

ADDRESS TO ACPC ELEVENTH NATIONAL CONFERENCE

“POLICING THE POLICE”

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Mr Chairman, Dr Preston, Ladies and Gentlemen,

I accepted the invitation to address this conference in the hope that you will be at least as much interested in a personal review of my experience as a practitioner in the field of police accountability, as in an historical survey of the long journey in time during which we in the police have had to respond to increasing demands for independent supervision of the way the police exercise power.

I propose therefore to spend some of my time this morning discussing the lessons learnt from the internal problems which faced the Metropolitan Police in the late '60s, when a series of events had shaken public confidence in the police to such an extent that the management of the "Times" newspaper concluded it could have no confidence in the ability of the force to deal with wrongdoing by its own people.

May I say at the outset that I have developed a belief over the past two years that we in Australia could be faced with similar problems, and have discovered that attitudes on both sides — police and public — very closely reflect those current in England at that time.

I hope I can be forgiven in opening this discussion by quoting Charlie Peace, a nineteenth century criminal, who said: "The conscientious bobby who works his beat is honest; you always know where he is and if you get in his way that is your own fault. It's the man who neglects his duty to go courting the servant, or nips up the entry to get a surreptitious drink, who causes all the trouble. You never know where you may meet with him."

The founder of the New Police in London in 1829, Sir Robert Peel, had a good understanding of the need for well-disciplined members and one of his first Orders said: "He (the constable) will be civil and obliging to all people of every rank and class. He must be particularly cautious not to interfere idly or unnecessarily in order to make a display of his authority. When required to act, he will do so with decision and boldness."

Four short years later, we had the colony of New South Wales adopting a very similar procedure to that adopted in London. The new Sydney Police Act provided for the appointment of two police magistrates to head the new force, but in London it was a soldier and a lawyer who were given the job. Community feeling, not unsurprisingly in view of the origins of the colonies, reflected some concerns not dissimilar to those expressed in England a few years earlier. One author noted: "It may be doubted whether the police force of any English-speaking country, except Ireland, has ever been more thoroughly unpopular than were those of most of the Australian colonies in the last century".

It seems that we have made some progress towards public acceptance, but if there is one thing we in Australia and

Britain have had in common, it is the general suspicion that they, the police, were instruments of political oppression. Certainly, the prejudices against them constituted one of the major barriers to their early effectiveness.

But the concern about policing the police is worldwide! I do not think American experience has a great deal of relevance because of the multiplicity of agencies and a very different law enforcement system, but I would at this stage quote from a more recent Report of the Presidential Commission on Law Enforcement and Administration of Justice, which had this to say:

"Every department, regardless of size, should have a comprehensive program for maintaining police integrity and every medium and large sized department should have a well-manned Internal Investigation Unit responsible only to the Chief Administrator. The unit should have both an investigative and preventative role in controlling dishonest, unethical and offensive action by police officers".

Indeed, American concern about their police has had much to do with forming current opinion throughout the Western World. Any review, no matter how brief, of the American scene, does require a quote from J. Edgar Hoover. He said:

"A questionable move currently being championed in some localities is the establishment of civilian review boards to hear complaints against law enforcement officers. To a large degree, these panels would consist of appointed individuals who are generally inexperienced, uninformed in law enforcement and police administration. When carefully considered, it is clear this drive for external boards is an ill-advised manoeuvre. It amounts to the usurpation of authority rightfully belonging to the police commander. It is a practice which could damage effective law enforcement and reduce the orderly processes of community life to petty bickering, suspicion and hatred. The police executive cannot become a mere pawn of bureaucratic committees, he must have full responsibility for the performance, discipline and control of his officers. Valid objections to external review boards are too numerous and extensive to be shunted aside. Such panels represent a backward step for law enforcement".

I do not think there is any doubt that so far as the public is concerned, most controversy concerns the issue of the police acting as judges in their own cases (and jury too!). Sir Robert Mark recognised the importance of this aspect in his 1973 Dimpleby Memorial Lecture. Referring to the formation and operation of A10, Scotland Yard's Internal Affairs Branch, he said:

"We realise, however, the procedure has one major drawback. It looks like a judgment of policemen by other policemen. So long as this remains the case, some of you will perhaps be understandably sceptical. No one likes to accept the verdict of a person thought to be judge in his own court. That is why the Home Office are trying to devise a system of outside review of such investigations which will have everyone's confidence".

There are commentators in Australia who support the investigation of complaints made against the police, by the

police, subject to review. And this opinion is shared by a number of influential British authorities. It might not be unreasonable of me also to point out that the idea of self-policing is not unique to the police. It is well known, for example, that the statutory committees of the various State law societies have a role in the investigation of complaints against solicitors, as do the Bar Councils in respect of barristers.

A glance at the New South Wales Medical Practitioners Act, particularly sections 5, 27A and 28, shows the composition of "The Board", the "Investigating Committee", and the "Medical Disciplinary Tribunal" charged with the investigation of complaints against doctors. Similar provisions for the hearing of complaints against dentists are also embodied in legislative proposals at State level. Bearing in mind the ethics of these professions, few would quibble with the proposition that the only ones competent to investigate medical and dental practitioners should be members of the same profession.

I would go further and claim that were skilled police investigators able to assist with complaints against members of the legal profession, a very different result might follow the investigation.

The main difference, of course, between the police and the other professional societies is that people are free to choose their own lawyer, their own doctor and dentist, whereas they have to take the policeman who is assigned to their case. There is an additional complication, too, in that no one needs a dishonest policeman so much as a professional criminal. If this concept can be applied to other professions, such as the legal one, you will no doubt be able to draw your own conclusions.

At any rate, it was against a background of general concern that the Australian Law Reform Commission deliberated the methodology and procedures for handling complaints against the police in 1975. In the introduction to its report, it is stated that the matter to be examined therein is how to establish a system of dealing with complaints which permits just and thorough investigation, whilst at the same time upholding morale and discipline in the difficult task with which the police are faced.

I hope I have set the scene adequately for me now to discuss my own experience.

I am certain that the Metropolitan Police's success in retrieving its reputation from the dark days described in a contemporary book as the "fall of Scotland Yard" and again become leaders in the field of criminal investigation was due solely to working very conscientiously indeed at the business of gaining hard evidence. Having gone to great pains to achieve this end, which meant, in the case of major criminals, running surveillance oriented intelligence exercises for considerable periods of time, to the detriment of a great deal of other pressing work, the eventual result was that the officers concerned had a very strong hand to play when the time to effect arrest arrived. The professional criminal who then found that, dealing with an honest force, he could not bribe or fix his way out of the position where certainty of conviction was obvious, turned to the betrayal of his fellow conspirators. Thus "supergrass" a new professional class of informant was born and as a corollary, so too were various systems of witness protection now a developed operational technique in London, as well as in many American cities.

But I leap ahead.

As long ago as 1929, a British Royal Commission on the Police reported:

"Some of the CID (Scotland Yard) evidence which we have heard leaves a disquieting impression in our minds. There is, we fear, a contingency amongst this Branch of the

Service to regard itself as a thing above and apart, to which the restrictions and limitations placed upon the ordinary police do not or should not apply. This error, if not checked, is bound to lead to abuses which may grow until they bring discredit upon the whole force."

This forecast gave a preview of the exposure by the Times of, and I quote, "an unhappy story written with legal advice and without pleasure. It is an account of corruption, greed, cynicism and injustices". As a result of this exposure, eventually two detectives went to jail, and a third failed to surrender to his bail. In the course of the appeal in respect to the two jailed detectives, the trial judge said of the investigators that they had rendered a great public service, adding, "It was, it would appear, mainly their intrepidity and skill which laid bare the hideous cancer which, if unchecked, could have done even greater and incalculable damage to law enforcement".

The investigation of the Times' allegation was, in the first instance, conducted by Metropolitan Police detectives. The way they went about their business did not restore the confidence at the Times, but pressures from the Home Secretary on the then Commissioner to arrange for independent investigation by officers from another force were strongly resisted by the Metropolitan CID. The senior officers of that Branch of the Metropolitan Police genuinely believed that only experienced Scotland Yard officers had acquired the skills and had sufficient knowledge of the complex procedures developed at the Yard over the years which alone could lead to convictions. Notwithstanding these representations, the police authority remain unconvinced and an Inspector of Constabulary was appointed to oversee the work and in due course a team of provincial officers were brought in to assist in the investigation and the convictions referred to above followed.

The attempt to introduce an independent element by appointing an Inspector of Constabulary left the gentlemen concerned deeply embittered. It was vital that he should have had executive power over the investigative team, but legally, Inspectors of Constabulary do not have an operational role, and this was not granted to him. It is curious, nevertheless, to reflect that under present arrangements, the Chief Inspector of Constabulary is regularly asked by the Chief Constable or the police authority concerned to nominate an officer from an outside force to conduct an internal enquiry and the Metropolitan Police is no exception to this procedure. In fact, this procedure was following in 1980 in no less than 126 cases.

I believe that police skills and knowledge are essential for the successful investigation of crime alleged to have been committed by police officers, not least because it is a matter of record that convictions of police officers charged with criminal offences are eight times as difficult to obtain as in the normal run of trials for similar offences. This, I think, is due to the fact that usually the evidence against police officers involves people with criminal records. Juries, it seems, find it extremely difficult to convict a police officer of good reputation and character (this is always the case) on the evidence of this kind, unless it is strongly supported by other facts.

Discovering and establishing this supporting evidence requires great skill and experience and these cases are not really suitable for amateur sleuths.

To retain public confidence in the impartiality of the investigation, however, in appropriate cases, the argument that the investigator should not be in a subordinate position to the chief of police of the force whose officers are under investigation is difficult to answer. As Robert Mark has said, the cynics amongst us will always have doubts about the will-

ingness of a subordinate officer to risk his career by exposing faults in supervision and in procedures, which is usually the case when searching investigations are made into any organisation.

It is the APPEARANCE of independence which is essential if the police are to be continued to be trusted to investigate their own affairs. I believe, however, there is general agreement that independent investigations involving senior officers from interstate should be confined to issues of real major public concern. Otherwise, the number of complaints under investigation could result in these important officers spending an unreasonable amount of time away from their own police forces.

Our case for internal reviews being a police matter would, I believe, be more convincing if all chief officers of police were seen to be willing to seek, in appropriate cases, this added degree of independence in the investigation of allegations of wrongdoing by members of their own force; clearly it is no longer enough to conduct a first class investigation if the community at large will not accept that the job has been well and honestly done.

The office I think I have missed most in Australia involves the Director of Public Prosecutions. In Britain, all allegations of crime made against members of the force MUST be submitted to the Director of Public Prosecutions for decision as to prosecution, unless the chief officer concerned can certify that he is satisfied that no crime has been committed. That is a very difficult thing to do. The British will not accept ex post facto review and the Complaints Board in Britain receives copies of the investigation of all complaints before any decision is taken on the action to follow from them (unless it is a criminal case and, in consequence, the Director of Public Prosecutions is the decisive factor).

Without such offices, the scene here is obviously not comparable. It is true too that the number of police forces to whom one can turn for independent investigation is, of course, very much more limited. I am grateful therefore that our relationships with the Ombudsman provides a degree of independent oversight of the manner in which complaints are investigated in the A.C.T. In developing our respective roles prior to the introduction of the Complaints (Australian Federal Police) Act 1981, the first hurdle between us, which had to be overcome, related to independent investigation. I am motivated by the concept that the Ombudsman must be satisfied, if it is humanly possible for us to do so.

This is the first and most basic step for us in our struggle to secure public confidence in the manner in which we deal with allegations of wrongdoing. As I have just said, I am conditioned to accept and welcome investigations from outside this force. But I have argued strongly that the advantages of an initial police investigation are compelling. Firstly, the investigator is conscious of the unwritten, as well as, written laws governing police procedure and behaviour; secondly, he will have appropriate experience in investigating important crimes; and thirdly, he can bring the authority to bear which is inherent in his office in a hierarchical organisation.

In regard to the first point the need for very precise rules governing the conduct of the police being included in the force General Orders, and that these Orders should be as open as possible is very much AFP policy. I have, for example, arranged for copies of the Orders and Regulations governing the force to be placed in the library at Parliament House.

There is another aspect to the issue of who should initiate enquiries. I am determined, as indeed are the majority of police, that any dishonest police officer will be prosecuted to conviction and his subsequent removal from the force obtained. I am, however, aware that privilege can appertain to

certain statements made to the Ombudsman and it is also true that any previous enquiry of witnesses can muddy the water in regard to subsequent criminal investigations. I was very grateful, therefore, to enjoy the active help of the Ombudsman in developing relationships between his department and my Internal Affairs Branch which enables him to satisfy himself about the progress of investigations. We have always had the understanding that if we in the AFP could not achieve that end, I would be as anxious as he to set up an independent enquiry.

I readily recognise the need for confidence between the Ombudsman and the complainant is equally vital and have agreed that the Ombudsman, or his representative, should be present at any interview conducted by the police with the complainant. This, of course, has the added advantage of satisfying the Ombudsman that the complainant's complete understanding of what is at issue is fully and properly recorded and, thus, forms an adequate basis for the subsequent enquiry. The new Act has, of course, legalised these procedures and includes a residual power if the Ombudsman is dissatisfied with our work to arrange for an independent enquiry, supervised by him. This residual power is quite important as there is nothing so stimulating to endeavour in any detective work as the certainty that re-investigation will take place if there is any lack of zeal or any attempt to distort the findings is apparent.

From the police viewpoint, I can visualise allegations of a political or especially sensitive nature in which it would be important for the original investigation to be undertaken completely independently, and should these circumstances arise, we will of course propose that action to the Ombudsman.

The requirement for an Internal Affairs Division is embodied in the Complaints Act and having been one of that small group who took part in the "palace revolution" at the Yard, which was led by a very experience and wise District Commander and which persuaded Sir John Waldron, the then Commissioner, to set up what subsequently became known as A10 Branch, it follows that I gladly support this development.

Last year saw publication of the first triennial Review Report of the British Police Complaints Board, to which I have already referred. The Board was satisfied that in general the investigation of complaints was thorough and satisfactory. They said they were aware, however, of a body of opinion that did not share their confidence or conclusions as the impartiality and effectiveness of police investigations. In their view, unexplained injuries sustained during the course of arrest or while in police custody represented the focus of discontent and they had considered whether it would be possible to provide a different machinery in such cases. The Board recommended that complaints of serious injury should be investigated by a specialised body of investigating officers recruited by secondment from police forces but answerable to someone other than a police officer. I am not aware whether a decision has been made at this stage or not, but, hopefully, the Chairman of the Complaints Board will be visiting Canberra in February of next year and we will be able to address ourselves directly to him.

I might, at this stage, make the point that it is not only independent bodies who can be dissatisfied with the standard of investigation of complaints and, indeed, Robert Mark, when he was a Deputy Commissioner, was very vocal about his concern.

A great many more complaints might usefully have been re-investigated for the reasons I have already given, but internal relationships and stresses which have been thoroughly explored in his book "In the Office of Constable" probably

explained why he did not feel that this course of action would have been profitable at that time.

The administrative set-up at Scotland Yard prior to the introduction of an internal affairs division was unsatisfactory, but, as I have said, it took a great deal of pressure to alter the situation.

Additional Detective Chief Inspectors had been introduced to every Division by the previous Commissioner in order to provide adequate resources for complaints investigation. It was intended that these officers would spend six months supervising major crime investigations, and the following six months on complaints against the police. As the complaints rate was so high, however, it was never possible to complete the caseload up at the end of one of these tours, which had the effect that the senior CID officers were sharing their interests between those two forms of enquiries. All too often the need for resources for the current investigations of major crimes in Divisions exercised too much pressure on those deputed to undertake internal investigations. Certainly one or the other had to be neglected.

Inevitably, the need for high standards in internal investigations made it all too clear that the work should be confined to those with proven track records, both as investigators and as men of great independence of spirit and, of course, integrity of the highest order.

It was my task to select the first members of A10 Branch, and I am glad to say that all of those initially selected reached high rank in the force. The fact that I also determined that, at least for the first year or two, promotions within the detective force in all the relevant ranks would be confined to those who had demonstrated their merit in A10 Branch, no doubt assisted.

It also seemed important to me to demonstrate to the force that any attempt to obstruct the work of A10 Branch should be dealt with vigorously. As a consequence, a Detective Chief Superintendent was given an immediate transfer to the uniform branch during those early days when a misguided loyalty towards his subordinates caused him to display undue interest in an investigation of officers serving on his Division. He was seriously affronted by the concept that something could take place within his area without him being given prior notice of it. Unfortunately, he decided to take this up with the investigators rather than with me. No similar difficulties arose thereafter!

Probably the most difficult task that faced senior officers at that time was the need to convince members of the detective force — one that had long been admired for its efficiency and effectiveness — that in fact their reputation was very much at risk. On my first week in my new job I made certain dispositions known to the four Deputy Assistant Commissioners, all men I might say, whose high rank reflected their great success as investigators, and all of whom were fairly public figures.

These dispositions affected the majority of the Commanders of the detective force and inevitably many were being transferred to posts with less prestige within the hierarchical system than they currently held, this prestige particularly being directed to the murder squad and the flying squad for example. I listened to what the Deputy Assistant Commissioners had to say, but maintained the original plan, which I explained to the officers concerned.

I discussed with them the conditions which had caused the Commissioner to state that he was quite willing to replace every detective in the force. Plain speaking was the order of the day on both sides.

The next day I addressed an assembly of all the detective officers of and above the rank of Superintendent, a very considerable body of highly experienced men and did my best to

persuade them that the force now had to demonstrate an unprecedented willingness to deal with allegations of misconduct within its ranks — in effect to “open the books for independent audit”.

It seems they were well prepared for this talk. Its 24 minutes duration seemed to me to be quite the longest period of time I have ever spent in such a situation. My audience showed self-control to an inordinate degree; no one moved a muscle, made any noise or responded at all. Other than to fix me with cold and hostile stares. Well, I received the message that they were so determined to deliver. As they were so clearly reflecting a feeling of being, as it were, stuck with me, I asked them to accept that I was equally stuck with them. I reminded them that it was vital that communication begin as soon as possible if we were to remedy the ills which I had up to then been describing.

The stony silence continued and I was about to give up and leave when a younger officer at the back of the hall taxed me with lack of goodwill in that the names and postings of the Commanders had appeared in the evening newspapers that day. He suggested that good manners and willingness to communicate might better have been demonstrated by keeping the matter confidential until I had given this information to them as a token of my wish to work with them for better days.

I had with me the press release which we had intended to distribute after the meeting. I displayed these to the audience and said that it seemed that at least one of the officers briefed the day before had seen fit to breach this confidence with the press. I continued that I would nevertheless have no inhibitions about passing on such appropriate information in advance, despite the risk of leaks. To my surprise, and probably the astonishment of everyone there, one of the Commanders leapt to his feet and wildly denied the accusations that were being made about his integrity. These denials were made in such an extravagant manner that every experienced officer present immediately identified the culprit.

The tension in the room had been high but relief from it by this very curious piece of behaviour was extremely fortuitous as far as I was concerned and the guffaws of laughter which followed are my strongest impression of this stressful period.

I am glad to tell you that communication began then and within a very short period afterwards, I was glad to be greeted as warmly as ever when doing the rounds.

I learnt one thing from this, and that was, that no matter how much they frightened me, apparently conscience had produced a coward or two within that particular body. In that room, however, were some of the finest men I have ever had the privilege to know and to lead; men whose devotion to their craft and their skill and dedication soon made itself felt.

Why did I tell this anecdote? To demonstrate my understanding of the deep hurt and wound to the self-esteem which honest detectives always feel when their integrity or the integrity of their organisation is severely and publicly challenged. I am very conscious, too, from personal experience that this hurt is suffered sometimes with even greater force by their wives and families.

There was a result from this early action. The transfers were widely publicised and Sir Robert Mark received a letter from James Callaghan, the Prime Minister, which is in his book, and worth quoting here. It said: “Quick, decisive, and right. All I hoped you would do. Congratulations”.

Having, as it were, made our dispositions, it was then clear that the only way to restore morale would be through successful operations against major criminals. Such was the calibre of my new command, however, that while complain-

ing bitterly about their low morale, they began to achieve remarkable results as a result of their concentration of effort on intelligence work and a readiness to ensure that every detail in every investigation was examined as thoroughly as human ingenuity could arrange, and despite the enormous drudgery which such work involves and the strain it imposes on men who were already working to the limit of their capabilities, they soon began to enjoy their work again, perhaps more than ever before.

I make this point because so often one hears fears expressed that police morale would be destroyed if investigation of complaints is pursued with independence and vigor beyond what is the current practice. In fact, my experience shows that the morale of detectives tends to be motivated in different ways.

A new wave journalist in the States, James Mills, wrote an article about a New York detective, having spent no less than five months with the detective officer concerned. This was a very penetrating piece. George Barrett, the detective, is quoted as follows:

"I am obsessed with the idea that I've got to win, and these animals can smell it. No one's going to mess with me and win because I've been around, I've been up against the bad guys. These animals on Broadway? I'll eat them up. I've got the tools and I know how to use them. If I can't get the best of the guy with punches, I'll kick him, and if he's a better kicker than I am, I'll go with the stock or the jack, and if I have to, I'll use my gun".

To some people George Barret is precisely what is wrong with law enforcement; to others he is all that can save it!

I introduce George Barrett in this discussion and I must say I have quoted very broadly from a very limited statement in a long article about his life as a New York cop to illustrate that the motivation of most detectives I know, is to be sure that the criminals whom they truly despise, don't win. Whilst they feel like that, a new system of complaints investigation, a change of command, while making them unhappy, is very unlikely to stop them working. At least that was my experience.

Having earlier dealt at some length with the need for public confidence in the integrity of police internal investigations, it would perhaps be easy to miss a more obvious point — the need for police management to demonstrate that the force's systems for internal supervision and for dealing with those suspected of committing crimes and so, are above reproach. In my opening remarks I also dealt with the fact that it is natural for suspicion to exist about the police — indeed it is probably a factor in regard to any system which is outside the experience of most citizens.

I am afraid, however, that television and crime literature have developed an awareness more of what we do not do, and I often feel the need for a method of brainwashing recruits for the police in order to remove from their minds all the misinformation which they have acquired from watching the "box". Be that as it may, the police should accept that fear and guilt complexes do exist in all of us, at least of the kind experienced when driving and directed to pull into the side of the road by a traffic patrol.

Having said that, let me say that as a professional policeman I find the imaginative leap which civil libertarians so easily make from proper fear of systems used by the secret police in Europe, on both sides of the Iron Curtain in my lifetime, to fears of equal gravity about our highly regulated procedures rather staggering.

The trial process alone has ensured that police have been as anxious as any other body to find ways to find a balance between the intimacy inherent in the interrogation process and the need to be accountable. This concern focusses itself

largely on allegations by Defence Counsels of impropriety in the taking of statements and the rules governing their admissibility provides the motive.

I think far too little credit is given in Australia to the Australian police system for obtaining a record of interview which I believe is far superior to the practice adopted anywhere else in the world. To record the question and answer process throughout the interview instantly on the typewriter and to read it over and invite the person making it to correct it, seems to me to be at least as good as any other system.

Another common cause for concern and certainly of complaint in Britain arose from allegations of access to legal advice being denied to those in custody. The fears in this regard reached such a height in Britain that the Criminal Law Act was amended and the new section, 62, was introduced in 1977. Specifically entitling an arrested person to have intimation of his arrest and the place of where he is being held sent, without delay, to someone reasonably nominated by him, or with no more delay than was necessary in the interests of the investigation or proven crime, or the apprehension of offenders.

An elaborate system was set up by which chief officers of police submitted monthly reports to the Home Office and they were required to complete an individual report in each case in which a request for someone to be notified was not dealt with within four hours, and indeed, where the period extends to 24 hours or more, a copy had to be sent to the Home Office.

Figures I have taken from the 1980 Report of Her Majesty's Chief Inspector of Constabulary show that the number of cases in which notification was delayed for any substantial period of time was very small. In fact, the number of cases not dealt with within four hours per 10,000 arrests was six. The number per 10,000 arrests which were not dealt with within 24 hours was 0.6.

Not the least important factor arising from this report and the reason I mention it here is that this was the first time that such information had been collected and the figures, I suggest, do more than anything else to disprove allegations then commonplace that the police were routinely refusing to notify lawyers or other people that arrests had taken place.

The next long-standing problem concerns what has come to be known as "the verbal", a familiar phrase even amongst the most law abiding, by reason of our addiction to television and the way in which they strive to be more real than the real thing. Verbals — I remember one senior detective being cross-examined in the Old Bailey about statements alleged to have been made by the accused person. He put up a very stone-wall response to cross-examination, which, I think unwisely, caused Defence Counsel to ask him if he had ever heard of the expression "a verbal" and, if he had, would he tell His Lordship what he understood by it.

If you had known this detective as well as I did, you would have held your breath whilst waiting his reply — as I did and I didn't have to wait long. He said:

"I understand a verbal, My Lord, to be a statement voluntarily made by an accused person when asked to account for his actions by the police, but one which is subsequently altered on the advice of Defence Counsel".

I must confess that the officer's impartiality as a witness was not accepted by everyone present in the court.

The solution to the problem of "the verbal" most commonly canvassed in recent years has been the tape recorder, and perhaps the most authoritative statement made of the problems involved with the recording of statements is contained in the Report of the Royal Commission on Criminal Procedures, published in Great Britain in January 1981.

This is not the place to summarise all of the arguments.

The Royal Commission, having pointed out there were some very real and practical difficulties, put the main issues in the following words:

"The proponents of tape recording believe that it has two major advantages. A tape would provide not only an accurate record of all that was said at an interview, but also monitor upon the way the police conducted the interview. The court would not have to rely upon an officer's often inadequate memory but would be able to hear the suspect's tone of voice and to determine whether inducements were given or threats made. The savings on lengthy trials within trials would offset the cost of taping.

Against this, opponents point to the cost, particularly of tamper-proof equipment and of editing and transcribing. They are concerned about the inhibiting effect of the tape recorder on the suspect in relation not only to admissions about the offence concerned, but to the gathering of criminal intelligence generally. They foresee attempts to compromise interviewing officers by feigning assaults or false allegations of inducement given before the recorder was switched on. There might also be allegations of tampering. These would give rise to as many trials within trials as occur now. Untaped evidence, it is feared, would be regarded as inferior and there would be problems over the audibility and intelligibility of the recordings".

Well, the Royal Commission dismissed the concept of recording the whole of all interviews on grounds of costs alone, pointing out the overwhelming operational difficulties. All officers on duty would need to have a recorder immediately available, and recordings made in the open or in public places using a small pocket recorder would often be of poor quality because of the background noise.

The British study showed that interview rooms in police stations would need acoustic treatment. There are also problems of non-verbal responses, inaudible replies and of dialect. All were exacerbated outside the more controlled situation of the formal interview at the police station.

They concluded that no system of recording could eliminate the challenge to evidence about what had been said in an interview. They thought that the tape recording other than in unusual circumstances should be confined to interviews in police stations. This was the police practice studies overseas by the Commission.

The present state of technology does not encourage the view that automatic voice transcription will be available in the foreseeable future, and the commission's conclusion was that transcription should be kept to a minimum.

The Commission's visit to the United States and Sweden led them to the view there is less force than they expected in arguments that the presence of the recorder would hamper investigation. Experienced U.S. investigators thought the advantages of having the admission on tape far outweighed the drawbacks.

There was no evidence that special anti-tampering measures would be needed. The Commission were advised that with the rapid advance in micro-technology, it would be possible to develop electronic tamper-proof devices which would be relatively inexpensive but simple to operate.

We are working in my force to prepare for the enactment of the draft Bill dealing with criminal investigation procedures and as far as tape recording is concerned, there are new arrangements for the recording by police of confessional evidence, including the use of the sound recorder. We are now putting these arrangements to test and senior police from the Headquarters, the Criminal Investigation Branch and Dr Malcolm Hall of the Scientific Research Directorate have been brought together to anticipate what we believe will be the relevant provisions through exercises to be undertaken oper-

ationally by experience investigators drawn from a number of our geographical Divisions.

After training, those investigators will be provided with sound recorders with which to record the oral confessions of offenders suspected of committing indictable offences. We will monitor this process, which it is expected will extend over several months.

There is an interesting development which I had hoped to demonstrate to you here, but as always, there are delays in pushing the boundaries forward; that is the development of a new pocket tape recorder, for which we have a promise of the first production models. This machine, while not competing in any way with the duplicated tape arrangements which will probably be necessary under the criminal Investigation Act will, nevertheless, be a valuable defence from allegations of verbals at the time of arrest. The machine is designed to record on the tape. As it is being used, the date and continuously the time, the recorder being used and other additional information about the user. This information about time (and date) is supplied by an inbuilt clock and can be demonstrated by playback through a specialised playback machine. It is tamper-proof!

In a recent AFP/Victorian case of some importance, the officers involved were at great pains to record every detail of every conversation they had. I believe, through hidden devices, several of the people being interrogated did the same. I am absolutely certain that the success of that case began the moment the police tape recordings were played over to Defence Counsel. Those officers are ardent supporters of tape recordings.

I seek a further aim, of course, and that is to demonstrate the willingness of my investigating officers to record all they say and do; this will not only enable them to complete their own reports, refresh their memories and so on, but will eventually make the old style pocket book redundant and will end, finally, the legend of "the verbal". I hope by such means to provide that independent supervision which every officer needs now for his own protection, for as a more skilled criminal class becomes more effective in attacking the police, so police officers become more vulnerable and need greater protection.

One of the last things perhaps I ought to say about the desire for the police to be accountable and to show that I am not without my prejudices, is to record the sense of dismay I had when I realised that the Criminal Investigation Bill and those who drafted it accepted that there was no way in which proper regulations for the conduct of the police could be arrived at unless they were imposed with the full force of law. As the Bill will contain no orders on the police which are not widely accepted as being necessary and, in fact, I think the majority of them have always been in the General Orders appertaining to the Metropolitan Police Force, it is a curious reflection on the state of trust of the police in our society that we cannot be allowed to conduct our affairs without an Act setting out precisely procedures for the investigation of crime.

However, I am confident it is not too late and I am more than content that the Australian Federal Police while not being exactly a laboratory of police affairs, will nevertheless be happy to be in the forefront of developments in this field.

The theme was how do we "Police the Police"? I think I must say I still believe the very best and only people who can do that task is the police themselves, but I freely admit that open auditing of the way in which they do it, is essential to public confidence.