

ADVOCATING FOR JUSTICE LECTURE

CRIMINAL BAR ASSOCIATION

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POLICE CORRUPTION:

HOW TO CONTROL AND DEAL WITH IT

I must say that I think the organisers of this talk could not have chosen a better time for it because, in my opinion, the Police Force is today facing the most difficult problems that it has had to face in living memory. I think there is clearly some connection between the allegations of corruption and gangland killings. That connection may be direct or indirect, and it may be that only some of the same people are involved in both, but certainly the police corruption issues have muddied the waters for the Police Force in trying to solve the spate of gangland killings, so they are linked at least to that extent.

I want to begin with two cautionary tales. The first of them is about my first contact with a Royal Commission. I was Associate to the Chief Justice, Sir Edmund Herring and in Parliament, around 1952, no party had a clear majority. There was jockeying for position and people trying to form new alliances. In the course of this there were allegations made of bribery amongst the Members, in that some had been offered Ministries in a new Government in return for their votes. There were also suggestions of money changing hands.

In the light of these allegations, the Chief Justice was asked if he would constitute a Royal Commission, along with the two next senior and available Judges of the Court. He agreed, and I was appointed Secretary of the Commission. The proposed Commission soon became public knowledge, and strong representations were made by the remaining Judges of the Court, who had not been consulted about the decision, in spite of a long standing rule, initiated by Irvine CJ, that Supreme Court Judges should not sit on such Commissions. I happen not to agree with that rule, but it was accepted in Victoria at that time and I think it still is, and it was entitled to respect.

At all events, the Royal Commission proceeded. My first task was to catch a tram up to the other end of town, and wait under a tree outside Parliament House in order to serve subpoenas on all the Members of Parliament who had to give evidence. I couldn't go into the Parliamentary precinct for the purpose because I would have been in contempt of the Parliament.

One by one these men sidled up to me, trying to look inconspicuous and, when they had identified themselves, I handed them their subpoenas. After about 20 minutes, I took the tram back again to the Law Courts. The round trip cost me 1s 6d and I duly put in a claim for what I thought would be the first of many expenses.

When the Royal Commission had been opened soon afterwards, the first witness called was the Member who had made the most serious allegations. He had discovered the night before that the waiver of Parliamentary privilege, which had been carried in order to enable the Commission to sit, did not extend to cover his personal privilege, so that he could not be compelled to answer questions, as he had expected. As a result he almost literally went to water and declined to answer any questions. Just as that happened, Eugene Gorman QC came into the hearing room and announced that his client, one of the people referred to in the allegations that had been made, had issued a writ for libel against the Melbourne Age, and that other actions were being contemplated. He argued that the Commission should not proceed

because it would be in contempt of the Supreme Court. It seems a little odd that the three senior Judges could be in contempt of their own Court, but they accepted the argument that they could be. They adjourned the hearings sine die and the Commission never resumed.

The point I want to illustrate is that Royal Commissions have to give way to the ordinary courts of the land whenever relevant proceedings have been commenced or are imminent. To finish the story, a few months later the Parliament solemnly passed whatever it had to pass on such an occasion to enable me to be repaid my 1s 6d, which was the total cost of the Commission. It must have been the cheapest Royal Commission of all time.

My second cautionary tale concerns another Royal Commission about six years later, when I was Counsel Assisting. I already had four other inquiries under my belt, and I should have known what I was doing. But I think I made a mistake in that matter which I have regretted ever since.

It was a Royal Commission into Off-Course Betting, constituted by Russell Martin, a recently retired Supreme Court Judge. He was asked to determine whether such betting should continue in the form of a totalisator, betting shops, or licensed telephone bookmakers on their own premises. One of the major issues involved was the extent to which telephone installers and other PMG officers, and police officers, had been corrupted by existing illegal betting. A typical example of PMG corruption was the discovery of ten telephones installed in a broom cupboard, with extensions to other rooms. But it was the allegations of police corruption, which concentrated my thoughts.

At a conference shortly before the hearings were due to start, the Inspector who was leading the new gaming squad (the old squad having been removed, just as the former drug squad has recently been) came with two Senior Constables, to tell me of

the corruption they knew had taken place. They explained how such corruption had occurred, and the two Senior Constables estimated that about 60% of the Force had been corrupted. They made it clear that it was not a major level of corruption in most cases; it was just turning a blind eye to the street betting that was going on behind the pub, in return for a free meal, a free drink or a free bet. Another typical example was that, in country towns, police officers, when it was time for them to move on, often received a wallet of notes from a grateful population. The thickness of the wad could easily be affected by their attitude to things like off-course betting and licensing laws.

It was in those minor ways that police corruption could readily occur. Bearing them in mind, the Senior Constables estimated the extent of corruption to have involved about 60% of the Force. The Inspector did not disagree, but left most of the talking to them – they were young men and very sure of themselves. He was a good and honest copper, but he took rather a back seat. Nevertheless he was the logical first witness. Before calling him I opened the case and referred to the 60% estimate. Although I should have expected it, I was shocked by the size of the headlines in that evening's Herald.

The inspector gave evidence about what they had found when they went through the old gaming squad's records. They had reviewed 1,400 cases and found there had never been an arrest in spite of the fact that addresses which had been given by people to be charged proved, on checking by the new squad, to relate to churches, vacant blocks of land and factories. And records that were handed over showed only a fraction of the takings, which the new squad had found on similar raids. It was clear that the old gaming squad was completely corrupt. I asked him to estimate how much all this had affected the Police Force generally. He said he thought it was very serious. I asked him to put a figure on it, but he was reluctant to do so. I asked him again and he said that he thought about 30% might be corrupt. Soon after that the Commission adjourned for the day.

The next morning the two Senior Constables came to me and said the Acting Chief Commissioner had sent for them the previous evening and warned them that if they gave the evidence I had foreshadowed, it would be the end of their careers in the Force. I thought at the time that he was threatening them but, looking back, I don't think I was right. I think he was warning them of the sort of ostracism that would occur if they gave that evidence. And I think he was right. In either event I decided that their futures were more important than any embarrassment I might suffer from not being able to support my opening with evidence, so when I put them in the witness box I got them to tell what they knew about corruption, but did not ask them to put a figure on it.

In the result it was the Inspector, a good man who was doing a very good job, who received the ostracism from his friends and everyone around him, to the point where his life was made very difficult. Although he was not far from retiring age, he resigned. I have felt guilty about that ever since. In fact it has only been while preparing this talk that the thought has occurred to me that, if I had not opened the 60% figure, the Senior Constables would almost certainly have gone ahead and given that evidence. It would have been they who were ostracised and would have found no future in the Force. That would have been a real tragedy because they turned out to be two of the best officers the Force has produced. They were largely responsible for gaining for the Force the corruption-free reputation it had until comparatively recent times.

There are a number of lessons to be learned from all this. One is the wide range of activities or inactivities that can constitute corruption. Another is the difficulty faced by a whistleblower in overcoming an entrenched culture of misguided mateship among police.

I want to say a few words about the chief causes of corruption among police, as I see them. The first is the existence of victimless crimes, such as illegal gambling,

prostitution and breaches of the licensing laws. I think it is much easier to persuade a policeman to turn a blind eye to breaches of the law that many members of the public do not take seriously, than to overlook major crimes. But minor corrupt conduct can represent the beginning of a downward slide.

Compromising with major crimes is only likely to occur when very large sums of money are involved, either in the form of cash or of readily saleable commodities, such as party drugs or expensive motor vehicles.

I would like now to turn to the various remedies that could alleviate or deal with the problem of corruption. First, there are a number of preventive steps that can and should be taken. Education is obviously very important. Police trainees should be given plenty of examples of the ways in which they could be sucked in to corrupt activity, and how they should deal with it in each case. Secondly, there must be proper levels of pay for police, taking into account the often dangerous and nasty aspects of their work. They are far less likely to look for ways of supplementing their pay if they believe they are properly paid. Next, I think there should be a regular turnaround of police serving in what I might call vulnerable areas of the Force. I believe no one should be left in such an area for more than a few years; there should be planned rotations. I also think that police officers should be constantly reminded of their responsibilities throughout their careers, particularly in promotion courses or other special training. They must be persuaded that the elimination of corruption in the Force is far more important than any concept of mateship or teamwork that may point the other way. Finally, there must be simple and secure methods of reporting any suspicions or knowledge of corruption. Such reports should not have to work their way up a line of management.

If all these precautions are in place, what is the best way to handle a known or suspected case of corruption that comes to light? I deal first with the possibility of a Royal Commission (or Board of Inquiry – the difference is only one of status). The

advantage of a Royal Commission is its status and powers of compulsion to answer questions. The disadvantages are, first, that they tend to be hideously expensive. The Government usually finds it necessary to pay for the representation of most of the people who are called before the inquiry and this can, over time and along with all the other expenses, amount to hundreds of thousands of dollars per month.

The second disadvantage is that Royal Commissions are inhibited by existing or pending litigation, and that has certainly been nuisance to me in some of the Commissions I have conducted. I have usually been able to work my way around such problems, but in a case like the present, where there are so many actions pending which either involve police or require police evidence, I think it would be completely impractical to establish a Royal Commission at this stage. It would also be difficult to draft terms of reference giving guidance as to where the Commission should become involved and what areas of corruption it should leave aside as being not sufficiently serious to justify its attention.

After the dust has settled, and these actions have been terminated, I think it would be possible to establish a Royal Commission, but I suspect that by that time everybody will have lost interest and there would be no point in going ahead. So I would rule out the possibility of calling on a Royal Commission to deal with the present problems.

I turn then to a Police Integrity Commission, or some body with a similar name, that would be like a standing Royal Commission. It would have the same disadvantages in that its work could be frustrated by existing or pending litigation, but it would be able to get around that to some extent by picking and choosing, of its own motion, what leads to follow. It would not be circumscribed by detailed terms of reference. Another advantage of such a body would be its ability to build up over time a core of knowledge of the Force and its workings, including possible areas of corrupt conduct.

One disadvantage I see in constituting such a body is that its workload would be difficult to predict and resource from year to year. Some years there might be little for it to do and at other times it could be overwhelmed. There would have to be provision for flexible resourcing according to the demands for its services. With that proviso, I think such a standing body would be a very viable option. It would, however, take some time to set up before it could function effectively.

The next option I want to deal with is that of the Ethical Standards Department, or whatever else it might be called, within the Police Force. I think this is where isolated allegations of police corruption should be dealt with, but I don't believe it is adequate to handle organized, or what is sometimes called 'franchised', corruption within the Force. When systemic corruption is exposed or suspected it is time to call for additional resources and expertise from outside the Force.

I would like to think that such outside assistance could come from some body organised at a national level and able to assist any State or Territory force. That would give economies of scale and also ensure that its work was seen to be quite independent. I would hope that the Australian Crime Commission could provide such a service, but I don't know enough about its workings to be able to tell whether it could do so. If it were willing and able to provide such assistance, that would be my preferred option for dealing with systemic corruption, while leaving minor problems to the Ethical Standards Department.

The solution that the Victorian Government has opted for is to give greatly expanded powers to the State Ombudsman, who is also the Police Ombudsman. Having had a close knowledge of the highly successful working of the Banking Ombudsman in recent years, and seen something of the work of Ombudsmen in other fields, I think that it is a complete distortion of the role of an Ombudsman to be called upon to investigate serious criminal conduct. His office is already, I believe, fully occupied with its proper role of handling complaints against public servants, including the police. It

provides an excellent alternative dispute resolution service, in which its staff has been trained. Where are they going to recruit the skilled criminal investigators who will be required to discover the full story of police corruption? Presumably they will have to come from the Police Force, and all the Ombudsman and his staff will be able to do is to supplement their work by using their new powers to require answers to questions, and maintain an oversight of the police investigations. I don't doubt the ability of the present Ombudsman to carry out these responsibilities as well as anyone could. I just cannot see it as a long-term solution to present problems or even a satisfactory quick fix.

Finally I want to talk about the Chief Commissioner's powers. I am strongly of the view that the Commissioner needs wider powers to dismiss police in whom she has, for good reason, lost confidence. I think it is dreadful that you can have in the Force a police officer

who is believed by his or her superiors and colleagues to be guilty of a serious criminal offence. If charges are laid and have to be dropped because a crucial witness disappears or refuses to give evidence, for that officer to continue serving, surrounded by an atmosphere of suspicion and distrust, must be destructive of morale and disruptive of effective working relationships.

The only solution I can offer is one that was available to me as Director-General of Security. I had the power, under the contracts by which my officers were employed, to dismiss anyone without notice and without having to give reasons, but on payment of 12 months salary along with any other accrued entitlements. I think that such a power was essential if it was strongly suspected, but could not be proved, that any employee was an enemy agent, or leaking state secrets to the media, for example. I believe that a similar power would enable the Police Commissioner to rid the Force of officers in whom she had lost all confidence. However I believe it would be appropriate to provide for any such decision, if challenged, to be reviewed in private hearing by another authority – perhaps a designated County Court Judge or the Ombudsman, if not otherwise engaged in his own police corruption investigations.

