538–1571, 1604–1627
Bolton, Allan	2803–2805
Bowles, Graeme Leslie	2745–2753
Briant, Laurence Cecil	6675–6684
Broughton, Robert Quentin	5977–5991
Brown, Kenneth Ernest	152–158, 2991–3033, 3056–3060, 3362/3363–3405
Brustman, David Leslie	3734–3737
Bullen, Andrew John	4984–4999, 5021–5026
Burgess, Murray George	5947–5976
Burles, Emily May	7183–7184
Burn Frederick	886–909
Callaghan, Patrick	1448–1460, 1591–1600, 1643–1661A, 1663–1704
Campbell, James Paice	9870–9874
Carman, Paul Gerrard	6481–6487
Carton, Kevin John	7286–7302/7303
Casson, John	672–684/685, 1851–1860, 1944–1958, 293–310 In Camera, 2004–2028, 2041–2046
Chambers, Leigh Kelvin	3346–3350, 3534–3539
Clark, Robert Arthur	6554–6556, 6611–6655
Cook, Russell Francis	5511–5525
Coote, Jeffrey Edward	2793–2802
Collyer, Alan Lindsay William	7383–7390
Coppin, Carol Margaret	1460–1473, 1475–1502
Coppin, Leonard George Keith	622–643, 1065–1076, 1214, 1221–1245, 1264, 1340
Cosgriff, Brian John	1846–1851, 1862, 1961–1974, 1976–1983
Cox, Donald William	8669–8716, 8806–8818
Crowley, William Desmond	9370–9384, 9539–9580, 9899–9940
Cuddy, Neil Thomas	2632–2656, 2658–2683
Curteis, Geraldine Anne	6699–6750, 6784–6807
Daly, Virginia Louise	799–805
Dam, Leo John	3295–3316, 3406–3445
Davies, Gomer John	8850–8876, 8878–8902, 8905–8944
De Gelder, Stephen Wallace	759–776
Delianis, Paul	6095–6140, 6146–6165, 9019–9044, 9081–9123
Dennis, Malcolm Frank	2775–2793
De Wardt, Douglas Ewan	6661–6667
Dixon, Eric William	3195–3220
Dixon, Peter Lloyd	3570–3584
Dobell, William Pratt	910–955
Eaton, Allan Walter	9318–9323
Ebdon, Robert William	6223–6306
English, David Malcolm	362–389
English, Maria	5614–5626A
Erdmann, Frank	4932–4984
Ericksen, Thomas Joseph Fabian	9340–9354
Eskdale, Anthony Charles	9860–9870
Faulkner, William Stanley Graham	961–962
Feldman, Raymond Geoffrey	7508–7518
Fennessy, Brian Francis	3928–3993, 3995–4059, 8620–8646, 8648–8660
Ferguson, Julie Rae	3594–3604
Ferguson, Peter Bruce John	5880–5891, 5893A–5918
Fildes, Peter Grant	2426–2431
Fowler, Kenneth	5741–5780
Fracaro, John	3288–3293
Fraser, Graham Andrew	5780–5793A
Gangell, John Joseph	6362–6397
Gaudion, Bert Atherley	10,041–10,042
Gibb, Peter Robert	169–182A, 199–210, 235–264, 6–25 In Camera, 37–63 In Camera, 294–309, 4691–4727
Gibson, Loretta	6582–6587
Gillespie, Iain George	820–838, 9942–9947
Giles, Michael Peter	4999–5021
Gilmour, William Frederick	3554–3569
Gleeson, Leslie James	1110–1131, 1184–1213, 1215–1221, 1246–1263A
Gray, Mary Frances	5603–5614
Grigg, Alwyn Thomas	2134–2141
Halvy, Laurence Francis	2511–2554, 2589–2615
Hamilton, Edna Jean	7902–7904
Hamilton, Ronald John	7695–7796, 7798–7823
Hancock, Russell Edgar	2306–2320, 2449–2453
Harris, Wayne John	6881–6919

ALPHABETICAL LIST OF WITNESSES—*continued.*

Name.	Transcript Reference.
Heard, David Andrew Cory	5027–5036
Hecker, Keith	161–162
Hewat, Peter John	6412–6440, 6450–6470
Hibbert, Maxwell Karl	9711–9738
Higgins, Paul William	3133–3144, 3146–3158, 3336–3343, 3485–3495, 3499–3515
Hitchings, William Martin	6514–6521
Hole, Geraldine Mary	2029–2041, 2105–2118
Hole, Neville Isaac	1756–1773A, 1907/1908–1925, 1934–1943A
Holland, William Alfred	1707–1738, 1740–1751, 9956–9975, 9979–9990A, 525–528 In Camera
Hosmer, Mervyn William	7431–7433
Howard, Barry William	5087–5139
Howard, Neil Dunstan	1502–1513
Huggins, Henry Gregory	4543–4553
Hunter, Patricia Anne	5506–5511
Irinyi, John	1988–2003
Janetzki, Eric Raymond	7188–7208
Johnston, Carmel Joy	5793–5813
Joyce, Rayma Eileen	91–92, 591–595, 2141–2244, 9586–9642
Joyce, Reginald Barry	149–151, 265–266, 276–279, 309–360, 498–515, 684/685–688, 702–703, 734–747, 1021–1064
Joyce, Sheena	390–394, 838–858
Kain, Ivan Alfred	1132–1140, 1145–1180
Kealy, Francis Anthony	4775A–4789, 4791/4792–4826
Keeley, David Hinkler	5536–5565, 5567–5579, 379–383 In Camera, 5626A–5656
Kellett, Ronald Arthur	7304–7313, 7315/7316–7348
Kerley, William John	158–160, 7115–7118
Kok, Augustinus Constantinus	5585–5603
Krzyskow, Edward John	4827–4840
Lalor, Leo Adrian	3737–3799, 3801–3894, 10,019–10,039, 10,049–10,050, 10,051A–10,083
Lattin, Alfred Herschell	3343–3346
Lawless, Janet	2048–2051
Lawless, Peter John	281A–289 In Camera, 9410–9520, 9522–9523, 471–475 In Camera, 9527–9528
Lawless, Yvonne Ann	563–572, 585–590, 1392–1447, 1516–1529
Lewis, Douglas Keith	3113–3132
Major, Jeffrey Bruce	4874–4908
Manning, William Gary	6980–7007
Marin, Paul	6521–6541, 6557–6572
Mathrick, Graham Henry	4576–4623
Mawson, Ann	4728–4756, 360–361 In Camera, 4757–4774, 362/363–366 In Camera
Melotte, Melville Francis	3177–3195, 3317–3335, 3446–3485, 4393–4414, 4416–4485
Mendelsohn, Oscar Adolf	530–563
Miller, Norman Hamilton	5195–5210, 5214–5245, 5247–5269
Mitchell, Jennifer Margaret	6751–6773
Mitchell, Lynette Joy	6773–6784
Molan Philip John	656–657
Molloy, James Patrick	883–886
Molnar, Alexander	5044–5057
Moresi, Dennis Graziano	5270–5301
Morgan-Payler, William Harry	3649–3655, 7490–7491
Moroney, David Cleaver	644–655, 657–671, 7152–7154
Morrow, Pamela Anne	5057–5082
Mrak, Viktorija	4554–4556
Murphy, Brian Francis	7210–7223, 415–416 In Camera, 7224–7250
Murphy, Richard Ernest	8183A–8273, 8304–8343
McClellan, Anthony Joseph Paul	9332–9338, 9367/9368–9370
McGowan, Stanley Thomas Andrew	7823–7869
McKenna, Brenda Margaret	2737–2744A
McKibbon, Robert William	10,042–10,044
McKoy, Victor John	6306–6318, 6330–6340, 6348–6361
McLelland, James Alexander	3584–3595
Natoli, Angelo Basilio	2431–2449
Nation, Darryl John	747–759
Nelson, Kim Rita	7580–7624, 7626–7688
Newton, David Barry	3158–3173, 3175, 6166–6201, 6203–6215C
O'Brien, Terence Francis	3316–3317, 8735–8776, 8778–8793, 9051–9073
O'Loughlin, Neil Graeme	8524–8592, 8599–8619
O'Neill, Edward	516–530
O'Sullivan, Terence Clement	9338–9340
Oberin, Ross Clive	5991–5995
Oldfield, Alfred Gordon	4211–4264
Olding, Douglas Martin	5832–5880
Olding, Ivan Richard George	5821–5831, 5892–5893A
Osborne, Noel Alan	2753–2775
Owen, Gregory Francis	3235–3244, 3255–3287, 7371–7378, 7380–7381, 7408–7416, 7422–7427
Page, Edwin Leslie	3350–3356, 3515–3528
Palmer, John William	7467–7473
Parker, Harold Leslie	6668–6675
Paton, Colleen	2945–2968
Paton, Trevor Robert	2968–2987, 3145
Pattison, James Robert	968–986

ALPHABETICAL LIST OF WITNESSES—*continued.*

Name.	Transcript Reference.
Pavey, Colin Barry	8948–8985
Pearson, Russell Arthur	9354–9367/9368
Penkethman, Reginald Barry.. ..	776–798
Percival, Leonard Bradley	4556–4569
Pittaway, Robert John	5525–5534
Pleitner, Alan James	9738–9792
Power, John Joseph	7030–7033, 398–406 In Camera, 7050–7054, 7064–7070, 7073–7109
Prendergast, Laurence Joseph ..	699–701, 1371–1374, 1384–1392, 3545–3549
Prior, Gregory John	4570–4574, 4625–4633, 8997–9001
Proud, Larry Paul	6807–6880
Provost, Moira Carmel	4650–4672
Quinn, Barry Robert	7434–7448/7449
Quinn, Michael James	6140–6145
Rainsbury, Kevin John	2415–2424
Redlich, Robert Frank	8716–8732
Reed, Jack Gordon	7354–7360
Reeves, Robert Ivor	4672–4689
Richmond, Graham James	2627–2632
Richter, Robert	9198–9211
Rickman, Maxwell George	9259–9304
Ritchie, Brian John	9646–9651, 9665–9710
Roberts, Alan George	8522–8523
Roberts, Rosalea Ann	2072–2103/2104
Robertson, Kenneth Scott	865–869, 411 In Camera, 414 In Camera, 10,046–10,049
Rosenbaum, Maurice	266 In Camera
Rundell, Alan James	6341–6348
Russell, Frederick Wenzel	9876–9895
Russell, John McCrae	3245–3254
Ryan, Michael Charles	400–463, 466–493
Ryan, Robert Francis	2615–2625
Sayers, John Arthur	708–733, 986–1019, 1095–1109, 1572–1591
Schipper, Garry John	4108–4211
Schoeffer, Richard Edward	6655–6661
Scott, Gregory Lindsay	2119–2134
Sellers, Stephen Donald	3619A–3647, 3655–3674, 3682–3732, 3923–3927
Seymour, Frederick John	3356–3360, 3528–3534
Shanks, Lynne	3604–3616/3617
Sheehey, James Maurice	1078–1094
Sherrin, Francis John Roy	7450–7466
Simeon, James	7880–7902, 7904–7962/7963
Skan, Trevor Wallace	7476–7498, 9126–9151
Smith, Evelyn Kay	2814–2842, 2851–2866, 2868–2876
Smith, Gary James	963–968
Smith, John	4530–4543
Smith, John Livingstone	134–148
Smith, Ronald William	2876–2902, 2904–2945, 2963–2963A, 3145
Stephen, Ian Robert Michael ..	5036–5044
Stephenson, Frank Ossian	2555–2587
Stone, Alan Roy	6470–6481, 6496–6513
Strang, Paul John	6542–6554, 6572–6581, 6587–6611,
Strefford, Peter	696–699, 705–708
Stringer, Henry James Ormond ..	2843–2850
Stupak, Erika	3895–3922, 5999–6042/6043
Swaeney, Ian Ronald	805–819
Tamblyn, Philip John	4264–4351, 5304–5305, 6081–6087, 384–387 In Camera, 6398–6400, 8276–8287, 8344–8429, 8442–8465, 8468–8494, 8501–8520
Tarpkos, Louy	2392–2407
Taylor, Daryl Arthur Wayne ..	2051–2067
Terry, Anne Elizabeth	6318–6329
Timewell, Leonard William	1341–1370, 1629–1643, 1862–1907/1908
Thomas, Noel Charles	4061–4108, 358–359 In Camera
Thompson, Peter Noel	7258–7284, 9835–9858
Tobin, Raymond Edward	4852–4874
Topp, Rex John	3033–3052, 3063–3113, 3361–3362/3363, 6048–6081
Traynor, Barry Edward	2453–2509/2510
Trickey, Kelvin George	2408–2415
Ure, Peter Charles	5139–5195
Vernon, Robert Roy	609–617
Wadeson, Peter Thomas	4487–4527
Waight, Edward Shepherd	7008–7018
Wainer, Bertram Barney	595–598, 1774–1841A, 255–257 In Camera, 6488–6496, 9216–9234, 9311–9318, 9325–9327, 9391–9408, 9991–10,016
Wallace, Sheila	7391–7408
Walliss, Phillip Clarence	5819–5820, 9795–9815, 9823–9834
Ward, Peter John	6044–6048
Warnock, Frederick Charles	956–960, 2684–2736
West, Daphne Jean..	601–603
West, Robin Norman Leslie.. ..	93–104, 106–127, 575–584, 66–69 In Camera, 70–120 In Camera, 608, 121–145 In Camera, 147–164 In Camera, 167–246 In Camera
Whyte, Norman Barry	2249–2305, 2320–2354
Whyte, Roslyn Joy	2354–2392
Williams, Alan Paul Francis ..	5918–5947
Williams, Gordon Maxwell	7962/7963–8031, 8037–8182, 8821–8848, 9236–9255
Williams, Michael Edmund	4840–4851, 4908–4924
Wren, Victor Stanley	5656–5672, 5675–5741

APPENDIX "B"

LIST OF EXHIBITS

Explanatory Memorandum.

In all 766 documents and articles of various descriptions were tendered as exhibits before the Board.

In the circumstances I consider it desirable to make reference to the following matters :—

(i) A perusal of the list of exhibits set out hereunder may well cause the reader to assume that unless otherwise indicated, the documents received in evidence were original documents and not photocopies.

The reality of the situation, however, is that although not so described, the actual exhibit may well in fact be a photocopy of the original. For example, all extracts from the diaries of Police Officers tendered in evidence before the Board were photocopies, as were extracts from Interview Registers, and Records of a similar nature.

In a number of cases, although original documents were received in evidence, they were subsequently returned to the party who had tendered them, and photocopies substituted in their place. Exhibits 39, 40 and 41 fell into that category. Those documents were clearly of a vital nature so far as Lawless was concerned, and it was essential his legal advisers re-gain possession of them with a view to their use in further legal proceedings on his behalf. A number of documents fell into a similar category, in which event photocopies were substituted for the original document.

(ii) A number of articles were tendered as exhibits, but by virtue of their very nature were subsequently returned to the party who had tendered them. In the majority of cases such articles were tendered by Counsel appearing for the Police Association. In due course they were returned to the Police Department, or the Police Officer who produced them, e.g. the ·22 rifle owned by Reginald Joyce (Exhibit 80), the box of miscellaneous jewellery tendered in the Keeley Matter re Wren (Exhibit 353), and the revolver and holster produced by Senior Constable McKoy (Exhibit 396).

In certain instances, articles belonging to civilian witnesses were tendered in evidence by Counsel assisting the Board, and in due course were returned to those witnesses, e.g. the overcoat of Norman Barry Whyte (Exhibit 188) and the overcoat of Roslyn Joy Whyte (Exhibit 196).

The view the Board took concerning articles of such nature was that there was little or no purpose to be served in retaining them, and ultimately storing them away in the archives.

(iii) Certain articles were tendered but not proved in evidence, e.g. the pair of shoes tendered in the Lawless Matter, and allegedly worn by Peter Robert Gibb at the time he was alleged to have committed a particular armed robbery (Exhibit 18). In due course it became unnecessary to prove such exhibits in the strict sense, and they were returned to the party who had tendered them. For instance, Exhibit 18 was tendered at an early stage of the hearing of the Lawless Matter (page 10 In Camera of the transcript) with a view to discrediting Gibb, and establishing that contrary to his denials he had in fact committed the particular armed robbery. After he had given evidence in the Lawless Matter, he was convicted of that offence, and Counsel appearing for the Police Association properly considered there was no point in pursuing the matter further.

(iv) On one or two occasions, documentary evidence was notionally tendered. Subsequently it was ascertained that such material could not be physically produced. e.g., Exhibit 743.

Identification.	Description.	Transcript Reference.
1	Ocean Grove Film from GTV9	62
2A	South Yarra Film from GTV9	62, 3570
2B	Transcript of conversation that occurred during South Yarra film from GTV9	3570
3	Box Hill and District Hospital Records relating to Whyte	62
4	Southern Memorial Hospital, Medical Records of David Keeley	62
5	Cotham Clinic Medical Records of David Keeley	62
6	Eye and Ear Hospital Medical Records relating to David Keeley	62
7	Records from Larundel Hospital relating to Mrs. Joyce	64
8	Hospital records relating to Mr. Norman Barry Whyte	93
9	Handwritten statement by the witness West, undated	114
10A	Document headed Memo re R.L.N. West 6th March, 1975	124
10B	Affidavit correction statement	124
10C	Two Sketch Plans, one relating to paragraph 4 and one relating to paragraph 10 of Mr. West's affidavit	124
10D	Mr. West's statement of 6th March, 1975	124
11	Typewritten statement entitled " Matters in full that were discussed between R. West and myself "	132, 223
12	Alfred Hospital records including X-Rays relating to Stephen Sellers	133
13	Typed copy, undated, unsigned, of handwritten statement by Peter Robert Gibb	174
14	Draft Affidavit of Peter Robert Gibb	176
15	Handwritten, unsigned statement by Peter Robert Gibb	223
16	Criminal History Sheet relating to Peter Robert Gibb	242
17A	Photograph showing a man on a counter	10 (I.C.), 9620
17B	Photograph showing a man standing on the floor	10 (I.C.), 9620
17C	Photograph depicting two persons standing on the floor of a bank	37 (I.C.), 9620
17D	Photograph which the witness Gibb believes is of him, a detective and a third person on a bridge at Mordialloc	38 (I.C.), 9620
17E	Photograph of three people standing outside a block of units	38 (I.C.), 9621
17F	Photograph of two persons standing outside what appears to be a block of flats	39 (I.C.), 9621
17G	Photograph of four persons standing on a bridge	40 (I.C.)
17H	Enlargement of Exhibit 17A	40 (I.C.), 9621
18	Pair of Shoes	10 (I.C.), 9620
19	Tape Recording of Gibb reading over record of interview 5th April, 1973	16 (I.C.), 9620
20	Tape recording of conversation between the witness Reginald Barry Joyce and Dr. Wainer on 17th April, 1975	266
21	Photograph of Mr. Gibb, his sister Margaret, and a third person named Judy	41 (I.C.)
22	A copy record of interview between Peter Robert Gibb and Detective Sergeant Lalor on 5th April, 1973	43 (I.C.), 9621
23	Telegram dated 27th February, 1975, sent by Rayma Joyce to Michael Ryan	362, 9642
24	Declaration of David Malcolm English sworn 28th February, 1975	363/364
25	Telegram received by Michael Ryan from Rayma Joyce, on 27th February, 1975	363/364
26	Typewritten statement of Rayma Joyce produced as an exhibit at the Lawless trial on 9th May, 1973	399
27	Typewritten statement of Michael Charles Ryan dated 28th February, 1975	409
28	Tape of conversations between Rayma Joyce, Ryan, English and police officers on 28th February, 1975	464/465
29	Transcript of tape Exhibit 28	464/465
30	Tape Recording of a conversation between the witness Reginald Joyce, Rayma Joyce and Sheena Joyce during a car trip from Chelsea to Pentridge	509, 833
30A	Transcript of Tape (Exhibit 30)	671

LIST OF EXHIBITS—*continued.*

Identification.	Description.	Transcript Reference
30B	Complete transcript of conversation between Reginald Joyce, Rayma Joyce and Sheena Joyce during the car trip from Chelsea to Pentridge	833
31	Letter dated 24th June, 1974, sent by Peter Lawless to Reginald Joyce	510/511
32	A page from the Age newspaper dated 22nd November, 1972	513A
33	Sheet of blue paper which has written on it " Lawless, 21/3/75 ".	523
34	A statement handwritten by Inspector Robertson, signed by the witness Edward O'Neill and dated 2nd March, 1975	529
35	Photocopy of typed copy of Exhibit 34.	529
36	Statement handwritten by Inspector Robertson and signed by the witness O'Neill on 4th March, 1975	529
37	Sheet of white paper with the writing Lawless, 21/3/75	530
38	Report of Oscar Adolph Mendelsohn dated 12th May	534
39	Note 1 in the top left hand corner signed by Rayma Joyce and Peter John Lawless ..	535, 9620
40	Note 2 in the top left hand corner signed by Rayma E. Joyce and Peter John Lawless	535, 9620
41	Note 3 in the top left hand corner signed by Rayma E. Joyce and Peter John Lawless	535, 9620
42	Blue coloured document undated with the signature at the bottom, Leslie James Gleeson	585
43	Notes made by Yvonne Lawless following visits to Pentridge	590
44	Typewritten document headed Statement of R. E. Joyce	590
45	Photocopy of note received by Daphne Jean West on 16th May, 1975	602
46	Handwritten note of Robin West, undated	71 (I.C.)
47	Christmas card sent by Robin West to Peter Lawless, Christmas 1974	76 (I.C.)
48	Tape recording of Interview between Inspectors Ewert and Mudge on 9th October, 1974	109 (I.C.)
49	Copy of affidavit of Robin West sworn 27th June, 1974	120 (I.C.)
50	Copy of the Nation Review dated May 16th to May 22nd	606–607
51	Criminal history sheet of Robin Norman Leslie West	123 (I.C.), 7473
52	Indemnity dated 7th May, 1975, granted to Robin Norman Leslie West.. ..	123 (I.C.)
53	Statement signed by Robin West dated 27th April, 1974	145 (I.C.)
54A	Photocopy of transcript of tape recording of interview between Detective Sergeant Lalor and Robin Norman Leslie West relating to an armed robbery at a hamburger bar at 517A Princes Highway, Harrisfield	148–149 (I.C.), 1215
54B	Tape of record of interview between Detective Sergeant Lalor and witness West, re the armed robbery at Esray's Harrisville. (Also includes read-back of other record of interview)	1215
55	Copy letter undated alleged to have been sent by Lawless to West	150 (I.C.)
56	Document bearing the signature of Robin Norman Leslie West, dated in blue ink 13/10/74 and in green ink 13/11/74	154 (I.C.)
57	Page of copy record of interview of Robin Norman Leslie West and Detective Sergeants Lalor and McCarty held on 26th March, 1974, bearing the initials of the witness Robin Norman Leslie West	156 (I.C.)
58	Page 44 of Depositions taken at the committal of Quinn, West and Donnelly in May, 1974 bearing the initials " R. W. "	157 (I.C.)
59	Statement signed by West relating to an incident which occurred at Pentridge before Christmas 1973	158 (I.C.)
60	Note signed by the witness West dated 4th December, 1974	159 (I.C.)
61	Four-page document headed " Re the Affidavit " initialled by the witness West, in or about February or March, 1975	159 (I.C.)
62	Copy of Affidavit sworn by Robin Norman Leslie West on the 27th June, 1974 shown to West by Lawless in the cells at the County Court at the time Exhibit 61 was intitialled	159 (I.C.)
63	Undated letter sent in March, 1975, from West to Lawless	161 (I.C.)
64	Copy letter sent by Lawless to West dated 11th April, 1975	161 (I.C.)
65	Transcript of the evidence given by Leonard George Keith Coppin at the trial of Peter John Lawless in the year 1973	622
66	Criminal history sheet of Leonard George Coppin	638
67A	Photocopy of statement, Leonard George Keith Coppin, dated 5th October, 1972	643, 1272
67B	Tape of witness Leonard Coppin reading statement made to Police on 5th October, 1972; reading of statement of Carol Margaret Coppin on 5th October, 1972	1272, 1535
67C	Tape recording of the reading of the statement of Carol Margaret Coppin on 2nd October, 1972	1535
68	Typed copy of Exhibit 53 produced by Mr. Moroney	660
69	Transcript of evidence given by Robin Norman Leslie West at the Car-O-Tel trial in October, 1974	218 (I.C.)
70	Affidavit sworn by Leslie James Gleeson on 25th February, 1975 together with photostat copies of Exhibits 39, 40 and 41	709
71	Notes taken by witness Sayers during the course of an interview with Peter Robert Gibb on the 11th October, 1974	710
72A	Notes taken by witness Sayers during the course of an interview with Laurence Joseph Prendergast on 11th October, 1974	711, 734
72B	Statement in the form of an unsworn declaration of Laurence Joseph Prendergast	711, 734
73	Telegram bearing the date 20th March, 1975 from Ruby to Peter Lawless ..	712
74	Notes made by Senior Constable De Gelder on Sunday, 25th May this year ..	773
75	Notes made by the witness Reginald Barry Penkethman, Sunday, 25th May, 1975	786
76	Statement made by Ian Ronald Swaeney to Police on the 26th May, 1975 ..	819
77	Handwritten running sheet of Inspector Dobell	936
78	Record of supervision by Inspector Dobell in respect of the 24th May, 1975 ..	936
79A	Photostat copy of warrant issued on 25th May, 1975 in respect of an offence, to wit possession of a firearm without being the holder of a shooter's permit	936
79B	Photostat copy of warrant issued the 25th May, 1975 in respect of an offence, namely discharge of firearm in a town or populous place	936
80	.22 calibre rifle, serial number 064631	971/972
81	Magazine containing one I.M.I. cartridge	971/972
82A	White envelope with the words " three spent cases, one live round found by Senior Constable De Gelder " on it containing three spent cases and one live round	979
82B	White envelope with the words " two cartridge cases found by Senior Constable Smith " on it containing two cartridge cases	979
82C	White envelope with the words " three live rounds taken from magazine by Senior Constable Burn " on it, containing three live rounds	979
83	Plastic envelope containing fired bullet found in vicinity of flue in the lounge at 9 Poplar Street, Frankston	973
84A	Photograph of front of premises at No. 9 Poplar Street, Frankston	973

LIST OF EXHIBITS—*continued.*

Identification.	Description.	Transcript Reference.
84B	Photograph of front of premises at No. 9 Poplar Street, Frankston, with four bullet holes marked on it	976
85	Plastic envelope containing a fragment of a bullet found in the front wall of No. 9 Poplar Street, Frankston	973
86	Plastic envelope containing three cartridge cases used by Sergeant Pattison for comparison	980
87	Photograph received by witness Sayers from Peter John Lawless on 2nd October, 1974	1018
88	Three handwritten sheets of paper handed to witness Sayers by Peter John Lawless on 2nd October, 1974	1018
89	Letter dated 26th June, 1974 from Peter John Lawless addressed to " Dear Reg and Sheena "	1026
90	Undated letter from Peter (Lawless) addressed to " Dear Reg and Sheena "	1026
91A	Tape recording of an interview between John Murphy and Ivan Alfred Kain on 28th May, 1975	1140, 1143, 1165
91B	Transcript of interview between John Murphy and Ivan Alfred Kain on 28th May, 1975	1143
92A	Tape recording of interview between Inspector Ewert and Ivan Alfred Kain on 23rd May, 1975	1143
92B	Transcript of tape recording of interview between Inspector Ewert and Ivan Alfred Kain on 23rd May, 1975	1143
93	Letter dated 30th April, 1975 from Ivan Alfred Kain to the Board of Inquiry	1144, 1148
94	Letter dated 3rd of June, 1975, from witness Reginald Joyce to the Board	1165
95	Criminal history sheet of Ivan Alfred Kain	1167
96	Typed statement signed by the witness Gleeson dated either 10th or 11th December, 1974	1205
97	Affidavit made by the witness Leslie James Gleeson on 4th January, 1975	1205
98	Deposition of witness Leonard George Coppin taken at the inquest into the death of Fitzgerald on 19th December, 1972	1221
99	Criminal history sheet of Leslie James Gleeson	1259
100	Photostat copies of Court decisions sent by the witness to Mr. Lawless	1280
101	Letter dated 6th June, 1975 from Reginald Joyce to the Board, enclosing copy of typed notes headed " Regarding the Peter Lawless case "	1340
102	Conventional enlargement of Exhibit 39	1345
103	Infra-red photograph of Exhibit 39	1345
104	Conventional blow-up of Exhibit 39 in which the word " that " is prominent	1345
105	Infra-red blow-up of portion of Exhibit 39 in which the single letter " t " appears in isolation	1345
106	Conventional blow-up of portion of 2nd paragraph of Exhibit 39 with the word " myself ", two dots and the word " In " clearly apparent in the 3rd line	1348, 1375
107	Conventional blow-up showing the word " In " standing practically alone in the third line directly under the word " children ", or what appears to be " children "	1348
108	Conventional blow-up of portion of Exhibit 39 showing a ball-point pen cross between the words " it " and " in "	1349
109	Conventional blow-up of Exhibit 40	1350/1351
110	Conventional blow-up of Exhibit 41	1355
111	Conventional blow-up of portion of Exhibit 41 with the handwritten " e " over the typewritten " Rayma Eileen Joyce "	1357
112	Criminal history sheet of Laurence Joseph Prendergast	1391
113	Photostat copies of Exhibits 39, 40 and 41 obtained by the witness, Yvonne Lawless, from Mr. Sayers	1440
114	Handwritten notes of statement prepared by Yvonne Lawless and produced to the Board on the 11th June, 1975	1440
115	Letter dated 19th December, 1974 from Peter John Lawless to Mr. John Sayers	1447, 1575
116	Evidence of witness Carol Margaret Coppin given at the trial of Peter John Lawless	1461
117	Photostat copy of police statement of Carol Margaret Coppin dated 2nd October, 1972	1461
118	Photostat copy of further police statement by witness Carol Margaret Coppin, dated 5th October, 1972	1462
119	Deposition of witness Carol Margaret Coppin taken at the Coronial Inquiry into the death of Fitzgerald	1462
120	Photostat copy of notes made by the witness Howard on 2nd October, 1972	1505
121	Photostat of a statement of Kathleen Mary Boland dated 27th September, 1972	1530
122	Photostat of a statement of Kathleen Mary Boland dated 3rd October, 1972	1530
123	Deposition of Kathleen Mary Boland taken at the Inquest into the death of Christopher Fitzgerald	1531
124	Transcript of evidence of Kathleen Mary Boland given at the trial of Peter John Lawless on 17th May, 1973	1531
125	Box containing 20 negatives of photographs of Exhibits 39, 40 and 41 produced by the witness Timewell	1538
126	Handwritten note made by witness David Moroney dated 14th June, 1974	1572
127	Handwritten notes of Peter John Lawless, dated 26th July, 1974	1575
128	Depositions of Patrick Callaghan dated 21st December, 1972, together with the presentment for trial and notice of additional witnesses	1591
129	Transcript of Mr. Callaghan's evidence before the Supreme Court given on 31st May, 1973	1591
130	Statement of the witness, Kathleen Mary Boland dated 1st March, 1975	1610
131	Specimen of handwriting of Rayma Joyce	1633/1634
132A	Fingerprint sheet of Peter John Lawless dated 14th May, 1965	1633/1634, 1694
132B	Fingerprint sheet of Peter John Lawless dated 20th July, 1965	1633/1634
132C	Fingerprint sheet of Peter John Lawless dated 11th April, 1969	1633/1634, 1635
133	Twenty-three sheets of paper containing specimens of dates written by Peter John Lawless	1641
134	Photocopy of statement of Leonard William Timewell	1641
135	Criminal history sheet relating to Patrick Callaghan	1691
136	Photostat copy of the police brief relating to the charges against Patrick Callaghan	1704
137	Photostat copy of the police brief in relation to charges against Graham Laurence Vincent Thomas	1704
138	Conventional enlargement of portion of Exhibit 41 headed " Yvonne Ann Lawless " with " Peter John Lawless " appearing thereunder	1707
139	Conventional enlargement of portion of Exhibit 41 bearing the manuscript " Rayma E " above the typed words " Rayma Eileen Joyce "	1707

LIST OF EXHIBITS—*continued.*

Identification.	Description.	Transcript Reference.
140	Enlargement of portion of Exhibit 39, with the figures " 1969 " appearing directly above the word " Rayma "	1707
141	Enlarged portion of Exhibit 39, bearing the word in typescript " Lawless " above the words " a crim "	1707
142	Enlarged portion of Exhibit 40, in which the only complete word appearing thereon is the manuscript " Peter "	1707
143	Enlargement of Exhibit 40	1707
144	Enlargement of Exhibit 41	1707
145	Statement of Bertram Wainer dated 7th April, 1975, witnessed by William Alfred Holland	1740
146	Copy of portion of Exhibit 43, typed on behalf of the witness William Alfred Holland	1750
147	Photostat of a phonogram extracted from the records of the P.M.G. and addressed to Peter Lawless, Remand Section, Pentridge, Coburg, dated 20th March, 1975	1753
148	Balance of transcript of evidence given at the second trial of Peter John Lawless together with the other contents of the 15 Appeal Books prepared for the appeal to the High Court	1756, 1934
149A	Handwritten Statement of the witness Neville Isaac Hole dated 3rd October, 1972	1767
149B	Typed copy of Exhibit 149A	1768
150	Letter dated 21st July, 1974 from Peter Lawless to Dr. Wainer	1820
151A	Tape of telephone conversation between Dr. Wainer and Graham Thomas on the 24th March, 1975	267 (I.C.)
151B	Transcript of telephone conversation between Dr. Wainer and Graham Thomas on the 24th March, 1975	267 (I.C.)
152	Statement of witness Brian John Cosgriff	1851
153	Eighteen sheets of paper containing the handwriting of Rayma Joyce	1865, 1896
154	Depositions dated 26th June, 1973, relating to committal for trial of Neville Isaac Hole together with a presentment	1911
155	Criminal history sheet of Neville Isaac Hole	1925
156	Police report on Mrs. Daphne Jean West incident	1927
157	Balance of the Depositions taken at the Coronial Inquiry into the death of Fitzgerald	1934
158	Transcript of the Evidence given at the first trial of Peter John Lawless ..	1934, 9535
159A	Carbon copy of a two-page statement of Patrick Callaghan, typed on white paper ..	1957
159B	Carbon copy of a two-page additional statement of Patrick Callaghan, typed on blue paper	1957
159C	Handwritten statement purporting to be by Patrick Callaghan and written by the witness, Casson, on yellow paper	1957
160A	Tape of conversation between Rayma Joyce and Holland	293 (I.C.)
160B	Transcript of taped conversation between Rayma Joyce and Holland	293 (I.C.)
161A	Copy tape of conversation between Rayma Joyce and Brian Jameson dated 24th April, 1975	293 (I.C.)
161B	Transcript of copy tape of conversation between Rayma Joyce and Brian Jameson dated 24th April, 1975	293 (I.C.)
162	Affidavit sworn by Peter John Lawless on 22nd February, 1973	296 (I.C.)
163	Copy affidavit of John Casson, sworn 26th April, 1973	298 (I.C.)
164	Copy affidavit of Gerald Austin Hoy sworn 17th April, 1973	298 (I.C.)
165	Handwritten statement bearing a signature G. Hutchinson and dated 22nd February, 1974	303 (I.C.)
166	Carbon copy of document headed Peter John Lawless, Index of Exhibits ..	303 (I.C.)
167	Handwritten statement of Patrick Callaghan signed at the foot of the first page " Peter John Lawless "	304 (I.C.)
168	Carbon copy of statement of John Joseph Power	305 (I.C.)
169	Carbon copy of statement of Rosalea Ann Roberts	305 (I.C.)
170	Statement of one, Hall, handwritten by the witness Casson	305 (I.C.)
171	Notes made by the witness, Casson, of an interview with Neville Hole	305 (I.C.)
172	Carbon copy of statement of Alwyn Thomas Grigg	306 (I.C.)
173A	Statement of Alwyn Thomas Grigg, written by Mr. Michael Kelly and dated 18th March, 1973	306 (I.C.)
173B	Statement of Carol Margaret Coppin, handwritten by Mr. Kelly and dated 14th March, 1973	306 (I.C.)
173C	Statement of Leonard George Coppin handwritten by Mr. Michael Kelly and dated 13th March, 1973	306 (I.C.)
173D	Undated statement of Hole, written by Mr. Michael Kelly	306 (I.C.)
174	Photocopy of Notice of Application for leave to appeal against a conviction by Peter John Lawless dated 14th June, 1973	308 (I.C.)
175	Photocopy of amended grounds of appeal, dated 20th August, 1973	308 (I.C.)
176	Subpoena issued on 16th March, 1973, directed to Patrick Callaghan	2005
177	Subpoena issued on 18th May, 1973, directed to Patrick Callaghan	2006
178	Photostat copy of letter dated 28th June, 1975 from Peter John Lawless to the witness, Casson	2044
179	Photostat copy of Police Statement of Daryl Arthur Taylor, dated 6th October, 1972	2064A
180	Record of conviction of Rosalea Ann Hulland	2095
181	Criminal history sheet of Gregory Lindsay Scott	2134
182	Photostat copy of police statement of Alwyn Thomas Grigg	2136
183A	Tape of the interview between Rayma Joyce and Detective Senior Sergeant Fry and Senior Detective Pocock, 26.7.74	2155B
183B	Transcript of tape of interview between Rayma Joyce and Detective Senior Sergeant Fry and Senior Detective Pocock, 26.7.74	2155B
184A	Tape of interview between Rayma Joyce and Detectives Fry and Pocock on the 31st July, 1974	2157
184B	Transcript of Exhibit 184A	2157
185	Statement of Rayma Joyce dated the 26th February, 1975	2164
186	Statutory Declaration of Rayma Joyce dated 1st March, 1975	2164
187	Two photographs of Norman Barry Whyte taken on 24th August, 1974 ..	2274/2275
188	Overcoat of Norman Barry Whyte	2276
189	Carbon copy of Statement of Norman Barry Whyte dated 24th August, 1974 ..	2291
190	Original statement of Norman Barry Whyte dated 24th August, 1974	2320
191	Property sheet of Norman Whyte dated 24th August, 1974	2334
192	Duty and occurrence record with respect to a visit to the Richmond Police Station by Inspector Stephenson on 24th August, 1974	2345, 2371

LIST OF EXHIBITS—*continued.*

Identification.	Description.	Transcript Reference.
193	Duty and occurrence record with respect to a visit to the Richmond Police Station by Inspector Dinsdale on 24th August, 1974	2345
194	Report of charges with respect to Mr. Norman Barry Whyte from the Richmond Watchhouse register	2346
195	Certificate of the orders of the Richmond Court with respect to Mr. Norman Barry Whyte, such orders being made on 2nd September, 1974	2346
196	Coat of Roslyn Joy Whyte	2364
197	Statement of Roslyn Joy Whyte dated 24th August, 1974	2367A
198	Medical Records of Dr. Fildes relating to Norman Whyte	2426
199	Letter dated 17th April, 1975 from Dr. P. G. Fildes to Mr. T. Holt	2431
200	File of Angelo Basilio Natoli relating to Mr. and Mrs. Norman Whyte ..	2434
201	Typed copy of instructions given to Mr. Natoli in August, 1974	2434
202	Result of Charge and Antecedent Form relating to Norman Barry Whyte ..	2461
203	Report of Inspector Warnock dated 20th December, 1974	2465
204	Photostat copy of statement of Barry Edward Traynor prepared for the Police Brief	2489
205	Photostat copy of statement of Barry Edward Traynor prepared at the request of Chief Inspector Warnock	2489
206	Photostat copy of page from Interview Register	2493
207	Photostat copy of statement of Laurence Francis Halvy	2523
208	Photostat copy of statement of Robert Francis Ryan	2626
209	Record of duty by Inspector Dinsmore	2626
210	Photostat copy of statement of Neil Thomas Cuddy dated 19th November, 1974 ..	2638
211	Fingerprint Form of Norman Barry Whyte dated the 23rd August, 1974 ..	2656
212	Bundle of Criminal Offence and Modus Operandi Reports covering July to 23rd August, 1974 and dealing with assaults in the Richmond area	2656
213	Bundle of Criminal Offence and Modus Operandi Reports covering July to the 23rd August, 1974 and dealing with breakings and larcenies in the Richmond area	2656
214	Report of Sergeant Brian James Norton relating to fingerprints on photograph Exhibit 87	2657
215	Duty and occurrence records for Constables Osborne and Bowles for fortnight ending 31st August, 1974	2662A
216	Victoria Police Manual	2683
217	Extract from Watch-House book at Richmond Police Station covering period 23rd and 24th August, 1974	2683
218	Sketch of muster room at Richmond Police Station	2740
219	Photostat copy of statement of Malcolm Frank Dennis dated 19th November, 1974	2776
220	Radio produced by Mr. Smith	2813A
221	Sketch plan of premises at 84 Hodgson Street, Ocean Grove	2815
222	Photostat copy of warrant—Search for firearms or prohibited weapons dated 11th September, 1974	2818
223	Application by Evelyn Kay Smith for a Shooter's Licence dated 23rd March, 1974	2840
224	Application by Ronald Smith for a Shooter's Licence dated 23rd March, 1974 ..	2841
225	Photostat copy of statement of interview of Sergeant Stringer with Ronald William Smith on 20th July, 1974	2849
226	Photostat copy of Criminal History Sheet of Ronald William Smith	2849
227	Transcript of interview between Mr. and Mrs. Smith and a representative of Channel 9	2854
228	Cutting from "Sunday Observer" headed "Dossier of Terror"	2855
229A	Application form for telegram, E. Smith to Mrs. Lorna Jones	2868
229B	Telegram dated 11th September, 1974 addressed to Mrs. Lorna Jones	2868
230	Invoice and receipt from Geelong Automatic Transmissions Pty. Ltd., dated 11th March, 1975 and 27th March, 1975 respectively	2894
231	Portion of barrel of .22 rifle owned by Ronald Smith	2907
232	Recognizance of Ronald William Smith entered into at Melbourne Court of General Sessions, 26th day of April, 1968	2910
233	Transcript of Proceedings before the Court of General Sessions on Friday, 26th April, 1968 before His Honour Judge Franich	2910A
234	Recognizance of Ronald William Smith dated 14th day of June, 1967 at Geelong	2911, 2928
235	Transcript of Proceedings before Judge Franich on 13th June, 1967	2916, 2928
236	Medical report of Dr. Munro dated 31st July, 1975	2963A
237	Record of convictions of Trevor Robert Paton	2968
238	Further warrant to Sergeant Brown with respect to premises at 10 Howqua Court, Corio	2989
239	Copy of Special Circular No. 1 of 1974	2992
240	Copy of report of Detective Senior Sergeant Brown dated 13th September, 1974 ..	2999
241	Extracts from Police diary of Detective Senior Sergeant Brown, 11th September, 1974 and 8th October, 1974	3032
242	Copies of ten antecedent reports relating to Ronald William Smith	3032
243	Extract from diary of Douglas Keith Lewis	3121
244	Extract from diary of Sergeant Rex John Topp	3142
245	Extract from diary of Senior Detective Paul William Higgins	3158
246	Extract from diary of Detective Senior Constable David Barry Newton	3173
247	Self-tapping screw	3176
248	Extract from diary of Senior Constable Eric William Dixon	3203
249	Medical Records relating to Gregory Francis Owen	3235
250	Medical Register from Pentridge containing entries relating to Gregory Francis Owen	3235
251	Photostat copy of Criminal History Sheet of Gregory Francis Owen	3235
252	Medical Records of the Royal Melbourne Hospital relating to Gregory Francis Owen	3247
253	Photostat copy of letter dated 6th August, 1974 from Gregory Francis Owen to Assistant Commissioner Crowley	3285
254	Photostat copy of report of Inspector E. L. Page dated 24th May, 1974 ..	3356
255	Photostat copy of sheet in the Watchhouse book for the 24th May, 1974 ..	3357
256	Photostat copy of report of Sergeant Frederick John Seymour dated 24th May, 1974	3360
257	Photostat copy of the Interview Register for 24th May, 1974	3446
258	Photostat copy of a Road Map covering the Clifton Hill area	3446
259	Consorting Report dated 13th June, 1972 relating to Gregory Francis Owen ..	3515
260	Property Sheet of Gregory Francis Owen dated 24th May, 1974	3521
261	Extract from the Duty and Occurrence Record for the 25th May, 1974	3523
262	Return of record of duty of Inspector Page for the evening of 24th May, 1974 ..	3527
263A	Tape recording of the conversation between Dr. Wainer and Laurence Joseph Prendergast	3557

LIST OF EXHIBITS—*continued.*

Identification.	Description.	Transcript Reference.
263B	Transcript of tape recording of a conversation between Dr. Wainer and Laurence Joseph Prendergast	334 (I.C.), 3557
264	Photograph of the rear of the flats at 631 Punt Road	3556
265	Photograph of the rear of the flats at 631 Punt Road, South Yarra, marked by William Frederick Gilmour	3557
266	Photograph of the rear of the flats at 631 Punt Road, South Yarra, taken looking directly at the flats	3558
267	Photograph of the driveway leading into the underground parking area of the flats at 631 Punt Road, South Yarra	3558
268A	Photograph of the interior of the flat at 631 Punt Road, South Yarra, showing a man standing in front of the windows	3570
268B	Photograph of the interior of the same flat, highlighting the windows of the flat	3570
269	Criminal History Sheet relating to Stephen Donald Sellers	3619A
270	Copy letter dated 5th August, 1974 from J. N. Zigouras and Co. to the Chief Commissioner of Police and others	3654
271	Letter from the Acting Deputy Commissioner of Police to Messrs. J. N. Zigouras and Co. dated 26th August, 1974	3654
272	Copy letter dated 19th August, 1974 from J. N. Zigouras and Co. to Inspector Delianis	3654
273	Warrant to search for firearms dated 2nd July, 1974	3741
274A	Photograph of the rear of the Volkswagen showing the number plate LUT 675	3754
274B	Photograph showing the registration label of the volkswagen—that label expiring on 17th March, 1975	3754
274C	Photograph of the front of the Volkswagen showing the number JPH 776	3754
274D	Photograph of interior of Volkswagen showing the number plate LDA 095	3754
275	Photograph of the block of flats at 631 Punt Road, South Yarra, showing Detectives Thomas, Lalor and Major on the ground and Detective Fennessy at the window	3755
276	Photograph of interior of Flat 22, 631 Punt Road, South Yarra	3755
277	Second photograph of the interior of Flat 22, 631 Punt Road, South Yarra	3756
278	Report of Leo Adrian Lalor dated 31st July, 1974	3765
279	Criminal History Sheet of John Killick	3772
280A	Tape of conversation between Messrs. Sellers, Hildebrand and Delianis at Alfred Hospital, on 13th September, 1974	3800
280B	Transcript of tape of conversation between Messrs. Sellers, Hildebrand and Delianis at Alfred Hospital on 13th September, 1974	3800
281	Depositions taken at the committal of Laurence Joseph Prendergast on the 8th and 13th days of August, 1974	3818, 3886
282	Photostat copy of entries from diary of Leo Adrian Lalor	3819
283	Photostat copies of antecedent reports relating to Stephen Sellers	3819
284	Photostat copy of an entry in the interview register dated 3rd July, 1974 relating to Laurence Joseph Prendergast	3894
285	Contemporaneous notes of Erika Stupak	3926
286	Criminal history sheet of Paul Gutze	3927
287	Criminal history sheet of Salvatore Filardo	3927
288	Mitsubishi Tape Recorder bearing Serial Number PK–332705	347 (I.C.), 3993
289	Extract from the diary of Brian Francis Fennessy in respect of 2nd July, 1974	3955
290	Photostat copy of an extract from the interview Register relating to John Reginald Killick and dated 2nd July, 1974	3975
291	Photostat copy of an extract from the diary of Brian Francis Fennessy in respect of 30th July 1974	3976
292	Extract from diary of Garry John Schipper for 2nd July, 1974	4183
293	Pro-forma of queries submitted by Mr. Dennis Rush to Mr. Schipper in relation to the matter of Laurence Joseph Prendergast, 11th April, 1975	4183
294	Statement of Garry John Schipper made for the brief in relation to the charge of conspiracy brought against Laurence Joseph Prendergast	4183
295	Photocopy of extract from Toorak Times of the 30th July, 1974	4183
296	Memorandum from D. J. Rush to J. Buckley, Officer-in-Charge of the Criminal Law Branch, dated 26th August, 1975	4209
297	Photostat copy of diary entry by Oldfield, dated 2nd July, 1974	4233
298	Photostat copy of entry in the Interview Register relating to Laurence Joseph Prendergast, dated 12th August, 1974	4326
299	Photostat copy of statement of Melville Francis Melotte made in August, 1974	4406
300	Photostat copy of report of Detective Chief Inspector E. R. Janetzki dated 17th September, 1974	4420
301	Photostat copy of diary entry of 2nd July, 1974 by Melville Francis Melotte	4438A
302	Yellow Pullover	4463
303	Photocopy of an extract from the diary of Peter Thomas Wadeson for the 2nd July, 1974	4514A
304	Statement of John Smith	4531
305	Photostat copy of extract from diary of Sergeant John Smith for 2nd July, 1974	4541
306	Plan of driveway into the carport area of the flats at 631 Punt Road, South Yarra	4554
307	Flywire screen from Flat 12	4563
308	Flywire screen from Flat 22	4563
309	Five photographs depicting the windows of the flats at 631 Punt Road, South Yarra	4563
310A	Photograph from window of Flat 22 looking down Park Lane	4564
310B	Photograph looking west along Park Lane	4564
311	Photocopy of extract from duty-book in respect of Henry Gregory Huggins for the 2nd July, 1974	4631
312	Photocopy of extract from duty book in respect of Gregory John Prior for the 2nd July, 1974	4631
313	Transcript of Evidence at trial of Peter Robert Gibb in December, 1974	4718
314	Alfred Hospital Records relating to Peter Robert Gibb	4728
315	Statement of Ann Mawson dated 12th January, 1974	4743
316	Shirt worn by Peter Robert Gibb on 11th January, 1974	4757
317	Photostat copy of a receipt from Boris The Tailor, dated 22nd December, 1972, and original receipt from Boris The Tailor dated 22.12.72	4770, 4791/4792
318	Transcript of T.V. programme "This Day Tonight"	366 (I.C.)
319	Interview Register relating to Ann Mawson	4773
320	Photostat copy of statement of Francis Anthony Kealy dated 12th January, 1974	4779
321	Report dated 12th January, 1974, prepared by Francis Anthony Kealy	4795
322	Photostat copy of statement of Edward John Krzyskow, 12th January, 1974	4829

LIST OF EXHIBITS—*continued.*

Identification.	Description.	Transcript Reference.
323	Photograph of Peter Robert Gibb	4841
324	Photocopy of statement of Michael Edmund Williams dated 11th January, 1974	4842
325	Photostat copy of report of Detective Chief Inspector Tobin, dated 12th January, 1974	4853
326	Photostat copy of statement of James Renata Tehei dated 12th January, 1974	4872
327	Photocopy of statement of Jeffrey Bruce Major, dated 12th January, 1974	4877
328	Mobile Patrol Duty Return dated 11th January, 1974, prepared by Senior Constable Cook	4904
329	Property Sheet of Frank Erdmann dated 14th May, 1975	4937
330	Notes compiled by Frank Erdmann on 15th May, 1975	4945
331	Letter dated 2nd July, 1975, from Frank Erdmann to this Board of Inquiry	4983
332	Entry in the Carlton Watch-house Book in relation to Mr. Frank Erdmann made on 14th May, 1975	5090
333	Mobile Patrol Duty Return dated 14th May, 1975 prepared by Barry William Howard	5094
334	Photostat copy of Duty and Occurrence Record, 14th May, 1975	5198
335	Running Sheet of Inspector Miller for 14th May, 1975	5198
336	Photostat copy of entry in notebook of Constable Dennis Graziano Moresi, dated 14th May, 1975	5275
337	Direction to officers in charge of districts, dated 10th December, 1973	5301
338	Extract from diary of Philip John Tamblyn for the 11th January, 1974	5305
339	Extract from diary of Patricia Anne Hunter, for the 11th January, 1974	5506
340	Extract from the diary of Robert John Pittaway for 11th January, 1974	5525
341	Tape of telephone conversation	5536
342A	Tape of Caulfield Conversation	5536
342B	Transcript of Caulfield tape	5536
343	Criminal History Record of David Hinkler Keeley	5536
344	Two records of interview conducted by Sergeant Wren with David Hinkler Keeley on 10th January, 1974	5567, 5611
345	Transcript of Evidence of Dr. Robert Milne McLelland given before His Honour Judge Ogden on 17th April, 1974	5575
346A	Tape recording made on the 15th January, 1974 between witness Keeley and Sergeant Wren at the Mountain View Hotel	5577B/5578, 5581
346B	Transcript of tape of conversation between Sergeant Wren and witness Keeley	5581, 5671
346C	Direct copy of Exhibit 346A taken by Detective Sergeant Walliss	5820
346D	Improved copy of Exhibit 346A produced by Detective Sergeant Walliss	5820
347	Alligator clip produced by David Hinkler Keeley	5595
348	Hospital records from Dandenong and District Hospital relating to David Hinkler Keeley	5636, 5644
349	Photostat copy of interview register from Mt. Waverley relating to David Hinkler Keeley, dated 10th January, 1974	5644
350	Copy of interview register from Malvern Police Station relating to David Hinkler Keeley, dated 10th January, 1974	5645
351	Photostat copy of property sheet signed by David Hinkler Keeley on 10th January, 1974	5645A
352	Photostat copy of statement by Terry Elizabeth Gray made the 10th January, 1974 to Policewoman Johnston	5664
353	Box of jewellery	5664
354	Statement of Kenneth Fowler	5680
355	Photostat copies of diary entries of Senior Sergeant Victor Stanley Wren	5680
356	Photostat of diary entry of Senior Sergeant Harmer, 14th and 15th January, 1974	5680
357	Mobile Patrol Duty Return dated 9th January, 1974	5727
358	Brief prepared by Policewoman Johnston relating to Terry Elizabeth Gray	5780
359	Antecedent Report relating to David Keeley, dated 27th February, 1975	5780
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373	Copy of letter from Acting Deputy Commissioner Crowley to Officer in Charge of P. District dated 4th June, 1975	5976
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383A	Letter dated 11th October, 1974 from Galbally and O'Bryan to Miss Erika Ramchen	6039
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384	Photocopy of warrant sworn out by Sergeant Pittaway on 11th September, 1974	6050
385	Diary entry of Sergeant Topp for 12th September, 1974	6055
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387	Docket sheet relating to George Mostyn Archibald, alias Baxter	6102A
388	Photocopy of entry in the diary of Inspector Delianis in respect of 29th August, 1974	6103
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409	Photocopy of charge sheet in respect of Peter John Hewat, dated 11th April, 1975	6465
410	Mobile Duty Return dated 11th April, 1975, signed by Constable Clark	6466
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412	Record of convictions of Alan Roy Stone	6471
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417	Photocopy of Record of Interview between Inspector Day and Alan Roy Stone, taken in October, 1975	6513
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426	Photocopy of statement of Richard Edward Schoeffer dated 10th September, 1975	6661
427	Statement of Geraldine Anne Curteis, made on 7th February, 1975	6715
428	Notes taken by Mr. Trevor Monti at the hearing of the charge against Miss Curteis on the 25th February, 1975	6724
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431	Bail receipt relating to Geraldine Anne Curteis dated 6th February, 1975	6747
432	Photocopy of letter dated 5th March, 1975, from Michael Taussig, Solicitor for Miss Curteis, to Constable L. P. Proud	6750, 6751
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452A	Coronial Depositions relating to the Queen against Power	7031, 412 (I.C.)
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453	Criminal History Sheet relating to John Joseph Power	7070
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457	Letter dated 12th December, 1974, from Crown Solicitor to John Joseph Power	7090
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475	Police File relating to alleged assault on one, Bosworth, by Gordon Hutchinson	7127, 7186
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477	C.O. and M.O. Report dated 18th August, 1972 re the Rento incident	7127
478	Antecedent Report dated 6th December, 1972 relating to William Joseph Swift	7127, 7223
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483	Typed copy of diary notes of David Cleaver Moroney dated 5th July, 1974	7154
484	Diary of Sergeant Bird in relation to the week commencing 14th August, 1974	7159
485	Statement purporting to be a statement of John Thomas Blake, dated 2nd August, 1972	7179
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489	Statement of Gordon Hutchinson dated 26th March, 1973	7187
490A	Copy tape of interview between Inspector Robertson, Gordon Hutchinson and Governor Armstrong on 24th March, 1975	411 (I.C.)
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492	Fingerprint Form of William Joseph Swift	7223
493	Antecedent Report relating to Gordon Hutchinson, prepared in June 1972	7250
494	Two photographs of fingerprints bearing the numbers 2132/72	7253
495	Fingerprint scenes of crime card	7253
496	Extracts from the diary of Detective C. A. Carter covering the period from 9th August, 1972, to 26th August, 1972	7253
497	Original statement of Gordon Hutchinson dated 17th August, 1972	7261
498	Extract from diary of Senior Sergeant Thompson from 14th July until 31st August, 1972	7286
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505	Copy letter from Mr. Collyer to the Chief Inspector of the State Savings Bank dated 11th April, 1974	7356
506	File from the Malvern Branch of the State Savings Bank relating to account No. 94088 in the name of Gregory Francis Owen	7359
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511	Four photographs of Norman Barry Whyte	7390
512	Letter dated 10th December, 1975, from Mr. D. J. Grace to the Secretary of the Board	7416
513	Copy letter dated 16th December, 1975, from the Chairman of the Board to Mr. D. J. Grace	7416
514	Medical Certificate from Dr. J. Roger McNeill dated 12th December, 1975	7429
515	Photostat copy of Sentence Record Card relating to John W. Palmer	7432
516	Depositions relating to deceased Josif Sloka and Drago Pucar	7432
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518	Criminal History Sheet of Barry Robert Quinn	7440
519	Report from Paul A. Willee dated 12th December, 1975	7443
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521	Trial transcript of the Queen against Quinn and Palmer	7466
522	Extract from St. Kilda Watchhouse book relating to Robin Norman Leslie West, dated 7th and 8th March, 1974	7466A
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524	Criminal History Sheet relating to John William Palmer	7472

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529	Sketch of property at 86 Lord Street, Richmond, prepared by Ronald John Hamilton	7704
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533A	Tape recording of interview between Inspector Robertson, Inspector Schmidt and Ronald John Hamilton, made on the 5th July, 1973	7743
533B	Transcript of tape recording of interview (Exhibit 533A)	7743
534	Photostat copy of letter dated 24th June, 1973 and written by R. J. Hamilton to the Chief Commissioner of Police	7776
535	Copy of the depositions in the matter of The Queen against Ronald John Hamilton, dated 20th January, 1975, and bearing the number E 151	7805
536	Copy of depositions in the matter of the Queen against Sparkes and Hamilton dated 1st October, 1964	7807
537	Report of race results at Kyneton for 14.3.73..	7815
538	Sketch of fifth floor of Russell Street prepared by Ronald John Hamilton ..	7817
539	Transcript of evidence taken at the trial of Ronald John Hamilton in August, 1973	7823
540	Hand written note with the words " Stanley McGowan re armed holdup at Thornbury Sub-post office, co-offender Joey Hamilton " and then underneath two names " O'Loughlin and Sinclair "	7845
541A	Tape of the read back of record of interview between Senior Detective Sinclair and Stanley Thomas Andrew McGowan on 15th March, 1973	7847, 7868
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542	Transcript of Bail Application before His Honour Mr. Justice McInerney, dated 14th May, 1973	7853
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544C	Two spools of tape, being refined copies of Exhibit 544B	7876A
545	Letter dated 9th May, 1975, from Eric Heuston to the Board of Inquiry ..	7896
546	Criminal history sheet of James Simeon	7952
547	Copy entry from the Car Squad Register dated 12th March, 1973	7973
548	Copy of portion of D24 running sheet dated 14th March, 1973	7974
549	Photostat copy of entries in diary of Inspector Williams covering the period 8th March, 1973 to 23rd March, 1973	7976, 8071
550	Photocopy of the fingerprint report relating to the Thornbury armed hold-up ..	7977
551	Copy of statement of Inspector Gordon Maxwell Williams dated 10th April, 1975 ..	7977
552	Copy of list of outstanding warrants against Eric Grant, alias Heuston	7980
553	Copy of antecedent report of Stanley Thomas Andrew McGowan dated 3.4.73 ..	7998
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555	The C.O. and M.O. report relating to the Thornbury robbery	8031
556	Criminal History Sheet relating to Stanley McGowan	8031
557	Antecedent report dated 16.7.73 relating to Stanley McGowan but in the name of Bronco Peter Dragosevic	8031
558	Photocopy report on identification parade held at Russell Street on 15th March, 1973, by Detective Inspector Holmberg	8053
559	Photocopy of statement of Inspector Gordon Maxwell Williams, dated 1st May, 1973	8091
560	Extract from the City Watchhouse Register No. 14963 dated 7th October, 1973, relating to Eric Heuston	8108
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564	Police brief relating to the Preston robbery	8109
565	Extract from the diary of Inspector Williams for the 28th March, 1973 ..	8109
566	Extract from property register No. E. 23575	8120
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568	Affidavit of Justification of Recognizance made by Kim James	8134
569	Recognizance of Eric Heuston (Surety : Kim James)	8134
570	Transcript of the evidence of Inspector Gordon Maxwell Williams given at the trial of Brendan John Clune on 26th March, 1974	8145
571	Photostat copy of a letter dated 17th August, 1972, from the Chief Superintendent of the Department of Corrective Services, Long Bay, to Mr. E. Donnini	8150
572	Photocopy of statement of Brian Francis Fennessy, dated 3rd May, 1973 ..	8169
573	Photocopy of statement of Melville Francis Melotte, dated 9th May, 1973 ..	8178
574	Photocopy of statement of Dennis McIntyre, dated 8th May, 1973	8178
575	Photocopy of statement of John Anthony Walsh, dated 14th May, 1973 ..	8179
576	Photocopy of statement of Douglas Keith Lewis, dated 9th May, 1973	8179
577	Photocopy of statement of William Brian Jones, dated 24th March, 1973 ..	8182
578	Photocopy of statement of Albert William Cochrane, dated 14th March, 1973 ..	8182
579	Photocopy of letter from Acting Chief Commissioner Crowley to the Ombudsman dated 15th May, 1975	8183
580	Photograph of McGowan apparently taken in 1973	8183
581	Daily Circular No. 225 of 1973	8183

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Identification.	Description.	Transcript Reference.
582	Photocopy of Remand Brief relating to Ronald John Hamilton dated 15th March, 1973	8183
583	Photocopy of statement of Eric Heuston made on 15th August, 1973 to Sergeant Murphy	8187
584	Questionnaire from Crown Solicitor's Office during preparation of trial brief, dated 17th May, 1973	8241
585	Copy of statement of Senior Sergeant Murphy dated 10th April, 1975	8274
586	Photocopy of extracts from the diary of Senior Sergeant Murphy of 14th and 15th March, 1973	8274
587	Original Prisoners' Property Sheet of R. J. Hamilton	8281
588	Photocopy of report prepared by Detective Senior Constable Tamblyn dated 30th May, 1973	8283, 8373
589	Record of Interview between Detective Sergeant Murphy and Ronald John Hamilton on the 15th March, 1973	8326A
590	Record of interview between Senior Detective Sinclair and Stanley Thomas Andrew McGowan on 15th March, 1973	8326B
591	Letter dated 27th January, 1976, from Mr. D. Hammond S.M. to the Board of Inquiry	8344
592	Certificate of Errata, dated 2nd January, 1976, signed by the Chief Court Reporter, S. J. Kelly	8384A
593	Photocopy of report prepared by Graeme James Maxwell	8416, 8430
594	Transcript Error Correction in relation to page 104, Transcript of The Queen against Hamilton	8416, 8430
595	Urn referred to in trial of The Queen against Hamilton	8495
596	Photocopy extract from the diary of Senior Detective Tamblyn for the 14th March, 1973, and 15th March, 1973	8495
597	Transcript of the trial of The Queen against Aldersea	8495
598	Photocopy of lead-up to brief in the matter of The Queen against Hamilton ..	8503
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601	Photocopy of statement of Sergeant O'Loughlin dated 3rd May, 1973	8575
602	Photocopies of four C.O. and M.O. reports either prepared by Sergeant O'Loughlin, or dealing with matters in which he was involved	8599
603	Photocopy of extracts from the diary of Brian Francis Fennessy for the 14th and 15th March, 1973	8623A
604	Photocopy Record of Interview conducted by Detective Sergeant Crawford with Desmond Gordon Gallagher on the 15th March, 1973	8649
605	Photocopy of extracts from the diary of Mr. Sinclair for the 14th and 15th March, 1973	8660
606A	Photocopy of extract from Interview Register for the 26th September, 1973, relating to Eric Heuston	8660
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607	Photocopy of extract from Interview Register for 7th October, 1973, relating to Eric Heuston	8661
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609A	Photocopy of Record of Interview between Sergeant Lalor and Peter Robert Gibb on the 9th October, 1973, relating to the Braybrook T.A.B.	8662
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610	Photocopy of C.I.B. Interview Register for the 15th March, 1973	8662
611	Photocopy of Criminal History Sheet of Donald William Cox	8670
612	Photocopy of Statement made by Donald William Cox to Terry O'Brien, dated 14th December, 1973	8673
613	Four photographs depicting portion of motor vehicle JYJ 032	8687A
614	Photocopy of Fingerprint Sheet relating to Donald William Cox, dated 17th December, 1973	8704
615	Photocopy of consorting report dated 28th August, 1973, relating to Gadsden, Workman and Harris	8714
616	Application to inspect Russell Street Police Station in the matter of Pavey against Cox, dated 16th May, 1974	8718
617	Copy of statement taken by Terence O'Brien from Donald Cox shortly after 14th December, 1973	8742
618A	Copy letter from F. E. O'Brien and Company to the Chief Commissioner of Police dated 20th December, 1973	8742
618B	Letter of Chief Commissioner of Police to F. E. O'Brien and Company dated 27th December, 1973	8742
619	Handwritten note of Terence O'Brien believed by him to be the note handed to the Justice of Peace at the committal proceedings Heidelberg in March, 1974	8766
620	Handwritten statement written by Donald Cox	8779, 8806
621	Photostat copy of handwritten note written by Peter Charles Andriske	8780, 8794
622	Photocopy of statement of Peter Charles Andriske made for the Public Solicitor prior to the trial of Cox	8796
623	Photocopy of Antecedent Form relating to Gordon Keith Harris, dated 15th November, 1973	8818
624	Photocopy of statement of Inspector Gordon Maxwell Williams made during the course of the trial of Cox in August, 1975	8825
625	Photocopy of armed robbery file with respect to armed hold-up of M.M.B.W. vehicle	8853
626	Photocopy of interview register in relation to Donald William Cox made on 17th December, 1973	8854
627	Photostat copy of Watchhouse Book in relation to Donald William Cox made on 17th December, 1973	8854
628	Photocopies of four antecedent reports and one Daily Circular relating to Donald Cox	8858A
629	Photocopy of pages 231 and 232 from the depositions taken at the committal of McDougall, Gibb and McLachlan, commencing on the 19th March, 1974	8948
630	Photocopy of entries from the diary of Detective Senior Constable Pavey ..	8954
631	Photocopy of the report dated the 7th May, 1974, prepared by Sergeant Lalor, together with report prepared by Sergeant Williams	8985
632	Photocopy of depositions in the matter of the Queen against Donald William Cox taken on the 28th March, 1974, and the 16th May, 1974	8992

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Identification.	Description.	Transcript Reference.
633	Transcript of trial of The Queen against Cox, Donald and Harris heard in July and August, 1975	8992, 9046
634	Photocopy of fingerprint form in relation to M.M.B.W. robbery dated 7th September, 1973	8992, 9046
635	Photocopy report of Detective Sergeant Davies dated 11th April, 1974	8992
636	Photocopy of extract from the diary of Detective Sergeant Davies for 17th December, 1973	8992
637	Photocopy of file of investigation of complaints by Alan Roy McDougall compiled in 1975	8993, 9046
638	Photocopies of six consorting reports relating to Donald William Cox	8993
639	Photocopy of statement of Michael Anthony Hinds taken on 18th September, 1973	8993, 9046
640	Photocopies of daily circulars dated 13th and 20th September, 1973	8993
641	Photocopy of antecedent report of Thomas Donald dated 14th November, 1973 ..	8994
642	Photocopy of antecedent report of Gregory John Workman dated 11th September, 1972	8994
643	Information for an offence, signed by C. B. Pavey as Informant	8995
644	Photocopy of Search Warrant, dated 17th June, 1975, directed to Leo John Dam ..	8995
645A	Strip of negatives produced by Gregory John Prior relating to the premises at 631 Punt Road, South Yarra	9000
645B	Prints of Exhibit 645A	9000
646	Film taken in Flat 2, 631 Punt Road, South Yarra, on the 6th September, 1975, showing Sergeant Reid making exits from the flat window	9004
647	Photocopy of instructions to police guard dated 2nd July, 1974, signed by Inspector Boisen together with four annexures	9039, 9046
648A	Tape of conversation allegedly between Sellers and Police Officer Dawson	9039
648B	Transcript of Exhibit 648A	9039
649	Letter dated 5th February, 1971, from Daryl Hall to Mr. Terry O'Brien ; photocopy of letter dated 9th February, 1971, from F. E. O'Brien and Co. to the Director of Prisons; photocopy of letter dated 9th February, 1971, from the Director of Prisons to F. E. O'Brien and Co.	9051
650	Copy of letter dated 30th July, 1974, from Mr. T. F. O'Brien to the Secretary of the Law Institute of Victoria	9052
651	Three documents : two records of interview relating to the Black Rock T.A.B. and the Ashburton T.A.B. made on 11th February, 1974 ; and record of interview in relation to the use of firearms to prevent apprehension, dated 26th February, 1974	9055
652A	Depositions of The Queen against McClure and others dated 1st August, 1973 ..	9058
652B	Transcript of the trial of The Queen against McClure and Dexter dated July, 1975 ..	9058
652C	Explanatory memorandum of Mr. T. F. O'Brien in relation to the McClure trial ..	9058
652D	Blow-up of photograph of portion of statement for brief in the matter of The Queen against McClure	9059
653A	Depositions in the matter of The Queen against Branford and Smith taken in March 1971	9060
653B	Transcript of trial in The Queen against Dennis William Smith dated February, 1973	9060
653C	Judgment of Court of Criminal Appeal in the matter of The Queen against Smith dated 12th June, 1973	9060
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655	Depositions, The Queen v. Anthony William Ingram, dated 2nd July, 1973 ..	9063
656	Depositions in the matter of The Queen v. Carroll dated 1st February, 1974 ..	9063A
657	Depositions in the matter of The Queen v. McClure and Meldrum, taken on 25th July, 1975, and the 1st August, 1975, together with two exhibits	9065
658	Depositions in the matter of The Queen v. Benton, taken on the 1st May, 1974 ..	9066
659	Depositions in the matter of The Queen v. Flannery and Others, taken in April 1973..	9067
660	Transcript of the trial of The Queen against W. S. Prendergast and Others, held in September, 1973	9068, 9310
661	Depositions in the matter of The Queen against Jones, taken on the 18th day of July, 1974	9069
662	Depositions in the matter of The Queen against Hill, taken on the 19th December, 1974	9070
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663B	A cassette tape of a conversation between Dr. Wainer and Assistant Commissioner Crowley	9074, 9222
664	Depositions in the matter of The Queen v. Robert John Mather taken on 1st February, 1974	9078
665	Photocopy of antecedent report relating to Robert John Mather dated 8th January, 1974	9078
666	Transcript of the trial, The Queen v. Clune and Robinson commencing on 3rd June, 1974	9078
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669	Transcript of the trial of The Queen v. Brian Leslie O'Callaghan, dated 3rd February, 1976	9079/9080
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672	Photocopy of report dated the 1st August, 1974, from Inspector Delianis to the Chief Superintendent C.I.B.	9104
673	Photocopy of advice from Inspector Delianis relating to the use of tape recorders, dated 4th August, 1974, together with annexures	9115
674	Photostat copy of property receipt relating to Stephen Sellers, dated 15th July, 1974	9146
675	Photocopy of notes made by David James Belson on the 20th November, 1974 ..	9180
676	Copy of memorandum dated 13th March, 1975, from the Crown Solicitor to Detective Inspector B. M. Ewert	9186, 9236
677	Transcript of Exhibit 663A	9221
678A	Tape of telephone conversation between Keeley and Lalor on 6th November, 1974, and of subsequent conversations between Keeley and Lalor at Fawkner Park	9224
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679	Depositions of The Queen v. Desmond Gordon Gallagher	9287
680	Photocopy of extracts from the diary of Maxwell George Rickman in respect of the 8th, 9th, 15th, 16th and 22nd March, 1973	9304
681	Transcript of trial of The Queen v. Gallagher, commencing 28th August, 1973 ..	9304
682	Photocopy of Prisoner's Personal Property (other than clothing) Sheet, relating to Ronald John Hamilton	9304, 9310

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Identification.	Description.	Transcript Reference.
683	Photocopy of Prisoner's Private Property (clothing) Sheets relating to Ronald John Hamilton	9304, 9310
684	Transcript of Committal Proceedings in the matter of Police against Bert Atherley Gaudion	9311
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686	Photocopy of letter dated the 17th October, 1974, from Fallaw and Henderson to Mr. J. M. McConnell and Mr. P. W. McKay relating to a matter of Killen against McConnell and McKay, together with photocopy of account also dated 17th October, 1974	9317
687A	Tape of conversation at Caulfield between Keeley and Gaudion produced at committal 4.12.75 and numbered EX 3A	9323, 9327
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688	Tape of conversation between Dr. Wainer, Gaudion and Holland bearing the date the 24th March, 1975	9325, 9332
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690	Photocopy of police brief in the matter of Police against Gaudion	9328
691	Photocopy of statement of Dr. Wainer made on 31st October, 1975	9328
692	Transcript of trial of The Queen against Laurence Joseph Prendergast commencing 22nd March, 1976	9328
693A	Photostat copies of bail bonds relating to John Reginald Killick dated 3rd July, 1974	9328
693B	Certificate of Order of Melbourne Magistrates' Court dated 3rd July, 1974 ..	9328
694	Copy of transcript taken at Central Court of Petty Sessions at Sydney relating to appearances before the Court of James Simeon	9329
695	Photocopy of extracts from C.I.B. Interview Register at Russell Street, dated 3rd July, 1974	9330
696	Photocopy of notes of Russell Arthur Pearson made in or about the month of June, 1975	9367, 9368
697	Photocopy of a report from Chief Inspector C. L. Holley dated 19th December, 1975	9409, 9410
698	Two statements made by Robin West dated January, 1976	9446
699	Photocopies of pages 98 and 127 of the transcript of the trial, Queen against Lawless held before His Honour Judge O'Shea in 1971	9467
700	Letter written in red ink with the date " Tuesday " written on the first page, from Rayma Joyce to Peter John Lawless	9472
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702A	Certificate of Dismissal relating to a charge of shopbreaking and stealing heard in the County Court on the 1st December, 1970	9474
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702C	Certificate of Order dated the 26th May, 1971, relating to a charge of forgery ..	9474
702D	Certificate of Dismissal relating to a charge of larceny and receiving, heard in the County Court on the 27th October, 1970	9474
702E	Certificate of Dismissal dated 10th May, 1972, relating to a charge of shopbreaking and stealing	9474
702F	Certificate of Dismissal dated the 10th May, 1972, relating to a charge of shopbreaking and stealing	9474
703	Copy statement of Peter John Lawless dated the 8th April, 1969	9474, 9521
704	Coronial File relating to the Inquisition into the death of Fitzgerald	9479
705	Photocopy of police file relating to the murder of Fitzgerald	9479
706	Photocopy of police file relating to complaints made by Peter John Lawless, bearing date 1972	9479
707	Photocopy of police file relating to Peter John Lawless, headed " CO and MO File "	9479
708	Photocopy of fingerprint sheets relating to Peter John Lawless	9480
709	Letter dated 11th November, 1974, from the Superintendent, Service Branch, Telecommunications Division of the Australian Post Office, to Mrs. Lawless	9480
710	Pages 28 and 29 of the depositions taken at the Coronial Inquiry into the death of Fitzgerald	9494
711	Notes made by Peter John Lawless between his second trial and appeals ..	9507
712	Transcript of portion of the trial Queen against Peter John Lawless, heard before His Honour Judge O'Shea in 1971	9535
713	Photocopy of note prepared by Police Officer Huxtable on 7th November, 1974 ..	9542
714	Undated letter, signed by J. Darmody, to the Commissioner of Police, together with enclosure	9578A
715	Handwriting sample of Rayma Eileen Joyce	9631
716	Photocopy of extracts from diary of Brian John Ritchie	9710
717	Photocopy of interview register at Russell Street in respect of the 2nd October, 1972	9711
718	Photocopy of transcript of radio interview of Dr. Bertram Wainer by one Nash on the 5th May, 1976	9711
719	Photocopy of transcript of a television interview with Dr. Bertram Wainer and Mr. Mike Ryan on Wednesday, the 5th May, 1976	9711
720	Photocopy of extracts from the diary of Alan James Pleitner, from the 25th to the 27th September, 1972, inclusive, and from the 2nd to the 5th October, 1972, inclusive	9795
721A	Photograph of Rayma Eileen Joyce	9797
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722	Photocopy of notes made by Detective Sergeant Walliss on the morning of 27th September, 1972	9797
723	Photocopy of extracts from the diary of Senior Constable Clarke	9833A
724	Photocopy of interview register at Russell Street for the 27th September, 1972 ..	9833A
725	Photocopy of extracts from the diary of Detective Sergeant Walliss in respect of the period from 23rd September, to the 30th September, 1972	9834, 9859
726	Affidavit sworn by Sergeant Alan James Pleitner on the 16th January, 1973 ..	9834
727	Copy of advertisement appearing in the 10th May, 1976, edition of The Age, commencing " Dr. Bertram Wainer advises . . . . etc.".	9835
728	Copy of a journal named " Public Eye ", the No. 1 edition, dated May 1976 ..	9859
729	Photocopy of extracts of the diary of Peter Noel Thompson in respect of the period from the 24th to the 27th September, 1972	9859
730	Depositions in the matter of The Queen against Connell dated 1st June, 1972 ..	9875
731A	Tape-recording of telephone conversation between Keeley and Gaudion either late 1974 or early 1975	9875
731B	Transcript of Exhibit 731A	9875

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Identification.	Description.	Transcript Reference.
732	Transcript of Exhibit 688	9895
733	Transcript of Exhibit 689	9895
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735	Film of interview between Iain George Gillespie, Dr. Wainer and Mr. Ryan on the 5th May, 1976	9943
736	Letter dated 5th May, 1976, from the Under Secretary to the Chief Commissioner of Police	9978
737	Letter dated 13th May, 1976, from the Deputy Commissioner of Police to Messrs. Maurice Blackburn and Co.	9978
738	Photocopy of Memorandum of Association of " Public Eye "	10,004
739	Photocopy of Notice of Registered Office and List of Directors	10,004
740	Photocopy of pages 76 to 79 inclusive and 82 to 85 inclusive, " It isn't Nice "	10,018
741	Handwritten list of 23 complainants prepared by Dr. Wainer	10,018
742	Statutory Declaration purporting to be sworn by Eric Heuston	10,028
743	Transcript of evidence in the trial of Queen against Michael Doran	10,041, 10,051
744A	Photostat copy of letter dated 8th January, 1970, addressed to " To my darling sexy Ruby ", together with its envelope	10,044
744B	Photostat copy of letter dated 8th January, 1970, addressed to " To my darling Isobel ", together with its envelope	10,044
744C	Photocopy of single sheet of paper found with Exhibits 744A and 744B	10,044
745	Photocopy of full transcript of trial The Queen against Peter John Lawless, heard before His Honour Judge O'Shea commencing on the 23rd day of March, 1971	10,045
746	Photocopies of fingerprint scenes of crime cards containing entries numbered 3711 to 3715 inclusive, 3731 to 3735 inclusive, and 3761 to 3765 inclusive	10,046
747	Photocopy of notes taken by Inspector Kenneth Scott Robertson on the 28th July, 1974, and the 30th July, 1974	10,047
748	Photocopy of Victoria Police File relating to Peter John Lawless, and bearing the number 1723 of '74	10,047A
749	List of persons shown as visitors to Eric Heuston at Long Bay Gaol	10,049
750	Photostat of inside front cover of " Brown Bomber " alleged by Dr. Wainer to have been supplied to him by Senior Sergeant Gaudion	10,082
751	Photocopy of extracts from the diary of Senior Sergeant Lalor for the calendar year 1973	10,083
752	Photocopy of extract from the diary of Senior Sergeant Lalor covering the period from Wednesday 23rd October, 1974, to Saturday 30th November, 1974, inclusive	10,083
753	Copies of six records of interview between Senior Sergeant Lalor and various suspects	10,085
754	Photocopy of Pentridge Records relating to David Joseph Hinkler Keeley	10,251
755	Memorandum relating to Standing Order 644 (2)	10,413
756	Photocopies of entries from the diary of Detective Senior Constable Tamblyn for the period 18th August, 1974 to 16th September, 1974	10,433
757	Report of Sergeant Graeme James Maxwell relating to an antecedent report dated 16th May, 1974, and concerning one Donald William Cox, together with a copy of such report	10,433, 10,482
758	Extracts from the evidence of Police Officers Skan and Davies given at the trial of McDougall 22nd November, 1974	10,457
759	Press report appearing in the Truth newspaper in the edition dated Saturday, April 5, 1975	10,602
760A	Photocopy of letter dated 7th June, 1971, from the Criminal Investigation Branch, Sydney, to the Superintendent, Central Industrial Prison	10,653
760B	Photocopy of docket minute sheet relating to Francis Alexander Johnstone, alias Eugene Francis Donnini	10,653A
760C	Photocopy of property record relating to Francis Alexander Johnstone	10,653A
760D	Photocopy of fingerprint form relating to Francis Alexander Johnstone	10,653A
760E	Photocopy of prisoners' visitors book of Long Bay Gaol in respect of the month of June, 1971	10,654
760F	Photocopy of police visitors book from Long Bay Gaol showing that Inspector Williams interviewed Prisoner No. 2282 Johnstone on the 7th June, 1971	10,654
761	Handwritten note prepared by the witness Morgan-Payler relating to visits to Stephen Sellers at the Alfred Hospital on the 3rd and 4th July, 1974	11,013
762	Photostat copies of correspondence passing between the Chief Commissioner of Police and the Under Secretary relating to the powers of the Police insofar as the obtaining of individuals' names and addresses	11,693A
763	Photocopies of extracts of Statutes relating to the powers of Police and other officers to obtain the names and addresses of individuals	11,694
764	Photocopy of Executive Instruction No. 77 of 1975, relating to the investigation of complaints against Police	11,694
765	Photostat copy of crime statistics, year 1975, together with Appendices	11,694
766	Photostat copy of correspondence between the Chief Commissioner and the Under Secretary relating to the appointment of a liaison officer at the Law Courts	11,695

APPENDIX "C"

IN THE SUPREME COURT
OF VICTORIA

MELBOURNE

BEFORE HIS HONOR MR. JUSTICE DUNN

BETWEEN :

KEITH HECKER — Plaintiff

and

BARRY WATSON BEACH — Defendant

ONE OF HER MAJESTY'S COUNSEL
FOR THE STATE OF VICTORIA

THE QUEEN

v.

BARRY WATSON BEACH — Respondent

ONE OF HER MAJESTY'S COUNSEL
FOR THE STATE OF VICTORIA

—ex parte—

KEITH HECKER — Applicant

JUDGMENT

(Delivered 7th May, 1975.)

HIS HONOR : In my opinion the applicant and the plaintiff in these proceedings is entitled to succeed.

By an Order-in-Council dated the 18th March 1975 Barry Watson Beach, one of Her Majesty's Counsel, was appointed a Board of Inquiry, " for the purpose of enquiring and reporting whether there was any credible evidence raising a strong and probable presumption that any, and if so, which members of the Victoria Police Force have been guilty of :—

(*a*) Criminal conspiracy, perjury, subornation of perjury, extortion, fabrication of false evidence, compounding a felony, aiding and abetting the commission of any offence or demanding or soliciting or accepting any money or any other reward directly or indirectly from any person or persons in breach of any regulation under the *Police Regulation Act* 1958 or in circumstances involving the commission of any criminal offence ;

(*b*) Harassment or intimidation of any member of the public ;

(*c*) Failing to observe or comply with any of the provisions of the Chief Commissioner's standing orders relating to—

(i) the investigation of complaints and grievances of members of the public ;

(ii) the conduct of identification parades ;

(iii) the investigation and obtaining of evidence from suspected persons."

The Board had a preliminary sitting on the 26th March, 1975, and in April, 1975 commenced hearing evidence. On the 29th April 1975 a prisoner, Peter Robert Gibb, was called to give evidence. Before doing so he alleged to the Board that he was subject to reprisals in Pentridge because of his intention to give evidence to the Board and further alleged he had received threatening messages through other prisoners, messages said to come from one named member of the Police Force. Gibb's evidence was not completed on the 29th April. On the 30th April Gibb was brought from Pentridge to the building in which the Board was sitting. He was in the custody of prison officers, one of whom was senior prison officer Keith Hecker. In the corridor outside the room in which the sittings of the Board were being held, an incident occurred which involved Gibb and one or more of the prison officers in whose custody Gibb was. No member of the Police Force was involved. The incident was of such a nature that the proceedings of the Board were interrupted. When the entrance doors of the room in which the Board was sitting were opened, Mr. Beach, to whom I shall refer hereafter as " the Chairman ", could see the disturbance occurring in the corridor. When the Board resumed after this incident was concluded the Chairman announced that the Board would adjourn until the following day—it is to be inferred because the Board was pursuing steps to obtain other premises for its sittings. The Chairman announced that, " The first matter I intend to deal with when the Board does resume tomorrow will concern the incident that took place outside the Board this morning."

When the Board resumed on the 1st May, 1975, Mr. Hender, of counsel, sought leave to appear for two of the prison officers in whose custody Gibb was the previous day, one of whom was Hecker. That leave was granted and other counsel who had been given leave to appear for various persons in what I may call the normal proceedings of the Board, also sought leave to appear in this matter, which the Board referred to as " an Inquiry within an Inquiry." Leave was granted to Gibb to have separate legal representation and limited rights to appear were granted to other counsel. The Chairman announced that he felt it necessary to make an inquiry into what happened, " although all I can do subsequently is to make findings of fact concerning it." Further the Chairman said, " I have no power to do anything about it but simply make those findings."

The Board proceeded to hear the evidence of Gibb who alleged he had been assaulted by prison officers, the only one he identified being Hecker. At the conclusion of his evidence-in-chief Mr. Hender submitted that as no members of the Police Force were involved the Board had no jurisdiction to inquire into this incident. The Chairman rejected that submission. He said, " In my view such a matter is covered by the terms of reference in this way : Yesterday the proceedings of this Board were disrupted for almost the bulk of the day by reason of an altercation which occurred in the corridor outside the Board involving one of the witnesses then presently before the Board. In my view, I have every power to inquire into how that altercation occurred and to inquire whether or not anything did occur which in any way might intimidate that witness or prevent him from freely giving evidence before this Board."

It was in these circumstances that on the 2nd of May, 1975 Hecker made application for and obtained an order *nisi* for a writ of prohibition and an interim injunction to stay the further proceedings into this incident. The return of the order *nisi* and the summons for interlocutory injunction in the action commenced by Hecker against the Board are now before me.

Mr. Brooking, who appeared with Mr. Smith, for the Board, informed me that his client desired these matters disposed of on the merits and on the assumption that the relief sought could be granted in these proceedings if it was otherwise justified. Accordingly, it is not necessary for me to express any opinion on those matters. Since the decision in The Queen *v.* Liverpool Corporation *ex parte* Liverpool Taxi Fleet Operators Association (1972) 2 Q.B. 299, there is no reason to suppose that such relief cannot be so given.

These proceedings are concerned solely with the jurisdiction of the Board to conduct a formal investigation into the incident referred to. They are not concerned with any investigation into what occurred. Naturally the Board is very concerned that witnesses who give evidence before it or who might intend or be required to give evidence before it are not subjected to intimidation, violence or reprisals or threats of any kind. So am I concerned that this should not happen and, if it does, that it should be dealt with promptly and according to law.

Consequently, there is, and can be, no argument that Peter Robert Gibb is entitled to the full protection that the law can provide against violence, intimidation, reprisals or threats of any kind. The question raised by these proceedings is the machinery by which this is to be done. There are in existence the normal processes of the law for this—of investigation and appropriate legal proceedings where warranted. The learned Chairman sought to add a further one, namely, a formal investigation on oath by him. In my opinion he was not and is not justified in law in doing so.

A Board of Inquiry is not a court, as the learned Chairman clearly acknowledged. The Executive has no power to give to a Board of Inquiry any of the powers of the court or authority to act in a way which would interfere with the due administration of justice. See *McGuiness* v. *The Attorney-General* (*Victoria*) (1940) 63 C.L.R. 73, per Latham C.J. at p. 85. The Board's rights and powers are to be found within the terms of the Order-in-Council by which it was appointed and any given by statute—in Victoria this means the powers given in Division 5 of Part I. of the *Evidence Act* 1958—and such incidental powers necessary for the Board to function.

It is not suggested that the holding of such an Inquiry as the Chairman proposed is within the express terms of an Order-in-Council or that part of the Evidence Act.

Mr. Brooking sought to justify that right to hold this investigation on one or more of the following grounds :—

(1) the power to examine witnesses must include the power to investigate whether or not a witness has been intimidated or victimised, for the protection of that witness ;

(2) although the board has no effective sanction to deal with contempt, such an investigation would have a persuasive deterrent influence against such conduct ;

(3) if the Board found victimisation or intimidation proved, appropriate authorities would be expected to take action on its findings ;

(4) such an investigation was necessary to enable the Board to take action to prevent a repetition and further interruption of its proceedings ;

(5) it was necessary for the purpose of assisting an assessment of the reliability of the evidence of Gibb as a witness ;

(6) reliance was placed on the terms of s. 21A of the *Evidence Act* 1958.

Each of these grounds was contested by Mr. Goldberg who appeared for the applicant and the plaintiff.

As to the first objection, it is undoubtedly within the power of the Board to examine or investigate matters affecting the credibility of a witness—a matter which will be considered under the 5th objection. But in my opinion the Board of Inquiry had no power to hold such an investigation as it was proceeding to do in this case. If there were reasonable grounds for suspecting intimidation or other improper conduct of like kind, it could and should have invoked the normal processes of the law to deal with them. This is what a court itself would do in such circumstances. It has to be realised that such conduct constitutes a very serious offence and in fairness to all concerned should be dealt with by normal processes. It has to be remembered, too, that a Board of Inquiry is not obliged to observe the rules of evidence applicable in the courts, as is demonstrated in this case. But the prime reason for my opinion is that such a power is not to be inferred or implied.

As to ground 2, it follows from what I have already said this ground could not justify it. It would be quite wrong to attempt to exercise in this guise a punitive power which a Board does not possess.

The third ground cannot be sustained. The responsibility of a Board of Inquiry is not to publish findings of any kind at large—but to report to His Excellency, The Governor, as directed by the Order-in-Council. Its findings cannot in fact bind anyone, nor are they entitled to be of persuading effect on anyone.

In respect of the fourth ground, it is of course necessary for the Board to make, or cause to have provided, adequate provisions for the orderly and uninterrupted conduct of its proceedings. It appears from the transcript that it was not in fact necessary for that purpose to hold such an investigation as was proposed, as the Chairman had already taken that action before this particular investigation began. Even had he not done so, I would not be persuaded that the nature of the investigation he was proposing was necessary for that purpose.

The fifth objection, namely that it was necessary to enable the Board to form an opinion of the credibility of Gibb as a witness is one that seemed to have some substance ; but on further consideration I am satisfied that it has not. In forming a final conclusion on the reliability of Gibb's evidence, no doubt the learned Chairman will have to consider all the evidence relating to any allegations by Gibb of intimidation or prior victimisation, if they appear to be of such a nature as to effect his credibility. Such a task is not discharged by the Board—or would not be discharged in a court—by holding a full scale enquiry into every, or any fact that could bear on that problem. In any event in this case, it is not suggested by Gibb that his testimony has been in any way affected by anything of which he complains.

The final matter put forward is that the provisions of s. 21A of the *Evidence Act* in conferring the privileges and immunities of a witness in a Supreme Court proceeding on a witness before a Board justify the Board in taking the action it took and proposed to take. With respect to those urging this argument, I have been unable to see the validity of it. I think this section is concerned with the rights and protection of witnesses in respect of other matters—but even if it is held to include protection from intimidation, it does not confer any power on a Board of Inquiry to enquire into or deal with it.

No doubt, the learned Chairman was actuated by a highly commendable desire to take some action in the cause of protecting witnesses from intimidation or violence. I respectfully think he would have better achieved his purpose if he had put in motion the normal and proper processes of the law. Some suggestion was made in argument on behalf of the Board that because the Board was concerned with investigating allegations of possible serious derelections of duty by some members of the Police Force, no member of the Force could be trusted to investigate such a matter as this fairly and properly. That is an attitude which I do not think can possibly be justified.

One other matter has to be dealt with—it was not a matter which had occurred when the Board commenced its investigation and therefore could not have affected its decision. On the afternoon of the 30th of April, 1975, Hecker reported the events of the incident with Gibb in the vicinity of the Board Room to Mr. Buckley, an, or the, Investigations Officer employed by the Social Welfare Department at Pentridge. It is Mr. Buckley's duty to investigate complaints regarding offences by prisoners against the *Social Welfare Act* 1970 and the Regulations thereunder, and if thought appropriate to lay charges for alleged offences. Mr. Buckley says he investigated this incident and interviewed other Prison Officers who had been present. As a result, he decided to, and did on the 4th of May, 1975, lay Informations against Gibb for allegedly assaulting Hecker and for using indecent language. These Informations are due to be heard on the 14th of May, 1975 by the Visiting Magistrate to Pentridge.

It is therefore argued for the applicant that to allow the investigation by the Board to proceed would interfere with the due disposal of these informations. On the other hand, it was argued for the Board that Gibb was not concerned to stop the Board's investigation, and that the onus was on the applicant to satisfy me that these Informations were laid *bona fide*, and not for the purpose only of preventing the investigation proceeding. Mr. Goldberg informed me that once it had been decided that Informations should be laid, it was thought proper to lay them before these proceedings concluded, and because it might be alleged, if they were deferred till afterwards, they were inspired by the result. It is like tossing a double-headed penny. Whatever decision is taken could be the subject of criticism. For the reasons I have already given I find it unnecessary to base my decision on these proceedings, although I cannot find sufficient in the material before me to hold that Mr. Buckley was not acting *bona fide*. In any event, if this were the only matter it could have been suitably dealt with by postponing the resumption of the Board's enquiry into this incident until after the Magistrate had dealt with the Informations.

Accordingly, the applicant is in my opinion entitled to the relief he seeks.

(Discussion ensued.)

HIS HONOR : I think you, Mr. Goldberg, Mr. Brooking and Mr. Smith might formulate the minutes of the orders that you want.

MR. GOLDBERG : If I could have leave in general terms to mention the matter at a suitable time ?

HIS HONOR : Yes.

APPENDIX "D"

In Camera Evidence.

As I indicated in the Introduction to the Report, I have set out hereunder the date on which evidence was heard "in camera" and where it is to be found in the transcript. The "in camera" evidence immediately follows the page number of the transcript appearing in the right hand column.

28th April, 1975	1 I.C.–4 I.C.	Post P105
29th April, 1975	5 I.C.	Post P168
8th May, 1975	6 I.C.–16 I.C.	Post P264
9th May, 1975	17 I.C.–63 I.C.	Post P290
16th May, 1975	64 I.C.–69 I.C.	Post P584
19th May, 1975	70 I.C.–120 I.C.	Post P603
20th May, 1975	121 I.C.–166 I.C.	Post P617
22nd May, 1975	167 I.C.–223 I.C.	Post P694
23rd May, 1975	224 I.C.–246 I.C.	Post P695
20th June, 1975	247 I.C.–252 I.C.	Post P1705
24th June, 1975	253 I.C.–257 I.C.	Post P1823
24th June, 1975	258 I.C.–265 I.C.	Post P1844
25th June, 1975	266 I.C.–269 I.C.	Post P1845
25th June, 1975	270 I.C.–280 I.C.	Post P1861
27th June, 1975	281 I.C.—291 I.C.	Post P1960
30th June, 1975	292 I.C.–310 I.C.	Post P1974
30th June, 1975	311 I.C.–322 I.C.	Post P1987
1st July, 1975	323 I.C.–327A I.C.	Post P2003
3rd July, 1975	328 I.C.–332 I.C.	Post P2069
18th August, 1975	333 I.C.–334 I.C.	Post P3553
21st August, 1975	335 I.C.–341 I.C.	Post P3674
26th August, 1975	342 I.C.–344 I.C.	Post P3800
28th August, 1975	345 I.C.–347 I.C.	Post P3927
29th August, 1975	348 I.C.–357 I.C.	Post P3993
1st September, 1975	358 I.C.–359 I.C.	Post P4099
16th September, 1975	360 I.C.–361 I.C.	Post P4730
17th September, 1975	362 I.C.–366 I.C.	Post P4771
13th October, 1975	367 I.C.–378 I.C.	Post P5535
14th October, 1975	379 I.C.–383 I.C.	Post P5570
29th October, 1975	384 I.C.–390 I.C.	Post P6087
27th November, 1975	391 I.C.–397 I.C.	Post P7029
27th November, 1975	398 I.C.–406 I.C.	Post P7033
28th November, 1975	407 I.C.–410 I.C.	Post P7071
5th and 6th December, 1975	411 I.C.–414 I.C.	Post P7208
8th December, 1975	415 I.C.–417 I.C.	Post P7223
26th February, 1976	418 I.C.–420 I.C.	Post P8619A
8th April, 1976	421 I.C.–443 I.C.	Post P9165
13th April, 1976	444 I.C.–470 I.C.	Post P9307
27th April, 1976	471 I.C.–479 I.C.	Post P9523
4th May, 1976	480 I.C.–500 I.C.	Post P9642
5th May, 1976	501 I.C.–523A I.C.	Post P9643
10th May, 1976	524 I.C.	Post P9816
13th May, 1976	525 I.C.–528 I.C.	Post P9990A

APPENDIX " E "

APPEARANCES

As I indicated in Chapter 1 of this Report, Mr. C. W. Villeneuve-Smith, Q.C., and Mr. John Coldrey appeared to assist the Board.

Leave to appear on behalf of the persons or organisations enumerated hereunder was granted to the following:—

1. Mr. J. H. Phillips, Q.C., and Mr. John Walker appeared on behalf of the Victoria Police Association. At the conclusion of the taking of evidence leave was granted to Mr. Phillips and Mr. Walker to appear on behalf of the Chief Commissioner of Police.

   During the course of the Board's investigation, Mr. S. Strauss, Q.C., was given leave to appear with Mr. Walker on behalf of the Police Association for the limited purpose of making a specific application to the Board. At a later stage of the hearing Mr. W. J. Lennon was given leave to appear for the Police Association for the limited purpose of cross-examining a witness known personally to Mr. Phillips and Mr. Walker.
2. Mr. Robert Richter was given leave to appear for Doctor Bertram Barney Wainer, Ronald John Hamilton and Stephen Donald Sellers. Almost at the conclusion of the evidence received by the Board, Mr. Richter's leave to appear on behalf of Doctor Wainer was withdrawn. He was granted leave however, to make final submissions on Doctor Wainer's behalf.
3. Mr. Bernard Bongiorno was given leave to appear for Frank Erdmann.
4. Mr. Peter Faris was given leave to appear for Peter John Lawless. Almost at the conclusion of the evidence Mr. Faris withdrew from the proceedings. He was replaced by Mr. John Sayers.

   During the hearing of the Lawless Matter leave was given to the following witnesses to be legally represented: Patrick Callaghan, Peter Robert Gibb, Rayma Eileen Joyce and Robin Norman Leslie West.

   Callaghan was represented by Mr. D. Morey; Gibb was represented by Mr. Terry O'Brien; Joyce was represented by Mr. C. New; and West was represented first by Mr. R. Vernon, then by Mr. P. Heerey, and later by Mr. P. Molan.
5. Mr. F. Hender was given leave to appear for Chief Prison Officer Kerley and Senior Prison Officer Hecker.
6. Mr. C. Chessun was given leave to appear for John Joseph Power.
7. Mr. John Walker was given leave to appear for Senior Sergeant Bert Atherley Gaudion.
8. Mr. Richard Alston was given leave to appear for the Victorian Council for Civil Liberties.

APPENDIX " F "

WRITTEN SUBMISSIONS

Written submissions were received by the Board from the following persons:—

1. Counsel for the Police Association on behalf of Assistant Commissioner Crowley.
2. Counsel for the Police Association on behalf of Inspector Delianis.
3. Counsel for the Police Association and the Chief Commissioner of Police.
4. Mr. Peter Sallmann on behalf of the Victorian Council for Civil Liberties (see Appendix " A " to Chapter 8).
5. Twenty members of the Legal Profession (see Appendix " B " to Chapter 8).
6. Peter John Lawless.
7. Ms. Jackie M. Fristacky.

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