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EXPLANATORY MEMORANDUM TO CHAPTERS 11 TO 30 INCLUSIVE

1. Chapters 11 to 30 deal in detail with the 21 matters fully investigated by the Board. Because of the similarity of the Keeley Matter re Gaudion and the Owen Matter re Gaudion, those complaints have been dealt with in the one chapter—Chapter 22. Accordingly, although 21 matters were dealt with they are covered in 20 separate chapters.

2. To each chapter has been appended a list of the witnesses who gave evidence in that particular matter, together with the relevant transcript references. In addition, any exhibit of a documentary nature considered of particular importance in a matter, appears as an appendix to that matter; for example, reports compiled by Police Officers, Records of Interview, transcripts of tape-recorded conversations, etc.

3. As far as has been possible all documents appended to a particular chapter appear in their original form. In other words, the spelling errors in such documents are not printers' errors but in fact appear in the document itself. Grammatical construction is that appearing in the original document. In this same connection no attempt has been made to "tidy up" phraseology or grammatical construction in passages of evidence quoted from the transcript. As far as possible they faithfully reproduce the evidence as it was given.

4. It is to be borne in mind that every aspect touched upon during the Board's inquiry cannot be adverted to in summaries of the nature of those appearing in Chapters 11 to 30; nor can every matter which influenced me in arriving at a particular conclusion. For instance, in some cases it was as much the demeanour of a particular witness as the evidence he gave which caused me to form a particular view as to his veracity. In the event the reader of a particular chapter requires more information concerning the matter, he has no alternative but to read the transcript in relation to it and the relevant exhibits.

5. At the conclusion of the last chapter of the Report and appearing as an Appendix to the Report are copies of the more important Standing Orders touched upon during the course of the Board's inquiry. After each Standing Order appear the matters in which it was breached, and the manner in which it was breached. I stress that breaches of Standing Orders were discovered with such frequency during the course of the Board's investigation it has not been possible to do more than briefly advert to the more blatant.
CHAPTER 11  
THE COX MATTER

Introduction

The investigation of the complaint made by Donald William Cox to the Board opened up a number of matters, viz.:  

(a) those concerning Cox himself and the treatment he alleges he received at the hands of the Police when interrogated by them at Russell Street on the 17th December, 1973;  
(b) those concerning the behaviour of certain Police Officers involved in connection with the interrogation of Cox and his consequent trial, but not involving Cox himself; and  
(c) those concerning the behaviour of Police Officers other than those involved in the interrogation and trial of Cox, but which emerged during the investigation of the Cox Matter by this Board.

The complaint Cox made to this Board was that Sergeant Gomer John Davies and Senior Constable Colin Barry Pavey fabricated a Record of Interview which they alleged had taken place between them and Cox at Russell Street on the 17th December, 1973, gave perjured evidence in respect of it at his trial in July, 1974, and deliberately destroyed evidence which would have assisted Cox in establishing his innocence.

As the hearing of the Cox Matter proceeded, matters arose in the course of the evidence which, although not involving Cox, nevertheless warranted investigation by the Board. The first and most serious of such matters concerned evidence given by Sergeant Davies and Senior Constable Trevor Wallace Skan at the trial of one Alan Roy McDougall in the month of November, 1974. The allegation made in that connection was that both men committed perjury during the course of their evidence at that trial—so much so that before the trial concluded the Jury was discharged without verdict and a "nolle prosequi" was subsequently entered.

The second matter which arose during the investigation of the complaint made on behalf of Cox, and which the Board inquired into, related to allegations made by certain Police Officers of serious malpractice by Cox's Solicitor, Terence Francis O'Brien.

Having made a detailed investigation into the various matters raised before the Board, this Board ultimately was satisfied that there was credible evidence raising a strong and probable presumption:  

(a) that Sergeant Davies and Senior Constable Pavey concocted a Record of Interview between themselves and Cox, then gave perjured evidence in relation to it at Cox's trial;  
(b) that Sergeant Davies and Senior Constable Pavey did destroy evidence which would have been of assistance to Cox at his trial; and  
(c) that Sergeant Davies and Senior Constable Skan committed perjury at the trial of Alan Roy McDougall in November, 1974.

The Board was further satisfied that the allegations of malpractice made against Mr. O'Brien were made maliciously, without foundation, and in an attempt to discredit him. It was ultimately the finding of the Board that the three Police Officers concerned committed perjury during the course of their evidence before the Board.

I propose to first deal with the allegations made by Cox relating to the Record of Interview, the destruction of evidence and the perjury committed by Sergeant Davies and Senior Constable Pavey at his trial. Although I shall endeavour to deal with them in that order, they are to a great extent so inextricably woven together that it is not possible to place them into watertight compartments.

As in other matters dealt with by the Board, it is necessary to first say something of Cox's background, and how he came to be in the hands of the Police at Russell Street on the 17th December, 1973, in the first instance.

Background

At the time he gave evidence before the Board, Cox was aged 28 and was a driver by occupation. As at December, 1973, his prior convictions consisted of one for using insulting words (11th July, 1966), one for offensive behaviour and resisting arrest (16th October, 1967), one for unlicensed driving and stating a false name and address (4th October,
1971) and one for larceny (18th April, 1973). In respect of the latter conviction (probably his most serious), he was fined $100, in default one month's imprisonment. (See his Criminal History Sheet, exhibit 611.)

It could be said of Cox, therefore, that he was nothing more than a petty offender, and one not falling into the same category as Gibb, Prendergast, Power and the like.

On the 6th September, 1973, an armed robbery occurred in Melbourne during the course of which a Melbourne and Metropolitan Board of Works payroll was stolen, the sum involved being of the order of $21,000-$22,000.

According to Cox, on the previous evening he had been drinking in the Gowerville Hotel at Preston when he was approached by two men known to him to be violent criminals, who demanded the keys of his Ford Fairlane motor vehicle, and who made various threats to him and in relation to his parents in the event he declined to comply with their demand (page 8770).

Being fearful of the repercussions in the event he did not hand over the keys and thus his car, Cox alleged he did what was demanded of him.

Knowing full well that the men intended to use the car in the commission of a crime, and that it was likely the Police would trace the car to him and to the home of his parents with whom he was then living, Cox did not return to the home of his parents to sleep that night, but in fact obtained some blankets from a bungalow at the rear of his parents home, then went to the home of his employer and slept in the cabin of one of his employer's trucks parked in a nearby street (page 8770).

On the following morning he telephoned his mother and was informed by her that the Police had in fact called at his parents' home. He would have the Board believe that his mother did not tell him why the Police had been there (page 8770).

Later that day he purchased a copy of the Herald newspaper, read about the robbery and the fact that the vehicle used by the offenders had been a Ford Fairlane.

As he said at page 8671 of the transcript—he put two and two together, thought it was his, went into the city, bought a train ticket to Sydney and went to Sydney.

Some three months later and in all probability on Wednesday, the 12th December, 1973, he returned to Melbourne. On his return he ascertained his parents had engaged a Solicitor to act on his behalf—Mr. Terry O'Brien (page 8671).

On Thursday, the 13th December, 1973, in company with his parents he saw Mr. O'Brien, and gave him an oral account of the events surrounding his trip to Sydney. On the following day, i.e. Friday, the 14th December, 1973, he again saw Mr. O'Brien, this time accompanied by his father, and in the presence of Mr. O'Brien dictated a statement to Mr. O'Brien's Secretary (exhibit 612). To use his own words, "I was telling Mr. O'Brien and he was relating it to his Secretary who was taking it down, I don't know if it was in shorthand" (page 8673).

The factors to be noted about that statement are these:

(a) It gave a very broad account of events concerning the loan of his car and his trip to Sydney—so broad in fact that the Police would have had the greatest difficulty in checking it and in the event any of the statements contained in it were false, establishing that fact.

(b) It contained a flat denial that Cox had taken any part in the Melbourne and Metropolitan Board of Works robbery and on its face exculpated him from any involvement in the robbery whatsoever. In this connection he maintained he had only handed over the keys to his car by reason of the dire threats made to him and made in respect of his parents.

(c) Finally and in conclusion, it contained the following paragraphs:

"I want this matter cleared up and if the Police wish to interview me I am quite prepared to be interviewed providing that either my solicitor or an independent witness is present so that I will feel confident that what I say is accurately recorded.

I have instructed my legal representative to contact the Police regarding this matter."
Following advice I will refuse to go with them unless under arrest or unless my legal representative or independent witness is present. If the Police don’t arrest me, as I said, I am happy to answer all questions except to name the 2 men, providing I have a witness. If the Police do arrest me and take me away where I am alone I am going to tell them ‘I have nothing to say’ and no matter what happens I am determined to say nothing and to refuse to answer questions. I have a right not to answer questions and I will use that right.

If the Police take me away and make a statement setting out that I would not answer questions and ask me to sign it I will sign it. I will sign anything that sets accurately anything that is said between us.3

Having had that statement prepared on his behalf, that same afternoon Cox attempted to contact the Armed Robbery Squad by telephoning Russell Street from Mr. O’Brien’s office. He was told, however, that all members of the Armed Robbery Squad were out on a job, and advised to telephone again on the following Monday.

On Monday afternoon the 17th December, 1973, Cox returned to the office of Mr. O’Brien and at approximately 3.20 p.m. telephoned the Armed Robbery Squad and spoke to Inspector Gordon Maxwell Williams. Having told Inspector Williams he was at Mr. O’Brien’s office, Inspector Williams said he would send two Detectives down to see him. Approximately an hour later two Detectives arrived, viz. Sergeant Davies and Senior Constable Pavey.

What then occurred appears at pages 8674-5 of the transcript. I consider it of sufficient relevance to include it in this summary.

Q. On their arrival were you introduced to them?
A. Yes, I was.

Q. Did something happen in relation to your statement?
A. Yes, they were handed a copy of my statement.

Q. What did they do with it once they received it?
A. They read it.

Q. What happened then?
A. They said they had to take it back to Russell Street and Mr. O’Brien said, “Can an independent witness go?” and they said “No”. They said they had to take me just by myself and Mr. O’Brien offered them a typewriter if they liked to interview me in his office and they said, “No”, they had orders to take me back to Russell Street, to place me under arrest.

Q. Apart from saying they had orders to take you back to Russell Street, did they ever give you any reason as to why they declined Mr. O’Brien’s offer of the use of his rooms?
A. No, no reason at all.

Q. On your arrival at Russell Street, where were you taken?
A. I was taken to the fifth floor and placed in an Interview Room.

Q. Would you describe the furniture and the lay-out of the room to Mr. Chairman?
A. Yes, there were two tables. There was one as soon as you walk in the door and one straight across, a small steel laminex-topped one and to the right there was a wooden table about five foot by three foot and there were two chairs at the wooden table and one at the steel table.
Q. When you say a wooden table, it had a wooden top?
A. Wooden top.
Q. Do you remember whether it had wooden legs?
A. Pretty sure it had wooden legs.
Q. Where were you seated in the room?
A. I was seated at the wooden table on the end next to the door.

I turn now to the Record of Interview allegedly had by Sergeant Davies and Senior Constable Pavey with Cox.

Record of Interview had by Sergeant Davies and Senior Constable Pavey with Cox

From the material I have already adverted to at this juncture, one has a fairly clear picture of a young man determined not to be charged with any criminal offence. To this end, and in the first instance, he had fled the State of Victoria and gone to Sydney. Almost immediately upon his return, he entered into consultation with his legal adviser. In order to forestall the Police compiling a statement which might be in any way incriminatory of him, he had his Solicitor prepare one to be handed to the Police on his behalf. True it is that statement was in general terms making it difficult for the Police to check the accuracy of the material contained in it. In addition it was hedged with provisos which had to be met prior to Cox making any answer to questions put to him by the Police. Those provisos adverted to the presence of his Solicitor or other independent witness; in the event an independent witness was not present, a refusal to answer questions other than to indicate that he had nothing to say; and a refusal to sign any statement other than one that indicated he would not answer questions, or that set out accurately anything that was said between himself and the Police.

Not only was the statement containing those stipulations handed to the Police at Mr. O'Brien's office, the following exchange occurred between Mr. O'Brien, Cox and the Police, immediately prior to Cox leaving Mr. O'Brien's office in the custody of the Police. (See the following evidence of Mr. O'Brien at page 8740 of the transcript.)

Q. What happened then?
A. From memory, I think he made it clear he wanted to question him at Russell Street and if need be arrest him. He either said he was going to arrest him or arrest him if he had to. I asked if Mr. Cox, Senior, could be present during the interview at Russell Street and from memory, he said, that would have to be discussed at Russell Street when they got there. I said could I ring Mr. Williams who I thought was in charge or was a senior member of the Squad at that time to see if he would agree and Mr. Davies said at this stage that he couldn't wait for a phone call and said he would arrest Mr. Cox and take him to Russell Street.

Q. With or without his father?
A. From memory, I think he was going to arrest him, but the impression I got was that his father was not going to come, but I could not be sure of that.

Q. During the course of these discussions you have said you had in the presence of these Police Officers was anything said to Cox as to what he should do if arrested?
A. I said something to the effect that if you put him under arrest my advice to him, the substance of it, would be that he refuse to answer questions and Cox said he was not going to answer questions.

Q. He would not answer them at all or would not answer questions in the absence of an independent person?
A. I think the words he used was that he would not answer questions at that stage. I think it should be made clear there was a grave doubt as to whether another person would be allowed to be present.

Q. Did you, when it was intimated to Cox that he was under arrest or was about to be put under arrest, ask Cox what his attitude would be to answering questions if his father could not be present, and what did he say?
A. I can recall Cox saying he would not answer questions, as to what prompted it, I think I said to him—to the Police, I am sorry, I have given Cox advice not to answer questions if a witness was not present and Cox then said he would not answer questions without a witness being present. I am not a hundred per cent sure just what occurred before Cox made his statement.
Q. Was there some discussion about bail?
A. Yes, I said if Cox is not going to answer questions it should not take very long because you should not hold him there for long, you should charge him and he should be bailed very quickly. I don't think I got any reply to that. I think the Police were in the lift at that stage just outside the office.

Q. At that stage it had been indicated to Cox he was under arrest?
A. I think—certainly if not in actual words, I think probably in actual words, but they were in the process of taking him away anyway.

If ever one had an instance of a suspect doing his utmost to protect himself from Police interrogation and prosecution, it was in this case. At that stage, i.e. when arrested and taken from Mr. O'Brien's office, there was little more Cox could have done to protect himself. Little more apart from follow a direction given to him by Mr. O'Brien and to which I shall now advert.

Based on his experience of previous encounters with the Armed Robbery Squad, Mr. O'Brien had adopted a practice at this time of advising any client about to be interviewed by members of that Squad to surreptitiously write on, or underneath, the desk at which he was seated whilst being interviewed, the words, "It's lies" in the event he considered he was being "verballed" or false evidence concocted against him and sign his name. To enable the client to do this, and as he did in this case, his practice was to give the client a biro as he was being taken away by the Police (page 8741).

If one pauses for a moment, and considers the steps Cox and Mr. O'Brien had taken to ensure nothing of an incriminating nature would emerge from any conference between Cox and the Police, one's immediate reaction would be to say—"Under no circumstances will that Occur".

Yet, according to the Police, i.e. Sergeant Davies and Senior Constable Pavey, that was the very result of their interview with Cox. True, the Record of Interview was untaped and unsigned, but nevertheless they allege it was a genuine Record of Interview and one in which Cox implicated himself as an accomplice insofar as the Melbourne and Metropolitan Board of Works robbery was concerned.

I am quite unable to accept this evidence. Both as a matter of probability and as a matter of human behaviour, it is in my view most unlikely that Cox, who clearly had a well developed apprehension about the likely outcome of his interrogation by the Police, and who had undertaken elaborate precautions to safeguard himself against such eventuality, would, within an hour or so of leaving Mr. O'Brien's office, have decided to throw away the shield forged for his protection by Mr. O'Brien, and meekly capitulate by admitting his complicity in the commission of a serious offence. Equally, I am quite unpersuaded that Cox, having also confessed to the Police that O'Brien had conspired with him to fabricate his defence and, on the Police version, being aware that such assertion was embodied in the Record of Interview, would nonetheless have retained O'Brien's services (as indeed he did) in the committal proceedings and later at the trial.

I turn now to consider in more detail the versions given by Cox, Inspector Williams, Sergeant Davies and Senior Constable Pavey as to what occurred at Russell Street between the arrival of Cox and the time at which he was lodged in the cells at the Watchhouse. Whilst I am reluctant to include large passages from the transcript in a summary of this nature, in this instance I consider I have no alternative.

The following is the account Cox gave in his evidence in chief at page 8675 et seq. of the transcript. It relates to those events that occurred after he was seated at the desk in the Interview Room.

Q. Having been seated there, what happened then?
A. I was there for about 20 minutes to half an hour and Detective Williams came in.

Q. Up until the time that Detective Williams came in, were you alone?
A. Yes, I was.

Q. He came in after 20 or 30 minutes, what happened on his arrival?
A. He introduced himself and asked me what I knew about the armed robbery and I said only "What I have got to say is in my statement I made to my solicitor" and he said—he started asking me a few questions, where were Harris and Workman and I just said that I wouldn't have a clue.

Q. Harris was one of the persons eventually charged with you?
A. Yes.
Q. Did you know him prior to this occasion?
A. Yes.

Q. Where had you met him?
A. Several times, at the Gowerville Hotel.

Q. When you were asked about Workman, was any Christian name given?
A. No.

Q. Do you know a Workman?
A. Do I know him? Yes.

Q. How many people with the name of Workman are there?
A. There is Greg and Wayne. I know Wayne and Greg is his younger brother.

Q. Have you met Greg?
A. Yes, I know him well.

Q. Where did you meet him?
A. I have known him all my life.

Q. Did you ever go to school with him?
A. No, I left there and started an apprenticeship at Collingwood Tech. after that.

Q. Did you complete that apprenticeship?
A. No.

Q. What was the nature of the apprenticeship?
A. Plumbing.

Q. How long did you stay at Collingwood Technical School?
A. Three years.

Q. Is it correct to say your education, as it were, extended through until you were about 18?
A. Approximately 18.

Q. You were asked about Harris and Workman. What exactly were you asked about them?
A. I was asked where they were and I said I didn't have a clue and Detective Williams said, "Don't give me that, you know where they are" and I never replied. He said to me, "You better have a little think about this, I will be back later", something to that effect, and he left the room.

Q. What was the next thing that happened?
A. I was left there for about 15 or 20 minutes and Detectives Pavey and Davies sat at a steel desk and Davies sat at the desk I was on and Pavey was asking about my car. He said, "Was it manual or automatic?" and I said, it was automatic and he asked me if it went well and I said it did. It was silent then for a couple more minutes and Detective Pittaway—as I know him now, I didn't know him then—and another chap came in and Pittaway just said, "So you are Donald Cox" and he walked out again and Detective Williams came in again and started saying, "I know you received $1,000 for lending your car, you know where Harris and Workman are, you have lent your car to them before". I never answered and he showed me a document. It had Harris and Workman's name on it, that they had been consorted in my car before and he made a couple of accusations and then left the room again and I think Davies and Pavey left the room, too, and about ten minutes or quarter of an hour later they came back with photos of my car and a sawn-off shotgun and a bag of bullets. They showed me the photos of my car and they asked me if I had seen the shotgun before. I said, No, I hadn't or something like that and he said "Pick it up and have a look at it" and I said no, and Detective Davies asked me about my wife, how come I was divorced and questions like that and I said I didn't know, it was just one of those things.

Q. You were asked questions of personal details?
A. Personal questions.
Q. Was anything asked of you in relation to the armed robbery?
A. No. I think I was sitting there for about quarter of an hour, 20 minutes, and I remember Davies, I don't know if he was writing anything down, it looked like he was just doodling on a piece of paper. Detective Williams came in the room again and said goodnight to the two detectives. He said, "See you Monday" or something like that and he left the room and then Davies and Pavey left the room. They came back in about another quarter of an hour and Detective Pavey asked me if I would like a cup of coffee and I said, "Yes please" and he said, "Make it yourself". I made a cup of coffee and I went back in the Interview Room, I don't know for how long, 20 minutes or half an hour, and he came and got me and took me to take my fingerprints.

Q. Where do you say you made the coffee?
A. It is a little room just next to the Interview Room, before you go into the Interview Room.

Q. So after you made it, where did you go then? Back into the Interview Room?
A. Yes.

Q. You say you were by yourself whilst you drank that?
A. Yes.

Q. When you gave evidence at the trial, you told the jury how you had come to do some writing on the desk. Would you tell Mr. Chairman when it was in the course of these proceedings that you came to do that?
A. It was the second time, just after Detective Williams left the room.

Q. What was it that made you start to do it at that point?
A. After he said he knows I have received $1,000 to lend my car, that I knew where Workman and Harris are and other things he was saying to me.

Q. Can you recall any other expressions he used?
A. There was one, "I don't care who wears it, as long as I clear my books", something like that, something to that effect. When he left the room I wrote under the desk, "It's lies" and signed my name.

Q. Perhaps we can try and obtain from you exactly where this was written? Was it written on the part of the desk facing you?
A. Yes.

Q. Assume this envelope is the top of the desk, was there any wooden board around underneath the desk?
A. Yes, and I signed it on that bottom piece.

Q. On what represents the wooden board, the vertical surface?
A. Yes, the table was covering where you could see it.

Q. The table top edge overlapped, provided a verandah over the area where you wrote, "It's lies"?
A. Yes.

Q. Imagine you were going to write it on the end of that table in front of you. Did you write it on the outside surface of the vertical board? Would you like to leave the witness box and indicate where you actually wrote it?
A. I was sitting here and that was the end of the table (indicating). It was where that steel part is, that top part came out further than this table, and it was just underneath there.

Q. You wrote it on the outer side of the vertical piece of board under the table top.

Q. What did you write it with?
A. A biro.

Q. Do you recall where you had got hold of the biro?
A. Yes, at Terry O'Brien's office.

Q. Had you done this off your own initiative or were you given advice about it?
A. I was given advice about it.

Q. Who gave you that?
A. Mr. O'Brien.

Q. What was it he told you?
A. If they make any false accusations towards you or try and say things about you, if you think it is false write in some part of the room, "It's lies".
The Cox Matter

Q. You are telling us then that after your coffee, Mr. Pavey indicated that he was going to fingerprint you?
A. Yes.

Q. Were you then taken from the Interview Room?
A. Yes, I was.

Q. Did you observe Mr. Davies at that stage?
A. Yes, Mr. Davies was in the room, the Armed Robbery Squad room. He was in about the middle of it, I think, at a desk and he was typing. I wouldn't have a clue what he was typing.

Q. After you had been fingerprinted, what happened to you then?
A. I was taken down to the Desk Sergeant down below at Russell Street and I was asked if I had any complaints. I said no.

Q. Judging by what you had written on the surface of the desk, you must have had some complaints?
A. Yes, but I didn't think it would do any good making a complaint to the Policeman.

Q. Is that the reason you say you didn't voice any complaint?
A. Yes.

Q. Approximately what time do you recall being lodged in the Watchhouse?
A. About half-past seven, I think it was. Between quarter-past and half past, I am not too sure.

Inspector Williams' account relating to his contact with Cox whilst Cox was at Russell Street that afternoon, appears at page 8821 of the transcript. It could not be more simplistic.

Q. On the 17th December, 1973, were you at the Armed Robbery Squad office when a man called Cox was there?
A. Yes.

Q. Do you recollect speaking to him?
A. I did speak to him. I went down to the Interview Room and saw him there and I spoke to him.

Q. Can you recollect what you said to him?
A. No, I can't remember exactly what it was, but it was only a short conversation.

Q. Would you have, as it were, interrogated him about what he was suspected of?
A. No.

Q. What would your conversation be limited to in those sort of circumstances?
A. I would just ask his name. My main interest would be to have a look to see what he looked like.

Q. I take it you had never seen him previously, Mr. Williams?
A. No, Sir.

Q. You learned later that he was charged, did you?
A. Yes.

Sergeant Davies' account on the other hand was somewhat lengthy and painted a picture of Cox so different from the picture painted of Cox up to the time at which he arrived at Russell Street, as to justify its inclusion in this summary if for no other reason than that. It appears at page 8854 et seq. of the transcript and is as follows:

Q. Mr. Davies, did you ask Cox a series of questions concerning the robbery?
A. Yes.

Q. And when you did that, and indeed from the time you had come from Mr. O'Brien's office, had Cox presented, through Mr. O'Brien, a document which he had signed which purported to say that he had loaned his car to some people he was not prepared to name through fear, is that right?
A. To the best of my knowledge, Mr. O'Brien handed it to me in the presence of Mr. Cox at Mr. O'Brien's office.

Q. And you kept that, did you, for the time being for the interview of him?
A. We did, yes.

Q. In the interview, did you ask the questions?
A. I did.
Q. Did you type down the questions and the answers?
A. Yes.
Q. And did the interview follow this pattern, that having obtained his particulars, you then asked some questions about the statement Mr. O'Brien had furnished which Cox answered?
A. Yes.
Q. Did you put the exhibit that you had to him?
A. As the interview went on, yes.
Q. And did they include some photographs of his car?
A. I think there were four photographs altogether of his car.
Q. A sawn-off shotgun?
A. Yes.
Q. Mr. Davies, it is not clear whether he was shown merely a photograph of another gun, which seems to be a sawn-off rifle, or whether he was actually shown the rifle itself. Can you remember now whether you had the rifle, which is certainly shown in the photographs, but can you remember whether you had the gun?
A. It was probably in the overnight bag and I think there was the sawn-off .22 with red tape, red binding on the handle. That was in the bag and was shown to him on that night.
Q. In any event, it was certainly depicted in the photograph, was it not?
A. Yes, it was.
Q. And, Mr. Davies, did he follow the pattern for a while of re-asserting largely what he had said in the prepared statement, was that how the interview got under way?
A. Yes.
Q. Can you remember Sergeant Williams having any dealing with Cox?
A. The only thing I can recollect is that as we came back into the office with Cox for the first time, that is when Cox was in the office, to my knowledge, we walked down the corridor leading towards the Interview Room and I think Inspector Williams may have said something to the effect of "How are you?" or something along those lines, something very short, and without much importance. That is the only recollection of Inspector Williams speaking to Cox.
Q. Evidence has been given to the effect that Williams did speak to him and seemed to have some document indicating that Harris and Workman had consorted on a prior date in Cox's car. For a start, do you recollect having any personal knowledge of such an incident?
A. No.
Q. Can you remember Williams ever showing Cox that?
A. No, I can't.
Q. It is common ground that Cox was not with you for some short time immediately after he arrived at Russell Street?
A. For about, say, 10 to 15 minutes.
Q. Are you able to say of your own direct knowledge whether or not anyone else spoke to him at that time?
A. I didn't think anyone spoke to him, but I can't definitely say yes or no.
Q. Now, a couple of other matters. At one stage in the interview you seemed to know the distance from his employer's house, it turned out to be a Mr. Redding—really, it is the distance from the hotel to Redding's which you put at 3 miles. Do you remember you asked him, "It seemed you walked three miles"?
A. Yes.
Q. How are you able to calculate that?
A. I walked into the corridor for a short distance and there was a very large map taking up about 8 feet or 10 feet square, and I measured it with a ruler, a rough approximation.
Q. First of all, did you believe there was more than one person involved in the robbery?
A. Yes.
Q. Did you have any belief as to who the participants were?
THE BOARD: This is prior to the time at which he actually interviewed Cox?
MR. PHILLIPS: Yes, thank you Mr. Chairman?
A. Yes, I think I had knowledge from a daily circular which was circulated regarding a number of suspects.
Q. Can you remember now whether you appreciated before the interview that it was alleged that a person named Harris had been in it?

A. Without referring directly to the date of the daily circular, I cannot be specific, but I think I would have.

Q. Or Donald?

A. No, I can't recollect seeing Donald's name on the circular regarding it.

Q. Now, it is common ground that at one point of time he was offered a cup of coffee, and accepted?

A. Yes.

Q. Now, the Record of Interview reads that shortly before that, Cox said to you, when you put to him he had been given some money by the men for the loan of his car, "Christ, no. Oh, Christ, give me a go, for Christ's sake. This has nearly driven me out of my mind. Leave me alone, please." Now, Mr. Davies, as best you can, will you try to describe this young man's demeanour up until he said that?

A. He appeared to be reasonably nervous; he was jumpy. He did not appear to be happy to be in the office.

Q. Was that expression—"Christ, no. Give me a go"—said calmly, or in some state of agitation, or how?

A. He appeared to become quite agitated. I think he had his head in his hands at that stage; he did later on. He appeared to be about to cry, to me. He appeared to be about to weep.

Q. Did you accede to the cup of coffee suggestion?

A. Well, I suggested it to him—did he want a spell and a cup of coffee, to which he said yes.

Q. Now, did you think that would be beneficial from your point of view?

A. I did not know at that stage. I thought it would be better for him. He was obviously upset.

Q. Well now, as to the difference between evidence you gave at the trial and the Record of Interview, and what Cox has said, he said he, in effect, served himself, whereas what you said and what the record of interview suggests is that the coffee was provided for him. Which do you say happened?

A. Coffee was provided for him. Detective Pavey made the coffee. I asked Cox what he had in it, and I think, from recollection, he said he wanted milk and two sugar.

Q. There is a coffee-making machine clearly visible in the first of the interview rooms, is there not?

A. In actual fact, the first Interview Room is not used as an Interview Room; it is used as . . .

Q. Now, Mr. Chairman knows that. But the point is you have to walk past that machine to get into the room where you interviewed Cox?

A. That is, correct, sir, yes.

Q. Well, do you say that having had the coffee and been on his own for a while, he then expressed further feelings of worry and distress to you, and went on to make a series of admissions to the extent that he had supplied the car, indicating some of the people who were involved in the matter and indicating that he had got a thousand dollars?

A. Yes.

Q. But he would not have it that he had taken any part in the actual robbery itself?

A. He did not state anything about directly taking part in the robbery.

Q. What was done, Mr. Davies, by way of trying to get him to adopt the document?

A. He was asked whether he wished to read it. His exact reply I cannot remember, but it was to the effect, did he have to, and I explained, I think, it was entirely up to him. And he did decline to read it aloud or sign it.

Q. And did you then treat it as notes made at the time?

A. Yes, sir.

Q. Does the Interview Register record that he did, in fact, admit the offence?

A. I think it does, yes.

Q. In the limited degree that you have indicated in the Record of Interview?

A. Yes.
Q. As best you can, will you describe his demeanour after the cup of coffee?
A. He still appeared to be worried. He explained the fact that he had lost a couple of stone worrying. He appeared to be a lot calmer in himself. He appeared to be happy to get it off his chest, just get rid of it off his chest.

Q. Did what he told you in the latter part of the record of interview, if I can term it that, include an assertion that the previous statement with which you had been supplied by Mr. O'Brien was, in effect, Mr. O'Brien's work rather than his own?
A. I think at least in part that was the impression I got.

Senior Constable Pavey added little of importance to the evidence Sergeant Davies gave in respect of the Record of Interview. Accordingly, I do not propose to set it out in the same fashion in this summary. Suffice is to say he corroborated the evidence Sergeant Davies gave in relation to it.

And so one is faced with the situation where the Police would have one believe that contrary to the elaborate steps Cox had taken to ensure he would not be implicated in the robbery, within a short time of his arrival at Russell Street he has had a change of heart, and implicated himself as an accessory before the fact. If that was so, the reader of this summary may be excused for asking—"If this man was so co-operative after he arrived at Russell Street, why did he decline to read back the Record of Interview when invited to, and why did he decline to sign it?" (page 8857).

Although I shall advert to this aspect at a later stage of the summary, one might pause at this juncture and ask, if he made the confession alleged, and did not write the words "Its lies" under the desk and sign his name as he now alleges he did (and in fact has alleged he did from the outset), why go through the charade of having his Barrister and Mr. O'Brien's Articled Law Clerk (Mr. Andriske) go through the laborious procedure of making application to the Justice of the Peace who conducted the committal proceedings for an order granting them permission to inspect the room at Russell Street in which Cox was interviewed, and then making that inspection?

In my opinion the answer to those questions is simply this—Cox made no such admissions to the Police at Russell Street on the 17th December, 1973, and the desk upon which or under which he wrote the words "Its lies" and signed his name, was removed from the Interview Room between the date of the initial application to the Justice of the Peace who conducted the committal proceedings, viz. the 28th March, 1974 (page 8743), and the date of the actual inspection, viz. the 16th May, 1974 (see exhibit 621).

I propose in a moment to advert to certain features relating to the Record of Interview which to my mind demonstrates it was a fabrication. Before doing so, however, I consider it desirable that I first say something concerning the impression I formed of the three Police Officers who gave evidence in respect of the matter, and the basis upon which I formed such impressions.

I deal first with Inspector Williams. That Officer appeared before the Board in the Hamilton Matter (Chapter 16), I feel obliged to record that his demeanour, and the content of his evidence in that matter, was of such a kind as to impel the greatest caution in my mind as to acceptance of his testimony, and therefore made it necessary to scrutinize his evidence in the Cox Matter with the greatest care before acting on it.

It will be seen from the evidence to which I have already adverted that Inspector Williams would have the Board believe he took no part in the interrogation of Cox, but merely went to the Interview Room simply to ask his name and see him, as he had not seen him before (page 8821). The fact is, however, that that is not true, and demonstrably so.

In the first instance, one finds that on the 8th February, 1973 Cox was booked for "consorting" with other "reputed thieves" in the Top Bar of the Eureka Stockade Hotel in Bourke Street, Melbourne. The senior Police Officer who was present on that occasion and signed the Consorting Report (exhibit 638) was none other than Detective Senior Sergeant Williams (that then being his rank). Inspector Williams' explanation to the effect that although he was there, he may not have actually seen Cox on that occasion, but that Cox may have been questioned by one of the other members of the team present, is one I do not accept (page 9243).

That Inspector Williams' reasons for going into the Interview Room to simply see what Cox looked like and to ask for his name were false, is borne out by the evidence of Sergeant Davies and Senior Constable Pavey.
As Sergeant Davies said at page 8855 of the transcript, his belief was that having arrived at Russell Street and whilst walking down the corridor leading to the Interview Room, Inspector Williams said to Cox, "How are you". If that evidence is correct, the only inference one can draw from it is that Inspector Williams did know Cox prior to the 17th December, 1973.

The account Senior Constable Pavey gave in relation to the matter appears at page 8952 and page 8954 of the transcript. At page 8952 he too said that Inspector Williams said something to Cox as Cox was being taken down the corridor towards the Interview Room. When asked at page 8954 what it was that Williams said, he replied, "Are you Cox?", I think he said or something like that. Whichever of the two versions you accept, it is clear Inspector Williams saw and spoke to Cox in the corridor; accordingly there would have been no need for him to go to the Interview Room simply to see what he looked like, and to ask his name.

In my opinion that lie by Inspector Williams was further reinforced by the statement he made at page 9245 to the effect that he didn't believe a photograph of Cox existed. The fact is that a photograph of Cox had appeared in the daily circular distributed from Russell Street on the 13th September, 1973 (exhibit 640).

To suggest, as he did at page 9240 of the transcript, that he had no interest in seeing Cox that afternoon is almost impossible of credence. He was in charge of the investigation into the Melbourne and Metropolitan Board of Works robbery in which Cox's vehicle was involved. It was into his hands that Cox had come in such an unusual fashion, i.e. from the office of his Solicitor already armed with a statement exculpating himself. To suggest that in those circumstances he had no interest in seeing Cox is a suggestion incapable of acceptance.

In my view the overwhelming probabilities are that Williams did speak to Cox in the Interview Room along the lines Cox swore in evidence. When one considers that Williams had read the robbery file (page 9237), believed that Cox's car had been lent and that this share of the proceeds had been $1,000 (page 9246), (see also Pavey's evidence as to Williams' knowledge of those matters (page 8980a)) and must have known from the daily circular in the Armed Robbery Squad—(a) that Cox had received $1,000 for the use of his car; (b) who his associates were; and (c) his haunts (see Pavey's evidence in this connection at page 8980 et seq.), it is inconceivable Inspector Williams did not question Cox along the lines Cox maintains he did. In fact when pressed in cross-examination as to one such aspect (see page 9245) Inspector Williams was forced to concede the possibility he did. As Inspector Williams said at page 9239, Cox was the man who could fill in the gaps concerning the robbery so far as the Police were concerned. In those circumstances it is inconceivable he did not question him in an endeavour to do so.

In my opinion Inspector Williams was as far from being frank with the Board in this matter as he was in the Hamilton Matter. I do not accept his evidence that he did not interview Cox in the manner Cox alleges.

I turn now to say something of a general nature in respect to Sergeant Davies. In this connection it is very difficult to know where to start. The irresponsible statements made by him, and the lies I am satisfied he told, not only before this Board, but during the course of the McDougall trial to which I shall hereafter refer, are such that my ultimate recommendation will be that charges of perjury be brought against him in respect of them.

I list some of the assertions he made before this Board, assertions which in my opinion were of a scandalous nature and completely unfounded.

(a) Mr. Terry O'Brien is a disreputable Solicitor (page 9883). (As I earlier pointed out, Counsel appearing for the Police Association and in this instance Sergeant Davies, dissociated himself from that assertion (page 8780).) At a later stage Sergeant Davies stated that Mr. O'Brien was a person of bad or poor character (page 8884). When asked to provide one shred of evidence in support of that assertion, he replied, "He has conducted himself in a manner which I cannot specifically at this stage think of any one occasion, but he has conducted himself in a manner that one would not expect of a barrister". When then asked, "Where?", he replied, "For some years, to my knowledge". When then asked, "You cannot give us one example?", he replied, "Not at this stage, I could probably do some inquiring" (page 8884).
It was then pointed out to Sergeant Davies that in the antecedent report he had prepared in respect of Cox he there described Mr. O'Brien as being disreputable (exhibit 628).

The following exchange then occurred (see page 8884)—

Q. What is the evidence by which you write down in a report that he is a man of bad character, as you define "disreputable"?
A. For a start, on this particular occasion the way he instructed Mr. Cox to make up this story. To my mind it is most disreputable.
Q. You were prepared to accept what Cox said about that, I take it?
A. Well, going on Mr. O'Brien's reputation I thought this was just a bit more fuel to the fire.

I might add that the evidence Mr. O'Brien and Cox gave before this Board was such that the suggestion that Mr. O'Brien had instructed Cox to make up his story was totally false. So clear was that the situation, that as I have indicated, Counsel appearing for the Police Association dissociated himself from the suggestion, and did not require that Mr. O'Brien's Secretary to whom Cox's statement had been dictated be called to give evidence.

(b) In a Record of Interview between Detective Inspector Ewert and Sergeant Davies held on the 5th March, 1975 (see exhibit 637), Sergeant Davies stated: "It has been strongly rumoured in the past that large sums of money have changed hands in organising deals for criminals in the higher courts".

When questioned concerning that statement at pages 8882–3 of the transcript he made the following replies:—

Q. Is that a serious allegation you are making against the Crown Law Department?
A. I have heard that said by several people over the years. It is quite a reasonably well-known belief among the Police that things go on up there not according to Hoyle.
Q. Who told you?
A. I think you could ask any member of the Police Force.
Q. Who told you?
A. I can't recollect.
Q. You have no basis for that allegation?
A. I have heard it from several people, especially members of the C.I.B.
Q. You can't give us names?
A. Not at this stage.
Q. Have you had personal experience of something of that nature taking place involving the Crown Law Department?
A. Not personally. I can remember one fellow that used to be at the Hawthorn Appeals Court, who I believe was dismissed for allegedly organising appeals or something for Mr. X. I think his name might have been Mr. Y. or something like that and he was organising various things. I think he did get the sack from the Crown Law for something or other.
Q. Organising in the sense of making sure that certain Judges dealt with certain appeals?
A. That is as far as I know but that may be completely incorrect. That was the rumour.
Q. Who was it that was rumoured to be getting their hands on these large sums of money?
A. I don't know any names.
Q. You don't know of any names?
A. No.
Q. Let me put this to you, Mr. Davies. You are prepared to malign and impute improper motives to anybody and everything if it will get you, Mr. Davies, off the hook?
A. That is not so.
Q. That is not so?
A. No.
Q. Do you have one shred of evidence about the imputation you are making against unnamed people in the Crown Law Department of this State?
A. I don't personally.

For obvious reasons I have omitted the names of the two persons concerned. The allegations were so scandalous and unfounded I considered it improper to name them in this report.

(c) At page 8906 Sergeant Davies was asked, "Mr. Davies, have you in your thinking overnight come up with any more examples of malpractice by members of the Crown Law Department?" To that question he replied, "I have thought of one, I think the Crown Solicitor himself was sacked for some reason some time ago". Whilst it ultimately became clear the individual he had in mind was the Public Solicitor, his initial statement demonstrated the irresponsible manner in which he was prepared to make defamatory utterances of others, when it suited his purpose to do so.

(d) At page 8882 of the transcript be made this assertion, "Mr. X, I don't have much of an impression of him. I have only seen him in action as a Crown Prosecutor and he was far below the normal standard one would expect. He appeared to be an embarrassment to Mr. Y. who was the Chief Prosecutor".

The evidence called before this Board established that that was a blatant lie. In the case to which Sergeant Davies was referring the only part the junior Prosecutor played at the trial was to lead a civilian witness through her evidence in chief—evidence which in the context of the trial was not really in dispute and was very brief. The real point, however, was that Sergeant Davies and all other witnesses were out of Court at the time that evidence was led. Accordingly Sergeant Davies had no basis for making the slanderous statement he did and to my mind it was simply yet another lie told in an endeavour to protect himself in relation to his own perjured evidence which I find he gave at that very trial, and to which I shall hereafter refer.

I turn now to some of the more obvious lies he told before the Board, and in other proceedings in which he had given evidence, and which were adverted to during the hearing of the Cox Matter. In the main the other proceedings referred to was the trial of one Alan Roy McDougall.

(a) In his evidence before this Board, Sergeant Davies swore that initially he did not expect there to be any contest at Cox's trial concerning the Record of Interview (page 8888). Indeed at page 8893 he swore that he didn't think there would be any particular contention even at the committal stage.

If one had nothing further to go on than the material I have already adverted to in this summary, one would find that statement most difficult to accept. Here one had the situation where a suspect had been escorted from his Solicitor's office with a prepared statement exculpating himself insofar as the particular robbery under investigation was concerned, he making it clear he will say nothing of an incriminatory nature. Yet within a matter of a few hours an unsigned untaped Record of Interview is produced implicating him as an accessory before the fact to the robbery, without which the Police would have had no basis upon which to found the charge they laid against him (page 8902). Could it be that Sergeant Davies, with a wealth of experience behind him, and knowing he was dealing with a "disreputable Solicitor", who would do anything to frustrate the efforts of the Police to obtain a conviction against his client, be so naive as to believe that that Record of Interview would be unchallenged?

At Cox's trial, however, and in answer to a question put to him in relation to the matter he swore, "Well knowing Mr. O'Brien and the way he operates, I anticipated there
may be something but it didn't particularly worry me at that stage" (i.e. at the stage of the committal). (See page 621 of exhibit 633.)

Of much more significance is the fact that on the 20th December, 1973, i.e. the Monday following the Friday interview at Russell Street, Mr. O'Brien wrote a letter to the Chief Commissioner of Police relating to the matter (exhibit 618A). The following (omitting formal parts) is a copy of that letter—

"We are acting on behalf of Donald Cox who has been charged with robbing a Peter Testoriero of $21,700.00. He was arrested on that charge on the 17th December, 1973, at our office at approximately 4.20 in the afternoon. His father who wished to be present while he was questioned by the Police was told that he could not accompany Donald Cox to Police Headquarters. Donald Cox then said that he would not answer questions. The Police were at the time of his arrest handed a statement made by Donald Cox in which he denied the offence.

We understand that Donald Cox was charged with the offence at the Armed Robbery Squad office and in the early evening taken to the Watchhouse, when according to Donald Cox's father a Detective said that Donald Cox had made admissions in relation to the crime.

Mr. Cox senior has informed us that he saw his son at the City Watchhouse about half an hour after his son was locked up and asked him whether he had made the admissions alleged. His son denied that he had. Donald Cox confirmed himself that he did deny making any admissions of guilt. The position therefore is that our client denied the offence in a statement at the time of his arrest and denied making any admissions when questioned by his father soon after he was locked up.

Our client was not provided with any Record of Interview and in view of the matters set out above we would be most anxious to know whether or not it will be alleged he made an interview and whether or not it will be alleged he made any admissions of the crime. If there is a Record of Interview we would appreciate your letting us know how we can obtain a copy."

In the light of the foregoing matters it was disturbing in the extreme to see Sergeant Davies solemnly pledging his oath before the Board that up to the stage of the committal, he did not expect that there would be any contest as to the authenticity of the Record of Interview. In my view this was an attempt to hoodwink the Board, and I unreservedly reject his evidence.

(b) Sergeant Davies was questioned about certain evidence he gave at the trial of McDougall. It is sufficient for my purpose to set out this passage appearing at page 8861 of the transcript.

Q. Mr. Davies, is what you gave on oath at the trial of Donald Cox the truth?
A. Yes.
Q. Is there anything you want to change in that evidence?
A. No.
Q. Do you regard the oath as important?
A. Of course.
Q. Do you remember being questioned by Mr. Redlich at that trial about allegations made against you resulting from a trial of one McDougall?
A. Yes.
Q. And you telling him that the allegation was that you doctored a tape-recording, is that right?
A. I can recollect a question being asked by Mr. Redlich and that was similar to my answer.
The Cox Matter

Q. And he asked you, "Was that all that was alleged" and you replied, "No, no, there was another sort of minor matter"?
A. That is correct.

Q. And he put to you, "Was it also alleged that you had committed perjury"?, and you answered, "It was"?
A. Yes.

If there is one thing I am certain of following this Board's inquiry into the Cox Matter, it is the fact that Sergeant Davies considers the commission of perjury by him to be a minor matter, if, indeed, of any moment at all.

(c) At page 8867 of the transcript this exchange occurred—
Q. Incidentally, the McDougall Record of Interview was a relatively short one, was it not?
A. Yes.
Q. Two pages?
A. Yes.
Q. A fairly short interview by the standards of the Armed Robbery Squad. That is so, is it not?
A. I am not able to comment on everyone's length of their Record of Interview.
Q. But you regarded it as a relatively short Record of Interview, did you not?
A. It was reasonably short, yes.
Q. That is what you told Mr. Ewert when he put the matter to you, when he interviewed you, did you not? He put it to you that it was a short Record of Interview and you said "Yes, a relatively short one"?
A. I probably said that.
Q. When Mr. Richter asked you at the trial, he put to you that it was a pretty short Record of Interview. Your answer was: "I don't know". That was not a very frank answer was it, Mr. Davies?
A. I don't know about being frank. I think it was a truthful answer.
(See exhibit 758, page 44.)

(d) At page 8868A this exchange occurred—
Q. You were given the names of McDougall and Gibb as people in relation to the armed robberies before you came in to interview them that night?
A. They were suspects, yes.
Q. Then, tell Mr. Chairman, when Mr. Richter asked you this you gave him this answer; Mr. Richter, "But you had been given the name, the names Gibb and McDougall as the persons to be questioned in relation to those hold-ups?", and your answer was, "No, I hadn't, I hadn't been given any names". Why did you tell him that?
A. I think that was in reference to specific names, they were the suspects but I was not given any specific names, I don't think, by any particular persons that they were the suspects for it.
(See exhibit 758, page 58.)

(e) At page 8869 of the transcript this exchange occurred—
Q. It was well known in the Armed Robbery Squad office that they were the two people wanted for interviewing, was it not?
A. I don't think it was well known at all, no.
Q. But it was the general gossip in the office that Gibb and McDougall were the fellows?
A. That they were the suspects.
Q. That is right, is it not, that was the general gossip in the Armed Robbery Squad that Gibb and McDougall were the fellows involved?
A. That is possibly right.
Q. Possibly? Certainly right, is it not, Mr. Davies?
A. I don't recollect exactly, but as far as I was concerned, they were.

Q. Because that is what you told Mr. Ewert, was it not?
A. It was general gossip in the office that Gibb and McDougall were probably the fellows.

Q. That is what you told Mr. Ewert?
A. I can't recollect exactly saying that to Mr. Ewert.

What Sergeant Davies told Mr. Ewert appears at page 12 of the Record of Interview conducted by Detective Inspector Ewert with Sergeant Davies on the 5th March, 1975 (see exhibit 637).

The entries in Sergeant Davies' diary and Senior Constable Pavey's diary, indicate that one week previously they had been looking for Gibb and McDougall. Indeed the diary entries indicate they had been searching for Gibb and McDougall as early as the 19th December, 1973.

(f) At page 8879 of the transcript of his evidence before the Board he swore that he recalled telling the Prosecutor at McDougall's trial that when he saw McDougall on the night of the 11th January he appeared to be a bit shaken up over what had happened to Gibb. At McDougall's trial when asked how he, McDougall, appeared, "Well he just appeared to be normal, he was sitting there in sort of casual clothes, seated near a table, he just appeared normal, he wasn't sad, he was just sitting there". When the direct question was put to him, "I suggest to you he appeared somewhat dazed?" he replied, "I don't think so" and to the question, "Shaken?" he replied, "He didn't appear to be to me." (see exhibit 758, page 41).

(g) At page 8890 of the transcript Sergeant Davies was asked whether prior to his interview with Cox it was his belief that Cox was involved in the robbery? To that question he replied, "No".

Having arrested Cox at the office of Mr. O'Brien in connection with the robbery, on the face of it that answer appeared rather odd.

That it was so much nonsense appeared from the matters next put to him by Mr. Coldrey at page 8890, viz. that at Cox's trial he had been asked these questions to which he gave the following answers—

Question: Look, Mr. Davies, there was a poster up in the Armed Robbery Squad office, wasn't there, before you even saw my client, and he was one of a number of men referred to as being suspects for this robbery?
Answer: That is correct.

Question: As far as you were concerned, prior to seeing the statement, you considered it very likely he was one of the men in the robbery?
Answer: Yes; to some degree, yes.

(h) At McDougall's trial on the 25th November, 1974, Sergeant Davies swore that he hadn't heard the tape recording of McDougall reading back his Record of Interview " for some time, some many months ". (see exhibit 758, page 45).

The fact is he had heard it played in the presence of the junior prosecutor at the trial, at Russell Street on the 20th November, 1974.

The above matters are not, and do not purport to be, an exhaustive catalogue of the untruths and equivocations to be found in this witness' evidence. In view of a recommendation I make later concerning him, I think it best if I say no more of him as a witness other than that I was, in the end, driven to a situation where I was unable to accept any portion of his testimony unless it was adequately corroborated. Indeed I feel constrained to make this observation—I wonder how many lies, discrepancies and inconsistencies one would find, if one had the time to compare evidence given by Sergeant Davies relating to similar matters in other proceedings in which he has given evidence. For example, his evidence as to the failure of accused persons to sign particular Records of Interview in other matters, the failure of accused persons to read-back
Records of Interview, the sudden break-through where an accused has either refused to answer questions and/or has maintained his innocence, then before or after the provision of a cup of tea or coffee—confessed his guilt.

I turn now to say something of the evidence given by Senior Constable Pavey.

Let me say at the outset that Counsel for the Police Association was at pains to elicit the fact that Senior Constable Pavey only commenced duty with the Armed Robbery Squad in mid-December, 1973, that he was a member of the Squad on a temporary basis only, and in fact remained with it for approximately 3 weeks before being transferred to other duties (pages 8948-9).

Mr. Pavey's demeanour in the witness box was that of a man ill at ease and clearly not relishing his task of "backing up the team". Regrettably he did "back up the team", even though this involved him in being untruthful before the Board.

I do not propose to detail the various untruths I am satisfied he told in evidence. I select one by way of example which has no bearing on the Record of Interview presently under discussion but which does illustrate the point Mr. Villeneuve-Smith, Q.C., made in his final submissions as to the "ghetto type mentality" or the "them against us" mentality displayed by so many Police Officers during the course of the Inquiry.

The passage from the transcript to which I am about to refer relates to the words Cox alleges he wrote on the desk in the Interview Room.

As I shall indicate in due course, when the inspection was made of the Interview Room on the 16th May, 1974, according to Cox the desk in question was no longer there, although there was a line or mark on the wall above the level of the top of the desk then there, indicating that a higher desk had been there at some stage, and had been replaced by the one seen on the 16th May.

During the course of his cross-examination Senior Constable Pavey was asked certain questions as to any discussion he had had with Sergeant Davies as to the evidence he was to give before the Board. I consider the following passage at page 8957 of the transcript indicates the point I wish to make.

Q. Was there not a discussion between you as to the content and the form of the evidence that you were to give before the Board, what you were going to say?
A. We probably said to each other that we were going to get asked the same questions, again, I suppose.
Q. About how long did this conversation that you had last?
A. We were together, I suppose an hour, an hour-and-a-half.
Q. And is this all you can recall of it?
A. Specifically, yes.
Q. So you were discussing points of interest about the Cox Matter, were you not?
A. Yes.
Q. They were points of sufficient interest at that time to be discussed between the two of you?
A. Yes.
Q. But not sufficient points of interest as to remain in your memory now?
A. Oh, well, as I say, I spoke about my cross-examination and Sergeant Davies spoke a bit about his. We got the file together and had a look in the Interview Room.
Q. What did you do that for?
A. Just to refresh my memory of it. I have not been in it for two years, I suppose.
Q. Did you think that might be a matter of some importance at this Board hearing?
A. Yes.
Q. What did you think might be important about the Interview Room?
A. Well, I was under the impression that it was a point of issue at the trial and also at the committal, so I should imagine it would be of interest at this hearing.
Q. Was it merely to refresh your memory as to the size of the room and
the furniture that was in it?
A. That is correct, yes.
Q. Anything about any marks on the wall, was that discussed between
you?
A. Yes.
Q. What was discussed?
A. Just said, "There's the mark on the wall".
Q. That brought it all back to you, did it?
A. Brought what all back to me?
Q. The significance of the mark on the wall?
A. He just said, "There's the mark on the wall".
Q. Do you know why he said that to you?
A. No.

Immediately appreciating the farcical nature of the answer he had
given, when challenged as to its truthfulness he said he did have an
idea as to why Davies said it, viz. that he supposed it was the same one
that was there the last time and that it was of some significance so far
as the Cox Matter was concerned (as it clearly was).

During the course of this Board's Inquiry it has become apparent to
me the almost hopeless situation the individual is in, when, having been
taken into custody, an unsigned, untaped Record of Interview is produced
against him at his trial. Invariably there is no one to substantiate his
account of what occurred, and he does not have the facilities available to
him which were available to the Board by which a comparison of phraseo-
logy used in such Records of Interview can be made; nor can he examine
the similarity of the explanations allegedly proffered by the accused for
his refusal to sign the Record of Interview or read it back, so that the
read-back can be tape-recorded. Nor for that matter is he aware of the
extraordinary coincidences which occurred in several matters adverted to
before the Board which sought to explain why the read-back was not tape-
recorded, even though the accused allegedly performed what was required
of him, e.g. "We thought the room was wired for taping and didn't find
out it wasn't until after the accused had read-back the Record of Inter-
view". (See, for example the Hamilton Matter—Chapter 16—and the
matter of Aldersea adverted to in that Chapter where a similar mishap had
occurred.)

The explanation given in that matter for not taking the accused
promptly to a room which was wired for taping and have him re-read the
Record of Interview was that he would "wake-up" to the fact the read-
back was being recorded and would not do so.

My simple query to that proposition is this—Why would he object?
If he has been co-operative enough to sit down—often for some hours—
whilst a Record of Interview is typed, why would he then refuse to read
it back so that the read-back can be tape-recorded?

Although I have dealt with this matter at some length in Chapter 8 of
this Report, I now have such doubts concerning Police testimony relating to
unsigned and/or untaped readbacks of Records of Interview, to lead me
to conclude that unless there is cogent evidence which satisfactorily
explains why a particular Record of Interview has not been signed, or
the read-back of it taped, it should not be admitted in evidence against an
accused person whenever that accused challenges its authenticity.

As I have indicated in Chapter 8, in my view the whole of an interview
between Police and a suspect should be tape-recorded. We are, after all,
living in 1976.

It is difficult to heed seriously the contention that extraneous noises
made during the Record of Interview renders this course impracticable.
This was not apparent to me when I attended a demonstration at Russell
Street; moreover, silent typewriters are in common use.

I turn now to consider certain of the arguments advanced by Counsel
appearing for the Police Association as to why this Board of Inquiry should
find that the Record of Interview between Sergeant Davies, Senior
Constable Pavey and Cox was not a fabrication.

Submissions Supporting the Proposition that the Record of Interview was
not a Fabrication

(1) Cox did not complain that the Record of Interview was fabricated
when he was put through the Interview Register.

The first point to be borne in mind is that if Cox was telling the truth
about the matter, and I accept he was, at the time he was put through the
Interview Register he had no knowledge of the fact that a Record of
Interview had been concocted.
In the second instance, and as Cox pointed out at page 8678, any complaint he had to make concerning his dealings with the Police would have been pointless. This was a view, which was supported by the evidence of the three members of the legal profession who gave evidence before the Board, viz. Messrs. Natoli, Marin and O'Brien, and by numerous other complainants and/or witnesses; it is a view, I might add, with which I entirely agree.

(2) Even on his own evidence, Cox did answer certain questions despite the advice given to him by Mr. O'Brien and his resolve whilst at O'Brien's office not to do so.

In dealing with this matter Mr. Phillips Q.C. overlooked the last sentence in the statement Cox handed to the Police, viz. "I will sign anything that sets accurately anything that is said between us." (See exhibit 612.)

Whilst Cox signed no statement or Record of Interview (a most unusual state of affairs in view of his alleged co-operation with the Police) the questions he conceded he did answer were of an explanatory or non-culpatory kind, e.g. questions as to his car.

As these answers merely elaborated matters adverted to in his statement, were non-incriminatory, and really dealt with matters of a peripheral nature, I consider the fact that he answered them of no significance. I consider had they appeared in a signed statement they would have fallen into the category of the statement to which I have adverted to in exhibit 612, viz. a statement setting out accurately anything said between Cox and the Police.

(3) It is said that much of the factual material appearing in the Record of Interview is true and therefore Cox must have supplied it to the Police.

As Judges have pointed out from time to time, that is the very vice of a concocted Record of Interview. It contains sufficient factual material obtained from other sources, such as Antecedent Reports, statements of associates etc. as to give it an air of verisimilitude. In the present instance, I am satisfied the Police had available to them every piece of factual information contained in that Record of Interview, prior to the time at which they interviewed Cox.

In the first instance they had the previous Antecedent Reports relating to Cox (see exhibit 628.) In this connexion I might add that Sergeant Davies denied he familiarised himself with those Antecedent Reports before he interviewed Cox (page 8915.) On its face alone I would not have accepted such a statement. That a Senior Police Officer would not check a suspect's background, in particular his Antecedent Reports, before interrogating him would be, on the evidence before the Board in a number of matters, a radical departure from established Police practice. In any event, in my opinion Senior Constable Pavey put the lie to that piece of testimony. At page 8980A Pavey swore that before Cox was interviewed he spent 10-15 minutes down at the I.B.R. "to look at Cox's docket". At page 8551 of the transcript he had this to say—

Q. What words have you written?
A. "Donald William Cox, 14 Patterson Street, Preston, parents home".

Q. Yes, all right. Will you tell Mr. Chairman whether or not that was the document you were referring to in the evidence at the committal proceedings?
A. That is the one, yes.

Q. Where did you get that information from?
A. From Cox.

Q. What did you have in mind in eliciting that information and writing it down on the form?
A. To go to the Information Bureau and see if he had any record and check his docket to see if there was one there.

Q. Did you, in fact, do that?
A. Yes, I did.

Q. Did you find a docket?
A. Yes.

Q. How many previous antecedent reports do you recollect were on it then?
A. I can only recollect one signed by Peter Cochrane.

In the depositions taken at Cox's committal he swore and I quote, "Prior to commencing the record of conversation with Mr. Cox, I believe that Sergeant Davies did have an opportunity to look at some photographs and other exhibits that I didn't have the opportunity to look at. I think
those exhibits were in a filing cabinet. I don’t know how long Sergeant Davies spent looking at these exhibits. I went down to the Information Bureau to gain certain particulars and he had that time to look at them about 10 or 15 minutes”. (See page 9 of exhibit 632.)

In my view if both men had not familiarised themselves with Cox’s background prior to the time at which Senior Constable Pavey went to the I.B.R., they certainly did so during that 10–15 minutes.

Of course Sergeant Davies would have it that there was no preliminary conversation with Cox prior to his launching into the Record of Interview (page 8919). As Senior Constable Pavey swore at the committal however, and again I quote, “There was preliminary conversation prior to the record of conversation being taken. That conversation was information obtained from Mr. Cox regarding his anteecedent Police Form and our M.O. Form”. (See page 8 of exhibit 632.)

In the second instance they had a number of consorting reports available relating to Cox—reports which would have divulged his associates, the places he frequented, etc. (See exhibit 638 and the evidence of Pavey at page 8980.)

In the third place they had available the various anteecedent reports relating to Cox’s associates, viz. Donald, Harris and Workman (page 8980), which would have showed that one of the haunts frequented by Cox was the Gowerville Hotel. (See exhibits 641 and 642.)

Fourthly, they had interviewed Cox’s mother either on the day of the robbery or the day after (page 8770 and page 8703) and they knew Cox was employed by Redding (page 8696A).

Whilst one could point to many other sources of information available to the Police, e.g. the information Sergeant Pittaway had concerning him, the final one I propose to advert to is the fact that one of Cox’s co-accused Donald, had been arrested whilst Cox was in Sydney and had been committed for trial four days before Cox was interviewed, viz. the 13th December, 1973. Whilst little if anything appears in Donald’s Record of Interview relating to Cox, his anteecedent reports, etc., contain a deal of information concerning Cox.

The fact is that the Police had available to them every piece of information appearing in the Record of Interview.

(4) It is next said that Cox lied to the Board concerning whether or not he supplied personal details to the Police during the course of the interview.

It is true that at page 8703 Cox denied he did. However I consider it relevant to note the following exchange at page 8817—

Q. Can you be positive at this stage, Mr. Cox, that that did not happen, or do you think you may have given them some personal details about yourself?
A. I am pretty sure I did not give any personal details about myself.
Q. You did recall, I think, in your evidence the other day, giving personal details of your domestic life, did you not?
A. Yes.
Q. Yes, and chatting to them about your motor car?
A. Yes.
Q. That being so, I suggest to you it would not be unlikely, would it, that you might tell them about your schooling?
A. I cannot really remember telling them anything. Of course, I could have. I cannot really remember.

In view of this evidence I do not draw any inference adverse to Cox insofar as his initial denial is concerned.

Some days after his interview with the Police, Cox prepared a hand-written statement setting out what had occurred (exhibit 620) and again some days after the 17th December Mr. O’Brien caused a statement setting out those events to be typed out (exhibit 617). In those statements Cox indicates that personal details were taken from him at Russell Street. Those statements were prepared at a point of time when the events would have been much clearer in Cox’s mind. It is not surprising he was not clear concerning the matter when he gave evidence before this Board. In fact at page 8806 Cox swore he could not even remember making the handwritten statement (exhibit 620).

Many other factors were pointed to by Counsel appearing for the Police Association as to why I should accept that the Record of Interview was genuine. I have given them proper consideration but in the light of
the views I formed as to the credibility of Davies and Pavey and the matters to which I now propose to advert, reject them. I can only repeat that I am, as a matter of probability, unpersuaded that Cox underwent a change of heart of the kind and in the circumstances deposed to by the Police.

Factors supporting the proposition that the Record of Interview was a fabrication

(1) The very circumstances in which it was alleged to have been obtained immediately put one on one's guard. As I pointed out at an earlier stage of this summary, before he went to Russell Street, Cox took every conceivable precaution he could to ensure he would not be incriminated in the matter. Yet lo and behold, the Police would have one believe that having arrived at Russell Street, he has a change of heart, and confesses to the part he played in connection with it. As a matter of probability that would not occur.

(2) If he co-operated in the way the Police allege (page 8919), why did he not sign the Record of Interview or read it back so that it could be tape-recorded? Again one asks, why does this man go to Russell Street determined not to incriminate himself, have a change of heart, become co-operative, make a confession, and then not be prepared to read it, or sign it?

(3) When Cox refused to sign the Record of Interview or read it back, why was an independent Police Officer not brought to the Interview Room to interrogate him in relation to his failure to sign it or read it back in accordance with the direction as to such matters given by Assistant Commissioner Crowley (page 9901 and page 9913 et seq.)?

(4) Why, having made the confession, does Cox then immediately inform his Solicitor that false allegations are being made against him, causing the Solicitor to write the letter, exhibit 618A, to the Chief Commissioner of Police?

(5) Sergeant Davies would have one believe that at the very moment he was achieving his "break through" he interrupted the interview to enable Cox to have a cup of coffee (see pages 8856-7 and page 8924). That surely is the very moment one would expect an experienced and determined Police Officer to persevere and obtain the necessary confession.

(6) Why was no attempt made to tape record Cox's refusal to sign or read-back his Record of Interview?

At page 8895 of the transcript Davies told the Board the usual way of taping a read-back is to pre-arrange the taping before the question of reading the Record of Interview aloud is put to the suspect. Indeed in McDougall's interview some three weeks later, that very procedure was adopted by Davies (page 8898). In the present case, however, it was not. There was no pre-arrangement to have the read-back tape-recorded, yet this was a case where the admissions allegedly made involved malpractice on the part of a Solicitor and accordingly were of the gravest nature.

No satisfactory explanation was ever offered by Sergeant Davies as to why that had not been done. In fact at Cox's trial he overcame the problem by swearing that the arrangements for having the read-back tape-recorded are not made until after the question is put to the suspect (see exhibit 633, page 607). I regret to say, yet another falsehood by Sergeant Davies.

(7) Finally I am satisfied that Cox wrote "its lies" on or under the desk and signed his name, and that when the Police ascertained that fact on the first day of the committal proceedings they removed the desk. I turn to deal with that aspect.

Notation written by Cox on desk at which he was interviewed

The points I wish to make in this connection are these:

(1) Mr. O'Brien gave Cox a biro before he left his office to be taken to Russell Street and instructed him to write "its lies" on or underneath a desk in the event he considered false evidence was being concocted against him. I consider it of sufficient importance to set out in this summary his evidence as appearing at page 8741 of the transcript.

Q. Before the Police arrived, in addition to the advice which you told Mr. Chairman about and which is embodied in exhibit 612, had you indicated to Mr. Cox any other course of action he should pursue at Russell Street if he were apprehended and he was being improperly treated by the Police?

A. What I told him was if he believed he was being verballled—if he believed an interview or false evidence was being concocted he should, say, write something on a desk in Russell Street or underneath
a desk and I suggested the words he might write would be, "its lies" so hopefully at a later stage he could prove contemporaneously that at the time he was making admissions he was writing "Its lies" under a desk.

Q. For that purpose, did you supply him with anything?
A. I think on the balance of probabilities, I supplied him with a biro, but once again I cannot state that with any great certainty, probably I did, but I can't recall.

That is evidence I unhesitatingly accept.

(2) Cox swore that he did that very thing during the course of the interview (page 8677).

If Cox did not do as he says he did, would he persist with the charade to the point of having the application made to the Justice of the Peace at the committal for an order granting leave for an inspection of Russell Street to be made, and then have that inspection carried out by Mr. Redlich and Mr. Andriske? In my view he would not. I accept his evidence in this connection.

(3) If I was in any doubt as to this matter, the following factors would have been more than sufficient to remove that doubt.

(a) The mark on the wall of the Interview Room at Russell Street indicated a larger desk had previously been in the position Cox says the desk on which he wrote the words was. Not only was this borne out by the Board's own inspection of the Interview Room, it was borne out by the evidence of Mr. Redlich (see page 8720) and Mr. Andriske (page 8795). See also Andriske's notes (exhibit 621). What then became of that desk? The only explanation reasonably supported by the circumstances of the matter is that it was removed by the Police once they realised its potent significance in the destruction of the authenticity of the Record of Interview.

(b) The behaviour of the Police and the number of lies told by them concerning the matter leave one in little doubt that the conclusion I arrived at as to the removal of the desk is the correct one. I propose to advert to some of those lies.

(i) When application was made at the committal proceedings on the 28th March, 1974, by Mr. O'Brien for an order permitting an inspection to be made of those areas at Russell Street where Cox had been taken on the 17th December, 1973, that application was opposed by Sergeant Davies (page 8858). Why oppose it, unless he feared there was something to hide?

(ii) Sergeant Davies would have it that when the application was made on the first day of the committal, he did not go back to Russell Street and have a look around to see what it was that could have been of assistance to Cox. In this connection I consider it desirable to set out the following passages from his evidence at page 8935 et seq. of the transcript—

Q. When Mr. O'Brien appeared on the first day of the committal, you were served with a copy application for a view at Russell Street, were you not?
A. Yes.

Q. And that was in terms that the defendant will apply to be able to inspect with his solicitor the areas of Russell Street Police Station where he was taken on the date of his arrest, on the 17th day of December, 1973. Is that so?
A. Words to that effect, I think, yes.

Q. You knew, of course, where he had been on that day, did you not?
A. I knew that he had been there.

Q. Taken up in the lift, had he?
A. I would think so, I can't recollect that, but I would think he would have been.

Q. Taken straight through to the Interview Room?
A. I would think so again.

Q. Escorted by either yourself or Pavey?
A. Yes, probably.
Q. In the Interview Room the whole time until fingerprinting procedure?
A. I'm not sure whether or not he may have gone to the toilet, but if so, yes, then to the other office re the fingerprinting.

Q. In any event, if he went to the toilet and then was later fingerprinted he was in the presence of either yourself or Pavey?
A. I would think so.

Q. After you saw that application you hotfooted it back, did you not, to have a look at the Interview Room to see whether anything might have happened there?
A. I don't think so.
Q. Eh?
A. I can't recollect hotfooting it back to the Interview Room.

Q. Do you deny that between the day of the first committal and the day of the second committal you did not go and inspect the Interview Room with a view to seeing if anything was there that might have been of assistance to Mr. Cox?
A. Between those dates I would have been in the Interview Room a number of times. I can't recollect specifically looking for anything that would have been of assistance to Mr. Cox. There is very little in the room apart from the furnishings.

Q. You cannot recollect. Is that an honest answer?
A. That is correct.

Q. You had never seen one of these applications before, had you?
A. That is right.

Q. When Mr. O'Brien made the application to the Justice of the Peace on the first day of the committal, did he not indicate in argument about the matter that at Russell Street Cox had done something to an object there indicating that he was innocent. Was that not put by Mr. O'Brien to a Justice of the Peace at the time he made the application?
A. I don't think in those words. I think the application was relating to something at Russell Street that would prove Mr. Cox innocent, but I don't know at what stage we knew whether it was in the CIB building, the City Watchhouse or somewhere at Russell Street, but it was something to prove Cox innocent. We didn't know until we actually got to the Armed Robbery Squad office on the second day.

Q. So that there was going to be something that was going to prove that he was innocent, according to Mr. O'Brien, and it is in Russell Street Police Station and in one of the areas he was taken to on that night, right?
A. This would have to be, yes.

Q. Since he was in Police company on every occasion except when he was left alone in the Interview Room, it would not be very hard for you to work out where that piece of information, or whatever it was, to prove his innocence, might be situated, would it?
A. He would have been in the Interview Room for the longest amount of time. I cannot recollect if he went to the toilet or not, but if he did he might have been in the part there by himself. At the City Watchhouse he might have been in the cell by himself.

Q. Did you understand Russell Street Police Station to mean the City Watchhouse?
A. That includes part of Russell Street Police Station.
Q. There is hardly much he could do in the cell to indicate his innocence, is there, when he has had his property and so on taken from him?
A. I didn't know at that stage what it was or how he could prove his innocence.

Page 8938—

Q. Well now, is this the situation, Mr. Davies: you think it quite probable that you went and had a look at the Interview Room at Russell Street after you had seen this application on the first day of the Cox committal?
A. After the first day . . . I do not think—recollect going straight away in there. No doubt I was in there a number of times between the two dates of the committal. I would presume that I went in there, but I cannot recollect going in to have a look.

Q. And you would have gone in there on at least one occasion for the purpose of checking out what, if anything, might have been there that was going to prove Cox's innocence?
A. I do not know. I remember going . . . I would presume I had gone in there. As I said, I cannot remember going in there for any specific purpose, but I would presume I was in the room. But as for looking for anything that was going to prove him innocent, I did not—could not understand that something was there that could prove him innocent, and I do not think I took particular notice.

Strangely enough Senior Constable Pavey demonstrated a similar lack of curiosity. At page 8969 of the transcript he had this to say—

Q. Mr. Davies has told us that the application O'Brien had made to the Honorary Justice was quite novel to him, he had never heard of it before in his life. That is what he told us. Do you follow?
A. Yes.
Q. Was that your state of mind also, you never heard of such an application either?
A. No,
Q. So here was that entirely novel application by this tricky fellow who had to be watched and I suggest both of you were therefore very interested and curious to know what it was all about?
A. To a certain degree, yes.
Q. Why do you say to a certain degree?
A. We knew we had nothing to worry about.
Q. In that state of mind I suggest that both of you, when the Court adjourned, went back to Russell Street, did you not?
A. That is on the first day?
Q. Yes?
A. We would have, yes.
Q. And went straight away to the Interview Room?
A. I didn't go to the Interview Room that day.
Q. Were you not curious to see if there was anything there which might explain this novel application that Mr. O'Brien had made before the Court?
A. Curious? I suppose, but I didn't go there. I am sure of that.
Q. Did Davies?
A. I don't know.
Q. Was there no discussion between you either at the Heidelberg Court or on the way to Russell Street; "I wonder if there is something in the Interview Room?"
A. As I said I think we discussed where he had been and I think Sergeant Davies was talking about getting some advice about this application.
Q. But you never checked the Interview Room?
A. I am sure I didn’t go in there, no.
Q. I suggest that you did, in point of fact, go there, found a wooden table with some writing on it and erased it?
A. That is not correct.
Q. Did you ever ask Davies after the day of the first committal if he had ever checked the room?
A. I don’t think so.
Q. You never raised it with him again until the day of the view, is that right?
A. I don’t think so, no.
I am afraid that that is evidence I am not prepared to accept.
Knowing that Mr. O’Brien was—and I here quote the words used by Senior Constable Pavey at page 8967—“a bit tricky”—it is inconceivable that when the application was made, it was not immediately apparent to the two men there was something of vital assistance to Cox in the Interview Room, and that they thereupon did not immediately return to Russell Street and seek it out.

(iii) When the application was made to the Justice of the Peace on the first day of the committal proceedings (March 1974) no ruling was made on it (doubtless because of the Police opposition to it), and the committal proceedings were adjourned to the 16th May, 1974.

On the 11th April, 1974, Sergeant Davies wrote a report to the Chief Superintendent of the C.I.B. urging that rather than continue with the committal, the Crown Law Department issue Cox and Harris (his co-accused) with Notices of Presentment for Trial (exhibit 635). Had that course been adopted the effect of it would have been to have thwarted the application made by Mr. O’Brien for leave to make the inspection.

When Sergeant Davies was questioned about the matter at page 8941 of the transcript he had this to say—

Q. You see, I suggest to you that the whole idea of this report was to prevent any view being had at Russell Street?
A. That is not so.
Q. And it was to prevent any view being had, because the incriminating evidence, or the evidence Cox wanted, had already been removed from the Interview Room.
A. That is not so.
Q. What do you say, again, was the reason for this report, then?
A. That this time, as far as I can remember, it was basically to ease the pressure on the civilian witnesses.
Q. The civilian witnesses, at the time of this report, had finished giving their evidence in the Cox case, had they not?
A. Not in the Harris case. Yes.
Q. In the Cox case?
A. Yes.
Q. Yes, and all that remained was the finalisation of the cross-examination of Pavey?
A. And re-examination, yes.
Q. So the halting of the committal in Cox’s case would have done nothing to ease the pressure on any civilian witness, would it?
A. In relation to Cox, do you refer?
Q. Yes?
A. That is correct.

This was again another false statement made by Sergeant Davies.
However, the Crown did not accede to his request, and on the 16th May, 1974, the committal proceedings continued and the application made initially by Mr. O'Brien in March was granted. It is to be noted that at that time the Police withdrew their objection. Why? In my opinion because they had removed the desk with the words "Its lies" and Cox's signature on it from the Interview Room, and had nothing further to fear. That the desk had been removed was demonstrated by the presence of the mark on the wall above the desk present in the room at the time the inspection was made.

There is much more one could point to as demonstrating the falsity of the evidence given by the Police Officers in this matter. I leave it to the reader of the transcript to judge the matter for himself. I turn now to say something of the attack made on Mr. O'Brien.

**Attack made by Police on Mr. Terence O'Brien**

There is really little more to add about this lamentable episode. I have already described the attack as unwarranted, malicious and slanderous and that is precisely what it was. Mr. O'Brien is a reputable and responsible member of the legal profession and not one tittle of evidence was placed before this Board of Inquiry to suggest to the contrary.

The report prepared by Senior Sergeant Lalor, and endorsed by Inspector Williams and Sergeant Davies (exhibit 631) demonstrates a state of mind or mentality utterly opposed to the balanced and rational objectivity the community is entitled to expect from Senior Police Officers. It has its origin in malice and self-preservation and was wickedly untrue; their behaviour deserves the strictest censure.

Before leaving the matter, however, let me advert to a passage from the submissions of Counsel Assisting the Board relating to the matter (in this instance, Mr. John Coldrey). At page 10,855 et seq. of the transcript he had this to say—

"Finally, in assessing the validity of this Record of Interview, one must look at the actions of the Police surrounding the serious allegations concerning Mr. O'Brien. Despite the evidence of this conspiracy to pervert the course of justice, Davies put in no report to his superiors. At some stage—Davies cannot recall when—he gave information in the matter to Mr. Lalor, a man who clearly shared his anti-O'Brien view (page 8934). Lalor was a man of Davies' own rank (page 8953). Davies conducted no investigation himself, has no memory of seeing Lalor followed the matter up (page 8932, et seq.) and never bothered to find out if O'Brien had been interviewed. Nor did he ever raise the matter with O'Brien when contacting him in February, 1974 in relation to the committal.

Pavey did not form an opinion that it was conspiracy at the time (page 8972), and although believing the matter should have been investigated, he never suggested that (a) Williams be told (page 8974) or that Cox Senior or O'Brien be interviewed. Pavey never asked who was investigating the matter or the result (page 8976).

Like Pavey Mr. Williams had no thought of conspiracy to pervert the course of justice whenever he did happen to see the record of interview nor did he take any steps to have the matter investigated. Apart from Lalor's dossier, not one thing was done. This combined lack of activity and curiosity by the Police is capable of the inference that the allegation was known to be false by them, and false because it was fabricated. It is significant that the dossier did not surface until May, 1974 when it was clear after the March committal that the Cox matter was to be strenuously fought.

It is also significant that on the evidence before the Board the dossier was never sent to the Law Institute; the reason in our submission was that this document, together with the antecedent report containing the scurrilous references to Mr. O'Brien, was nothing more or less than an insurance taken out by Davies and his colleagues to cover their own malpractices. They are self-serving verifications of a concocted allegation. The allegation itself is obviously unfounded, as the evidence of Miss Gillman, Mr. O'Brien's secretary, indicated.

Davies with his propensity to distrust the law officers as revealed in his cross-examination (page 8875 and following), has the ideal mentality in our submission to construct the falsehood. In the submission of Counsel Assisting there is prima facie evidence firstly that Davies, aided and abetted by Pavey, concocted admissions by Donald Cox, including in them a vilification of Mr. Terry O'Brien, Solicitor. Further, that Cox's account of what occurred at Russell
Street on the 17th December, 1973, and the 16th May, 1974, is substantially correct. Thirdly, that Cox did write “Its lies” on the side of the desk and the Police did remove the desk from the Armed Robbery Squad, and they did so prior to inspection by Mr. Cox and his legal advisers. Those involved in that conspiracy were Davies, Pavey and possibly Williams. It is a conspiracy to obstruct the course of justice."

I agree entirely with the views he expressed.

I turn finally to the perjury I am satisfied Sergeant Davies and Senior Constable Skan committed at the trial of Alan Roy McDougall.

Perjury committed by Sergeant Davies and Senior Constable Skan at the trial of Alan Roy McDougall

A junior member of the Bar was briefed by the Crown to prosecute at that trial.

Some few days before the trial, and on the 20th November, 1974, he was taken by Sergeant Davies and Senior Constable Skan to Russell Street to enable him to hear the tape-recording of the read-back of the Record of Interview allegedly between Davies, Skan and McDougall. After the tape had been played the following conversation took place (see page 9179 et seq. of the transcript)—

Q. Would you tell Mr. Chairman as best you can recollect what that conversation was?
A. I asked, “Is that the only tape?” Davies replied to me, “No, it is not, we had to get rid of the other tapes because we could hear the beer cans going off like bombs on the tape.” I said, “What do you mean?” Davies replied that he had been off duty on this particular night and he had been drinking at a hotel; there had been an incident, and he had been requested to attend the Armed Robbery Squad Office. He said on his arrival at the office he saw a person whom he knew to be McDougall; McDougall was shaken up, and Davies said he knew that it was because Gibb had been shot on that particular night, and that McDougall, I believe, had been present, although I am not certain as to that. He said that it was a hot night—this is to McDougall.

Q. This is Davies telling what he said to McDougall?
A. Yes. Davies said to McDougall, “It is a hot night. Are you thirsty? Would you like a drink?” I was then told by Davies that Skan left the office and returned with some beer, and that some beer was consumed during the taking of a Record of Interview. I believe as a result of that—it is only my recollection—I said an expression to the nature of “That’s nice”. Davies replied, “It’s all right. If I am asked about it at the trial, I will deny it”. I said to Davies, “That’s a matter entirely for you”. There was no further conversation relating to those matters at that time.

Arrangements were then made for me to be taken back to Owen Dixon Chambers. I was taken back there by Mr. Davies, but Mr. Skan remained on duty in the Armed Robbery Squad Office and another gentleman, who I do not know, accompanied Mr. Davies in driving me back to the Owen Dixon Chambers.

Q. Tell me, had you ever met Mr. Davies or Mr. Skan prior to that day?
A. I had not.

Being somewhat perturbed about the matter, on his return to Owen Dixon Chambers, the prosecutor sought advice from a senior member of the Bar as to what he should do. As a consequence of that advice it was considered that the appropriate course to adopt was to brief a Senior Crown Prosecutor to lead him at the trial. In due course the necessary steps were taken and that was done.

Either that night or shortly thereafter, the junior prosecutor made notes of the conversation he had had at Russell Street earlier that day with Sergeant Davies (page 9180). A photocopy of those notes was received by the Board as an exhibit (exhibit 675) and is to be found as Appendix “B” to this Chapter of the Report.

On the afternoon of the 20th November, 1974, the junior prosecutor conferred with his leader. I consider the evidence given by the junior prosecutor as to what occurred during the course of that discussion and then at the trial, worthy of inclusion in this summary. The following passage appears at page 9181 et seq. of the transcript.

Q. On the afternoon of the 20th, did you see Mr. X. (the senior prosecutor)?
A. I did. He rang through to my clerk, and, as a result of the telephone call, I went to his Chambers in the County Court Building.
Q. And did you discuss with him what you had heard at Russell Street?
A. I did. I discussed the matter entirely with him as to what the proper course was to be adopted in relation to the matter.
Q. And would you tell Mr. Chairman what course was decided?
A. After some lengthy discussions, it was decided that the matter would not be a problem unless it arose during the trial and the matter was denied by Mr. Davies.
Q. Yes?
A. It was decided that the trial should proceed.
Q. All right. You mentioned that you sought the advice of a senior barrister when you returned to—what, Owen Dixon Chambers, was it?
A. Yes.
Q. And that you spoke to Mr. X. (the senior prosecutor)?
A. Yes.
Q. Did you mention what you had heard to anybody else?
A. I do not believe so.
Q. In particular, did you ever inform a Mr. Robert Richter of what you had heard at Russell Street?
A. No, I did not.
Q. Did Mr. Richter later appear for McDougall at the trial?
A. On the morning of the 21st, Mr. Richter appeared. I knew that he was appearing in the matter, because Mr. X. (the senior prosecutor) had told me he appeared previously in the other matter, and I believe at the time that the trial of Gibb came on, McDougall was a co-accused and that separate trials were ordered in relation to the matter.
Q. Yes, all right. Did the trial of McDougall eventually commence on the 22nd November?
A. It did. It was listed for the 21st November.
Q. Yes?
A. At the time when the matter was called on, there was no appearance for the accused man. The explanation that was offered was that he had hurt his hand and would be unavailable on that particular day. The trial was then scheduled to be listed again on the following day, the 22nd November, 1974.
Q. And did it, in fact, commence on that day?
A. It did.
Q. At the commencement of the trial, was there any order made in relation to witnesses?
A. An order was made for witnesses to be out of Court, excepting, as is the usual practice, that the corroborating officer would be present during the examination-in-chief of the Officer-in-Charge of the interview.
Q. Yes, all right, well now, as to your own role in the trial, how many witnesses did you lead in their evidence?
A. I led one witness, I believe. It was some time ago. I believe it was a lady who was in charge of one of the TABs. I led her through evidence-in-chief.
Q. As far as the other witnesses are concerned, I take it, then, it is your recollection that the Senior Prosecutor, Mr. X., led them and did any cross-examination?
A. Yes, and, in fact, I believe that he re-examined the witness whom I had examined in chief.
Q. Yes. Did you yourself have any association with Mr. Davies during the running of the trial?
A. No. I was advised that I was to stay away from Mr. Davies during the running of the trial.
Q. On Monday, the 25th November, did Mr. Davies give evidence on oath during the trial?
A. I believe he did, yes.
Q. Was he asked any questions in relation to the consumption of beer by McDougall?
A. On behalf of McDougall?
Q. Yes.
A. Yes, he was, he was cross-examined by Mr. Richter who appeared for McDougall, as to the questions in relation to the taking of the Record of Interview. The questions were directed squarely at whether or not McDougall had been given any beer during the Record of Interview.
Q. When Mr. Davies was asked that, what did he reply?
A. He said, "I believe that none had been given to McDougall".

Q. Did Mr. Skan give evidence on oath?
A. Yes, he did.

Q. Were similar questions put to Mr. Skan?
A. Yes.

Q. What was his reply?
A. He replied, "No, none had either".

Q. From what you have told us these answers on oath by the two Policemen were directly contrary to what you have been told by Davies at Russell Street on the 20th November?
A. They were.

Q. What did you and Mr. X (the senior prosecutor) then do?
A. I had a discussion with Mr. X (the senior prosecutor). I then went to the Chairman of the Bar Ethics Committee, Mr. Leo Lazarus.

In due course the trial Judge was apprised of the fact that difficulties had arisen so far as the trial was concerned (the exact nature of them was not specified to him), that the Crown wished the trial to be halted, and the Jury discharged. This application was acceded to. In due course, and following consultation with the Solicitor-General, a nolle prosequi was entered (page 9183).

The evidence the junior prosecutor gave as to events at the trial, was corroborated by Mr. Robert Richter. (See his evidence at pages 9198-9211 of the transcript.) In particular he swore that he had had no discussion with the junior prosecutor prior to the trial, and that the allegations he put to Davies and Skan during the course of their cross-examination concerning the liquor McDougall had consumed during the interview, and to the effect that the Record of Interview was a fabrication, were put as a consequence of the specific instructions he had received from his client (page 9199), and were instructions given to him well prior to the 20th November, 1974 (page 9199 et seq.).

When cross-examined before this Board concerning the matter, both Davies and Skan denied that the conversation deposed to by the junior prosecutor as having taken place at Russell Street on the 20th November ever occurred, and that in fact the junior prosecutor was either lying about the matter (see Davies at pages 8879-80) or had got the conversation out of context (see Skan at page 9135). In the circumstances, I find myself unable to accept the proposition that a prosecutor in the situation this junior prosecutor was on the 20th November, would get out of context a statement to the effect, "It's all right. If I am asked about it at the trial, I will deny it."

It was during the course of Sergeant Davies' evidence that he made the scurrilous statements relating to the junior prosecutor to which I have already adverted—statements which in themselves were false having regard to the fact that from all the evidence given before the Board he had never seen that barrister appearing in litigation before, or after McDougall's trial, and in fact did not even witness his brief performance in that matter.

During the course of final submissions Counsel appearing for the Police Association suggested that the junior prosecutor's memory was defective, and that he did not make his notes of the conversation on the 20th November or shortly thereafter as he swore he did, but probably at a later date.

I do not propose to canvass such matters in this summary. I simply state that I reject them.

One further matter Mr. Phillips Q.C. pointed to as indicating the junior prosecutor was in error concerning the conversation, was a passage in the transcript of the evidence given at McDougall's trial where the senior prosecutor put certain matters to Senior Constable Skan in re-examination. Because of the reliance Mr. Phillips placed upon the matter, I shall set it out verbatim as appearing at page 40 of exhibit 758.

"What did he reply to that?—He had no complaints.

No complaints. Thank you. I have no further re-examination Your Honor. I am sorry, Mr. X has reminded me. (To witness) You have been asked about noises which appear in the background of the tape, Mr. Skan. In the actual Interview Room, what type of chairs did they have?—We have chairs similar to this here, with the same type of legs, but different type of seating.

What type of floor—It's concrete with hard linoleum on it.
Are you able to tell me whether or not, on occasions, the chairs make some noise if they are moved . . .

(Objection by Mr. Richter).

Are you able to tell me, Mr. Skan, whether in the reading over of this document by the accused man, there was any movement by chairs by anyone during the interview?—There would have been movement of chairs, yes.

Thank you. I have no further re-examination."

The point made by Mr. Phillips was that if the conversation the junior prosecutor alleged had occurred at Russell Street did occur, he would not be suggesting that the senior prosecutor ask Senior Constable Skan whether the extraneous noise heard on the tape could have been the movement of chairs in the Interview Room, because he would have known that the noises were made by the beer cans.

That argument completely overlooks the fact that if the junior prosecutor's account of the conversation is correct—and I find as a fact it is—the tapes of the read-back of the Record of Interview on which the noise of the beer cans could be heard, had already been destroyed (page 9179). Accordingly, it, would not be at all unusual to find him suggesting to his leader that other factors might be responsible for the extraneous noises heard on the tape.

The conclusion I reached in this matter was that both Sergeant Davies and Senior Constable Skan committed perjury at McDougall's trial, as they did before this Board. It would seem appropriate that in due course, consideration be given to the institution of criminal proceedings against them in respect of these matters.

FINDINGS

I make the following findings in this matter:

1. Sergeant Gomer John Davies and Senior Constable Colin Barry Pavey fabricated evidence against Cox and committed perjury in relation to that evidence at his trial.

2. Sergeant Davies and Senior Constable Pavey conspired together to suppress evidence favourable to Cox and did so.

3. Sergeant Davies and Senior Constable Trevor Wallace Skan conspired together to commit perjury at the trial of Alan Roy McDougall and did so.

4. Inspector Gordon Maxwell Williams, Sergeant Davies and Senior Constable Pavey conspired together to commit perjury before the Board and have committed perjury before the Board.

5. Sergeant Davies and Senior Constable Skan conspired together to commit perjury before the Board and have committed perjury before the Board.
THE COX MATTER

APPENDIX “A”

LIST OF WITNESSES

<table>
<thead>
<tr>
<th>Name</th>
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<td>ANDRISKE, Peter Charles</td>
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</tr>
<tr>
<td>COX, Donald William</td>
<td>8669-8716 and 8806-8818</td>
</tr>
<tr>
<td>DAVIES, Sergeant Gomer John</td>
<td>8850-8946</td>
</tr>
<tr>
<td>O’BRIEN, Terence Francis</td>
<td>8735-8793</td>
</tr>
<tr>
<td>PAVEY, Senior Constable Colin Barry</td>
<td>8948-5987</td>
</tr>
<tr>
<td>REDLICH, Robert Frank</td>
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</tr>
<tr>
<td>RICHTER, Robert</td>
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</tr>
<tr>
<td>SKAN, Senior Constable Trevor Wallace</td>
<td>9126-9152</td>
</tr>
<tr>
<td>WILLIAMS, Inspector Gordon Maxwell</td>
<td>8821-8848</td>
</tr>
<tr>
<td>JUNIOR PROSECUTOR</td>
<td>9177-9198</td>
</tr>
</tbody>
</table>
APPENDIX "B"


Time 2.00 p.m. ... Picked by the Armed Robbery Squad members Skan and Davies: Driven to Russell Street. Conversation re McDougall in hotel in Richmond—Davies bringing beers and McDougall and Shoplifting and McD being an informer. Went by lift to office and was shown around by Davies and Skan. Shown the interview room and room where the tape recorder was plugged in. Tape was played to me in the Officer in Charge's Room, after hearing the tape, 3 of us went back to Lalor's office and conversation then took place.

JUNIOR PROSECUTOR... Is this the only tape?

DAVIES ... No we made others but we had to destroy them because you could hear the beer cans being opened. They went off like a bomb—or an expression similar to that.

JUNIOR PROSECUTOR... What do you mean?

DAVIES ... Before I came on duty that night I had being having a few beers at the pub—and it was a hot night. When I came in I saw the accused man McDougall and he was a bit shaken up over what happened to Gibb. Had a conversation with him and someone said I am thirst. Davies said would you like a beer—McDougall said Yes and Skan went to get some beer.

JUNIOR PROSECUTOR... That nice (or an expression similar to that).

DAVIES ... It's all right if am asked about this at the trial I will deny it.

JUNIOR PROSECUTOR... Well that a matter for you entirely.

Skan was present during the whole conversation.

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Note: I have substituted "Junior Prosecutor" for the name of the Junior Prosecutor.
CHAPTER 12

THE CURTEIS MATTER

Introduction

Geraldine Anne Curteis is a law clerk employed by a firm of Solicitors carrying on practice in the City of Melbourne. As at the 6th February, 1975 Miss Curteis was aged 24 and had an unblemished record so far as the Victoria Police Department was concerned. From her demeanour in the witness box one formed the impression that Miss Curteis was in every respect a decent and responsible member of the community possessing a degree of determination and independence commensurate with her age and legal background. Indeed one is justified in saying that it was that very determination and sense of independence which caused her to become involved with two comparatively junior members of the force on the evening of that date—an involvement which was to cause her a significant degree of embarrassment and inconvenience.

Between 6.30 and 7.00 p.m. on that evening Miss Curteis and two friends, Jennifer Margaret Mitchell and Lynnette Joy Mitchell, visited a restaurant in Fitzroy Street, St. Kilda named Leo's. Earlier in the evening the three young women had called at the home of a friend in Albert Park then driven to St. Kilda, parking their vehicles in Loch Street within walking distance of the restaurant. According to Miss Curteis, the Mitchell sisters had a meal at the restaurant, although she herself only had a glass of orange juice, some gelati and coffee. I advert to the latter aspect simply to indicate that the three women had not consumed any alcohol that evening nor indeed was it ever suggested by the Police Officers involved in this matter that they had.

Somewhere in the vicinity of 8.30 and 9.00 p.m. the three young women left the restaurant intending to return to their cars parked in Loch Street, preparatory to proceeding to their respective homes. In the course of returning to their cars Miss Curteis and the Mitchell sisters were stopped and questioned by two Police Constables from the South Melbourne Police Station—Constable Larry Paul Proud and Constable Wayne John Harris.

As a consequence of what occurred during that confrontation Miss Curteis was arrested, taken in the rear of a Divisional Van to the South Melbourne Police Station, charged with using insulting words, placed in a cell, and confined there for at least an hour before being released on her own recognizance to appear at the South Melbourne Magistrates' Court on the 25th February, 1975.

In contrast to the unfortunate experience of Norman Barry Whyte (see chapter 30) the evidence called on Miss Curteis' behalf at the hearing of that charge was such that the information laid against her was dismissed.

At this juncture the reader of this summary might be forgiven for enquiring how it was that a person of Miss Curteis' background and character came to end up in a cell at the South Melbourne Police Station that evening charged with the offence of using insulting words.

The answer to that question became apparent the further one delved into the evidence presented before the Board. Constables Proud and Harris made the error of assuming that three young women walking along a street as notorious as Loch Street, St. Kilda at 9 o'clock at night could be in Loch Street for one purpose only, viz. loitering for the purposes of prostitution. Having made that assumption they, or perhaps more accurately Constable Proud, acted accordingly. The women were stopped, and so far as Miss Curteis was concerned, treated in a high-handed and arrogant fashion by Constable Proud. I have little doubt that much to Constable Proud's later regret, Miss Curteis stood up for what she considered to be her rights, refused to give him her name and address, and ultimately left him with no alternative but to either arrest her, or back down and lose face. In a fashion somewhat similar to the behaviour of the Police Constables in the Erdmann Matter (chapter 14) and the Olding Matter (chapter 20) he chose the former course. Miss Curteis was placed in the rear of the Divisional Van, transported to the South Melbourne Police Station, there questioned, then placed in a cell. Although Miss Curteis had been informed initially that she would be charged with the offence of "loitering" (for the purposes of prostitution), when she was released from the cell block and permitted to bail herself out, she ascertained that the charge actually laid against her was not one of "loitering" but of using insulting words.

As in the Erdmann and Olding Matters, the Curteis Matter demonstrated the high-handed behaviour of certain members of the Police Force towards innocent members of the community. In this particular case there was no justification whatsoever for the behaviour of Constable Proud that evening, behaviour which in my opinion justifies the strongest criticism.
I turn now to consider the evidence called in the Curteis Matter in more detail.

Evidence of Miss Curteis as to Her Apprehension in Loch Street, St. Kilda

Having left Leo's restaurant the three young women proceeded in an Easterly direction along Fitzroy Street, St. Kilda to the intersection of that street and Loch Street. Miss Curteis' car and that of the Mitchell sisters were parked at the Eastern kerb of Loch Street some short distance North of Fitzroy Street. Having arrived at the intersection Miss Curteis and her two companions turned left into Loch Street and proceeded to walk in a Northerly direction along the Western footpath of Loch Street. It is not without significance that on Miss Curteis' account of the matter, as the three young women proceeded along Loch Street, Miss Curteis was nearest the Western building-line of Loch Street, Jennifer Mitchell was nearest the kerb (i.e. the Western kerb) and Lynnette Mitchell was walking between the two of them.

As the three women proceeded North along Loch Street, Miss Curteis observed a Police Divisional Van travelling at a slow rate of speed in a Southerly direction along Loch Street, i.e. coming towards them. As the van drew almost alongside them Miss Curteis alleges she heard a male voice shout something out from the direction of the van. Unfortunately Miss Curteis did not hear what it was that was said. What she did hear however was Jennifer Mitchell (who on her account was nearest the kerb) say: "We are not like that" (page 6700). The three women then proceeded to cross the road to go to their cars parked at the Eastern kerb. According to Miss Curteis she had almost reached the other side of the road when the Police van suddenly moved in reverse in a Northerly direction along Loch Street, causing her to jump to get out of its way.

On reaching the Eastern footpath of Loch Street, Miss Curties looked back across the road and observed the van stationary in the centre of the road and its driver (Constable Proud) talking to the Mitchell sisters. The only portion of the conversation Miss Curteis heard at that time was Jennifer Mitchell say, "Why?", then, "No, I will not". According to Miss Curteis the tone of voice of Jennifer Mitchell was such as to cause her to form the view she was upset (page 6700).

Having heard that part of the conversation Miss Curteis then walked back across the road in front of the van and approached the driver's window. What occurred next is best described in the evidence Miss Curteis gave at page 6701 et seq. of the transcript.

Q. What did you say when you approached the driver's side window?
A. I asked what the matter was.
Q. What did he say?
A. He asked me for my name and address.
Q. What did you say?
A. "Why?"
Q. What was his retort to that?
A. "What is your name and address?"
Q. Did you make any reply to that?
A. Again, "Why, why have we been stopped?"
Q. At this stage was there, so far as you could tell, anyone else in the divisional van?
A. Yes, there was another Policeman.
Q. Were your friends still there?
A. Yes.
Q. At about this point of time, did you notice something in the street?
A. There was a roaring sound in the direction of Fitzroy Street which made me turn, and I noticed an old-model Holden coming down Fitzroy Street, towards Melbourne. It only had one headlight on and was coming very quickly.
Q. At about that point of time when you noticed it, did anything happen so far as either of the Constables in the van was concerned?
A. Yes, the other Policeman got out, went up to the driver, stopped him and, as that happened, Constable Proud ordered Jenny, Lynn and myself to go back over to the nature strip where we had been.
Q. When you say where you had been, had Jenny and Lynn reached the nature strip?
A. No, they had not.
Q. About how far from where the divisional van had been or was at the time did the other Constable intercept the car with the one headlight, would you say?
A. About twenty feet from the front of the Police van.
Q. Towards Fitzroy Street?
A. Towards Fitzroy Street.
Q. Did you and the other girls obey the constable's direction and go to the nature strip?
A. Yes.

Constable Proud then drove the Police van forward, parked it, came back to where Miss Curteis and her two companions were standing on the nature strip, and again asked for their names and addresses. Whilst this was taking place the other Police Constable from the van (Constable Harris) interviewed the driver of the Holden car he had intercepted.

Again Miss Curteis asked, "Why" to which Constable Proud said something to the effect that he was not going to be abused. As Miss Curteis said in her evidence at page 6701A of the transcript, to that stage she had heard nothing said which would amount to abuse, and she in fact had not spoken to the Police until she approached the window of the divisional van.

At all events following Constable Proud's reference to abuse, Miss Curteis' account continued as follows:
Q. When you were asking Mr. Proud what he was talking about in relation to abuse, was anything said about being smart?
A. Yes.
Q. What did he say?
A. When he again asked me what my name and address was, and I had refused and wanted to know why he wanted to know, he said, "Don't be smart ".
Q. What did you say to that?
A. I didn't say anything in reply to that. At that stage, he again asked my name and address.
Q. What did you say to that?
A. I said, "Why have we been stopped?" He said, "Don't be smart " and I said, "Don't be rude ".
Q. Yes?
A. He said, "I will arrest you ".
Q. When he said that, did you make any reply to him?
A. Only to say that he was extremely rude and I asked him for his number and what station he was attached to.
Q. What did he say to that?
A. He said, "I don't have to give you that ".
Q. What did you say?
A. I said, " And I don't have to give you my name and address until you tell me why and why we were stopped and what we are charged with ".
Q. What did he say then?
A. He again asked me for my name and address.
Q. Was anything more said about arrest?
A. Not directly to me. He turned to Jenny and Lynn and asked for their names and addresses.
Q. Did Lynn say anything to you about name and address?
A. Yes, she did.
Q. What?
A. " Give your name and address ".
Q. Did you or Jenny reply to them?
A. Jenny replied.
Q. What did she say?
A. She said, " Geraldine works in the law, she knows what she is doing ".
Q. What happened when Mr. Proud asked for the names and addresses of Jenny and Lynn?
A. He again asked Jenny for her name and address and I said she did not have to answer that until he told her why and why we were stopped.
Q. Did she say anything?
A. She did not answer, just shook her head no.
Q. Then, you told Mr. Chairman he turned to you and asked for your name and address?
A. That is correct.
Q. At that stage had he asked Lynn for her name and address?
A. Yes.
Q. When he asked you for your name and address again, did you give it or refuse?
A. No, I refused to give it until he told me why.
Q. What did he say then?
A. "You are under arrest".
Q. What did you say?
A. I asked him what charge.
Q. What did he say?
A. No reply at all, just took me by the left arm and led me to the divisional van. He unlocked it and told me to get in. As I was getting in I again asked what I was being charged with and he told me not to be a smart bitch.
Q. Was the door then shut?
A. Yes, it was.

Whilst Miss Curteis was in the rear of the van Jennifer Mitchell came to the van with Constable Harris, told Miss Curteis that she and her sister had given their names to the Police and that Miss Curteis "was to give hers. Miss Curteis' reaction to that statement was to say she would not give it until she was told why they had been stopped, what she was being charged with, and what Constable Proud's number and station were (page 6702).

At that Constable Harris told Miss Curteis that he would give her his name and address if she would give him hers. If that exchange occurred—and to my mind there is no doubt it did—it would seem to me that by that stage Constable Harris realised that he and Constable Proud had a tigress by the tail and was desperately anxious to extricate himself from what was obviously becoming a fairly "sticky" situation.

What next occurred appears at pages 6703-4 of the transcript.
Q. What did you say?
A. I said I would not give them my name and address unless they told me why. He then went on to say that street was known to be frequented by prostitutes and I interrupted him and said, "Are you saying I am a prostitute" and he said, "Oh, no".
Q. Did you say to Mr. Harris that you had done nothing wrong?
A. Yes.
Q. Did Jenny again say something to you about your name and address?
A. Yes. She asked me to give it again and I said, "No", and I asked her not to give my name and address. I said I had done nothing wrong and I wanted to know why we were stopped and what I was being charged with.
Q. Then, did you offer, as it were, an invitation to Jenny?
A. Yes, I asked her if she was coming with me. I said that principles were involved and I was not going to be pushed around. At this stage Lynn called Jenny and Jenny returned to Lynn.
Q. What happened next?
A. Constable Proud returned, told me to get in.
Q. Back into the van?
A. Yes. I again asked what I was being charged with and he said, "Get in or we will put you in". I climbed back into the divisional van and the door was locked.
Q. So far as the movements and whereabouts of Lynn and Jenny Mitchell were concerned, that is as far as you could take it that night, is it?
A. Yes, that is correct.
Q. When you got back into the divisional van and the door was locked, whereabouts were you seated in the van?
A. Against the grille at the back of the driver's seat.
Q. Did it become apparent to you that both these gentlemen had got back into the front portion of the van?
A. Yes, both doors banged.
Q. Was there some discussion between the two Constables?
A. Yes.
Q. Were you able to hear all of it or some of it?
A. Part of it only.
Q. Can you tell Mr. Chairman what part you recall that you heard?
A. I heard Constable Harris say, "What about her?" Constable Proud replied, "Don't worry about that, there is two of us and only one of her". Constable Harris then said to him, "There is a bashing at No. 5", I think he said a domestic problem but I am not sure.

Q. Then did you hear something after that?
A. Yes. One of the Constables got out and the door banged again.

Q. Did you know which one got out?
A. No, I did not turn around to see.

Q. You remained in the van, did you?
A. That is correct.

Q. Did you have anything to say?
A. No, nothing.

Q. After some interval of time, did whoever had left the van earlier return to it?
A. Yes.

Q. What happened then?
A. The police van was driven to South Melbourne Police Station.

Q. Did you have anything to say on the way to the Police Station?
A. Nothing at all.

Q. When you arrived at what turned out to be the South Melbourne Police Station, was the door of the van opened?
A. Yes.

Independent evidence called in support of Miss Curteis' testimony as to her apprehension in Loch Street

Both Jennifer and Lynnette Mitchell gave evidence supporting that of Miss Curteis. Whilst there were obvious discrepancies between their evidence and that of Miss Curteis, I am satisfied both witnesses did their utmost to give me an accurate account of the events of that evening and I had no hesitation in accepting their testimony in relation to the matter in preference to that of the Police Officers involved.

The account Jennifer Mitchell gave is to be found at pages 6752 et seq. of the transcript. The following are the more relevant passages of her evidence in chief.

Q. As you walked along where were you in relation to the kerb in Loch Street, do you recall?
A. Memorywise I think I was in the middle, Geraldine was on this side (indicating), I was in the middle and I think Lynn was on the other side.

Q. SO, your memory is Lynn is on the kerb side?
A. I think so, I'm not sure.

Q. You are in the middle and Geraldine was near the fence?
A. I think so.

Q. As you walked along Loch Street will you tell Mr. Chairman what you observed?
A. I saw a Police van coming up very slowly, driving slowly, up the same way as were walking up Loch Street.

Q. Was that travelling away from Fitzroy Street or towards Fitzroy Street?
A. No, away.

Q. Was it coming at a fast speed?
A. No, very slowly, in fact almost stopped.

Q. What happened as it came along?
A. Well, a Policeman sort of looked and gave me the opinion that he was looking at us as though we were prostitutes walking up the street. I looked at the Officer and said, "No, Officer, we are not like that" and proceeded to go on.

Q. Was it the driver or passenger who looked at you like that?
A. I felt it was the driver.

Q. After you had said that what happened then?
A. The van proceeded to take off in quite a speed and we were crossing to go to the car across the road and apparently something was said like, "Get lost" or something like that. I thought I heard something said and then the van was reversed backwards very quickly and nearly skittled my sister and myself and came back and the Constable said, "Come here, you," looking at me, and so I walked over to the window and I said, "What's the matter, what have I done?"
Q. Yes?
A. And I was startled at the whole thing, and I said, "Why? What have I done?" and he kept saying, persisting, "What is your name and address?" and again I said, "Why?" "What have I done?", and at that stage Geraldine came over.

Q. Well then, what is the next thing that happens after that?
A. Well it just sort of went on for about three to four minutes—"What is your name and address?"—and then Geraldine asked, "What's the reason . . .?" "Why do you want the name and address?", and he just kept on persisting. "What is your name and address?"—no reason, nothing.

Q. Was Geraldine asking the same sort of question, you had been asking—"What have we done?"
A. Yes, that is right.

Q. Was any answer given as to what any of you had done?
A. No, nothing.

Q. At any time whilst this conversation was going on, was anything said about arresting anyone?
A. Yes, I think so. Because we would not give our names and addresses—we did eventually, my sister and myself, but Geraldine would not. He said he would arrest her and take her to the Police Station.

Q. Did she respond to that comment, that you can recall?
A. I do not think she was terribly happy about the whole thing. She said, "What is your rank and serial number, where do you come from, what is the charge?"

Q. Was anything said about being smart, that you recall?
A. I think there was, I cannot remember exactly but I feel there was something "Don’t be smart" or something.

Q. That was—?
A. Oh, yes, that was after she asked the rank and number and he said "Don't be smart" and she said, "Don't be rude" or something and he said, "Don't be smart". I cannot exactly place it.

Q. You said that when the van passed you coming from behind you and you made that remark you did, the van then accelerated?
A. That is right.

Q. And about that time you thought you heard someone call out, "Get lost"?
A. Yes.

Q. Are you able to say who called that out?
A. I could not tell you honestly. I just heard a voice—I do not know whether it was in front, behind or what. There were people standing around at the time near the fence.

At one point during the cross-examination of Jennifer Mitchell by Counsel appearing for the Police Association, the following exchange occurred (page 6770):

Q. I think it is common ground the Policeman asked her her name and address?
A. That is right.

Q. Did Geraldine say, "I have done nothing wrong"?
A. Yes.
Q. "I do not have to tell you that"?
A. That is right.

Q. Well, did the Policeman say, "I'm going to charge you with insulting words"?
A. Yes, I think he did.

Counsel for the Police Association attached a great deal of weight to that answer of Miss Mitchell, and contended it established that Miss Curteis was in fact told of the charge to be laid against her, and having been told should then have given Constable Proud her name and address. As he pointed out, had Miss Curteis given her name and address, it is clear she would not have been arrested but proceeded against by summons (see the evidence of Jennifer Mitchell at page 6772 of the transcript and that of Constable Proud at page 6859).

On the whole of the evidence given by Jennifer Mitchell to the Board, I am satisfied she was in error when giving that answer to Counsel appearing for the Police Association during the course of her cross-examination. In my opinion her evidence at pages 6767 and 6773 of the transcript is a more accurate account of what actually took place.

Q. While the Policeman with the moustache had gone over to ask your assistance he told you then, didn't he, that Geraldine was going to be charged with using insulting words?
A. No. he didn't tell me, no.

Q. You agree he asked you to go and talk some sense into Geraldine?
A. Yes, that is correct.

Q. That she would not be taken away if she did give her name and address?
A. That's right.

Q. But you say he didn't tell you she would be charged with insulting words?
A. He didn't tell me anything.

Q. Is this the situation, Miss Mitchell, that at no time during the period that you were at the scene in Loch Street did you ever know what Geraldine was going to be charged with?
A. I did not, no. I never knew. The whole thing was just—we never knew what the charge was. It was just, you know.

Q. I thought, Miss Mitchell, that you told Mr. Phillips—and I am not sure just where in the conversation—that at one stage the Police Officer with the moustache told Geraldine that she was going to be charged with abusive language or words to that effect?
A. Yes, not necessarily told Geraldine. There was something mentioned about abusive language, yes, but I cannot remember actually him saying to her, "I am charging you for abusive language". We never knew the charge, this is why we were so upset about the thing, for no reason we were just picked up.

Q. She asked the Police Officer with a moustache on more than one occasion, as I understand it, "What am I going to be charged with" or "What is the charge" or words to that effect. Did he not ever say specifically to her, "You are going to be charged with using abusive or offensive language"?
A. No, I do not remember him saying that.

The evidence given by Lynnette Mitchell appears at page 6773 et seq. of the transcript. In essence she corroborated the evidence given by her sister and Miss Curteis. Whilst there were discrepancies between her account and that of her sister and Miss Curteis, as I have already indicated, I considered her a truthful witness and one who endeavoured to give as accurate an account of the events of that evening as her memory would permit. To my mind the following passages of her evidence are the more significant:

Q. Have you got any idea of where Geraldine was?
A. She would have been on the wall, near the beach, walking along.

Q. Do you recall what was said in that conversation?
A. Yes, she wanted to know what was going on because we were quite innocent and doing the right thing. He then asked her for her name and address, which she refused to give because she wanted to know the reason why. She did not get any reply again. That was just the general conversation—asking for the name and address repeatedly.

Q. Was anything said that you recall about rudeness?
A. I thought their tone—not "their"—the one, Constable Proud, who was questioning us all the time was rude in his approach to us. We were not rude to him though.
Q. Was anything said about rudeness or do you not recall?
A. About what rudeness?
Q. You thought he was rude; was anything said to him?
A. No, I do not think so.
Q. Was anything said about being smart?
A. I recall that Constable Proud said that Geraldine Curteis was being smart and he told her not to be smart, but she was not. She was just trying to find out the reason and we thought she was within her rights asking.
Q. At any stage did you hear Mr. Proud indicate that Geraldine was under arrest?
A. I cannot remember.
Q. At any stage whilst you were at the scene did you ever hear it announced by the Police that they were going to charge her with any particular offence?
A. There was no mention of any charge because Geraldine kept asking what the charge was and we got no reply.
Q. Mr. Proud indicates that his version of the events on this night is that he saw the larger of the three females (that is Miss Curteis) call towards him, “Drop dead, pigs.” Was that ever said on that night by Miss Curteis?
A. No.
Q. Did she ever tell Mr. Proud to “drop dead”?
A. No, not once was any abusive language spoken.

As I previously indicated Counsel appearing for the Police Association made much of the answer given by Jennifer Mitchell during the course of her cross-examination to the effect that she thought Constable Proud said “I’m going to charge you with insulting words” (page 6770). For the reasons I indicated when dealing with the whole of the evidence Jennifer Mitchell gave I was satisfied that Constable Proud made no such statement.

In arriving at that conclusion I was also assisted to some extent by the evidence later given by the Watchhouse Keeper Constable William Gary Manning.

In this connection it is to be noted that between 9.30–9.35 p.m. that evening Jennifer Mitchell telephoned Miss Curteis’ mother from a public phone box, to inform her of the fact that her daughter had been arrested and taken to the South Melbourne Police Station (page 6768).

According to Constable Manning Mrs. Curteis telephoned the South Melbourne Police Station about 10-15 minutes after Miss Curteis had been lodged in the cells (page 6986) (i.e. about 9.45 p.m.), wanted to know why Miss Curteis was there, if she had been charged, and what she had been charged with (page 6983).

The inference I consider one is entitled to draw from that evidence—particularly in the light of the overall effect of the evidence the Mitchell sisters gave in relation to the matter—was that no mention had been made of the charge to be laid against Miss Curteis in Loch Street that evening, accordingly Jennifer Mitchell had been unable to convey that information to Mrs. Curteis when she telephoned her, hence Mrs. Curteis’ query when speaking to Constable Manning.

I turn now to deal with the evidence Miss Curteis gave in relation to her treatment at the South Melbourne Police Station.

Evidence of Miss Curteis as to her treatment at the South Melbourne Police Station

Upon their arrival at the South Melbourne Police Station, Miss Curteis alighted from the divisional van, was led into the Station by Constable Proud and placed in the Muster Room at the rear of the Reception Office. According to Miss Curteis the room was in darkness when they arrived at the Station and as she had an aversion to being in confined areas in the dark she refused to enter the room until the lights were switched on (page 6704). This evidence was hotly disputed by the Police, they maintaining that the lights in the room were on when they arrived at the Station and that as a matter of practice the lights in the Reception Office and Muster Room are left burning all night. The only remark I make at this juncture is that if Miss Curteis lied about the matter as the Police allege she has, it would be a pointless exercise on her part. The question as to whether the lights in the Muster Room were on or off when she was escorted into the Police Station had no bearing whatsoever on the complaint she makes, viz. that she was arrested without cause, and thereafter dealt with in a high-handed and completely unwarranted fashion by Constable Proud.
At all events having been taken to the Muster Room Miss Curteis sat down on a chair. Her account of what then occurred appears at page 6704 of the transcript. Again I propose to set it out verbatim deleting repetitious and irrelevant passages.

Q. And sat down?  
A. That is correct.  
Q. At that stage, did Constable Proud say something and do something?  
A. He took off his hat and threw it down on the desk that was there, and swore.  
Q. For the purpose of the transcript, I shall have to trouble you to tell us what he said?  
A. He said, "Fuck this".  
Q. Did you notice anything about this stage about Mr. Proud's demeanour which indicated anything?  
A. He looked hot and irritated, was perspiring, his hair was all greasy.  
Q. Was it a hot night?  
A. Very hot.  
Q. At this stage, you are present and Mr. Proud is present anyone else present?  
A. Another Constable seated at a desk on the left.  
Q. Was Mr. Harris present?  
A. No, I did not see him again.  
Q. What did he say to you when he sat down?  
A. He again asked me my name and address.  
Q. What did you say?  
A. "I refuse to give you my name and address until you tell me what I am charged with."

Q. What did he retort to that?  
A. He said, "All right, smart bitch, loitering".  
Q. When he said that, what did you say?  
A. I instantly said, "Geraldine Anne, with an 'e'" and spelt my surname.  

Thereafter there was a conversation concerning Miss Curteis' occupation, and further questioning concerning her presence in Loch Street that evening. In answer to those questions, Miss Curteis explained how it was she and the Mitchell sisters came to be there at the time of her apprehension.

Noting that Constable Proud was not taking any written note of the conversation Miss Curteis then said words to the effect, "Now that I have been arrested I believe I am entitled to either make a telephone call or have one made on my behalf". To that the unidentified Constable seated at the desk replied, "You have been watching too much television". Miss Curteis then asked to see whoever was in charge at the station. In reply to that request one of the Constables present said, "That's the sergeant". As he said that Miss Curteis noticed—and I quote—"a rather portly gentleman" standing in the doorway. She then enquired of that Police Officer whether she was or was not entitled to make a telephone call, to which he also replied, "You have been watching too much television". (page 6707). What occurred thereafter is again best described by Miss Curteis in her evidence in chief at page 6707 et seq.  

Q. What next was said or done?  
A. Constable Proud told me to go down to the Watchhouse.  
Q. Did you agree to that, or decline to do that?  
A. I refused.  
Q. And did you say anything?  
A. I said I would not go down until they told me whether I was or was not entitled to make a telephone call or have one made.  
Q. Was something said by anyone about that?  
A. No, no answer was given to that.  
Q. What happened next?  
A. Constable Proud took hold of my left arm, the Sergeant took hold of my right hand and arm, and I was sort of—as I stood up, they pulled me up out of the chair.  
Q. Before that happened, were you given any indication what would happen unless you went down to the Watchhouse?  
A. Yes.  
Q. What was it you were told?
A. "You will either walk down or we'll take you down".
Q. When you were taken in the manner you have described, were you pulled to your feet, did you get up of your own accord, or how would you describe it?
A. Half and half.
Q. Did you make some observation to Constable Proud about the manner in which he held you?
A. Yes. His grip on my left arm was hurting.
Q. Did you tell him that?
A. Yes, I said, "You are hurting my arm", and he relaxed his grip.
Q. Did he say anything else?
A. No.
Q. Did you walk down to the Watchhouse counter?
A. Yes, I did.
Q. Well, Miss Curteis, will you tell Mr. Chairman what happened when you reached the counter?
A. Well, one of the Policemen behind the counter reached out, grabbed my handbag, and I kept hold of it and I said, "I am quite capable of handing over my own things, thank you". With that, I took it off my shoulder and put it down on the counter.
Q. And what happened then?
A. He upended it.
Q. Just like that (demonstrating)? Upended it?
A. Just — — — (demonstrating).
Q. And I take it that then all the various articles that ladies carry in their handbags cascaded on to the counter?
A. That is correct, yes.

Following further evidence concerning the manner in which the articles from her handbag were dealt with, Miss Curteis continued her account as follows:
Q. Did you say anything about a charge at this stage?
A. Not at this stage. It was not until after I had complained about Constable Proud's language.
Q. Perhaps you had better tell us about that?
A. Constable Proud was on the 'phone, on the right hand side, and he was swearing.
Q. What did he say.
A. He said, "Not another fucking one—I have had frigging enough of this". I then turned to the Sergeant or the man with the stripes and said, "His language is embarrassing me". He told Constable Proud to calm down.
Q. What did Constable Proud do?
A. He just looked up at him and did not say anything.
Q. Was he talking on the telephone?
A. Yes.
Q. Did he complete his conversation?
A. Yes, he hung up.
Q. Was it at that juncture that you asked something about the charge?
A. Yes, I asked what I was being charged with.
Q. Would you tell Mr. Chairman why you asked that, Miss Curteis, because you had been told by Constable Proud earlier that you were going to be charged with loitering—why ask again?
A. Constable Harris said he did not think I was a prostitute, I was not loitering because I was on my way to the car which was in the street, and I could not see why I was being charged with loitering.
Q. You were puzzled by this, were you?
A. Very.
Q. Was anything said at this stage about the use of a telephone?
A. Yes, I again asked if I was entitled to make a telephone call or have one made on my behalf.
Q. Was there an indication that a call would be made?
A. Yes, the Sergeant said I was entitled to have one made on my behalf and who did I want them to ring.
Q. Did you give to them some names of persons?
A. Yes. Mr. Robert Carlisle, Mr. David Ashley and Mr. Peter Redlich. I gave them the addresses.
Miss Curteis was then told she was to go to the cells. At that she again asked what she was being charged with. On this occasion she alleges the Sergeant simply replied "Loitering" (page 6710). Miss Curteis was then led from the Watchhouse counter to the cells. Observing that the cell in which she was to be placed was unlit, Miss Curteis alleges she said she did not like dark places and asked could the lights be put on. Upon being told that the light was not working, Miss Curteis stated she would not enter the cell. At that the Police Officers escorting her simply, pushed her into the cell and shut the cell door. A few moments later the cell door was opened, some blankets thrown in, and the door closed again (page 6710).

As in the case of the lighting in the Muster Room, the Police called to give evidence in this matter hotly disputed Miss Curteis' contention that no light was burning in the cell. According to their evidence (to which I shall hereafter refer) the lights in the cell block are left burning 24 hours a day. Again I see no motive for Miss Curteis to lie about the matter. Indeed it is perhaps not without significance that when the Board inspected the cell block on the morning of the 15th November 1975, the cell block was then in darkness and it was necessary for lights to be switched on to enable the inspection to be made. I might add that during the course of the proceedings before the Board, on a number of occasions the Board inspected cell blocks at suburban Police Stations. In almost every case the lights in such cell blocks were not burning and had to be switched on to enable inspections to be made.

To the best of Miss Curteis' recollection she remained in the cell for a period of some 2-3 hours. I might add that as her watch had been taken from her along with her other property, she was unable to be more accurate so far as that aspect was concerned.

According to Miss Curteis' account, somewhere in the vicinity of midnight she was released from the cell and taken back to the Watchhouse counter. In the circumstances I propose to set out her account of what occurred at the Watchhouse counter commencing at page 6711 of the transcript.

Q. Who was behind the desk?
A. It was a man but I am not sure whether it was the same Sergeant or not.
Q. What did he say?
A. He said he was releasing me on bail and I said, "On who or what?"
He said it was on my own. I said, "What if I don't pay?" He said that the alternative was to spend the night at Russell Street.
Q. What did he then say?
A. He said that it was not very nice there at all, so I agreed to pay.
Q. What was the amount of bail?
A. The Sergeant fixed $20.
Q. Was that taken?
A. It was taken out of my money.
Q. Did you ask what the charge was for which you were being bailed out on your own recognizance?
A. As I said that I would be, yes, he pushed a blue Information across to me which said, "insulting words".
Q. You saw that, did you?
A. Yes, it was written down.
Q. What did you say when you saw that?
A. I said, "What—I was told I was loitering. Can't you make up your minds?"
Q. What did he say?
A. "Don't argue with me, tell it to the court on the 25th".
Q. What did you say?
A. I just said — — — (The witness shrugged).
Q. You shrugged?
A. Yes.
Q. Was anything done about the return to you of your property?
A. Yes, he untied a little coin bag and he tipped them out on the counter, pushed a form across and told me to sign it.
Q. What then?
A. He said, "Check and sign". I started checking and he said, "Sign it". I said, "I will when I have checked it".
Q. Did you check them?
A. Yes, I did and as I checked them he particularly asked me to count the money, which I did.
Q. With the exception of $20 which had been taken as bail, in point of fact was all your property returned to you?
A. Yes.
Q. Having done that, did you sign the property sheet?
A. Yes, I did.
Q. Did you say something to him after you had signed the property sheet?
A. I then asked him how I was to get back to my car.
Q. What did he say to that?
A. He said, "You've got money, there's a phone around the corner, ring a taxi".
Q. What did you say to that?
A. That I was taken forcibly from my car, I had no intention of ringing a taxi.
Q. At this stage, was something else said by someone?
A. Another Policeman had come down the stairs and he said to the Sergeant behind the desk, "Is she right to get home?"
Q. What did you understand that to mean?
A. "As far as I'm concerned, she can walk".
Q. What did you say?
A. "All right, I'll walk".
Q. Did you say anything about the car?
A. Yes, I asked him where it was and he said, "Look, lady, good night".

In due course Miss Curteis made her way to her car in Loch Street then drove home. On the following day she dictated an account of the events of the previous evening. That statement was tendered in evidence (exhibit 427) and in substance was to the same effect as her evidence before the Board.

On the 25th February, 1975 the charge of insulting words came on for hearing at the Magistrates' Court at South Melbourne. As I indicated in the introduction to this summary, that information was dismissed.

During the course of cross-examination Miss Curteis flatly denied that she had said anything of an insulting or offensive nature to the Police that evening. In particular she denied that she had used the expression "Drop dead, pigs" in Loch Street that evening or that she had used the expression "I, have been put here by two unjust pigs" when released from her cell by Senior Constable Adams preparatory to being bailed out. In fact so far as the latter allegation is concerned, i.e. that she used the expression "two unjust pigs" when released from the cell, it is not without significance that throughout the course of her evidence Miss Curteis was at pains to point out that she made no complaint whatsoever concerning the behaviour of Constable Harris. (See, for example, her evidence at page 6730 and page 6746 of the transcript). In my opinion—and for reasons to which I shall hereafter advert—that allegation of Senior Constable Adams is false, and sworn to by him in an endeavour to support the case of his friend and colleague, Constable Proud, he being under the mistaken impression when he first committed himself to the allegation that Miss Curteis was critical of both Constable Proud and Constable Harris.

So far as the allegation that Miss Curteis used the expression "Drop dead, pigs" in Loch Street that evening is concerned, both Jennifer and Lynnette Mitchell swear that Miss Curteis used no such expression. I had no hesitation in accepting their evidence in relation to the matter in preference to that of Constables Proud and Harris.

The only other witness called before the Board on Miss Curteis' behalf was a barrister, David John Ashley. Mr. Ashley gave evidence to the effect that having been contacted by Miss Curteis' mother at approximately 9.30 p.m. that evening and informed of the predicament Miss Curteis was in, he and a member of the firm of Holding Ryan & Redlich, Mr. Robert Carlisle, attended at the South Melbourne Police Station at approximately 10.00—10.15 p.m. with a view to securing Miss Curteis' release. On their arrival at the Police Station, however, they were informed that Miss Curteis was not there, having been bailed out on her own recognizance before they arrived.
Police Evidence in Relation to the Apprehension of Miss Curteis in Loch Street, St. Kilda.

Constable Proud's evidence in chief relating to this aspect of the matter commences at page 6808 of the transcript.

His account is to the effect that at approximately 9.00 p.m. that evening he was driving the divisional van in a Southerly direction along Loch Street accompanied by Constable Harris. As they had earlier received a message to go to No. 5 Loch Street in connection with an alleged or threatened assault, the van was only proceeding at a speed of approximately 3-5 k.p.h. whilst they sought out No. 5.

As they were approaching Fitzroy Street, Constable Proud saw three girls walking in a Northerly direction along the Western footpath of Loch Street. Contrary to the evidence of Miss Curteis and the Mitchell sisters, he alleges that the larger of the three girls (Miss Curteis) was nearest the kerb. As the van approached he heard the remark, "No, we are not prostitutes". Although he did not know who had uttered that remark he said, "No I do not wish to talk to you". He then alleges that while he was still looking out the window towards the three girls, the larger of the three (Miss Curteis) half-turned towards him and yelled out, "Drop dead, pigs". At that he immediately stopped the van, reversed it to a position opposite the three girls—they still being on the Western footpath of Loch Street—and said, "Please come here". What then occurred is best described in his own evidence at page 6810 et seq. of the transcript.

Q. What happened?
A. The larger of the three females then came to the van, the driver's side window, and said, "How dare you talk to us like that. I demand to know your name, number and station you are attached to."

Q. What did you say?
A. I said, "What is your name and address?" and she replied, "I don't have to tell you that. I have done nothing wrong".

Q. Well, at this stage, did a car come along with only one headlight, and did Constable Harris get out of the van to speak to the driver of that car, and did you have to move your van?
A. That is correct. There was a car travelling south.

Q. All right. Did you continue your conversation with Miss Curteis?
A. I then got out of the van and went to the rear and had a further conversation.

Q. What had happened so far as the other two girls were concerned?
A. The other two girls were close by, a matter of feet from the rear of the van, where I was talking to Miss Curteis.

Q. Were they taking part in the conversation or simply standing there at that stage?
A. They were standing at that stage.

Q. Now, what further was said, Constable, by way of conversation with Miss Curteis?
A. I said, "I intend charging you with insulting words. I wish to know your name and address."

Q. What reply, if any, was made?
A. The reply "Drop dead" was made.

Q. What did you say?
A. I said, "I have no choice but to arrest you for insulting words". She said, "No, you won't. I am pretty high up in law. I know a few barristers and solicitors and I will get you into trouble."

Q. What did you say?
A. I said, "Please get into the rear of the divisional van." We were standing at the rear of the divisional van at this stage. She said, "I will have you on a charge of false arrest. You are an ignorant pig."

Q. All right. Now, were you conscious of what was happening so far as Constable Harris and the other two girls were concerned whilst this was occurring?
A. At this stage Constable Harris had finished conversing with the occupants of the car that had been pulled up. He had then come across and started conversing with the two small females.

Q. Did you hear anything of that?
A. I could not hear the conversation clearly, no.

Q. You could hear words being spoken — — ?
A. I could hear words being spoken.
Q. But you could not discern what they were? Well now, what happened about Miss Curteis?
A. I asked Miss Curteis to get into the rear of the divisional van. She resisted, so I assisted her by pushing her on the shoulder into the back.
Q. How did she resist?
A. By not moving.
Q. And you applied pressure in the way you have described?
A. I applied pressure, yes.
Q. And she then got in, did she?
A. She then got in and I closed the door.

According to Constable Proud he then went to where Constable Harris was talking to the Mitchell sisters, told them Miss Curteis was to be charged with using insulting words and asked them to talk some sense into Miss Curteis so far as obtaining her name and address was concerned so that she could be released and charged on summons. He did add that as he walked over to where Constable Harris was talking to the Mitchell sisters he heard the end of a conversation between the Mitchell sisters and Constable Harris relating to prostitutes or loitering for the purposes of prostitution.

Having asked Jennifer Mitchell to talk to Miss Curteis he went with her to the rear of the divisional van and opened the rear door. According to his account of the matter Jennifer Mitchell said, "Come on Geraldine. Give them your name and address. Be sensible.", to which Miss Curteis replied, "No, I will get even with these fools" (page 6812).

Constable Proud then locked the rear door of the van, made a U-turn in Loch Street and stopped the van opposite No. 5. Having attended to the errand they were on, he then drove the van to the South Melbourne Police Station.

The evidence Constable Harris gave was substantially the same as that given by Constable Proud (see pages 6881–3 of the transcript). The only discrepancy of any moment in his evidence in chief was his account of what occurred when one of the Mitchell sisters went to the rear of the divisional van to ask Miss Curteis to give her name and address.

In answer to the question, "What did she do", he replied, "On the first occasion when we approached the van, the back door of the van was open. She refused to listen and she said, "I want to be locked up to get even with these fools". Then the Mitchell girl said to Curteis, "Don't be silly, give your name and address". Curteis replied, "No, these fools can get what they deserve" (page 6884).

It will be recalled that on Constable Proud's account of the matter the rear door of the divisional van was closed when he took Jennifer Mitchell over to speak to Miss Curteis and the only reply Miss Curteis made was to the effect that she would "get even with these fools" (page 6812).

Constable Harris agrees that he pointed out to the Mitchell sisters that the area was one where prostitutes were to be found (page 6884). In fairness to him he told the Mitchell sisters that Miss Curteis was being taken to the South Melbourne Police Station and they were welcome to follow if they wished (page 6884).

As it transpired Jennifer Mitchell did endeavour to follow the divisional van to South Melbourne but lost her way and abandoned the attempt. She then telephoned Miss Curteis' mother and informed her of Geraldine's predicament (page 6758).

Police evidence concerning the treatment of Miss Curteis at the South Melbourne Police Station

Upon their arrival at the South Melbourne Police Station, Miss Curteis was escorted from the divisional van to the Muster Room. In this connection, and in the light of later evidence tendered in relation to the matter, it is relevant to note that both Constables Proud and Harris agree that Miss Curteis walked voluntarily from the divisional van into the Police Station and to the Muster Room (see the evidence of Constable Proud at page 6813 and that of Constable Harris at page 6884). As I have already indicated, all Police called in connection with this matter maintained that the lights in the Muster Room were burning, and in fact as it was a 24-hour station, they were on 24 hours a day.

Having arrived in the Muster Room, Miss Curteis was seated in a chair and again asked for her name and address by Constable Proud. To this request she replied, "I don't care what you want to know. You are
stupid and getting yourself into a lot of trouble" (page 6816). Following a further unsuccessful attempt to obtain Miss Curteis' name and address, Senior Constable Proud went to the Watchhouse to seek the assistance of the most senior man on duty, Senior Constable Alexander David Adams. What occurred following Senior Constable Adams' arrival is best described in Constable Proud's evidence at page 6816 et seq. of the transcript.

Q. What did he say to her?
A. I cannot remember the exact words, but he said it was to her best interest to state her name and address, in regard to either obtaining bail or being released and application for summons.

Q. And what effect, if any, did that have on Miss Curteis?
A. She again refused. He then had a further conversation and she then agreed to give her name and address.

Q. And do you remember how she finally gave it, Constable?
A. She gave her name Geraldine Anne, and then, as I was writing down "Anne", she said, "Are you sure you have got enough brains to spell that?" She then spelt out her surname, Curteis, and said she lived at Flat 9, 25 Pine Avenue, Elwood.

Q. What did you do then?
A. I then asked Miss Curteis to walk down to the Watchhouse, where she would be charged and locked up.

Q. Yes?
A. She refused. Senior Constable Adams had left the room. I again went down to the Watchhouse and summoned Senior Constable Adams to come up and again talk to Miss Curteis.

Q. Yes?
A. Senior Constable Adams came up to the Muster Room again and asked Miss Curteis if she would walk down voluntarily. She again refused, and stated that she was staying where she was. Senior Constable Adams then took hold of her right arm; I then took hold of her left arm, and attempted to lift her from the chair. She then stood up and walked voluntarily down to the Watchhouse.

Q. Well, once she was on her feet, she walked freely, is that right?
A. Once on her feet, she walked freely.

Q. Well now, Constable, she has said that during that passage of time, namely, when she was in the front room, Constable Harris was not there?
A. Constable Harris was seated by her right.

Q. And indeed, she says that from the time she got to the Police Station, she did not see Harris again that night?
A. Constable Harris was present during the entire course of events.

Q. Do you mean by that, Mr. Proud, he was also present at the Watchhouse counter?
A. He was also present at the Watchhouse counter, sir.

Again it is relevant to note that once Miss Curteis either stood up or was helped up from the chair on which she was seated she walked voluntarily from the Muster Room to the Watchhouse.

I should perhaps pause and point out at this stage that Constable Proud:

(a) denied that he used the expression alleged by Miss Curteis when he removed his cap in the Muster Room;
(b) denied that there was any Constable in the Muster Room other than Constable Harris;
(c) denied that he told Miss Curteis whilst in the Muster Room that she would be charged with loitering; and
(d) denied that anything was said concerning the making of a telephone call whilst Miss Curteis was in the Muster Room.

Constable Proud's account of what occurred at the Watchhouse counter appears at page 6818 et seq. of the transcript. To my mind the following passages are the more relevant:

Q. Tell us what occurred in the Watchhouse?
A. Miss Curteis was taken down to the Watchhouse, she was stood in front of the counter, Senior Constable Adams stood at her side at her left. I walked into the Watchhouse and said to Constable Manning, "I have one for the book".
Q. He being the Watchhouse keeper?
A. The Watchhouse keeper. Manning then went over and stood in front of Miss Curteis. I stood in the doorway to the Watchhouse and got out the Interview Register. I then filled out the Interview Register as far as possible. I handed that to Senior Constable Adams. As Constable Harris walked into the Watchhouse, he had finished typing Informations which he handed to me. I signed these Informations and handed a copy to Miss Curteis after Senior Constable Adams had finished the Interview Register.

Q. Did that information, along with a lot of feminine impedimenta go into the property?
A. It did.

Q. Did she sign the property sheet?
A. She signed the property sheet, yes.

Q. Would you describe how things came out of her handbag. First of all, did she have a handbag?
A. She had a handbag. I asked Miss Curteis to place it on the counter. I think it was a zipper. She unzipped it and tipped the things on to the Watchhouse counter.

Q. She says she put it on to the counter and a Policeman upended it, I think she is saying rather abruptly, and things just poured out on to the counter. Did anything like that happen?
A. No, she handled that.

Q. Describe what happened about her being put in the cells?
A. I asked her would she sign a property sheet and she was put through the Watchhouse book. Constable Manning got the keys to the Cells, he walked through the door first. I followed Miss Curteis. He then unlocked the gate of the cells. We then walked in and shut the first gate, we then opened the second gate, we walked in, I walked over to the blanket shelf, got two blankets, walked into the cells ahead of Curteis, put the blankets in the cell. Miss Curteis went in and the cell was then locked.

Q. She alleges that though lights were otherwise on in the cells, her cell was in darkness?
A. That cell was lit.

Q. Were you present when Sergeant Adams asked the question about complaints?
A. I was.

Q. You have seen the Interview Register; do you confirm that her reply was: “I have no complaints, I am happy about the Police”?
A. That is correct.

Q. In the column “Interview with Police” and “Result” is that your writing?
A. Yes.

Q. It may not be clear to Mr. Chairman from the photostat, but it is in Loch Street, St. Kilda, at 9.0—something p.m.?
A. 9.05.

Q. Yes, on 6/2/75. You have also printed the words “Admitted offence”; did she in fact ever admit her offence either directly or indirectly at the Police Station?
A. Not at any stage.

Q. Can you explain why you wrote those words in there?
A. I have no explanation.

In the course of his evidence Constable Proud denied that any mention was made of “loitering” whilst Miss Curteis was at the Watchhouse counter, and although he received a telephone call whilst Miss Curteis was at the counter, denied that he used any foul language during the course of it (page 6819). He conceded, however, that Miss Curteis did request a telephone call be made and gave a number or name to be rung (page 6818 and page 6820).

According to Constable Proud he worked until 10.00 p.m. that evening, remained at the station until 10.20 p.m. then left. At the time he left, Miss Curteis was still in the cells and at that stage no one had arrived to bail her out.

In view of the fact that at 10.20 p.m. Miss Curteis was still incarcerated in a cell—a most distressing experience one would have thought for any young woman of Miss Curteis’ background—the question was raised with Constable Proud as to why it had been necessary to place Miss Curteis in a cell in the first instance. If Constable Proud’s evidence is to be accepted, it will be recalled that at the time Miss Curteis was apprehended
in Loch Street earlier that evening he made it clear that even though she was then under arrest, had she given him her name and address she would have been immediately released and proceeded against by summons (page 6859). It will also be recalled that when Senior Constable Adams was first called upon for his assistance he told Miss Curteis that it would be in her best interest to state her name and address—and I quote—"in regards to either obtaining bail or being released and application for summons ".

When this matter was raised with Constable Proud during the course of his evidence in chief, he replied that when Miss Curteis finally did give her name and address he was not then minded to let her go on summons as he believed she would be bailed out in a very short period of time. He further added that once he had decided she should remain in custody it was not permissible to allow her to remain in a room at the Police Station as the Standing Orders required a prisoner to be put straight in the cells after presenting at the Watchhouse (page 6829).

The matter was again raised with Constable Proud during the course of cross-examination. Because of the importance I attach to this aspect of the Curteis matter, I propose to set out the relevant passage of his evidence at page 6828 et seq. of the transcript.

Q. In the Watchhouse. You said you had to lock her up in the cells?
A. Well, it is common practice to lock a prisoner up in the cells, not to leave him sitting in the Watchhouse.

Q. Yes, and you said that there was a Standing Order which tells us all about this?
A. I believe there is.
Q. Please refer us to it, will you?
A. I do not know, Sir. I am familiar with Standing Orders, but I do not know paragraphs. I cannot refer you to a particular paragraph.
Q. But you say it is in the Standing Orders?
A. I believe it is, Sir.
Q. Although you have never seen it yourself?
A. I think I have, Sir.
Q. All right. Well, Mr. Proud, why did you not let her go and apply for a summons in relation to the insulting words?
A. When I asked her name and address, I believed that she would be released in a very short period of time.
Q. Why not let her go forthwith and apply for a summons?
A. At that stage, before going into the Watchhouse, I was not even sure it was her correct name and address.
Q. I am sorry, I do not follow you. At what stage?
A. Before going down to the Watchhouse.
Q. What made you think it was not her correct name?
A. Well, she had refused her name on three occasions, and there was nothing to substantiate that that was her correct name.
Q. Oh. I thought there was a passport?
A. There was a passport, when her property was entered on the property sheet in the Watchhouse.
Q. Yes, well, at that stage you knew the name she had given you was correct?
A. That is right.
Q. What reason had you to believe that the address was not correct?
A. The witness said "before going down to the Watchhouse ".
Q. At the Watchhouse you knew that her name was correct?
A. That is right.
Q. What reason had you to believe that the address she had given you was not correct?
A. Down at the Watchhouse, after her name was correct, I believed that also her address was correct.
Q. Well, at that stage why not let her go and apply for a summons in relation to the insulting words?
A. Miss Curteis had already been charged and entered into the Watchhouse book.
Q. But, Mr. Proud, you had access to the contents of her handbag before she was put in the book?
A. Before I put her in the book, yes.
Q. Why was it necessary to put her in the book if you satisfied yourself that her name was correct and her address was correct?
A. I believe she would be bailed out in a short period of time.

Q. Why go to all the trouble of the paper work connected with bail?
A. The Officer-in-Charge of the Station or the Watchhouse Keeper—their job is to attend to bail.

Q. But he had to do the paper work?
A. That is correct.

Q. Why go to all this trouble when you could have let her go forthwith and proceeded to apply for summons?
A. This is a matter of Police procedure and it is no trouble.

Q. A matter of Police punishment too, of this girl, was it not?
A. No.

Q. Lock her up for a while, punishment, was it not?
A. No.

The fact is that having been locked up for some hours (in this connection I consider it immaterial whether one accepts Miss Curteis' estimate of the time she remained in the cell or that of the Police Officers involved), bail was fixed by Senior Constable Adams in the sum of $20 and Miss Curteis was released on her own recognizance (page 6924).

In the circumstances I can find no justification for the action of the Police Officers concerned in placing Miss Curteis in a cell and leaving her there for at least an hour on their account of the matter, or some 2½ hours on her account. In my view once her name and address had been ascertained to the satisfaction of the Police, she should either have been released and proceeded against by way of summons, or charged with the offence and immediately released on bail. To my mind there was no reason why the bail fixed at 10.35 p.m. that evening (assuming again for the moment that that was in fact the time at which she was released) could not have been fixed at 9.30 p.m., thereby obviating the necessity of lodging her in the cells. In my opinion the only inference one can draw from the course adopted by the Police that night is the one suggested to Constable Proud during the course of his cross-examination, viz. that Miss Curteis was locked up in the cells as a form of punishment. I might add that I am reinforced in arriving at that conclusion by the evidence Constable Harris gave in relation to the matter.

At page 6917 of the transcript it was put to him that once Miss Curteis had been dealt with at the Watchhouse counter there was no reason why she could not have been immediately released on her own recognizance. His answer to that proposition was—and I quote—"She could sir".

The evidence given by Constable Proud concerning events at the Police Station that evening was corroborated by that of Constable Harris and Senior Constable Adams.

So far as the evidence of Constable Harris is concerned I see no useful purpose in detailing it in this summary. Apart from certain aspects of it to which I shall refer when dealing with the conclusions I have arrived at in the matter, it was substantially in accord with that of Constable Proud.

The evidence given by Senior Constable Adams appears at page 6920 et seq. of the transcript. Whilst it also corroborates the evidence given by Constables Proud and Harris concerning the treatment of Miss Curteis at the South Melbourne Police Station that evening, certain passages of it are worthy of inclusion in this summary.

Having been informed by Constable Proud that Miss Curteis had been arrested for using insulting words in Loch Street that evening and that she was refusing to supply her name and address, he proceeded to the Muster Room. The following passage from the transcript (commencing at page 6921A) is his account of what then took place—

Q. Did you speak to Miss Curteis?
A. I did.

Q. What did you say, in substance?
A. I said, "Constable Proud here has just informed you you have been arrested a short while ago in Loch Street, St. Kilda. You are refusing to supply your name and address. I would like to point out to you that it would be to your advantage in regard to possibly obtaining bail or possibly leaving the station pending a summons. I say you should provide the personal details to Constables Proud and Harris here".
Q. And she replied?
A. "I demand to know why these two so-called Police Officers have brought me here to this Police Station".

Q. Did you reply?
A. I then said, "From what I gather you were arrested for using insulting words. Now will you please supply your name and address and any other necessary information to the Police?"

Q. What did she say?
A. She said "All right then".

Q. What did you do?
A. I then returned to the Watchhouse and left the room.

Q. What happened next?
A. Approximately three or four minutes later Constable Proud summoned me to the front office and informed me he was now ready to lodge Curteis in the cells and she was refusing to move from the seat.
I informed her she would have to leave her seat and accompany us to the Watchhouse to be formally charged.

Q. What did she have to say to that?
A. She said, "I am not leaving this seat. You will have to carry me down the stairs. If you touch me at all you will hear more of this because I am a law clerk and I am conversant with all my rights". I then said to her, "Will you voluntarily accompany us to the Watchhouse?" She said, "No way am I going to leave this seat". Together with Constable Proud, I then took hold of her left arm, he took hold of her right arm, and we lifted her from the seat. As we did this she said, "You have not heard the last of this". As she got on her feet she walked voluntarily.

Q. What happened when you got to the Watchhouse?
A. When we arrived at the Watchhouse, Constable Proud asked her to empty the contents of her bag out on to the counter. He then completed the Interview Register as far as possible and handed it across to me. At this stage Curteis was standing outside the Watchhouse facing inwards.

Q. Which side of the counter was Mr. Manning on?
A. Constable Manning was inside the Watchhouse counter directly opposite Curteis.

Q. What about the two arresting Policemen?
A. Constable Proud was to the immediate left of Manning and Constable Harris to his immediate right. Constable Feldman was also present at this stage and he was seated at a desk operating a telephone.

Q. Some work was done on the Watchhouse book?
A. I then -- --

Q. Someone started writing up the Watchhouse book?
A. Constable Manning started writing up the Watchhouse book.

Q. What about the Interview Register?
A. I then wrote down a question in the Interview Register, asked Curteis the question and immediately wrote down her answer in the Interview Register and signed beneath this.

Q. You seem to have limited your question to complaints about Police at the Police Station. Did you do that intentionally or is that just a general way you usually ask?
A. As far as I am concerned, that was the way I was taught to do it. I have not had a great deal of experience in doing it.

Q. What did she reply?
A. I think she replied, "It should not have happened but I am happy with the Police now" or words similar to that effect.

Pausing at this juncture, it is interesting to note one aspect of the conversation Senior Constable Adams said he had with Miss Curteis at that time, viz. the statement by Miss Curteis, "I am not leaving this seat, you will have to carry me down the stairs".

In the evidence Constable Proud gave relating to that aspect of the matter, there was no reference by Miss Curteis to being "carried down the stairs" (page 6816).

The fact is that having regard to the physical lay-out of the South Melbourne Police Station, and having regard to the fact that Miss Curteis had been taken to the Muster Room immediately upon her arrival at the Police Station, it is highly unlikely she would have known that to get to the Watchhouse from the Muster Room it would be necessary to go...
down a flight of stairs. Upon leaving the Muster Room one proceeds a short distance along a passage, turns left, proceeds for a short distance along another passageway, then descends a short flight of steps.

In my view the only conclusion one can arrive at in that connection is that that is an instance of fabrication of evidence by Senior Constable Adams.

According to Senior Constable Adams, Miss Curteis emptied her handbag on to the Watchhouse counter herself and did ask that a telephone call be made to a solicitor. To the best of his recollection only one man was mentioned in that connection (page 6923).

Following the completion of the necessary paper work Miss Curteis was lodged in the cells. Shortly thereafter Senior Constable Adams and Constable Feldman left the station to attend to another matter and did not return until approximately 10.10 p.m. When asked whether he had any belief or expectation as to the length of time Miss Curteis would be in the cells when he left the station with Constable Feldman, he replied, "I believe she would be probably gone by the time we got back, would have been bailed out or, if not bailed out, would have been in the process of being bailed out." (page 6923).

When Senior Constable Adams realized on his return to the station that Miss Curteis had not been bailed out, he immediately took steps to secure her release. The following passage commencing at page 6924 of the transcript is his evidence in relation to the matter.

Q. When you discovered she was still there, what did you do?
A. I immediately obtained the Watchhouse keys and went out and was prepared to bail her out.

Q. What did you do?
A. I went out to the cells. She was in the only cell on the left just inside the main cell block. I said, "I am now in a position to bail you out. Will you please accompany me to the Watchhouse?" She said, "I am not leaving here. I have been put here by two unjust pigs. I know my rights have been infringed". I said, "Listen, if you do not come and accompany me and be bailed out, you will have to be conveyed to the City Watchhouse and spend the night there and returned to this station tomorrow morning for Court. I do not think that would be practical for either yourself or the Police having regard to your present frame of mind".

Q. Is that in fact so? Would she have had to go into Russell Street?
A. We are not allowed to keep female prisoners overnight at South Melbourne. They must be conveyed to the City Watchhouse where there is a matron. She made a reply to that statement. She said, "I am not leaving here. You can tell those two other pigs I will not forget this". I said, "Listen, I will go back in and prepare bail bonds. You can bail yourself out by leaving $20 deposit — — -

Q. When you opened the cell, was it in darkness?
A. No, the light was on.

Q. Where did you go then?
A. I then returned to the Watchhouse. I prepared bail bonds for Curteis to appear at the South Melbourne Magistrates' Court on the 25th February, 1975.

Q. You exercised your powers under the Justices Act, being the Officer-in-Charge?
A. That is correct.

Q. What did you do, having done that?
A. About 10.30 I returned to the cells. I again spoke to Curteis. I said, "I have made out the bail bonds. Come out with me now and I will bail you out". She replied, "Have those other two things left yet". I said, "Both members concerned with your arrest have gone home". She said, "I will come then".

Q. Did she come in with you?
A. She then accompanied me to the Watchhouse.

Q. Again, on this occasion was the light in the cell on or off?
A. It was on.

Q. Did she sign her bond?
A. She did.

Q. Did you give her a receipt?
A. I gave her a receipt for $20.
Q. Did you write on the back the date of the Court hearing for her?
A. I believe I did.

Q. Was there any conversation before she left as to how she would get home or how—did you believe there was a car involved somewhere or another?
A. She made a request that the police drive her back to the scene, that I have her conveyed back to the scene. I informed her that this was not the case, that she would have to find her own means of transport back and that there was a telephone box at the South Melbourne Post Office—...

Q. She says that some other Policeman round about this time asked “Is she right to get home, Sarge”, or “Is she right for a lift, Sarge”? Did anyone say that?
A. No, not as far as I know.

Q. She says you finally said, “Look, lady, get going, good night”?
A. No. that is not correct.

According to Senior Constable Adams some 5 minutes after Miss Curteis left the station, two men he believed were Solicitors arrived at the station enquiring after Miss Curteis. To the best of his recollection he told them Miss Curteis had been bailed out and had left the station. Although he could not be more specific it was his impression that from either the demeanour of the two men or something else—the case against Miss Curteis was likely to be defended (page 6925). He denied, however, that he was asked what words it was alleged Miss Curteis used or that he replied, “You can find that out in Court” (page 7522). In fact at page 6933 of the transcript he swore that as far as he could recollect he did not learn that evening what the actual words allegedly used by Miss Curteis in Loch Street were.

In the light of subsequent events, it is significant to note that to the best of his recollection Miss Curteis did not insult anyone between the time she reached the Watchhouse counter and the time at which she was lodged in the cells (page 6931).

The remaining witnesses called in the Curteis matter were the Watchhouse keeper on duty at South Melbourne that evening—Constable William Gary Manning, and Constable Raymond Geoffrey Feldman. The significant aspects of Constable Manning’s evidence may be summarised as follows:

(a) the lights in the Muster Room were on when Miss Curteis arrived at the station (page 6980) as were the lights in the cell (page 6983);
(b) that when Miss Curteis was brought to the Watchhouse counter she at first refused to hand over her property (page 6982) and had to be asked to do so on some three or four occasions (page 6990);
(c) that whilst at the Watchhouse counter she was continually abusive (pages 6982, 6991 and 7001);
(d) that the word “loitering” was never mentioned whilst Miss Curteis was at the Watchhouse counter (page 7005); and finally;
(e) that Miss Curteis gave the names of three persons who could be telephoned on her behalf, one being that of a person living in Geelong (page 6982), one being that of a person living in Elwood (page 6983) and the third being the name Redlich (page 7006).

Although Constable Feldman recalled Miss Curteis being at the Watchhouse counter that evening, he had very little recollection of what occurred whilst the necessary formalities were attended to, apart from the fact that Miss Curteis seemed very particular about ensuring that every item of property in her purse was entered on the property sheet—(page 7508). What he did depose to, however, was a conversation he alleges he had with a Solicitor who arrived at the station some 5 or 10 minutes after Miss Curteis left. The description he gave of the man to whom he spoke did not fit that of Mr. Carlisle, but did fit that of Mr. Ashley—(page 7515). The following is his account of that conversation as appearing at page 7509 of the transcript.

Q. What did the man say, as you recall it?
A. He asked if—I don’t know if he said Miss Curteis or he used a Christian name—but he said had there been a Miss Curteis arrested and I said, “Yes”. He then asked me what for and I told him “insulting words”.

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Q. Can you recollect, now, how you knew the charge?
A. How I knew what she had been charged with?
Q. Yes?
A. There was some short discussion with the members that she had been charged with insulting words, that was about all.
Q. Did the man say who he was?
A. I can remember him saying he was a Solicitor, that is about all.
Q. Have you any recollection of him giving a name?
A. His name?
Q. Yes?
A. No, not to my memory.
Q. Is it possible he did or are you confident he did not? What is the situation?
A. He may have but I cannot remember.
Q. Did he say anything as to his connection with Miss Curteis?
A. To my memory, no. He said he was a solicitor.
Q. I think we got to the point where you told him that the charge was insulting words. What was said after that, if anything?
A. He asked if he could see her and I said she had already gone. He then said, "How long ago?", and I said, "Five or ten minutes ago".
Q. Was there anything said about the informant, Constable Proud?
A. He may have asked who the informant was and I told him who it was, Constable Proud. He then said, "What words did she use?"
Q. Before you get on to that, was there any conversation as to where Constable Proud had been at that time?
A. I told him Constable Proud would have been knocked off at that time.
Q. I appreciate that, but would there have been any other conversation at that time?
A. Only that he said "What words were used?" I said, "You had better come along and hear it in Court".
Q. Do you remember what the words were?
A. No.
Q. You gave him your name, did you give him any other information?
A. I gave him my name, rank and number.
Q. What did the man do then?
A. He turned around and walked towards the front of the Police Station, down the passageway.
Q. Was Senior Constable Adams present during that conversation?
A. He was not.
Q. Did you see anything more of that man or another man after he left?
A. No, I did not.

During the course of cross-examination Constable Feldman stated that apart from the fact that Miss Curteis showed concern for her property and may have been slightly excited, he had no recollection of anything unusual or abnormal about her (page 7513A), nor did he have any recollection of her abusing the Police whilst at the Watchhouse counter (page 7514). Under cross-examination he was adamant that he only saw and spoke to one man some 5–10 minutes after Miss Curteis left the station and that at the time he did so Senior Constable Adams was not present (pages 7515–6).

Conclusion

Having carefully scrutinised the evidence placed before the Board in the Curteis matter, I had no hesitation in concluding that Miss Curteis said nothing of an insulting or abusive nature to Constable Proud in Loch Street, St. Kilda that evening, that Constable Proud had no justification for arresting her, charging her with that offence, then lodging her in the cells at the South Melbourne Police Station, and finally that as in other matters investigated by the Board, the Police Officers concerned have conspired together in an endeavour to cover up their behaviour, and have not told the truth when giving evidence before the Board. I shall now refer to those aspects of the evidence which influenced me most in arriving at those conclusions. As in other matters it is not possible to set out in a summary of this nature every aspect of the evidence which influenced me. I shall do no more than advert to the more significant factors.
In the first instance, I could not fail to be impressed by the demeanour and candour of Miss Curteis and the Mitchell sisters when compared with that of Constables Proud and Harris and Senior Constable Adams. Whilst there were discrepancies in the evidence they gave in the sense that so far as events in Loch Street, St. Kilda that evening were concerned their testimony was not identical the same cannot be said of the evidence of the Police Officers concerned and accept their evidence in preference to that of inexperienced civilians. Whilst I readily agree such a submission has merit, it would be foolish to suggest that wherever civilian evidence is in conflict with that of responsible Police Officers this Board should have regard to the training and experience of the Police Officers concerned and accept their evidence in preference to that of inexperienced civilians. Whilst I turn now to a consideration of certain aspects of the Police evidence in relation to this matter. I deal firstly with the evidence of Constable Proud.

In this connection I find it convenient to simply enumerate the more significant aspects of his evidence which caused me to ultimately reject it wherever it was in conflict with that of Miss Curteis and her witnesses. (i) In his evidence before the Board Constable Proud swore that when he first saw the three women walking along Loch Street the larger of the three "females" was close to the kerb (page 6808). It will be recalled that in her evidence Miss Curteis swore that of the three, she was one closest to the fence (page 6700). Her evidence in this connection was corroborated by Jennifer Mitchell (page 6752) and Lynnette Mitchell (page 6774).

Leaving aside for the moment the significance of Miss Curteis' position on the footpath (a matter to which I shall refer in sub-paragraph (ii) ), on the face of it, one had a straightforward conflict of fact between the evidence of Constable Proud on the one hand, and the three women on the other. Although I shall deal separately with the evidence Constable Harris gave in respect of the matter, for the moment it is sufficient to note the fact that his evidence was to the same effect as that of Constable Proud, viz. that Miss Curteis was nearest the kerb (page 6892). If the matter was left there, one would not be in the least surprised if it was contended on behalf of the Police Association that as Police Officers were trained to make observations and mentally record them, in a situation such as this, one should accept their evidence in preference to that of three untrained women, or at the worst not reject it in preference to the evidence those women gave.

As I have previously indicated—such a contention has its attractions. In this case, however, I had no hesitation in rejecting it.

In a statement he made to Inspector Martin on the 5th May, 1975, concerning the events of that evening (exhibit 439), Constable Proud stated—and I quote—"This drew my attention to three females on the footpath walking north. There were two smaller females and a larger female (Miss Curteis) closest to the fence."

When this was drawn to Constable Proud's attention during the course of cross-examination the only explanation he could offer was—and I quote—"It is a mistake" (page 6850 et seq.). When it was then put to him that just by coincidence he had fallen into an error in his statement which was in line with the sworn evidence of the three women, his only reply was—and I again quote—"Coincidence is the only way I can explain it" (page 6850). I might add at this juncture that by sheer coincidence, in the statement Constable Harris made at the request of Inspector Martin he too stated that the larger of the three females was walking "closest to the fence" (exhibit 445).

At page 6851 of the transcript Constable Proud agreed it was a matter of critical importance to know precisely where Miss Curteis was on the footpath (i.e. at the time the offensive remark was made). Clearly it was of the utmost importance. From the evidence both Miss Curteis and Harris gave, the remark "Drop dead, pigs" could only have been made (if made at all) by the woman closest to the kerb. In those circumstances one would have expected him—and for that matter Constable Harris—to have used the utmost care when making his statement to Inspector Martin in relation to the matter. In the circumstances
I do not accept his explanation that it was just a mistake. At page 6851 of the transcript Constable Proud said he could not understand the mistake. My only comment is—"Nor can I".

(ii) As I have indicated in paragraph (i) it was of critical importance to know where Miss Curteis was on the footpath at the relevant time. From the evidence Constables Proud and Harris gave, the remark "Drop dead, pigs" could only have been made by the woman closest to the kerb. I turn therefore to consider the evidence Constable Proud gave in respect to that aspect.

In the statement he made at the request of Inspector Martin (exhibit 439), Constable Proud stated and I quote—"To my right on the footpath I heard a female voice call out 'No we’re not prostitutes'. This drew my attention to three females on the footpath walking north. There were two smaller females and a larger female closest to the kerb. I appealed to this remark believing it to come from one of these persons, 'I do not wish to talk to you'. I then drove the van forward only a matter of feet with my head still turned towards these females. I then clearly saw the larger of the three females (Curteis) half turn towards me and yell, 'Drop dead, pigs'. There was sufficient lighting in the street for me to clearly see her say this".

During the course of cross-examination Constable Proud conceded that in his evidence at the Magistrates' Court at South Melbourne on the 25th February, 1975 he had agreed that when the expression "Drop dead, pigs" was used, the van had passed beyond the point where the women would have had he looked out the driving side window in the normal way of turning his head he would not have seen the women there at all but just a tree, or a house or whatever happened to be in his line of vision (page 6853). He further agreed that at the time the remark was made the women would have had their backs towards him and would have been near the rear of the van (pages 6853–4). As he then conceded, to have seen the women at the time the remark was made his head would have had to be turned at a three-quarter axis over his shoulder with his attention entirely off the roadway down which he was driving the van (page 6853).

I find the greatest difficulty in accepting the proposition that whilst he was driving the van Constable Proud looked behind him, saw Miss Curteis half-turn, and call out those words. I consider it probable that having arrested Miss Curteis as he did, Constable Proud had then to justify his action. The only way in which he could do that was by swearing he had actually seen Miss Curteis use the words complained of. To do that it was necessary for him to swear he performed the physical gymnastics put to him in cross-examination—a performance I consider highly unlikely in the circumstances.

(iii) In his evidence before the Board Constable Proud stated that when he asked Miss Curteis to get into the van she resisted thereby necessitating him assisting her in by pushing her on the shoulder (page 6811).

In a statement he prepared for the assistance of the Police Officer handling the prosecution of Miss Curteis at the South Melbourne Magistrates' Court (exhibit 443) he stated, "She also refused to move when told and at some stage of the interview had to be physically carried either into the van or down to the Watchhouse".

It is clear, of course, that nothing of that nature occurred whatever. I can only assume that statement was made with a view to colouring the picture of events that evening and placing Miss Curteis in as black a light as possible in the eyes of Constable Proud's superior officers.

(iv) It is clear from the evidence Constable Proud gave that throughout the course of the events in Loch Street, St. Kilda, that evening, Miss Curteis maintained she had done nothing wrong; (see, for example, Constable Proud's evidence at page 6810). It is of significance to my mind that at the scene Constable Proud did not ask Miss Curteis if she had used the words complained of (page 6857) nor did he ask the Mitchell sisters if she had (page 6859).

If the words complained of had been used, and the person alleged to have used them maintained she had done nothing wrong, to my mind it is inconceivable that the Police Officer who had been insulted would not put to the person about to be arrested and charged the words he alleged that person had used. It is equally inconceivable that as the names and addresses of two witnesses to the incident had been taken by his partner, he would not ask them if they had heard the person arrested use the words complained of with a view to either calling them as witnesses if necessary, or rebutting any evidence they might give in support of Miss Curteis' contention she had said nothing offensive, in the event that situation arose.
(v) In a report prepared by Inspector Martin following his investigation into the complaint subsequently made on behalf of Miss Curteis he stated, "At the South Melbourne Watchhouse it was necessary to physically carry the woman into the station" (exhibit 444). As I have been at pains to point out earlier in this summary, that did not occur, and accordingly such a suggestion is false.

That statement is either the invention of Inspector Martin or something told to him by Constable Proud or Constable Harris. If it is the invention of Inspector Martin one can only assume he included it in his report with a view to blackening Miss Curteis in the eyes of the Chief Superintendent to whom the report was sent. In that event it would fall within the same category as another scurrilous statement which appears in the report, viz. "Her solicitor at the Court hearing was a Mr. X (naming him), a solicitor well known for his anti-Police attitudes, a communist who takes great delight in embarrassing the law, order, and authority".

I might add that for the Inspector charged with the duty of investigating a complaint made by a member of the public against a Police Officer to sink to such depths, again highlights the necessity of having complaints against Police investigated by an independent tribunal.

In the event the statement to the effect that it was necessary to physically carry Miss Curteis into the station was not the invention of Inspector Martin one can only assume that statement was made to him by either Constable Proud or Constable Harris.

In either event it falls into the same category as the statement appearing in exhibit 443 to which I have already adverted, viz. at some stage of the interview, Miss Curteis had to be physically carried either into the van or down to the Watchhouse.

(vi) In the statement he made for inclusion in the Police Brief (exhibit 438) Constable Proud stated:

"I then requested Curteis to walk down to the Watchouse (the author's own spelling), where she was to be locked up. Curteis refused to move and had to be carried down to the Watchouse by Acting Sergeant Adams and myself."

An almost identical passage appears in the statement he made at the request of Inspector Martin (exhibit 439).

Both statements are false.

(vii) In the latter statement (exhibit 439) appears the sentence, "She was then charged with this offence and after further insults by her, was lodged in the cell".

That statement is clearly false. (See, for example, the evidence of Senior Constable Adams at page 6331 and that of Constable Feldman at page 7514.)

(viii) As in many other matters investigated by the Board there was much debate in the Curteis matter concerning the entries in the Interview Register relating to Miss Curteis (exhibit 435).

When filling out the Register, Constable Proud chose to insert under the heading "Reason for Interview and Result", the words "Admitted Offence". As he admitted at page 6823 of the transcript, at no stage either directly or indirectly did Miss Curteis admit the offence.

To my mind that entry is as false as the answer Miss Curteis is alleged to have made to Senior Constable Adams when he asked her whether she had any complaint to make in regard to her treatment at the station by Police that night, viz. "It shouldn't have happened but I'm happy now with the Police".

Whilst I shall have a little more to say about this entry when dealing with the evidence Senior Constable Adams gave, let me observe at this stage that such an answer would have been completely inconsistent with Constable Proud's statement that she was then charged with this offence and after further insults by her was lodged in the cells (exhibit 439) and the evidence of Constable Manning to the effect that whilst at the Watchhouse counter she was continually abusive (pages 6982, 6991 and 7001).

The discrepancies in the evidence given by Constable Harris were similar in many respects to the discrepancies and contradictions in the evidence of Constable Proud. As I have already indicated, in the statement he made at the request of Inspector Martin (exhibit 443) he too asserted that the larger of the three females (Miss Curteis) was walking closest to the fence. When he gave evidence at the South Melbourne Court in support of the charge laid against Miss Curteis he there swore that
Miss Curteis was walking nearest the kerb (page 6892). His explanation for what he would have the Board accept was merely an error in the statement he made for Inspector Martin was identically the same as Constable Proud's, viz. "It was a mistake" (page 6892).

As both Police Officers conceded that the position of Miss Curteis on the footpath and in relation to the kerb was a matter of critical importance (see the evidence of Constable Proud at page 6881 and that of Constable Harris at page 6892), it is not feasible to accept the proposition that both men made a simple and identical error about the matter when making their statements to Inspector Martin. All the more so when one bears in mind the fact that those statements were made as a consequence of the complaint Miss Curteis had made to the Police Department concerning the behaviour of Constable Proud. In such circumstances—and as both Officers conceded—they would have been at pains to ensure the statements they made were as detailed and as accurate as possible.

The second aspect of Constable Harris' evidence which caused me to reject it in preference to that of Miss Curteis and the Mitchell sisters related to the accounts he gave as to what he saw, or perhaps more accurately did not see, at the time the expression, "Drop dead, pigs" was used. In his statement to Inspector Martin (exhibit 445) the following passage appears: "This female I now know to be Geraldine Ann Curteis, she turned slightly towards us and yelled loudly 'Drop Dead Pigs'. Due to the fact that the street was reasonably well lit I clearly saw Curteis say this". In his evidence before the Board he swore that at the time the expression was used Miss Curteis was no longer within his view (page 6881) and he did not see who made the comment (page 6892). When asked to explain how it was the passage I have adverted to appeared in his statement, his only reply was—and I quote—"A bit of a misunderstand- ing" (page 6893).

That explanation I totally reject. The statements Constables Proud and Harris made to Inspector Martin in relation to the two aspects I have just adverted to, are so similar in wording and phraseology that despite Constable Harris' denial concerning the matter (page 6893), it is quite apparent that before making their statements both men put their heads together to ensure they told the one story. The fact that that is clearly what occurred is to my mind and of itself, corroborative of Miss Curteis' testimony to the effect that whilst in the rear of the divisional van in Loch Street she heard Constable Harris say, "What about her?", to which Constable Proud replied, "Don't worry about that, there is two of us and only one of her" (page 6703).

The third aspect of Constable Harris' evidence which did not impress me was that relating to the placing of Miss Curteis in the rear of the divisional van. During the course of cross-examination it was drawn to his attention that in the report prepared by Constable Proud on the 11th February, 1975 (exhibit 443), Constable Proud had stated that Miss Curteis had to be physically carried either into the van or down to the Watchhouse. To my mind the answers Constable Harris gave to the questions put to him in relation to the matter clearly demonstrated a lack of candour on his part. The passage to which I refer appears at pages 6894-5 of the transcript and is worthy of inclusion in this summary.

Q. Well, is it not true that she had to be carried into the van?
A. I can't recall.
Q. You never saw that?
A. Not from memory.
Q. And you do not believe it happened?
THE BOARD. You do not believe it happened that she had to be carried into the van?
A. I can't recall it, Sir.
Q. You think it might have happened without you knowing it?
A. It may have.
Q. You saw Miss Curteis put into the van, didn't you?
A. Yes.
Q. You observed it?
A. Yes.
Q. She did not resist, did she?
A. She was assisted into the van.
Q. How?
A. Just sort of—I suppose you would classify it, helped into the van.
One could not fail to get the impression that Constable Harris was endeavouring to support Constable Proud on the one hand by suggesting it may have happened, at the same time, and knowing it did not happen, doing his utmost to ensure he did not become too deeply committed in regard to the matter. I understand that in betting parlance that type of behaviour is described as "having a bit each way".

Whilst dealing with this particular aspect it is perhaps convenient to deal with Constable Harris' evidence in relation to the movement of Miss Curteis from the Muster Room to the Watchhouse. In that connection it is my view a similar criticism of his evidence is justifiable.

Although Constable Harris took no part in the preparation of the report of the 11th February, 1975 (exhibit 443) he assisted Constable Proud to prepare Constable Proud's statement for the Police Brief (exhibit 438). In this connection see his evidence at page 6895 of the transcript.

The final paragraph in that statement reads as follows: "I then requested Curteis to walk down to the Watchhouse where she was to be locked up. Curteis refused to move and had to be carried down to the Watchhouse by Acting Sergeant Adams and myself. She was then charged with this offence and lodged in the cells". Constable Harris' cross-examination in relation to this matter appears at pages 6805-6 of the transcript and is again worthy of inclusion in this summary.

Q. You swore here today that Miss Curteis was lifted from the chair by Mr. Proud and Mr. Adams and, after one step, walked voluntarily? That is what you swore on oath?
A. I swore on oath that she was approximately one step, I can't remember exactly how many steps.
Q. That is not being carried halfway down to the Watchhouse, is it?
A. (No response.)
Q. Is it?
A. Well...
Q. It is a simple question. That is not being carried halfway down to the Watchhouse?
A. If you measure the distance, it is not.
Q. You told us you assisted Mr. Proud in making the statement for the Brief?
A. Yes.
Q. That was typed out before you left the station?
A. Yes.
Q. Both of you working together?
A. Yes.
Q. If that is so, Mr. Harris, would you explain to Mr. Chairman how this came to be in it? "Curteis refused to move and had to be carried down to the Watchhouse by Acting Sergeant Adams and myself", myself being Proud. How does that appear?
A. She was carried some of the way.
Q. One pace, you say?
A. I said approximately one pace.
Q. She was not carried down to the Watchhouse by Acting Sergeant Adams and Mr. Proud, was she?
A. She was not carried all the way, no.
Q. How did that happen to get in there, can you tell us?
A. I would say it was typed in there and it was probably just what you would consider carrying her as assisting her, because she was not carried all the way but she was assisted most of the way.
Q. As that stands there?
A. It is not correct.
Q. It is not true, is it?
A. It is not correct.
Q. Not correct and untrue?
A. Yes.
Q. A misunderstanding?
A. No, I would not say a misunderstanding.
Q. Or a lie designed to indicate to the court that Miss Curteis' behaviour was far worse than it was?
A. No, Sir.
Q. You swore on oath, did you not, at South Melbourne, that Miss Curteis was carried halfway down to the Watchhouse?
A. I do not recall whether I said halfway or not but I swore on oath that she was carried some of the way.

In this latter connection see the notes taken at the hearing at the South Melbourne Magistrates' Court by Mr. Trevor Monti (exhibit 428).

Again in my opinion that passage of evidence demonstrates a lack of candour on Constable Harris' part.

Contrary to the evidence of Constable Proud (see pages 6857 et seq. of the transcript), Constable Harris maintained that at the scene Constable Proud did inform the Mitchell sisters of the particular words it was alleged Miss Curteis had used. It is my opinion that evidence was also false. As I have already indicated, I am satisfied the Mitchell sisters were never told the actual words it was alleged Miss Curteis had used. I consider Constable Harris was prepared to swear that to the best of his recollection they had, because he appreciated the absurdity of the situation in the event they had not.

The final matter I propose to advert to as reflecting on the credit of both Constables Proud and Harris concerns the time at which Miss Curteis was told she was to be charged with using insulting words and given a copy of the Information to that effect.

According to Miss Curteis the first indication she had that she was not to be charged with loitering for the purposes of prostitution but using insulting words was after her release from the cells and when she was handed the copy Information (see her evidence at page 6711, page 6738 and page 6741 of the transcript).

The Police evidence relating to the matter is to the effect that Constable Harris typed 3 copies of the Information charging Miss Curteis with using insulting words whilst he, Constable Proud, and Miss Curteis were in the Muster Room prior to the time at which Miss Curteis was taken to the Watchhouse (page 6885), that after Miss Curteis was taken to the Watchhouse but before her property had been taken from her he handed the Informations to Constable Proud (page 6885) and that Constable Proud then handed one copy to Miss Curteis (page 6818).

In this connection I do no more than quote the following passage taken from pages 6888–9 of the transcript.

Q. Mr. Harris, how do you spell Loch Street?
A. L-o-c-h-e, from memory.
Q. Mr. Harris, it is a lie by you on oath, I suggest to you, when you say you typed the information for insulting words on this night. That is so, is it not?
A. No.
Q. Have a look at the information. (Document handed to witness). That is the information for insulting words relating to Geraldine Curteis?
A. I cannot read it properly but it looks like it.
Q. How is Loch Street spelt, Mr. Harris?
A. I cannot read that.
Q. Have a good look. It is spelt L-o-c-h, I suggest to you?
A. That is quite possible.
Q. Do we have a clearer copy of that information? (Document handed to witness). There is no doubt, is there, Mr. Harris, that Loch is spelt L-o-c-h?
A. That is correct.
Q. And that is not the spelling of it, is it, Mr. Harris?
A. It was not the spelling I used here today.
Q. And it was not the spelling you used on that night, was it?
A. Yes, it was.
Q. Would you have a look at Exhibit 446. (Exhibit 446 handed to witness). That is the Mobile Duty Return you just swore you made out. Would you turn to the final page? Would you tell Mr. Chairman how you spelt Loch Street?
A. L-o-c-h-e.
Q. Would you turn to page 4? Would you tell Mr. Chairman how you spelt Loch Street there?
A. L-o-c-h-e.
Q. It has always been your belief it has been spelt that way, has it not, Mr. Harris?
A. I am not a good speller. I often ask people to spell things for me.
Q. You did not type this information, did you, Mr. Harris?
A. Yes.
Q. Would you have a look at the Interview Register. (Document handed to witness). Apart from the final righthand column, that is written in the handwriting of Mr. Proud, is it not?
A. Yes.
Q. Would you tell Mr. Chairman how he spells Loch Street?
A. L-o-c-h.
Q. And that is how Mr. Proud spelt it when he typed out the information?
A. That is incorrect.
Q. You see, Miss Curteis was never given that information until she was released on bail, I suggest to you?
A. That is incorrect.
Q. And it was never typed until after she had been lodged in the cells?
A. That is incorrect.
Q. Would you tell Mr. Chairman how, if you typed it, you happened to spell Loch Street L-o-c-h, without the 'e'?
A. Sir, when I was typing the information, as I said I am a bad speller and Constable Proud was with me. I do not recall asking him but I daresay that is how it occurred.

In the light of that passage of evidence, I say no more at this juncture than that I accept Miss Curteis' evidence in relation to the matter to that of the Police Officers who gave testimony in respect of it.

I turn finally to consider certain aspects of the evidence of Senior Constable Adams. At the outset let me say that in my view the evidence tends to suggest that apart from being merely a colleague of Constable Proud's, Senior Constable Adams could well be a fairly close personal acquaintance of Constable Proud's (see his own evidence at page 6950 of the transcript). I consider this factor could be of relevance having regard to certain aspects of the evidence Senior Constable Adams gave.

There are four aspects of the evidence given by Senior Constable Adams to which I now propose to refer.

In the first instance I propose to deal with his evidence to the effect that Miss Curteis was put through the Interview Register and when asked...

In her evidence Miss Curteis flatly denied that she was "put through the Interview Register", that she was asked that question by Senior Constable Adams, and that she made the statement alleged (page 6794 et seq.).

Having regard to the allegations the Police make in relation to Miss Curteis' behaviour at the South Melbourne Police Station that evening, I find it highly unlikely that in the event she was asked the question Senior Constable Adams alleges she was, she would make that reply. As Senior Constable Adams conceded—she was unco-operative from the time she came into the station that evening, refused to divulge any information to Constable Proud until Senior Constable Adams spoke to her, refused to walk down to the Watchhouse until forcibly lifted from her chair, and although not aggressive was arrogant throughout (pages 6937-8).

If one had no further material than that on which to base a judgement, one would be hard-pressed to find that within minutes of being taken to the Watchhouse this unco-operative arrogant female's state of mind had undergone such a change as to cause her to state, "It shouldn't have happened but I'm happy now with the Police" (see exhibit 435).

In her evidence Miss Curteis flatly denied that she was "put through the Interview Register", that she was asked that question by Senior Constable Adams, and that she made the statement alleged (page 6794 et seq.).

Of course the matter does not end there. One must now look at the answer it is alleged Miss Curteis gave in the light of the evidence of Constable Proud.
In the statement Constable Proud made on the 5th May 1975 at the request of Inspector Martin (exhibit 439) the following passage appears: "Curteis refused to move and had to be carried down to the Watchhouse by Senior Constable Adams and myself. She was then charged with this offence and after further insults by her was lodged in the cell".

Reading the passage literally, one could perhaps be forgiven for concluding that what the author was endeavouring to convey, was that having arrived at the Watchhouse Miss Curteis was charged with the offence infringing abusive words in the sense that she was handed the Information setting out the charge and the necessary paper work relating to the charge completed, and that between that time and the time at which she was placed in a cell she made further insulting remarks to the Police present. If that was what Constable Proud intended to convey in his statement of the 5th May 1975 it would make nonsense of the evidence of Senior Constable Adams to the effect that when Miss Curteis was put through the Interview Register she stated she was then happy with the Police.

When this aspect was raised with Constable Proud during the course of his evidence he swore that the further insults to which he was referring were made by Miss Curteis whilst on her way from the Muster Room to the Watchhouse. In his evidence at page 6873 or seq. I do not propose to debate whether that portion of his evidence is true or false. I content myself by adopting the answer he gave at page 6875 of the transcript to the effect that it would be a curious thing if a woman who had just moved to Melbourne from Geelong. He further denied that any phone number was provided in relation to that person (page 6935).

That Miss Curteis supplied more than one name and a telephone number not only clear from her own evidence but is clear from the evidence given by Constable Manning (page 6982 et seq.) In this case Senior Constable Adams has either deliberately lied about the matter, or, because he had no recollection of more than one name being given, has been prepared and on oath to accuse Miss Curteis of lying. In considering his credibility or lack of it, one situation is as bad as the other.

I might add that the behaviour of Senior Constable Adams so far as that aspect was concerned was yet another example of a Police Officer being prepared to swear on his oath that a civilian was not telling the truth about a matter, when the reality of the situation was that the Police Officer had himself merely no recollection of it. The point I make is that it is one thing to swear; "I cannot remember and therefore cannot answer yes or no," it is another thing to swear that the witness who has given the evidence is committing perjury, when the reality of the situation is that you have no recollection of the matter, and accordingly are in no position to swear whether he or she is or is not.

The third aspect of his evidence to which I refer is that relating to the abusive expression he alleges Miss Curteis used after she was released from the cells. It will be recalled that Senior Constable Adams' evidence in this connection was to the effect that when he asked Miss Curteis to accompany him from the cells to the Watchhouse she replied, "I am not leaving here. I have been put here by two unjust pigs. I know my rights have been infringed" (page 6924 and page 6956).

As I have previously indicated, Miss Curteis at no stage made any complaint or criticism of Constable Harris. Throughout the course of her evidence she was at pains to make clear the only complaint she made was that concerning the behaviour of Constable Proud. (See, for example, her evidence at page 6730 of the transcript).
In those circumstances why would she refer to both officers as “unjust pigs”? She, of course, denies she ever did. That is a denial I prefer to accept in preference to the evidence of Senior Constable Adams.

The fact that Miss Curteis did not make such a statement is to my mind abundantly clear from the final aspect of Senior Constable Adams’ evidence to which I now propose to refer.

According to Senior Constable Adams his belief that night (following the visit at Mr. Ashley and Mr. Carlisle) was that the Curteis would be defended (page 6927). It was further his belief that he would be called at the hearing to give evidence (page 6955). As events transpired he was not. The point I make, however, has nothing to do with words they alleged Miss Curteis had used in all probability did not ascertain what they were until he was interviewed by Inspector Martin in May 1975 (page 6955). It also concerns his evidence to the effect that he had no recollection of ever telling Constable Proud what Miss Curteis said when he asked her to accompany him from the cells back to the Watchhouse (page 6961).

When one has regard to the trouble he alleges Miss Curteis caused at the South Melbourne Police Station that evening I find it highly unlikely he did not inquire of Constable Proud or Constable Harris what insulting words they alleged Miss Curteis had used. Once he realized the case was to be defended I find it inconceivable he did not speak to Constable Proud or Constable Harris at the first available opportunity, inquire of them what she had said in Loch Street, and convey to them her description of them as two unjust pigs.

Miss Curteis denies she ever used such an expression. I accept her denial. I consider Senior Constable Adams’ evidence relating to this aspect to be as false as his sworn testimony to the effect that he did not know what a “verbal” was (page 6936). In my opinion what Senior Constable Adams has done has been to “verbal” Miss Curteis in an endeavour to extricate Constables Proud and Harris from the predicament he considered they were in. It does him little credit.

There are numerous other aspects of the Curteis matter one could advert to as indicating the totally unsatisfactory and unacceptable Police evidence called in connection with it. There are instances of one witness flatly contradicting another, discrepancies in the evidence of some witnesses, omissions of relevant matters from the evidence of others. As I have indicated in other matters, the purpose of this summary is to indicate the more salient features of a matter which have influenced me in arriving at a decision. I see no point in going further than I have in the Police Association that although it may be open to them to make an adverse finding insofar as the behaviour of the Police at the South Melbourne Police Station that evening was concerned, I should make no adverse finding against Constables Proud and Harris in respect of Loch Street earlier that evening. It has been strongly urged on me that on the evidence, particularly that of Jennifer Mitchell, something offensive was clearly said in Loch Street that evening, albeit not by Miss Curteis, justifying Constable Proud questioning Miss Curteis in connection with it. It has been further contended that in the event he genuinely believed Miss Curteis made the offensive remark, whatever the remark may have been, Constable Proud had no option but to arrest her once she refused to give her name and address.

I am prepared to accept that something offensive was said to the Police by some person as they slowly drove along Loch Street that night. For the moment it matters little if the expression was “get lost” as Jennifer Mitchell thought it was (page 6753) or “drop dead, pigs” as the Police allege it was. Whatever was said would in my view justify the Police in stopping the van and endeavours to locate the offender. It is at this point, however, that I part company with the submissions of Counsel appearing for the Police Association.

Constable Proud has maintained from the outset that he clearly saw the person who used the expression “drop dead pigs” and that person was Miss Curteis. I am satisfied beyond any shadow of doubt that that evidence is false. I find as a fact that he did not see Miss Curteis use that expression, and that Miss Curteis did not use that expression. Accordingly he had no right whatsoever to question her in the manner he did in the first instance.

In the event Constable Proud heard the expression used but did not see who used it, the situation would have been entirely different. In those circumstances I consider he would have been entitled to stop the van and
enquire of those persons in the immediate vicinity whether or not they
had heard the expression used, and if so, by whom. If from his enquiries
he genuinely believed Miss Curteis had used the expression, he would have
been entitled to demand her name and address and entitled to arrest her in
the event she refused to give it. Had that been the situation I would have
made no criticism of his behaviour in Loch Street that evening.

Regrettably that was not the situation. He swore positively that he
saw Miss Curteis utter the expression. I find as a fact that he did not.
Accordingly in my opinion he had no justification for immediately demand­
ing her name and address and no justification for placing her under arrest
when she refused to give them.

If I was asked to speculate about the matter, I would surmise that
what probably happened in Loch Street that evening was this.

As Constable Proud was driving the van slowly along the street, some­
one in the street—and being a fine warm evening there were any number
of persons in the immediate vicinity apart from Miss Curteis and the
Mitchell sisters (page 6761 and page 6837)—probably made a remark he
considered offensive at or about the same time as he saw the three young
women walking along the footpath.

At that time there was a direction or instruction to those Police on
patrol in the divisional van to the effect that they were to obtain the names
and addresses of anyone they thought might be loitering for the purposes
of prostitution (page 6957 and page 6839). As Constable Proud said, he took
no notice of the three girls until the comment was made, “No, we are not
prostitutes” (pages 6837-8). When that comment was made, however, it
then crossed his mind that they might be prostitutes (page 6838). What­
ever offensive remark was made by someone in the street, I think it highly
likely Constable Proud determined at that stage to stop the van and in
accordance with the standing instruction obtain the names and addresses
of the three young women. Unfortunately for him, Miss Curteis stood her
ground and, so far as he was concerned, he ultimately found himself
(doubtless in front of an appreciative audience) in a situation where he had
to either arrest Miss Curteis, or back down and lose face. As events
transpired he adopted the former rather than the latter course. Whilst it is
true he made reference to abusive language and insulting words at the
scene, I consider that to the forefront of his mind was the thought he would
charge Miss Curteis with loitering for the purposes of prostitution. When
the I.B.R. check he subsequently made revealed Miss Curteis had no criminal
background, that charge was clearly not suitable and he was then driven
back as it were, to justifying her arrest on the basis she had used insulting
words and had refused to give her name and address when requested
to do so.

As I have indicated, I see no room in this case for honest mistake.
Constable Proud was adamant he saw Miss Curteis call out, “drop dead
pigs”. I find as a fact she did not use that expression.

My conclusion therefore is that Constable Proud had no right to
demand the name and address of Miss Curteis in the first instance, no
justification for arresting her and charging her with using insulting words,
and no justification for subjecting her to the humiliation of being lodged
in a police cell at the South Melbourne Police Station for some hours. In the
latter connection I consider the behaviour of Senior Constable Adams to be
no better than that of Constable Proud. He was the Officer-in-Charge of
the station that evening, and in my opinion should have ensured Miss
Curteis was dealt with in a manner which would not necessitate her being
lodged in the cells.

**FINDINGS**

In this matter I make the following findings:—

1. That on the evening of the 6th February, 1975, in Loch Street St.
Kilda and later at the South Melbourne Police Station, Geraldine Anne
Curteis was harassed and intimidated by Constable Larry Paul Proud.

2. That on the 6th February, 1975, Geraldine Anne Curteis was without
lawful cause or justification arrested by Constable Proud, taken to the South
Melbourne Police Station, and detained therein for a period of time between
one and two hours.

3. That on the 6th February, 1975, Geraldine Anne Curteis was falsely
charged with using insulting words in a public place by Constable Proud.

4. That on the 6th February, 1975, Constable Proud and Constable
Harris conspired together to fabricate evidence against Geraldine Anne
Curteis.

5. That Constable Proud, Constable Harris and Senior Constable
Alexander David Adams conspired together to give false evidence before
the Board and did so.
THE CURTEIS MATTER

APPENDIX

LIST OF WITNESSES

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CHAPTER 13

THE EBDON MATTER

Robert William Ebdon is a self-employed artist and was aged 27 at the time he gave evidence before the Board. Prior to the 1st June, 1974, Ebdon had no criminal record in the sense that he had no convictions for offences of dishonesty, although he did have a number of convictions in respect of various traffic offences.

His complaint to the Board was that having been arrested in the Station Hotel at Prahran by Detective Senior Constable Victor John McKay and Detective Senior Constable John Joseph Gangell on the evening of Saturday the 1st June, 1974, he was repeatedly assaulted by Senior Constable McKay, first in the Police car on the way from the hotel to the St. Kilda Police Station, and later at the Police Station itself. As a consequence of such assaults he sustained a number of injuries in the nature of bruises and abrasions to the head, right loin and hip and to the scrotum. In addition he alleged that a comparatively large portion of hair had been pulled from his scalp.

The evidence called on behalf of the Police Officers involved in this matter was simply to the effect that at no time was Ebdon assaulted in the manner he alleged whilst in their custody. They did contend, however, that Ebdon behaved quite violently whilst in the Police vehicle and at the St. Kilda Police Station, and that any injury he sustained was brought about by his own behaviour, and the fact that it was necessary for the Police to physically restrain him. They maintained that no more force than was necessary, was used in dealing with him.

As in a number of matters dealt with by the Board, there was little independent evidence called on behalf of Ebdon in support of his allegations. The only witnesses to whatever occurred in the Police car on the way to the Police Station were the occupants themselves, viz. Ebdon, Senior Constable McKay and Senior Constable Gangell. Again, and as frequently occurred in matters investigated by the Board, Ebdon was unable to produce any witness to testify as to what occurred at the Police Station. So far as his side of the matter was concerned, one was compelled to rely on his testimony alone. He was, however, able to produce medical evidence in relation to his injuries and the evidence of a close friend who saw him the following day, and who was able to describe her observations of him at that time. Brief as that evidence was, it did ultimately assist one in determining where the truth of the matter lay.

I turn now to deal with the evidence Ebdon gave in relation to his complaint.

Evidence of complainant Robert William Ebdon

Background

Before dealing with the events of the 1st June, 1974, I think it appropriate to say something of the impression I formed of Ebdon.

He is clearly not a person much attracted to the observance of community convention or to the dictates of orthodoxy. As he made quite clear in his evidence—“he stands up for what he feels” (page 6271A). If he subjectively concludes that authority is wrong, and he is right, he has no hesitation in rejecting the view that, as a citizen, he is bound to comply with the law. He quite freely confessed to driving vehicles whilst his driving licence was cancelled, and left no doubt he would do whatever he pleased in that direction, regardless of what the law required. It was equally clear he regarded his dozen or so traffic convictions as quite unjustified, and spoke in terms of criticism of the Police involved. On more than one occasion when questioned about such matters he alleged a particular Court had been deceived by the Police who gave evidence (see for example, page 6269) and on more than one occasion accused the particular Barrister who had appeared for him of stupidity insofar as the presentation of his case was concerned. But there was nothing in his demeanour, opinions, or Police record, to suggest he was a person with a propensity to violence; this was confirmed by evidence to which I shall later refer.

His appearance and dress could perhaps be described as somewhat Bohemian although no odder than the dress and appearance of many of today's younger generation. I make no criticism of Ebdon in that respect. I simply advert to such matters in the hope they may assist the reader of this summary to have a better appreciation of the somewhat unusual events which occurred on the evening in question. I turn now to consider Ebdon’s evidence in relation to his arrest by Senior Constable McKay in the Station Hotel, Prahran, at approximately 10.00 p.m. that evening.
Arrest of Ebdon in the Station Hotel

At approximately 8.00–9.30 p.m. that evening Ebdon went to the Station Hotel to have a drink with friends preparatory to going on to a party. Between his arrival at the hotel and approximately 10.00 p.m., he sat in the lounge and consumed some 4 or 5 beers. Shortly before 10.00 p.m. Senior Constable McKoy and Senior Constable Gangell entered the lounge and stood near the fire-place surveying the scene. According to Ebdon, what drew his attention to the two Police Officers—both of whom were in plain clothes—was the fact and I quote: “There was a bit of a stir, more of a feeling, a few words, ‘Police, pigs, fuzz’ general terminology” (page 6224). What occurred thereafter is best described in Ebdon’s own words as appearing at pages 6225-6 of the transcript.

Q. How did they look?
A. They were very grim looking, they didn’t look in a very good mood at all, compared to everybody else, that is, they stood out.

Q. Did something come into your mind about these gentlemen?
A. You could put it that way, I suppose.

Q. Did you feel impelled to do something in relation to them?
A. Well, we were just about to get up to leave and as I was ready, I had finished my drink and I think everybody else was still talking and as I waited for them I looked across and the next thing I walked across and said, “Hello” or “Good day”.

Q. Why did you do that?
A. I don’t really know.

Q. Do you think you walked across and said “Good day” to them?
A. I am pretty sure I said “Good day”.

Q. What response did you get from them?
A. Very little response. They looked, but they didn’t say anything. I was searching for something to say to them.

Q. What did you say?
A. The first thing that came into my mind was the rumour going around so I asked them.

Q. Do you recall how you put it?
A. I remember I used the wrong word, which was the cause of all the trouble.

Q. Do you remember what you said?
A. “Do you know there is a rumour going around?”

Q. When that was said did you get any response to that?
A. More of a look of interest, perhaps a grunt or a noise, not really an answer, not really words.

Q. What did you continue to say?
A. I repeated myself and said, “There’s a rumour going around that you are both a couple of pigs” and inasmuch as I didn’t actually realise the sort of word I had used, it wasn’t the sort of word I would use, the English, but because of the rumour flying around, I suppose I used it.

Q. In point of fact the use of that expression had unfortunate circumstances, Mr. Ebdon, as we are all aware. Did you mean that in any derogatory or offensive or insulting way?
A. Most certainly not. It would only be picking a fight and I have no way of defending myself.

Q. When you said that what reaction did it provoke?
A. I can’t remember exactly what he said; he motioned—I remember looking at the ground, he motioned at the ground and I remember he said something, “Do you want to find yourself on the floor?” or something to that extent and I think I thought, “Why did he say that?” and while I was thinking I was more or less picked up bodily, one each side of them by the shoulders, by the arms and next thing I knew I was dragged across the floor, I was hurtling outside, I was picked up by a gust of wind, I had no control.

As Counsel assisting was heard to remark when opening the Ebdon Matter to the Board, “some people might think that an injudicious approach to gentlemen bearing the outward and visible signs of plain clothes Policemen”. Injudicious or not, it was a most offensive approach and one which in my opinion more than justified the action the Police subsequently took in arresting him and taking him to the St. Kilda Police Station.
At all events having been placed under arrest Ebdon was bodily removed from the hotel and taken to the Police vehicle parked nearby. I consider it relevant to note that Ebdon strenuously resisted the efforts of the Police to remove him from the hotel and strenuously resisted their efforts to place him in the Police car. As he said at pages 6227–8 of the transcript, “I resisted them bodily manhandling me”; “As we were through the doorway I grabbed hold of the door jamb or door frame”; “I probably grabbed hold of the door or the roof of the car, still resisting being pushed and manhandled”.

Ebdon’s explanation for his behaviour in resisting the Police in that fashion was that he wanted to talk to the Police and explain that the whole thing was a misunderstanding, that he had not called them pigs but in actual fact had only repeated the rumours going around the hotel. He maintains, however, that the Police would not stop to listen, hence his behaviour in resisting their attempts to remove him from the hotel and place him in the Police vehicle (pages 6226–7).

In the light of the evidence subsequently given by both Senior Constable McKoy and Senior Constable Gangell it is relevant to note that Ebdon maintained throughout that at no stage did he refer to the Police as pigs and at no time was he asked for his name and address whilst at the hotel or in the Police car on the way to the station.

Evidence of Ebdon as to the assault on him in the Police Vehicle

Ebdon’s evidence in chief as to what occurred in the Police car on the way to St. Kilda Police Station appears at pages 6229–6232 of the transcript. I propose to set it out verbatim omitting irrelevant and repetitious passages.

Q. Do you recall anything being said to you at the time Mr. McKoy got into the vehicle?
A. The clearest thing I remember is that as soon as I was in the car, he came in behind me and he said, “You have got no witnesses now, have you?” That is when he started hitting me. I think he got me with the elbow first.

Q. You were struck, you think, with an elbow. What part of your body was struck?
A. Around the head.
Q. What side of your head?
A. I think it was the front/left, around my cheek area.
Q. After that blow, did something else happen to you in relation to your hair?
A. Yes. There are probably a lot of details I cannot remember. What I can remember is the fact that he grabbed me by the hair—apparently seemed to lose his temper; he was being very irate—grabbed me by the hair and pulled my head down beside him on the seat, so that my head was more or less against his right hip.
Q. That would mean, would it, that the right side of your face was uppermost?
A. Yes.
Q. When you were in that position in the car, what was done to you?
A. Well, I was alternately wrenched up, shaken around, punched, and pushed down again.
Q. By what means?
A. By the hair.
Q. Were you struck?
A. Yes, I was struck a couple of times, pushed around . . . The first instance I remember explicitly is that I was held down on the seat and he lent across with his left hand and punched me in the ribs on the right-hand side. The second time he punched me there, I said, “Two “, and I kept on counting the numbers until 14, probably more in defiance than anything else. At 14 he stopped, and next thing I knew, I was heaved up, and then there was this grey flash and ringing in my head.
Q. I am coming to that in a moment. Apart from being jerked up and down by your hair and struck in the body, you have already told us of one blow to the face or the head. Were there other blows struck to your face?
A. There were countless other blows that I cannot remember, I cannot recall explicitly. The only ones that stand out are the ones I paid particular attention to.
Q. I just want to stop at that point of time. This is before you felt a different sort of injury to your head. Had you done anything in the car to Mr. McKoy to warrant being treated as you were?
A. To him?
Q. Yes?
A. Do you mean physically?
Q. Yes?
A. No.
Q. Were you in any way seeking to attack him in the car?
A. No.
Q. Or escape from the car?
A. When I was first in the car, I remember grabbing hold of the door handle, feeling that what was about to come was going to be more physical, and that regardless of whether he was a Policeman or not, it was going to be something to get away from.
Q. Yes?
A. That is when he got me by the hair.
Q. But had you attacked him?
A. No.
Q. Or, when the car was in motion, did you seek to escape from the car?
A. Not when it was going.
Q. All right?
A. I did try to sit on the other side of the seat. He might have mistaken that for trying to get out of the door.
Q. I interrupted you when you were telling Mr. Chairman that something happened to you which was quite different to what had gone on before. Would you do your best to describe to him what happened?
A. This was immediately following the 14 blows to the side. I remember being wrenched up by the hair and the next thing was a ringing in my ears, a flash, a crashing—I cannot describe it, in the ears.
Q. Whereabouts was the crashing?
A. All round the brow and the left cheekbone, around the left eye area. As the ringing subsided in my ears, and I do not know how long it took, I realised that my left hand was straight out and that it had hold of a gun which I think was a revolver.
Q. Whereabouts did you have hold of the gun?
A. To my best recollection I think it was behind the front seat, in front of McKoy.
Q. Whereabouts on the gun was your hand?
A. Over the chamber and I could feel the muzzle sticking up.
Q. Did someone else have hold of portion of the gun?
A. McKoy had hold of it. I did not see it but I am pretty sure he had hold of the butt, the actual grip of the pistol.
Q. Where was that? In the circumstances you have described, do you know where the gun was generally pointing?
A. Yes, pointing generally to the righthand front of the car, somewhere in the vicinity of the driver.
Q. Before you were hit by the gun if, indeed, it was the gun you were hit by, had you seen how it came to be in McKoy's hands, where he had got it from?
A. I did not see him pull it out. The first I realised there was a gun was when I had my hand on it. Then I made sense of the ringing and the blow to my forehead.
Q. The blow you got to the area of your forehead and cheekbone, as you have described to Mr. Chairman, did that seem to you at the time to have the sensation of a blow you had got from a fist, or something different?
A. It was definitely not a fist.
Q. What happened after the state of affairs you have described to Mr. Chairman? Was anything said by anyone?
A. Well, as I mentioned before, I realised I had hold of the gun. He did not move—he had frozen. He said, "It is loaded" and I said something like, "Go on and shoot it then", something like that. As I was talking I realised where it was. This was more out of anger when I realised there was a gun involved. He still had not moved, I realised the severity of the situation, what could happen if it went off, so I let go.
Q. Did you see what he did with the gun when you let go?
A. I did not see. I imagine he put it away. I did not see the gun again.
Q. Mr. Ebdon, what is your next recollection?
A. The next I remember is being pulled out of the car.
Q. Do you remember the car stopping outside the Police Station?
A. I do not remember it stopping—it obviously must have stopped and the next thing I remember is the door being opened. I think by the driver, who got out. McKoy pulled me out on the footpath by the hair so I landed more or less palms down on the footpath. I was not allowed to walk by myself.
Q. Do you mean by that more that when he pulled you out by the hair you were literally pulled out so you went full length down on to the footpath?
A. That is right.
Q. Palms down?
A. Yes.

Having been forcibly taken from the pavement into the Police Station Ebdon alleges that despite his struggles and resistance he was ultimately taken to a locker room on the ground floor. There he alleges he was viciously assaulted by either Senior Constable McKoy or Senior Constable Gangell.

Evidence of Ebdon as to the Assault on him at the St. Kilda Police Station
Ebdon's evidence in chief relating to this aspect of the matter appears at pages 6232–6238 of the transcript. Again I shall set out the relevant passages verbatim.

Q. What is your recollection of how you came to be in this locker room?
A. I remember the door opening and as soon as I saw the bank of lockers in the middle, I had barely time to realise that they were lockers and I found myself pushed from behind, careering to the right against the lockers. I barely had time to turn around and grasp hold of something, then I remember feeling a lot of blows from the rear about my head, shoulders and back, and falling to the ground.
Q. Were you able to in fact right yourself and turn around or were these blows delivered?
A. I was not able to turn around. I did not have time. Everything was happening very fast. That is why I thought we went upstairs but we did not.
Q. Do you know who administered the blows to you?
A. I did not see. I cannot say I could see him hitting me from behind.
Q. Can you tell Mr. Chairman how many blows were administered to you?
A. Once again, I would like to give a figure but it was a barrage of blows that I remember.
Q. If you do not feel able to give a figure, do not but if you feel able to give an approximate number, do so, please?
A. It was well over a dozen, it could have been 20, it could have been a dozen.
Q. You fell to the ground, you say?
A. Yes.
Q. What, on your back, your chest, your left side, your right side or how?
A. I did not drop. I was more or less forced against the lockers. I saved myself from falling against the lockers and ended up on the floor with my head almost in a corner.
Q. On what side of your body were you lying?
A. More on the right side. The right side of my stomach.
Q. What happened then?
A. I recall I was being kicked, as I remember, around the legs and back.
Q. On what side of your body, the right or the left?
A. It was not really the side.
Q. Perhaps you could indicate to Mr. Chairman by pointing where some, at least, of these kicks landed?
A. Around the back area.
Q. You are indicating what, the middle of the back, in the low back area?
A. From what I remember, yes. I do not think I was kicked in the head but I was covering my head in the corner of the lockers.
Q. What about the right side—were you conscious of any blows?
A. The right side would have been kicked as well. I was not lying directly on my side or stomach but in a prone position, somewhere between that.

Q. I think you told Mr. Chairman that during this period you had your head covered by your arms?
A. Yes.

Q. Were you calling out?
A. Well, after I found myself on the ground being kicked, I was somewhat numb, I think. I must have been. It was not very painful—it was just a barrage of being kicked. There was not anything for me to do but yell and as soon as I yelled they stopped.

Q. You are, you say, unable to tell Mr. Chairman approximately how many kicks you received?
A. No, I could not count them.

Q. Can you give us any idea for how long this went on?
A. It seemed like a fair length of time—it could have been shorter, but at least a full minute.

Q. What happened then? Did the kicking stop?
A. The kicking stopped. There was a pause. I do not remember how I got up—whether I was pulled up or I got up myself, but the next thing I knew I was being escorted up to a wash room.

Having been taken to a wash-room Ebdon was told to wash his face. According to Ebdon he flatly refused to do this as to do so would have removed the blood on his face which at that stage he considered was evidence of the fact he had been assaulted.

Ebdon’s next recollection of events is of being taken to the Watchhouse counter. There he alleges his pockets were emptied. Although Ebdon was not quite clear as to the sequence of events he maintains that at or about the time his pockets were being emptied two uniformed Police Officers came around to his side of the counter and twisted his arms up his back so that he was forced to bend over the counter in such a fashion that his face was lying on the counter.

Having had his property removed from him, Ebdon’s recollection is that he signed a property sheet and was then taken from the Watchhouse counter to the cell block. The following is his account of that incident—

Q. Where were you taken from the area of the Watchhouse counter, Mr. Ebdon?
A. I was turned to the right and push marched towards the door at the end of the corridor. The door I remember being open at the time or perhaps had just been opened. McKoy was in front of me at this stage. He stepped out through the doorway first.

Q. Who was then with you or holding you or behind you?
A. As far as I remember, the driver, I have forgotten his name again, and one or two of the other Police who had come around during the pocket search.

Q. What happened as you approached the doorway?
A. Well, I approached the doorway and McKoy stepped out through the doorway, down the step and as I began—I got to the doorframe itself, I was just about to step through when things sort of paused for a minute and McKoy either grabbed me by one of the shoulders or both shoulders, I am not sure, and I realised he was going to try to hit me in the crutch. It was too late to stop him and all I could do was to twist slightly and take some of the force on my thigh.

Q. Is that what you did?
A. Yes.

Q. Whereabouts then did you take some of this, what part of your thigh, the outer or inner?
A. The inner.

Q. Was this attempted kneeing successful in the sense that you were kneed in the crutch or did it not reach there or what?
A. It hurt but not as much as it could have.

Q. Was anything said to you by McKoy at this stage?
A. I do not think so.

Q. Did you fall to the ground after this attempted kneeing?
A. No, I refused him that?

Q. What happened after that?
A. I was marched to the outer cell of the block of cells.
One might gain some insight into the personality of Ebdon from the following passage of his evidence. At page 6236 of the transcript he was asked, “When you were in the cell were you doing anything?”, to which he replied, “Yes, I had to accept the fact that I was locked up and I was still a bit merry, I suppose. At least I was not being pushed around and kicked and I was still alive and able to think sensibly still, at least I thought I was. I amused myself by making up a song and tap dancing on the floor.”

At some later stage that evening Ebdon was removed from the cell in which he had originally been placed—a cell known as the “wet cell” and placed in a cell inside the cell block itself. At a time he believes was after midnight an Officer—in all probability the Duty Inspector—visited the cell. According to Ebdon he told him basically what had happened to him that evening and asked him what was going to happen and when could he get out. The only reaction that produced was a remark to the effect, “We will see what we can do”.

In fact, Ebdon remained in the cell throughout the evening and was not released until approximately 11.00 a.m. the following morning. He was then taken to the upstairs portion of the Police Station by Senior Constable McKoy and to a wash basin where he was able to wash his face. Following that Senior Constable McKoy took his fingerprints and formally charged him with using insulting words and resisting arrest.

Ebdon's account of his meeting with Senior Constable McKoy on the Sunday morning appears at page 6237 of the transcript and is worthy of inclusion in this summary.

Q. How was Mr. McKoy on the Sunday morning?
A. Well, we were conversing. He was talking and he struck me as being very different from the person he was the night before, although he still had a foul mouth.

Q. What did Mr. McKoy say to you, as you recall it, on the Sunday morning in relation to your own position?
A. He said a lot of things. One of the things I remember was that he was going to try and get me six months in gaol for what I had done.

Q. Did you ask him why?
A. I think I must have.
Q. What did he say?
A. He said because I was a cunt.

Q. What else did he say about your behaviour the night before?
A. I cannot remember explicitly what he said.
Q. Do you remember the expression preach or preaching?
A. Yes, he did accuse me of preaching to him which I was a little bit surprised at, I did not think I had been preaching to him at all.
Q. You did not think you had been preaching?
A. No. One of the things he told me, it was easy to understand why he was hitting out, I was telling him what he had been doing wrong and he did not like that.

Q. He complained that you had been telling him what he had been doing wrong?
A. He used the word preaching, that is my interpretation.

In due course a Justice of the Peace arrived at the Police Station, Ebdon was granted bail on his own recognizance, and released. It is of significance to note that prior to his release, Senior Constable McKoy did not put Ebdon through the Interview Register and thus gave him no opportunity to make a formal complaint concerning the treatment meted out to him on the Saturday evening.

Again and as some indication of Ebdon's character, Ebdon did not immediately go to his home upon his release but in fact went to the banks of the Yarra and slept there for a few hours. Following that he called at the flat of a Miss Anne Elizabeth Terry—one of the persons he had been with at the hotel the previous evening, told her something of what he had experienced following his arrest and then went home; later that day he amplified his account in the course of a telephone call he made to her.

On the 3rd June, 1974, i.e. on the Monday, Ebdon attended at the surgery of Doctor J. D. Hollaway for the purpose of having an examination made of the injuries inflicted on him on the Saturday evening. By agreement between Counsel Doctor Hollaway was not called to give evidence before the Board. A medical report prepared by Doctor Hollaway
and dated the 9th June, 1974, was admitted in evidence and is exhibit 392. I shall make further reference to the content of that report at a later stage of this summary. Because of the importance I attach to that report a copy of it appears as Appendix "B" to this chapter.

On the same day, i.e. the Monday, Ebdon prepared a statement outlining what had befallen him on the Saturday night and went to Russell Street with a view to lodging a formal complaint. At Russell Street Ebdon was advised to contact Inspector Tobin at Malvern, he being the Inspector-in-Charge of the St. Kilda Police Station. This Ebdon did, and an appointment was made for him to see Inspector Tobin on the 6th June.

I fail to see why Ebdon's complaint could not have been received by the Duty Inspector at Russell Street. If a citizen wishes to make a complaint against members of the Police Force why should he not be able to make that complaint at Russell Street, instead of as in this case, being sent off to a suburban station. Whilst it may well be the situation that the Inspector having overall control as it were of the Police stationed at St. Kilda, is himself stationed at Malvern, that being the Headquarters of that District, why should not the aggrieved citizen be able to go to Police Headquarters and lodge his complaint there? After all the Inspector to whom he makes his complaint at Russell Street will be far more independent than the Inspector-in-Charge of the particular Police Officers against whom he wishes to lodge his complaint.

One bears in mind of course that at this juncture BII had not been established.

At the meeting with Inspector Tobin, Ebdon told him of his experience and was assured by Inspector Tobin that the matter would be looked into.

On the 11th June, 1974, Ebdon appeared at the Prahran Magistrates' Court to face the two charges brought against him by Senior Constable McKoy. Following discussion between his Counsel, Senior Constable McKoy and Inspector Tobin, Ebdon pleaded guilty to the charge of using insulting language and the charge of resisting arrest was withdrawn. Why was that charge withdrawn? If ever a charge of resisting arrest was well founded, on any view of the matter, it was in this case.

At the hearing before this Board Ebdon made it quite clear that it was against his wishes that a plea of guilty was entered to the charge of using insulting words, and that he only did so because his Counsel urged him to. In fact before this Board he made a most scathing attack on his Counsel and left one in no doubt he was completely dissatisfied with the manner in which his case had been handled.

At all events at the conclusion of the proceedings at the Prahran Magistrates' Court, Ebdon was asked by Inspector Tobin whether he wished to pursue his complaint or not. His answer to that question was that he did not. When asked during the course of his evidence before the Board why he determined at that stage that he would not persist with his complaint he replied: "The way I interpreted his question was that he wanted me to, if anything, make any allegations, complaints, etc., through him, through the Police Force, which I did not want to do; I said I would rather make it public."

The final matter I wish to advert to so far as Ebdon's own evidence is concerned is the fact that as part of his case he produced an envelope containing a large quantity of hair, which he alleged had been pulled from his scalp on the Saturday evening by Senior Constable McKoy (exhibit 393). In the circumstances I feel it best to set out Ebdon's evidence relating to this aspect as it appears at pages 6238-9 of the transcript.

Q. Mr. Ebdon, I wonder if you would be good enough to look at the contents of that envelope, please. (Envelope handed to witness).
Q. What is it?
A. It looks like the hair I took from my head and put in the lining of my jacket on the Saturday night.
Q. When was it you removed that from your head and put it in the envelope?
A. When I was in the second cell, it was loose on my head but it wasn't obviously torn out, I discovered it by accident.
Q. Where did the envelope come from?
A. It was given to me some days later.
Q. Where did you put the hair, then?
A. The leather jacket I had had a torn lining and I managed to poke it down inside.
Q. To make it clear for the transcript, that was hair which you removed from your head without any effort on your part, it was loosely on your head, was it?
A. It was taken from the part of the head that was hurting.
Q. You did not, as it were, sit down and tear it out yourself in the cell?
A. I don’t think I could have.

The quantity of hair in the envelope was quite substantial. To pull that quantity of hair from a person’s scalp would require a great degree of force. In my view it would be highly unlikely that any person could inflict that type of injury on himself.

**Independent Evidence called in support of Ebdon’s Complaint**

The independent evidence called on Ebdon’s behalf consisted of the testimony of Miss Anne Elizabeth Terry and the medical report of Doctor Hollaway (exhibit 392).

In the main the evidence Miss Terry gave related to her account of events at the Station Hotel on the Saturday night and her observations of Ebdon the following afternoon. She, however, say a little about Ebdon’s character which I consider worthy of inclusion in this summary. The following passage appears at pages 6318–9 of the transcript.

Q. Miss Terry, I would like to ask you some questions about Mr. Ebdon. Your knowledge of him, it would be fair to say, is of him being somewhat non-conformist in his outlook?
A. Yes, he is.
Q. Holding ideas and opinions that might seem strange to other members of the community?
A. Yes, that is correct.
Q. What can you tell Mr. Chairman about his views on matters of violence?
A. Bob is a completely non-violent character, if anything he will walk away from it, he abhors any sort of violence.

The only matters of relevance so far as her account of Ebdon’s arrest is concerned, is the fact that it was her understanding that in talking to the Police immediately prior to his arrest Ebdon had used more than one word which could be misconstrued (page 6324).

Ebdon, of course, maintained that he had only used the word “pigs” once and that only in the context that there was a rumour going around to that effect. As I shall indicate in due course—the Police evidence was to the effect that Ebdon had said, “You look like pigs, you act like pigs and you think like pigs”—allegations which Ebdon strenuously denied.

It is difficult to appreciate what Miss Terry had in mind in agreeing to the proposition that it was her understanding that there was more than one use of a word which could be misconstrued. In her evidence in chief she swore quite categorically that she did not hear anything that passed between Ebdon and the two Police Officers (page 6321).

Counsel for the Police Association quite properly submitted that on one view of the matter Ebdon had obviously told her he had used the word “pigs” more than once and was not telling the truth when he gave evidence before the Board to the contrary. As against that Counsel assisting the Board contended no such construction could be placed on her answer, that if one looked at it in context Miss Terry could simply have been referring to nothing more than the whole of the words used by Ebdon when he spoke to the Police, viz. “There’s a rumour going around that you are both a couple of pigs”.

Because of the debate concerning this aspect I propose to set out that passage of Miss Terry’s evidence in this summary as appearing at page 6324 of the transcript.

Q. Do you recall now what it was he was to plead guilty to and what would be withdrawn if he did?
A. I do not know the terms you use but they were going to withdraw the charge of resisting arrest if he pleaded guilty to using the words that he did.

Q. Offensive language or insulting words?
A. That is correct.
Q. What was Mr. Ebdon’s reaction when that was suggested to him?
A. He was furious.
Q. Why was that?
A. Because Bob did not believe he had used offensive language in this context.
Q. In point of fact, ultimately, did he plead guilty to a charge of using insulting words or offensive words?
A. I believe eventually he did.
Q. He was fined, you believe, for some offence?
A. He was fined for some offence.
Q. Miss Terry, did he explain to the lady barrister why it was that he did not think that the language was offensive?
A. There was some discussion preceding that. Bob just did not feel that the words he had used were offensive in the context that he had used them.
Q. But he did not dispute using some words which could be misconstrued, is that the situation?
A. Yes.
Q. It is your understanding, is it not, that there is more than one use of a word which could be misconstrued involved?
A. Yes.

In my view, and having regard to the form of cross-examination at the time Miss Terry gave that answer, it would be unsafe to make any finding adverse to Ebdon based on that evidence alone.

During the course of her evidence in chief Miss Terry described Ebdon's appearance when she next saw him on the Sunday afternoon. The following passage appears at pages 6322A-3 of the transcript.

Q. When did you see Mr. Ebdon?
A. I saw Bob the next day, at approximately 1.30.
Q. Where was that?
A. In South Yarra.
Q. Was this at the place at which the party had been held?
A. That is correct.
Q. And can you tell Mr. Chairman first of all what you observed about him in terms of any marks or swellings on his face?
A. The most prominent mark was probably a lump on his forehead, and also a cut.
Q. Do you recall on which side, the left side or the right side?
A. At this stage I cannot.
Q. Did you notice anything else in terms of marks on him?
A. His mouth was swollen, and one side of his face, going up towards his eye.
Q. By the way, at that point of time had you had any experience of nursing yourself?
A. Yes, I have been nursing.
Q. At this point of time for how long had you been nursing?
A. Twelve months.
Q. Have you ever seen in the course of your nursing persons in what is described as a state of shock?
A. Yes.
Q. Did you notice anything about Ebdon when you saw him on the Sunday in relation to that?
A. Bob seemed to me to be in a state of shock.
Q. What was his colour like?
A. He was very, very pale.
Q. Did he appear at ease and composed or upset?
A. He was upset, very upset.

In the course of cross-examination Miss Terry agreed with the proposition put to her by Counsel for the Police Association that she had previously seen people who had spent a night in custody (page 6328). In re-examination she made the point however, that Ebdon looked nothing like such people (pages 6328-9). The inference she obviously intended the Board to draw from that answer was that Ebdon's condition when she saw him on the Sunday afternoon was far worse than the condition of any other person she had seen who had spent a night in custody.

Perhaps the strongest evidence called on behalf of Ebdon was the medical report from Doctor Hollaway. When Doctor Hollaway examined Ebdon on the Monday he found four distinct lumps on the forehead, two of which had overlying abrasions, a lump on the back of his head as well as an abrasion and an area of hair loss about half-an-inch across. The lumps, he concluded, were due to haematoma following on trauma. He had widespread areas of bruising inside his mouth with areas where
the skin was broken. He had tenderness in his right loin and hip, indicating underlying soft tissue damage and there was a bruise at the right hip area which was about one inch in diameter. He also had a similar size bruise on the right side of his scrotum. Doctor Hollaway concluded that the patient had suffered repeated trauma, leaving its main effect on the head but with evidence of violence elsewhere. The injuries were consistent with the causes stated by Mr. Ebdon to the doctor who thought, because of their multiplicity, they indicated repeated blows. The fact that considerable force would have been required to have caused the injuries led Doctor Hollaway to conclude that they were not consistent with self-infliction. He considered, however, that no permanent damage would be caused in respect of them.

I turn now to deal with the Police evidence.

Police evidence in relation to the arrest of Ebdon in the Station Hotel

I see no necessity to dwell at any length on the evidence Senior Constable McKoy and Senior Constable Gangell gave in this connection. In my opinion their action in arresting Ebdon was perfectly justified even on Ebdon's own account of the matter. Nevertheless in fairness to both Officers it is appropriate I make some reference to their testimony in connection with the matter.

At page 6307 of the transcript Senior Constable McKoy gave the following account:

Q. What occurred then, Mr. McKoy, what were you doing, just looking around?
A. We were waiting for the people to leave.
Q. What happened then?
A. Ebdon approached us and spoke to us. He got up from the table just beside the door and walked a couple of paces towards us and he said, "Do you know there is a rumour going around that you are pigs?"
Q. In what tone of voice did he say that?
A. A fairly loud tone.
Q. Did you notice anything happen when he said that?
A. Some of the people seated at the table with him laughed.
Q. What did you say?
A. I said, "Hurry up and leave, it's time to go!", and he repeated it and he said, "What about the rumour that you are pigs?" and I indicated to the door and I said, "There's the door, get your friends and leave" and he said, "When I'm ready" and I said, "What do you mean by that?", and he replied, "You look like pigs, you act like pigs." I said, "What is your name and address?" He said, "I'm not saying." I said, "Well, you are under arrest for using insulting language" and grabbed him by the arm.

Having arrested Ebdon, Senior Constable McKoy and Senior Constable Gangell then endeavoured to take Ebdon from the hotel and place him in the Police car parked nearby. Again the matter is adequately covered by the evidence Senior Constable McKoy gave at pages 6307-8 of the transcript.

Q. What happened then?
A. Gangell grabbed him by the other arm and I again grabbed him by the left arm and started to lead him away from where we were towards the entrance and I again told him he was under arrest and he tried to pull away from us and knocked over a couple of tables and chairs and glasses. He kept struggling fairly violently, we just kept hanging on to him and dragging him towards the door.
Q. What happened at the doorway?
A. He wrapped himself around the jamb of the hotel doorway with his legs and arms and we had to pull his arms rather violently to get him away from there and we pulled him out into the street and there was quite a large crowd in the street, we had to drag him through quite a number of people around the corner to the C.I.B. car. Once we got him there it was locked and Gangell unlocked the passenger side and I said, "Get into the car" and he refused. He kept saying, "I haven't done anything wrong", I backed him up between the car—the door was open and he still refused to get in; there were quite a few people there who had just come out of the bar, a number of drunks, and I wanted to get out of the place quickly and I pushed him into the car and fell in on top of him with my knees in his body.
Q. What are you fellows trained to do in circumstances such as that?
A. Try not to antagonise the crowd and get out as quickly as you can.

Q. You pushed him into the car; which way did he go in?
A. He went in backwards.

Q. What did you do?
A. I ended up with one of my knees in either his stomach or chest and the other leg I had on the back floor of the car; his legs were still protruding from the car.

Q. Just pausing there, what degree of your strength had you used pulling him out, a minor degree, or a substantial degree, or what?
A. From the hotel?
Q. Yes?
A. No, it took quite a bit of strength, he struggled fairly hard.

Q. His legs were out the door, you'd say; what happened next?
A. Gangell had to push his legs in before he could close the door.

Q. His legs were out the door, you'd say; what happened next?
A. Gangell had to push his legs in before he could close the door.

Q. Did he?
A. Yes, and I let him sit up then and get up and I got up and sat beside him on the seat and the next thing he did was reach over and open the door and try to get out.

Q. What happened?
A. Gangell was on the other side of the car and he slammed the door and I grabbed Ebdon in a headlock and Gangell opened the front side door and got in and I let him go again.

Q. Before you let him go, what was he doing?
A. He was struggling.

Q. May Mr. Chairman take it that he stopped at some point of time and you then let him go?
A. Yes, after Gangell started the car—he had to reverse a bit and come out—after we started moving, he sat up.

Q. When he sat up, what did he do?
A. The first thing he did was to try and get out of the car again.

Q. What did you do?
A. I grabbed him in a headlock again and pulled him down on to the seat.

Q. How did he react?
A. Violently, he struggled.

Q. What degree of pressure did you put on the headlock?
A. Quite a bit. I had to hold him down with all my weight.

Q. During the occasion you were struggling, after the second headlock, did something occur so far as your revolver was concerned?
A. Yes, I had his head down on my lap, his arms were threshing about, trying to push himself up—I had a clip on the holster, one in which the revolver snaps out forward, and during the struggle the revolver came loose. It was in between us. The first thing I did was to grab the revolver—he also grabbed it by the barrel and chamber area. I said, “Leave it alone, it is loaded, don’t touch it”. He kept hanging on to it very tightly so I said to Gangell, “Stop the car, he has got the gun”. Gangell pulled up then, I wrenched the revolver away from him and it hit him in the forehead. Gangell grabbed him by the arms and I threw the revolver on to the front seat with Gangell. Ebdon was struggling so I pushed him down in front of me, in between the back of the front seat and the back seat.

Q. Did you intend that there should be any contact with his head and the revolver?
A. No, it was quite accidental.

Q. Did the journey resume?
A. Yes. Gangell drove straight to the Police Station then.
Q. What occurred during the balance of the journey so far as you and Ebdon were concerned?
A. I was holding him down between the front seat, more or less on the floor, and he was trying to get up for the whole journey. He was trying to get up and I was trying to hold him down.
Q. How were you seeking to keep him down?
A. I had him by the back of the head with one arm and one arm on his body somewhere.
Q. Did you ever kneel on him and, if so, when?
A. Yes, I think I did kneel on him.
Q. On one occasion or more than one occasion?
A. I knelt on him when I pushed him in the car the first time and I would have been kneeling on him on the way back to the Police Station.
Q. What happened as to his leaving the vehicle at the Police Station?
A. When we arrived there I let him go and he sat up. I got out of the passenger side and said, "Get out of the car". He wouldn't he sat there. Gangell got into the car and tried pushing, I got him by the arms and pulled him out on to the footpath and pushed and shoved him into the Police Station.

It will be seen that on that version of events no more force than was necessary was used to subdue Ebdon during the journey to the Police Station. Contact between Senior Constable McKoy's revolver and Ebdon's head was purely accidental and occasioned by Ebdon's violent behaviour in any event. As the Police would have it, any injury sustained by Ebdon that evening must have occurred during the trip in the car as no injury was caused to him prior to that point of time or subsequently.

I turn now to consider the evidence given by the Police concerning the treatment of Ebdon at the St. Kilda Police Station that night and the following morning. Again I propose to quote verbatim the evidence Senior Constable McKoy gave in relation to the matter as appearing at pages 6310-2 of the transcript.

Q. What happened in the Police Station?
A. I tried to push him upstairs to the C.I.B. Office, but he would not go—he put up his arms to stop us, so we took him around to the Watchhouse.
Q. Did you notice any injury on him?
A. Yes, he was bleeding from a cut on the forehead.
Q. What happened about that?
A. He had smeared blood all over his face. We took him around to the station washroom and asked him to wash. He refused, so we took him back to the Watchhouse.
Q. Is that washroom in a room actually detached from the main part of the Police Station?
A. It is right at the entrance to the Inspector's Office.
Q. But you have to come out into an open space and into another door to come into it, is that right?
A. Yes.
Q. Have you seen a room at the Police Station which involves a bank of lockers in the middle?
A. Yes.
Q. And banks of lockers on either side?
A. Yes.
Q. How many times do you say you passed that room that night with your prisoner?
A. Twice.
Q. When you got back to the Watchhouse, what was done about the formalities of charging him?
A. I asked him for his particulars, his name, address, etc., and he refused to give them.
Q. From where did you get them eventually?
A. I asked him to take his property out of his pockets, which he refused to do, so Uniform Police held him by the arms across the counter and I took the stuff out of his pockets, amongst which was a driving licence.
Q. Was it from that document that you got his name and address?
A. Yes.
Q. Did his refusal to give you his name and address have anything to do with you arresting him rather than taking his name or would you still have arrested him?
A. No, if he gave me his particulars I would have still charged him by putting a summons on him.

Q. This is if he had given you his name and address at the hotel?
A. Yes.

Q. How often do you C.I.B. people get involved in charges like this?
A. Very rarely.

Q. Well, his property was taken, you say he was held by the Uniform Police, did you have a conversation with him then?
A. Yes. He said he did not think he had done anything wrong.

Q. Did you ask him as to why he resisted you?
A. Yes. He accused us of causing trouble.

Q. Was he charged with using insulting words in the Station Hotel and resisting you at Prahran in the execution of your duty?
A. Yes.

Q. Did you have anything to do with going to the cells with him?
A. Yes, I walked out in front of him—correction, behind him. The Watchhouse Keeper went out first, and I went out behind him and pushed him out to the cells.

Q. Again, was he going willingly or unwillingly?
A. He did not go willingly but he was not violent.

Q. Can you tell Mr. Chairman whether or not it is usual for the informant to go to the cells with the Watchhouse Keeper?
A. Yes, it is a duty.

Q. Did you see him the next day?
A. Yes, I saw him next morning when I started work a bit after 8.

Q. Was he then in custody?
A. Yes, he was still in the cells.

Q. Did you see him at any time when he was out of custody?
A. Yes, I took him out of the cells and took him upstairs to the C.I.B. where I finger-printed him and took some personal particulars off him.

Q. Do you know whether he washed upstairs or not?
A. Yes, I think he had a wash.

Q. What did you notice then about his features?
A. I cannot recall if he had blood on his face or not. I remember he had the cut but I cannot remember if he had blood all over his face.

Q. Did you have any conversation with him?
A. Yes, I had quite a lengthy conversation with him.

The only other matter I wish to advert to at this stage so far as the evidence of Senior Constable McKoy is concerned is his explanation for his failure to put Ebdon through the Interview Register.

When questioned concerning that aspect Senior Constable McKoy swore that he did not put Ebdon through the Interview Register because he has never been in the practice of putting street offenders through the Register (page 6316). His evidence was corroborated by Senior Constable Gangell who also swore he never put street offenders through the Register (pages 6379-80).

During the course of the evidence in the Ebdon Matter some figures were given to the Board concerning persons who had or had not been put through the appropriate Interview Register at St. Kilda during the year 1974 and that portion of the year 1975 prior to the month of November. I say appropriate Interview Register for the reason that at St. Kilda as at most Police Stations there is a separate Register to be used by the C.I.B. and one to be used by the Uniformed Branch. Having regard to the nature of the offences with which Ebdon was charged the appropriate Register in this particular case would have been the Uniformed Branch Register.

Those figures demonstrated that in 1974 the Uniform Branch arrested and charged 97 persons with street offences. Of the 97 only 20 were put through the Interview Register (page 6316).

In 1975 a total of 94 persons was arrested and charged with street offences of whom only 30 were put through the Interview Register (page 6317).
In my opinion the failure to put Ebdon and those other individuals referred to in the figures produced through the Interview Register was firstly a breach of Standing Order 641; secondly, it is quite contrary to the practice adopted at other Police Stations. See, for example, the evidence of Constable Harris at page 6913 of the transcript to the effect that at the South Melbourne Police Station it is the practice to put all persons charged with street offences through the Interview Register. The evidence given in the Hewat Matter as to the practice at the Fitzroy Police Station was to a similar effect.

The remaining evidence called on behalf of the Police in the Ebdon matter was that of Senior Constable Gangell and that of Acting Inspector Alan James Rundell.

The evidence given by Senior Constable Gangell corroborated that of Senior Constable McKoy as to the events of that Saturday evening, and took the matter no further than the evidence Senior Constable McKoy gave.

The evidence Acting Inspector Rundell gave was to the effect that on the evening of the 1st June, 1974 he was the Duty Inspector for the St. Kilda area and visited the St. Kilda Police Station at 23.55 hours that night. Although he had no actual recollection of his visit that evening, having referred to notes he made at the time, he was unable to recollect any complaint being made to him when he visited the cells in the course of his duty either by Ebdon or anyone else detained there. It will be recalled that in his evidence Ebdon alleged that when an Officer made an inspection of the cells after 12 o'clock that night he told him basically what had happened, wanted to know what was going to happen and when he would get out (page 6236).

The submission put forward by Counsel for the Police Association was that if one accepted the testimony of Acting Inspector Rundell to the effect that had any complaint been made by a prisoner that night he would have taken a statement from the prisoner, made a full investigation, and submitted a report departmentally, then clearly Ebdon was not telling the truth about the matter. In other words, as Acting Inspector Rundell had no note or recollection of such a complaint, then obviously none was made and Ebdon must be lying.

Whilst on the face of it that argument may be attractive, the evidence called before me during the course of this Inquiry gives me no confidence that that contention is necessarily correct. In fact if I may say so, the evidence in this matter coupled with the evidence in the Whyte, Erdmann, Olding and Stupak matters very strongly suggests there is little substance in such a contention whatsoever.

If one looks at the evidence in the present case, it is quite clear that at the time Ebdon was placed in the cells at St. Kilda he had blood smeared all over his face, blood he had refused to wash off believing it would be evidence of the fact he had been assaulted. (See McKoy's evidence at page 6310 and Ebdon's at page 6234.) In addition to the blood there were also abrasions to his forehead (see exhibit 392).

From the evidence Acting Inspector Rundell gave, it is quite clear he did not notice that one of the prisoners in the cells was in that condition, as, had he done so, he would have made a note of it in the Duty and Occurrence Register (page 6344 and page 6345).

The failure of Acting Inspector Rundell to notice anything unusual about Ebdon's condition at 11.35 p.m. that evening gives me little confidence in accepting his evidence to the effect that as he has no note of any complaint, none was made to him. Perhaps I should add in fairness to Acting Inspector Rundell, it was no part of his duty to inquire of prisoners if they have any complaints. That inquiry should be made when the prisoner is put through the Interview Register. As he conceded at page 6347 of his evidence, if he went around every cell block during the course of his rounds asking that type of question he may well spend the whole of one evening at the one Police Station, particularly if he happened to strike one with a half a dozen intoxicated people in the cells. His sole function in visiting the cells is to ensure the occupants are in a satisfactory physical condition.

Conclusions

The Ebdon Matter resolves itself into determining whether Ebdon's account of what occurred that night should be accepted in preference to the accounts of Senior Constables McKoy and Gangell.

In support of the contention it should not, Counsel for the Police Association pointed to a number of aspects of Ebdon's evidence which he described as unsatisfactory and which demonstrated Ebdon was not a truthful witness.
In the first instance, it was contended that Ebdon obviously had a hatred of members of the Police Force because of the manner in which he felt he had been harassed insofar as his driving was concerned. Accordingly it was nonsense for him to suggest he did not really know why he walked over to McKoy and Gangell in the first instance (page 6225) and did not mean to be in any way derogatory or offensive when he said, "There's a rumour going around that you are both a couple of pigs" (page 6225).

I must confess that, odd as Ebdon may be, to my mind that submission is a perfectly valid one. Had Ebdon been adversely affected by alcohol, that may have been an explanation for his extraordinary action. The fact is that on all the evidence he was not. I cannot but conclude Ebdon acted quite deliberately in doing what he did and in all probability did so, to "show-off" to his friends in the lounge.

The second matter on which Counsel for the Police Association placed great reliance was the fact that having regard to the description Ebdon gave of the violence inflicted upon him, in his submission there was very little physical injury to his body.

This aspect is probably the most important in the Ebdon Matter. Are the injuries Ebdon sustained consistent with the violence he alleges he was subjected to, or are they nothing more than the injuries one would have expected him to sustain if he behaved in the Police car in the manner Senior Constable McKoy and Senior Constable Gangell allege he did?

I am satisfied that there is credible evidence raising a strong and probable presumption that Ebdon was assaulted in the manner he alleged. The significant factors which influenced me in arriving at that conclusion are these—

(i) Despite Ebdon's account as to the multiplicity of blows and kicks he received, an account upon which one can really place little reliance having regard to the circumstances which existed at the time he received them, by no stretch of the imagination could the struggle which the Police claim took place in the car or the restraints placed upon Ebdon, have produced the injuries enumerated by Doctor Hollaway in his report, in particular the four distinct lumps on the forehead with their overlying abrasions—and the area of hair loss "about 1/" across "Nor could the large amount of hair produced by Ebdon have been torn from his scalp during the course of the struggle described by McKoy and Gangell.

(ii) To my mind it is of the utmost significance that McKoy made no reference to "hair-pulling" in the statement he prepared for the brief (exhibit 398) although he did advert to the fact he put a head lock on Ebdon. Nor did he advert to it in the statement made to Inspector Tobin on the 23rd July, 1974 (exhibit 399). In fact it was not until he was cross-examined about the matter that he first made reference to it. I consider his evidence at page 6350A of the transcript relating to the matter of such significance as to be worthy of inclusion in this summary.

Q. There is nothing in the statement for the brief about hair-pulling?
A. No.
Q. Although, in both statements there is material in relation to putting Mr. Ebdon in a headlock?
A. I would have to refer to the statement, Sir.

The Board: Exhibits 398-399. (Handed to witness and after perusal)?
A. Yes, that is correct.

Mr. Coldrey: Would you tell us this—when was the first time you ever told anybody that you had pulled Mr. Ebdon's hair in the car?
A. Here, today.
Q. Here, today?
A. Yes.
Q. Because you are making it up as you go along to try and explain the loss of hair from Ebdon's head?
A. No. I am not saying I pulled his hair out of his head—I am just saying I pulled his hair.
Q. Why did you not tell Mr. Phillips about this hair-pulling in the car?
A. It never occurred to me. I had forgotten all about it.
Q. When did you have your last conference with Mr. Phillips?
A. At lunchtime.
Q. And before that?
A. Yesterday morning.
Q. You had your conference with Mr. Phillips after you knew this matter had been opened and allegations had been made that you pulled Ebdon's hair?
A. No, Sir—I misinterpreted the question.
Q. You had your conference with Mr. Phillips after this matter had been opened, and you knew there were allegations that you had pulled Ebdon's hair?
A. Yes, although I do not recall anything being said about the hair.
Q. But you have just sworn on oath a few moments ago that the first time you knew about the allegations about the hair-pulling was when the matter was opened before the Inquiry?
A. That is correct.
Q. What do you mean you did not know about it—you have sworn you did?
A. At the time of the conference with Mr. Phillips.
Q. Well, why did you not tell him about the hair-pulling when you had the conference with him?
A. I do not know.
Q. No reason, except you made it up in the box today, that is so, is it not, Mr. McKoy?
A. That is incorrect, Sir.
Q. Can you give us any other reason?
A. Only that I forgot about it.

The amount of hair loss suffered by Ebdon was such that to my mind it is inconceivable McKoy would overlook the matter in the way he did, unless he was endeavouring to cover it up. When forced into the open he resorted to recent invention.

(iii) The next matter I took into consideration in arriving at the conclusion I have, concerned the blow Ebdon received to the head from McKoy's revolver.

McKoy's first account of this incident appeared in the statement he prepared for the brief (exhibit 398). There he described the gun as having fallen from its holster and struck Ebdon. When he came to make his statement to Inspector Tobin on the 23rd July, 1974, however, he said that the revolver either "fell or was pulled" from the holster during the course of the struggle (see exhibit 399).

I consider it relevant to quote the following passage of his evidence as appearing at page 6335 of the transcript.

Q. Well now, when you came to make your statement to Mr. Tobin, you added to this business of its falling from the holster, did you not? You added "or was pulled from the holster". (Witness referred to statement.) It is at the top of page 2. Do you see that?
A. Yes.
Q. How did you come to add that, Mr. McKoy?
A. I presume Mr. Tobin queried the same thing you are querying.
Q. I see. As to how it could just fall out?
A. Yes.
Q. And did you put that in—what with the suggestion that perhaps Mr. Ebdon pulled it out, did you?
A. Yes.
Q. I see. When was the first time that came into your mind?
A. When Mr. Tobin queried it.
Q. You see, once Mr. Tobin has queried it, you realise you have to have a story as to how it came out of the holster, I take it?
A. No, I do not believe I had to have a story.
Q. So you just add the possibility, do you, at that stage, to satisfy Mr. Tobin, that Mr. Ebdon might have pulled it out?
A. That is correct.

Having examined the revolver and holster, I am satisfied that the revolver could not have fallen from the holster in the manner McKoy initially alleged it did. The strength of the mechanism holding the revolver in the holster is such as to require the exertion of a not insignificant degree of pressure to free it from the holster. As Ebdon did not pull the revolver from the holster, it must follow that McKoy did. Once one arrives at that conclusion, it then follows that McKoy deliberately struck Ebdon on the head with it.

I might add, that if Ebdon's account of what occurred in the car on the way to the Police Station that night was a concoction, why did he not go the whole way as it were, and swear positively that he saw McKoy pull the revolver from its holster and strike him on the head with it? It will be recalled that Ebdon swore he did not see the gun removed from the holster. The first time he saw the gun in McKoy's hand, was when he realised he had hold of the barrel of it with his left hand, immediately following the blow he had received to the head.

The fact that Ebdon made no effort to embellish his account concerning this matter when he could very easily have done so, was a further factor which influenced me in arriving at the decision I did.

(iv) Why was the charge of resisting arrest withdrawn by the Police, if what they alleged occurred, did in fact take place that night? In this connection I do not accept McKoy's evidence that he believed Ebdon was a first offender (page 6315). Once Ebdon made his complaint to Inspector Tobin, I have no doubt Inspector Tobin would have had a thorough check made of Police records to ascertain whether Ebdon had any cause to harbour a grudge against the Police, and passed on the information relating to his numerous (and in some instances serious) traffic convictions to both McKoy and Gangell, prior to the hearing at Prahran on the 11th June, 1974. Nor do I accept McKoy's evidence that an additional reason for the withdrawal of the charge was that Ebdon was a person with a strong religious belief.

At that stage, Ebdon had already complained. The complaints he was making, on McKoy's evidence, must have been malicious, baseless, and quite un-Christian. Moreover it was McKoy's opinion he would offend again as he asserted in Ebdon's Antecedent Report.

A further factor was that Ebdon's endeavours to resist arrest were prolonged and occurred in a situation likely to produce danger to Police Officers; it was therefore not a minor breach of the law.

The inference I consider one is entitled to draw from the fact that that charge was withdrawn, is that the Police were not too happy to have the events of the 1st June, 1974, ventilated in open Court.

There were various other aspects of the evidence McKoy and Gangell gave relating to the events that evening which caused one to doubt the veracity of their accounts. For example, the different accounts McKoy gave as to what became of the gun after the struggle. I will not trouble the reader by enumerating them in this summary.

As I indicated at an earlier stage of this summary, on the Police version of events, the only time at which Ebdon could have sustained injury was whilst in the Police car. Leaving aside the incident involving the revolver, when both men were describing what occurred in the car in general terms, they referred to it as a struggle in the nature of a wrestle.
(see McKoy at page 6390 and Gangell at page 6358). As there was only one direct application of force to Ebdon's head, viz. the blow from the revolver, how did he receive the injuries to his head, the loss of hair and the other injuries described in the report of Doctor Holloway? The only conclusion I consider one can reach is that he received them in the manner he alleged he did.

FINDINGS

In this matter I make the following findings:—

1. That on the 1st June, 1974, and whilst en route from the Station Hotel at Prahran to the St. Kilda Police Station in a Police vehicle driven by Senior Constable John Joseph Gangell, Robert William Ebdon was assaulted by Senior Constable Victor John McKoy.

2. That 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.

3. That at the St. Kilda Police Station on that same evening Robert William Ebdon was assaulted by both Senior Constable McKoy and Senior Constable Gangell acting in concert.

4. That in failing to put Ebdon through the Interview Register Senior Constable McKoy was in breach of Standing Order 641.

5. That Senior Constable McKoy and Senior Constable Gangell conspired together to give false evidence before this Board and did so.
THE EBDON MATTER

APPENDIX “A”

LIST OF WITNESSES

<table>
<thead>
<tr>
<th>Name</th>
<th>Transcript Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBDON, Robert William</td>
<td>6223-6306</td>
</tr>
<tr>
<td>GANGELL, Senior Constable John Joseph</td>
<td>6362-6397</td>
</tr>
<tr>
<td>McKOY, Senior Constable Victor John</td>
<td>6306-6318 ; 6330-6340 and 6348-6361</td>
</tr>
<tr>
<td>RUNDELL, Inspector Alan James</td>
<td>6341-6348</td>
</tr>
<tr>
<td>TERRY, Anne Elisabeth</td>
<td>6318-6329</td>
</tr>
</tbody>
</table>
This patient consulted me on 3.6.74 giving a history that he had been assaulted by two men on 1.6.74. He stated that during this assault he was punched and hit with a revolver in the head, hit elsewhere in the body, and kicked in the groin as well as being pulled around by the hair.

On examination he had 4 distinct lumps on the forehead, two of which had overlying abrasions. He also had a lump on the back of his head, as well as an abrasion and an area of hair loss about $\frac{1}{2}$" across. The lumps were due to haematoma (blood clot) formation.

He had widespread areas of bruising inside his mouth, with areas where the skin was broken.

He had tenderness in his right loin and hip indicating underlying soft tissue damage, and there was a bruise at the right hip area which was about one inch in diameter. He also had a similar size bruise on the right side of his scrotum.

**Opinion** This patient has suffered repeated trauma leaving its main effect on the head but with evidence of violence elsewhere. The injuries are consistent with the causes stated by him to me. Because of their multiplicity indicating repeated blows, and the fact that considerable force would be required to leave the damage caused I consider that they are not consistent with them being self inflicted.

I consider that there will be no permanent damage as a result of the injuries he has received.

J. HOLLAWAY
CHAPTER 14

THE ERDMANN MATTER

Introduction

At the time he gave evidence before the Board, Frank Erdmann was aged 29, was a maintenance fitter by occupation and had an unblemished record so far as the Police were concerned. On the face of it—a decent and respectable member of the community.

His allegation was that on the evening of Wednesday the 14th May, 1975 he was wrongfully arrested by Senior Constable Barry William Howard and Constable Peter Charles Ure, falsely charged with being drunk in a public place, and unlawfully imprisoned in the cells at the Carlton Police Station from approximately 11.30 p.m. that evening until approximately 3.30 a.m. the following morning. The explanation he advanced for the unlawful behaviour of the Police Officers involved was that when he was intercepted by the Police at 11.10 p.m. that evening as he was leaving a toilet block in Royal Parade, Carlton, the two Police Officers wrongly assumed he was a homosexual. On realising that that was not the situation at all, and that the man they had wrongly intercepted was likely to cause trouble, they then unlawfully arrested him and falsely charged him with being drunk in a public place to cover up their error.

Having regard to the evidence called in this matter, I was satisfied that what Erdmann alleged occurred at Carlton that evening, did in fact take place. Before dealing with the evidence in more detail let me say at this juncture it established that Erdmann was sober at approximately 10.30 p.m. that evening and was sober when seen at 1.30 a.m. the next morning. How then was it that when arrested at 11.10 p.m. he was so drunk the Police considered he should be locked up for his own safety? If he was so drunk at 11.10 p.m. to justify that course being taken, how was it that some two or more hours later, i.e. approximately 1.30 a.m. he was sober again? The obvious answer to those two questions is that he was not drunk in the first instance.

The Erdmann matter could not be described as the most serious matter to come before the Board—quite the contrary. It demonstrated however, the helpless situation an innocent member of the community is in when in the hands of unscrupulous and dishonest Police Officers. It also demonstrated a practice condoned by the Victoria Police Department which is quite illegal and if abused could seriously infringe the liberties of the citizens of this State. I refer to the practice of arresting a person on the ground that he is so drunk as to be a danger to himself, locking him up for four or more hours, then releasing him and never bringing him before a Court to enable him to establish his innocence. Whilst that practice may have something to commend it in cases where one is dealing with a first offender dearly under the influence of liquor, it lends itself to the very abuse which occurred in this case, i.e. where the person arrested was not. In such a case unless that person has the good fortune to have available to him the type of evidence Erdmann did, by the time he is released he has nothing but his own testimony with which to rebut Police evidence.

Erdmann's evidence

On the 14th May, 1975 Erdmann was living at an apartment house at 48 Park Drive, Parkville, with a young woman named Pamela Anne Morrow.

At approximately 9.30 p.m. on that evening he walked to Naughton's Hotel some 300-400 yards away where he drank three or four glasses or pots of beer in the company of three young men named Andrew John Bullen, David Andrew Cory Heard, and Ian Robert Michael Stephen. Erdmann then purchased two bottles of beer and returned to his room at the apartment house arriving at approximately 10.15 p.m. The three or four glasses or pots of beer he consumed at Naughton's Hotel, was the only alcohol he had consumed that day.

Having returned to the apartment house he sat down to write some letters, one letter being a somewhat important one so far as he was concerned. Being disturbed by a radio program Pamela Morrow was listening to, he decided to go for a walk and think over what he intended to say in the letter he had drafted but not completed. Accordingly, and in the vicinity of 10.30 p.m. he left the apartment house. The evidence of the three young men who saw him at the hotel was to the effect he was quite sober when he left at about 10.00 p.m. The evidence of Miss
Morrow was that he was sober when he arrived home shortly after 10.00 p.m. and was sober when he left the apartment to go for a walk at approximately 10.30 p.m.

After he left the apartment house Erdmann walked to Royal Parade, walked for some distance in a northerly direction along Royal Parade, crossed the road to the eastern side, and proceeded south back along Royal Parade. Feeling the need to relieve himself, he entered the toilet block located on the eastern side of Royal Parade and in the general area of the Carlton Football Ground. As he was leaving the toilet block he alleged he met a uniformed Police Constable—later indentified as Constable Ure.

According to Erdmann the following exchange then occurred (page 4934):

**URE:** I want to take your name, come to the entrance.
**ERDMANN:** Why do you want to take my name?
**URE:** We have to check this place to keep poofers and perverts away.

It is not without significance that that is precisely what Senior Constable Howard and Constable Ure were doing at the toilet block that evening.

As the conversation with Ure was taking place the two men were walking towards the Police car parked nearby and in which Senior Constable Howard was seated. Whilst they were walking to the car, Erdmann alleges Ure said: “If we find you here again we will charge you with loitering.”

Upon reaching the Police car Erdmann maintained he gave his name and address to Senior Constable Howard, objected to the use of the word “poofers” and said: “You want to watch your vocabulary.”

At that Howard became quite upset, jumped out of the car and said: “You are drunk you poofter, come to the Police Station.” According to Erdmann, when he was charging him with, Howard said something like—drunk in a public place (page 4935).

On the way to the Carlton Police Station Erdmann alleged the following conversation took place:

**ERDMANN:** “This is the most ridiculous thing that has ever happened to me. I am not drunk at all and I would like to breathe into the tube”, (i.e. a breathalyzer).
**HOWARD:** “This is not a traffic offence we do not have to do that.”
**ERDMANN:** “I would like to see a doctor if you do not want to let me use the breathalyzer.”

Later Erdmann alleged he said: “If you think I am drunk because my language is not quite clear, you are wrong, I am not Australian,” to which Howard replied: “Your English is quite good.” The fact is that Erdmann had a good command of English although he did speak with an accent.

Later again and in the car on the way to the Police Station Erdmann alleged he said, “If you think you can stop me from proving I am not drunk you are wrong. You started this as a case of poofter bashing and then you try to cover it up by declaring I am drunk. I want to prove that I am not drunk” (page 4936).

Following his arrival at the Police Station and despite his protestations, Erdmann was searched, his property was taken from him, and he was placed in a cell. Whilst at the Watchhouse counter prior to being placed in the cell Erdmann maintained he insisted he was not drunk, and demanded the Police to get a doctor who could prove he was not drunk. He also alleged that when he asked if he could make a telephone call he was told “we are not in America here” (page 4938).

Some ten minutes after Erdmann was locked in the cell he was visited by the Duty Inspector, Inspector Norman Hamilton Miller. It is perhaps some measure of Erdmann’s sobriety that although he was not wearing a watch, he was able to accurately estimate that interval of time. It was in fact approximately 11.40 p.m. that Inspector Miller saw him in the cell (see Miller’s evidence at page 5195).

According to Erdmann, when Miller entered the cell he complained to him that he had been charged with being drunk in a public place when in fact he was completely sober. At that Miller said he would see what he could do, left the cell, returned some ten minutes later and explained that
he had not been charged, but that he was being kept there for his own protection because he was drunk. In the light of later events, it is relevant to set out Erdmann's account of what occurred next (page 4939).

Q. Did he say how it was they came to keep you there? What was the reason?
A. I explained to him that they had arrested me at the toilet because they thought I was a homosexual, and then, when they found I was not, they charged me with being drunk and I was complaining about that.

Q. Was anything said about some Police Regulations?
A. That is right. He pointed out they did not have to charge me, because there were new regulations which enabled them to keep people for their own protection.

Q. Did you say anything to the Inspector, if he was an Inspector, about having a look for himself to see if you were drunk?
A. Yes, I asked him again, "Why don't you see for yourself, why don't you get a doctor?"

Q. What did he say to that?
A. He did not say anything at all.

Q. Did he say anything about if you wanted to make a complaint, what you had to do?
A. He said he was the man to complain to, and I said, "I am complaining already. I am complaining about a misjudgment of the Police who arrested me, and held me there."

Q. In point of fact, were you wanting to complain about the treatment you had at the Police Station?
A. I did not intend to complain about that. Apparently, the Inspector said I could complain about that.

Q. You certainly were not complaining about that?
A. No, I was not.

Q. What were you complaining about?
A. I was complaining because I was held there, because I was drunk and there was no charge, and being absolutely sober.

Q. Did the Inspector then tell you when you would be released?
A. I pointed out to him -- -- he said they would release me at 2 o'clock. I said, "My girl friend is waiting at home", and he said, "We will send the Police out to let her know."

Q. Did you give the Inspector the address?
A. Yes, he took the name and address.

Apart from the later visit of an unidentified Police Officer who simply enquired as to whether Erdmann was alright, the next event of significance was the arrival of Pamela Morrow at approximately 1.30 a.m. Although I shall deal with Miss Morrow's evidence in more detail at a later stage it is relevant to note that she had been visited by Howard and Ure at approximately 12.00 midnight and had been told, (inter alia), that Erdmann had been arrested for being drunk, was then at the Carlton Police Station and would be released some time after 2.00 a.m. (page 5059). (According to Howard she was told he would be released after 2.30 a.m. (page 5093). Whatever be the situation as to the time Miss Morrow was told Erdmann would be released, at about 12.30 a.m. she stated she went to the Police Station and asked if she could see Erdmann. She was told, however, that he would be released at 1.30 a.m. and to come back then (page 5060). Hence her arrival at the cells at 1.30 a.m.

According to Erdmann, when Miss Morrow arrived he was released from his cell, and permitted to walk through the cell block to the barred gate at the end where he was able to talk to her through the bars. Following some preliminary conversation with Miss Morrow he spoke to the Police Constable present—later identified as the Watchhouse keeper, Constable Dennis Graziano Moresi—and told him he wanted to have a complaint recorded and that he wanted to see a doctor as soon as possible. What occurred next is best described in Erdmann's own words as appearing at page 4942 of the transcript.

Q. Did you ask for him to open the door and let you out?
A. I did not ask for that. He said "I can't let you out if you want to complain. You have to wait until the Inspector comes."

Q. What did you say to that?
A. I got a bit upset then because it was obvious then he would not let me out of the second door and I said "You are now blackmailing me because you are giving the option between not complaining and letting me out and complaining and staying locked up".
Q. What did he say to that?
A. He said "I didn't mean that".

Q. The fact was that you were not released?
A. That is right; he did not let me out.

Q. But he didn't put you back into the cell itself?
A. That's right. Not at that stage.

Q. Did you call out anything to Pamela Morrow?
A. I told her across the bars to get Mike Giles, that was a friend of ours who was a medical doctor.

Q. Why did you want Doctor Giles there?
A. To have a blood test taken as quickly as possible so that I could prove later on that I was not drunk.

Q. Did you see where Miss Morrow went after that, did she go out of your sight or did she stay, or what happened?
A. She stayed for perhaps half a minute or so, I don't recall, she took off quickly.

Following the departure of Miss Morrow, Erdmann was returned to his cell and locked in.

At approximately 3.00 a.m. that morning Erdmann was released from his cell and taken into a room adjacent to the Watchhouse. Present in the room were Inspector Miller, Pamela Morrow, Doctor Michael Peter Giles and another friend of Erdmann's, Alexander Molnar. I shall deal with the evidence of Morrow, Giles and Molnar in more detail at a later stage. Suffice it to say that when Miss Morrow left the Police Station shortly after 1.30 a.m. she returned to the apartment house at Park Drive, awoke Molnar, persuaded him to accompany her to the home of Doctor Giles, awoke Doctor Giles, informed him of the situation, and persuaded him to go to the Police Station with a view to taking a blood test from Erdmann.

What occurred following Erdmann's release at 3.00 a.m. from the cells is again best described in his own words as appearing at pages 4943–4 of the transcript.

Q. When you were taken into the room how would you describe yourself in terms of your frame of mind; were you unhappy or happy; angry or not angry?
A. I think I was pretty angry then.

Q. As you recall it, what did you say when you were brought into the presence of the Inspector?
A. I told him my complaints first, that I had been charged with being drunk and that I was not drunk and that I thought their judgment was wrong, because they had to pick me up as a poofter.

Q. They charged you to cover up for that?
A. Yes, and they found out I was a right man and they quickly charged me with being drunk.

Q. Did you say anything to the Inspector when he told you this?
A. I got pretty angry then, and I said "Look, I'm not drunk and why couldn't you take me to a doctor at an earlier time". I insisted that Mike Giles can take the blood test as soon as possible and he said, "No, that's not possible because the Police Surgeon is not here and Mr. Giles couldn't take a blood test and even if he did, it could not be used as evidence in the Court".

Q. Did you say anything about whether the Police had made any attempt to find out whether you were or were not drunk?
A. I told them he should have made an attempt to find out if I was drunk or not and since he had not done so I was not going to complain to him. I was going to charge the Policeman who had arrested me, and also I would charge him because he was helping to cover the matter up.

Q. What did he say to that?
A. He didn't say much on that. He tried to—he insisted that he was the man to complain to.

Q. At this stage did you have any confidence in him as being a man to complain to?
A. No, I don't think so.
Q. Did you say anything to the Inspector about the charge, the arrest for drunkenness being a cover-up for the harassment and poofeter bashing attitude of Police?

A. He said, "We didn't charge you at all. We didn't charge you at all, we just had to keep you for your own protection because you were drunk."

Q. What did you say to that?

A. I said, "I wasn't drunk and you made no attempt to establish whether I was or not".

Q. Did you tell the Inspector why, in your opinion, you had been arrested by the Police at the toilet?

A. I told him I thought they had tried to trap homosexuals there, and that they then charged me with drunk, in order to cover it up, and that he was playing his part in this game.

Q. On this occasion did Doctor Giles have any conversation with the Inspector that you can recall?

A. I can't recall much of the wording, but Mike Giles tried to calm me down because I was obviously very angry and he said, "Don't insult the Inspector, don't insult the Inspector, we can take a blood test", and that is when the Inspector told Mike Giles that he could not take a blood test and that it could not be used as evidence in Court.

Q. What happened after that?

A. I challenged the Inspector. I again said that I was not going to complain through the Inspector, through him, but that I was going to see a lawyer and that I was going to lay charges against them, and I again challenged them to charge me with something, and, if not, I would consider them a pack of poofeter bashers, and if he was objecting to that sort of thing they should try to charge me.

Q. What did the Inspector say to that?

A. He did not say very much at all then, and I finished the conversation then. I just walked off.

In a summary of this nature, one would usually not go further than Erdmann's account of his arrest and detention that night when dealing with the evidence he gave. In this instance however, I consider Erdmann's behaviour subsequent to the evening of the 14th/15th May, 1975 throws some light on the genuineness or otherwise of his complaint.

According to Erdmann's evidence, later on the 15th May he sat down and in his own handwriting compiled fairly detailed notes of the events of the preceding evening. Those notes were admitted in evidence and are exhibit 330. They are on all fours with the account he gave in the witness box.

The three young men Erdmann met in Naughton's Hotel the previous evening, were total strangers to him. In the week following his arrest and by dint of a deal of persistence, he succeeded in establishing their identity and locating them. The point I make in this connection was well expressed by the witness Heard during the course of his evidence. When it was put to him at page 5033 of the transcript by Counsel appearing for the Police Association that he was quite prepared to accept Erdmann's say-so as to events that occurred later that evening, he replied—"Yes". When asked Why?, he replied: "Because he was quite upset and he seemed to be taking a lot of trouble to prove his point".

In my opinion that was a perfectly valid observation and one not without substance. Erdmann was never charged with, let alone convicted of any offence arising out of the events of that evening. Why go to such lengths to establish he was not drunk when apprehended by the Police at 11.10 p.m. that night? Why not put it down as an unhappy experience and forget about it? My answer to that question is that he was not drunk at all, and was rightly incensed at the behaviour of the Police Officers involved.

Evidence Corroborative of Erdmann's Complaint:

Bullen, Heard and Stephen were all called to give evidence in support of Erdmann's contention he was not adversely affected by liquor when he left Naughton's Hotel at about 10.00 p.m. that evening.

Their evidence can conveniently be summarised as follows:—

(a) None of them knew Erdmann prior to that evening.
(b) They too arrived at the hotel in the vicinity of 9.30 p.m., having had nothing of an alcoholic nature to drink prior to their arrival.
(c) Erdmann had no more than 3-4 glasses or pots of beer whilst at the hotel, and was quite sober when he left at about 10.00 p.m.
I was impressed with those young men as witnesses and had no hesitation in accepting their evidence.

Miss Morrow also gave evidence on behalf of Erdmann. In substance it was to this effect—

(a) Erdmann returned home from Naughton's Hotel shortly after 10.00 p.m., remained at home for a short period, then left to go for a walk. In no way was he adversely affected by alcohol.

(b) At about 12.00 midnight Howard and Ure called at the apartment house. Howard told her (inter alia) that Erdmann had been arrested for being drunk in a public place, was then at the Carlton Police Station and would be released at about 2.00 a.m.

(c) At 12.30 a.m. she went to the Carlton Police Station to see Erdmann, was unable to do so, but was told he would be released at 1.30 a.m.

(d) At 1.30 a.m. she returned to the Police Station and was permitted to talk to Erdmann through the bars of the gate leading into the cell block. Her evidence in that connection was substantially the same as Erdmann's. In particular she confirmed that Erdmann was perfectly sober, would have then been released had he not stated he wished to make a complaint, and asked her to contact Doctor Giles.

(e) That she then left the Police Station, returned to the apartment house, awoke another occupant, Alexander Molnar, persuaded him to accompany her to the home of Doctor Giles, went to the home of Doctor Giles arriving at approximately 2.00 a.m., explained to him what had happened, and persuaded him to go to the Carlton Police Station and endeavour to take a blood test from Erdmann.

(f) The balance of her evidence related to her return to the Police Station following her visit to Doctor Giles. Insofar as this aspect was concerned, she confirmed the evidence, Doctor Giles, Molnar and Erdmann gave.

During the course of her evidence Miss Morrow agreed that when Howard and Ure called at about 12.00 midnight she told them that earlier that evening she and Erdmann had had a fight (page 5071). The fight, if it could be described as such, took place because she persisted in listening to her radio program when it was clear Erdmann wanted to concentrate on the letter he was writing.

Having agreed that she told Howard she and Erdmann had had a fight, it was then put to her that she told Howard, Erdmann had said he was going off to get drunk. That suggestion she flatly denied (page 5071). For reasons I shall advert to when dealing with the evidence Howard gave concerning the matter I was satisfied that allegation of Howard's was quite false. To use an expression frequently bandied about during the course of this Inquiry—that part of his evidence was nothing more than "a verbal".

As with Erdmann, Bullen, Heard and Stephen, I was most impressed with Miss Morrow as a witness and consider she gave a truthful account of the events of that evening.

Alexander Molnar was a man in his mid-thirties who had held the rank of Captain in the Australian Army but had resigned in 1973 to undertake an academic career. At the time he gave evidence he was completing the final year of his Bachelor of Arts Honours Degree in Russian language and literature. He was one of the most impressive witnesses to give evidence before the Board.

Having been awoken by Miss Morrow in the early hours of the 15th May, 1975 and had Erdmann's situation explained to him, he agreed to accompany her to the home of Doctor Giles and then to the Carlton Police Station. It is relevant to note that having left the apartment house he telephoned a Solicitor of his acquaintance from a public phone box and obtained his advice in respect of the matter before proceeding to the home of Doctor Giles. That fact is significant because it has a vital bearing on the time factor, an aspect disputed by the Police.

The evidence initially given by the Watchhouse keeper Moresi was to the effect that Miss Morrow's first visit to the Police Station was at 2.00 a.m. Leaving aside her evidence to the effect that before her visit at 1.30 a.m. she had gone to the Police Station at 12.30 a.m., the dispute here was as to whether she first saw Erdmann at 1.30 a.m. as she and Erdmann alleged, or in fact did not see him until 2.00 a.m. as Moresi initially alleged—a matter of some significance having regard to her observations of his condition at the time she did see him.
One matter I had no doubt about was that it was at approximately 2.00 a.m. that Doctor Giles was awoken that morning, and asked to go to the Police Station (page 5000). If one works back from that point of time it is clear Miss Morrow must have been at the Police Station at about 1.30 a.m. Between the time Miss Morrow left the Police Station and arrived at Doctor Giles’ home in Canning Street, North Carlton, she had driven back to Park Drive, awoken Molnar, explained the situation to him, waited whilst he dressed, driven to a public phone box, waited whilst he made his phone call, then driven to Doctor Giles. On any view of the matter something of the order of half an hour must have been involved.

In any event when ultimately pressed about the matter Moresi conceded he could well be half an hour out in his times (page 5295). It is also of significance that according to the evidence of Ure, Moresi told him that Miss Morrow first arrived at the Police Station about 1.30 a.m. or 1.00 o’clock (page 5181).

On the whole of the evidence I am satisfied Miss Morrow was at the Police Station at about 1.30 a.m., and that she and Molnar returned to it at some time after 2.00 a.m., and remained there until Erdmann was finally released.

Molnar also gave evidence concerning events at the Police Station in the early hours of the morning; the delay which occurred before anything was done; the lack of co-operation on the part of the Police involved; the deliberate obstructionist tactics adopted by them; their refusal to allow the taking of a blood test until the Inspector arrived; and their refusal then to allow a blood test to be taken, unless the Police surgeon was present—an impractical proposition in the circumstances, as the Police surgeon was in Sydney and his relief was then at Box Hill. He spoke of the arrogant and officious behaviour of Inspector Miller, how he appeared to be deliberately stalling for time, and how he threw every obstacle in the path of Doctor Giles so far as the taking of that test was concerned. Molnar’s evidence in chief relating to these matters is set out at pages 5046–9 of the transcript. His account corroborated the account of Doctor Giles and Miss Morrow, and was highly discrediting so far as Inspector Miller, in particular, was concerned.

What was also an important feature of Molnar’s evidence was his opinion as to Erdmann’s state of sobriety at that time. I quote his evidence in relation to the matter (pages 5048–8A).

Q. After Mr. Erdmann was brought out, was he brought into the same part of the Police Station in which you, Miss Morrow and Doctor Giles were?
A. Yes, we were all around the counter. The first thing that struck me about Frank was he was very angry, ropable and upset.

Q. Was he walking normally?
A. He was walking quite normally. I would say from my own personal experience, and I am prepared to say quite categorically, he was not drunk.

Q. Could you smell any alcohol on his breath?
A. I could not smell any alcohol on his breath, no. His eyes were not glazed, his speech was articulate and coherent—he was not staggering. I have seen a lot of drunks — — —

Q. I was about to ask you that?
A. Whilst in the Army one of my duties as a subaltern was to close the canteens and, believe me, you do see lots of drunken soldiers at that time, so I should be able to recognise a drunk.

As I indicated at the outset, Molnar was a most impressive witness. I consider he gave a very accurate account of his observations that evening.

I turn now to consider the evidence given by the last witness called on Erdmann’s behalf—Doctor Michael Peter Giles.

As the Erdmann matter involved a consideration of the state of Erdmann’s sobriety that evening, I consider it important to bear in mind Doctor Giles’ experience as a medical practitioner. At the time he gave evidence Doctor Giles had been in practice for a period of nine years. Whilst this would obviously have given him considerable experience of persons adversely affected by alcohol, and the effects of alcohol on the human body and on human behaviour, Doctor Giles was also currently engaged in post-graduate studies in Pharmacology, his objective being to obtain a Doctorate of Philosophy in that field. Pharmacology, of course, is the branch of medical science concerned with the action and mode of action of drugs (including alcohol) on the human system. By good fortune therefore, Erdmann was not only able to have a medical practitioner attend the Carlton Police Station that evening, that medical practitioner was an expert insofar as the effects of alcohol on the human system were concerned.
Having been roused out of bed at 2:00 a.m., Doctor Giles proceeded to the Police Station. The first criticism he made was of the fact that having entered the Police Station, it was some 10-15 minutes before he could attract the attention of one of the Police Officers on duty (page 5000). He then asked to see Erdmann, but that request was refused. He then indicated he wished to take a blood sample from Erdmann, and enquired as to whether or not there was any equipment or kit at the station to enable that to be done. According to Doctor Giles he was told there was no equipment available, and that if he wished to take a sample he would have to provide his own (page 5001). As Doctor Giles pointed out—the attitude of the Police Officer concerned was neutral and unhelpful (page 5001).

Doctor Giles then left the Police Station and journeyed to the Royal Melbourne Hospital where he unsuccessfully sought to borrow the necessary equipment. He then returned to the Police Station, and enquired whether it would be in order for him to take a sample using his own equipment, having it in mind to then go to the University Laboratories and pick up his own equipment from there. At this he was told he could not take a sample unless the Police Surgeon was present, that the usual one was in Sydney, and that the one standing in for him was at Bax Hill and would take an hour to get there (page 5002). There was no dispute that a conversation along those lines did take place between Doctor Giles and Inspector Miller. Miller’s version of it, however, was that he did not say there could be no test unless the Police Surgeon was present; all he said was that he wanted the Police Surgeon present (page 5230). For reasons I shall indicate at a later stage in this summary, wherever Inspector Miller’s evidence was in conflict with the evidence of Doctor Giles, I had no hesitation in accepting Doctor Giles’ testimony in preference to that of Inspector Miller. Accordingly I find as a fact that Doctor Giles was told that a blood test could not be taken unless the Police Surgeon was present.

Being told there would be an hour’s delay before the Police Surgeon arrived, Doctor Giles abandoned any idea of taking a blood sample. As he made clear in his evidence, any blood sample taken after that interval of time would be worthless.

Pausing here, let me make this observation. From the evidence of Doctor Giles and the other witnesses called on Erdmann’s behalf, I have not the slightest doubt that Doctor Giles was being given the “run-around” by Inspector Miller and the other Police on duty at the Carlton Police Station in the early hours of that morning. Not only were the Police uncooperative and unhelpful, every possible obstacle was placed in Doctor Giles’ path. The only conclusion one can come to is that the last thing the Police involved in this matter wanted to occur, was for any medical practitioner to take a blood test.

Eventually Erdmann was released from his cell and brought into the room where Doctor Giles, Inspector Miller, Miss Morrow and Molnar were. What happened next is best described in Doctor Giles’ own words as appearing at pages 5003-4 of the transcript.

Q. At some stage was Mr. Erdmann brought into where all you were assembled?
A. Yes. This was during the latter portion of my second visit.
Q. Did he then remain in the company of you all until such time as you left the Police Station?
A. Yes, that is correct.
Q. How close to you was he?
A. Well, within sort of a foot or so.
Q. When he was first brought in, did you notice anything about him in terms of his frame of mind or emotional condition?
A. He was angry.
Q. In the course of the interval of time at which he was present, before he left the Station, did he make complaints to this Police Officer?
A. Yes, he objected to having been forcibly detained and not being charged.
Q. Did he make any assertions by way of complaint about it being a cover up for something else?
A. He said that they were covering up for having molested him. He said they were poofier bashing.
Q. During this interlude was he clearly angry?
A. Yes.
Q. Did you say anything to him about steadying down?
A. I told him to calm down and that he would be very shortly released under the terms they had explained of four hours detention for one’s own protection.
Q. Was anything said to him in the course of his complaint, that he may find himself back from where he came?
A. He was told if he did not calm himself down he would find himself back in the brig again.

Q. Did Mr. Erdmann present any clinical signs of being affected by liquor?
A. Not the slightest. He did not smell of alcohol and he did not give any sign at all of difficulty with speech, co-ordination, awareness or anything like that.

Q. Were his eyes bloodshot?
A. No, his eyes were in quite a good healthy state.

Q. At a later stage did you observe him in the course of walking out of the Police Station?
A. Yes.

Q. How was his gait?
A. Normal.

Q. Did you at any time, after you left the Police Station, subject him to any clinical examination?
A. I had a talk with him for some period of time. I observed him closely then. I did not get him to pick up sixpence or threepence.

Q. How was he in terms of being rational and coherent?
A. He was quite rational and quite lucid—in fact, he put the position quite clearly. I thought. He was just angry.

Q. In the course of that talk was there any slurring of speech or anything of that nature?
A. No, none whatsoever.

Q. Upon what you observed of Mr. Erdmann, from the time you first saw him until the time you left him, in your judgment, could he have been at a point of time four hours earlier, so drunk as to warrant being taken into custody in terms of his own safety?
A. I have no doubt at all that he could not have been.

Later and at pages 5011–2 of the transcript he had this to say:

Q. Doctor, did you make a decision not to give him a clinical examination?
A. Well, I suppose I did, because I decided that my observations of him, talking to him and the walk round to the car were perfectly adequate. I could smell his breath quite clearly and there was no smell of alcohol in it. I think that is fairly reliable.

Q. When did you make the decision not to clinically examine him?
A. I suppose after we left the Police Station.

Q. And before you had a conversation with him outside?
A. You mean had I made that decision before we had the conversation?
Q. Yes?
A. No.

Q. Do you say you made the decision because it would be pointless to examine him?
A. Yes, correct. It is my opinion that close observation of a person is as effective a method of determining whether they are drunk as a lot of the clinical tests that people might indulge in.

Finally at page 5019 of the transcript he said this:

Q. Well, now, Doctor, I want you to get you away from theory, if I can, of which you have had quite a deal. On your knowledge of the man—Erdmann—on what you observed of him about 3 a.m., would you have expected him, about 11 p.m., to have been lurching and staggering about?
A. No.

Q. Without having proper control of his faculties?
A. No.

Q. To the extent that he was a danger to himself or others?
A. No.

The evidence called on Erdmann's behalf was as strong as any adduced before the Board. All witnesses gave truthful and in my view accurate accounts of their observations. Despite the criticism made of their testimony by Counsel appearing for the Police Association, it was testimony I found most convincing, and testimony I unhesitatingly accepted. I might add that had I had any doubts in the matter, those doubts would have been resolved in Erdmann's favour once I heard the Police evidence. The Police evidence called in this matter was most unsatisfactory, probably as unsatisfactory as any given before the Board. Rather than discredit Erdmann, it served to strengthen his complaint.
Watchhouse counter to be processed by the Watchhouse keeper Constable Dennis Graziano Moresi. According to the evidence, Moresi 'asked him about Erdmann continually stated he was not drunk, complained to himself because of his drunken vehicle as it was driving into this car park, I considered that he was unsafe harassment. Things like this don't happen in London as he informed me that he had been to the London Hotel, and had directly across Royal London Hotel to home. When I had asked him where he lived, he indicated these, plus the fact that he had not moved out of the area. I also took into account that he stated he had walked from the place. As he continued to drive into the driveway leading to the toilets. When Ure was asked why they were making a check on the toilets he replied: "The area around where we were stationed is renowned for homosexuals and a lot of young people get in the car parks at night." (page 5144); "We just go to the toilets there and check," (page 5145).

As they entered the driveway they alleged they saw Erdmann walking along the driveway and towards their car. He was unsteady on his feet and appeared to be in a drunken condition. As Erdmann continued to walk towards the Police car as though to literally walk right into it, Howard brought the car to a stop. Both men alighted and approached Erdmann. Howard said: "Where have you been to tonight?" to which Erdmann replied: "I have been to the London Hotel, and I am walking home from there. When asked by Howard "How much have you had to drink tonight?" he replied: "About ten to twelve beers and a couple of whiskies" (page 5088).

According to both men, Erdmann's breath smelt strongly of intoxicating liquor and his speech was slurred.

Howard then said: "What is your name?" to which Erdmann replied "Frank Erdmann." When asked "Where do you live?" Erdmann said "Straight across there," and pointed straight across Royal Parade in a westerly direction. Howard said: "What is your address?" Erdmann replied "Park Drive, No. 48."

As both Police Officers observed—Park Drive was not west of where the three men were standing and as indicated by Erdmann, but was in fact 1–14 kilometres south.

Having reached the conclusion that Erdmann was drunk, Howard said: "You have had too much to drink for your own safety. You are under arrest for being drunk in a public place." To that Erdmann replied: "I'm not drunk."

Erdmann was then placed in the rear of the Police vehicle and driven to the Carlton Police Station.

At this stage it is relevant to note Howard's evidence as to the factors he took into account in arriving at the conclusion Erdmann was drunk. At page 5089 of the transcript he was asked: "Will you just list the factors you took into account in reaching that conclusion," to which he replied: "When I first observed him, he was unsteady on his feet. When I was speaking to him, his speech was slurred; his breath smelt strongly of intoxicating liquor. As he informed me that he had been to the London Hotel, and had 10 to 12 beers and a couple of whiskies, I took this into account. I also took into account that he stated he had walked from the London Hotel to home. When I had asked him where he lived, he indicated directly across Royal Parade, and then when I asked him his address, he told me Park Drive, which is approximately 14 kilometres. From all of these, plus the fact that he had not moved out of the road of the Police vehicle as it was driving into this car park, I considered that he was unsafe to himself because of his drunken condition."

According to both Police Officers—on the way to the Police Station Erdmann continually stated he was not drunk, complained "This is Police harassment. Things like this don't happen in Germany" and said "What about Pam? " (Miss Morrow).

Following their arrival at the station, Erdmann was taken to the Watchhouse counter to be processed by the Watchhouse keeper, Constable Dennis Graziano Moresi. According to the evidence, Moresi asked him
the usual questions as to his name, address, date of birth, &c., to which he
gave quite rational answers (page 5090). At or about this time
Erdmann's property was taken from him and he was formally searched by
Senior Constable Howard. He was then taken to the cell block and placed
in the first cell to the left of the door leading into the cell block. Constable
Moresi obtained two clean blankets from a cupboard in the cell block and
handed them to him.

According to the Police, when placed in the cell Erdmann asked
where the toilet was. To that enquiry Moresi replied: "In the corner
there." The significance to be attached to Erdmann's enquiry is that as
the light in the cell was burning, the presence of the toilet in the cell
would have been obvious to all but a drunken man.

During the time he was at the Police Station and before he was placed
in the cell, Erdmann continued to protest "I'm not drunk," "This is
Police harassment," and ask "What about Pam?". Once in the cell
Howard enquired "Who is Pam?", to which Erdmann replied "Pam
Morrow, the girl I live with." On being told that, Howard alleged he said:
"I will go across and inform her where you are."

Having received a call from D24 to go to Grattan Street Carlton and
apprehend a person lying in the gutter obviously inebriated, Howard and
Ure then left the Police Station. On their return to Carlton a short time
later they encountered the Duty Inspector, Inspector Miller. According to
Howard, Inspector Miller asked him where he had found Erdmann and in
what condition, and as to his observations and conclusions that
Erdmann was in a drunken condition (page 5002). It is not without significance
that this conversation was later denied by Inspector Miller. As Inspector
Miller said at page 5234 of the transcript, had he asked Howard and Ure
for their opinion as to Erdmann's condition that would have indicated a very
real degree of uncertainty in his mind as to Erdmann's sobriety. If satisfied
Inspector Miller asked both men for their opinions. His own
answer at page 5234 demonstrates the significance of his query.

At all events, having made that enquiry of the two men, Inspector
Miller then instructed them to go to 48 Park Drive and inform Pam
Morrow of Erdmann's arrest. This the two men proceeded to do. Because
of the reliance the Police placed on Howard's conversation with Miss
Morrow, I consider it appropriate to set it out verbatim as it appears at
pages 5092-3 of the transcript.

Q. What conservation, if any, took place between you and her?
A. I said, "Is your name Miss Morrow?" She said, "Yes.", I said, "Do
you know Frank Erdmann?" She said, "Yes, he lives here." I said,
"I have arrested him for being drunk—he is now at the Carlton
Police Station." She said, "What condition is he in?" I said, "He
is pretty drunk." She said, "How much will the bail cost?" I said,
"There will be no bail. He will be released when he is sober which
will be approximately some time after half past two in the morning."

Q. Was anything else said before you departed?
A. Yes. Miss Morrow said to me, "We had an argument earlier this
evening and he went out and said he was going to get drunk."

Q. Did she say anything with respect to your calling around?
A. She thanked us very much for calling around. We then left the
address, went back to the Royal Park Police Station where I con
cluded duty.

The evidence given by Constable Moresi corroborated the evidence of
Howard and Ure as to what occurred at the Police Station between the
time at which they brought Erdmann to the Station and the time at which
they finally left following their conversation with Inspector Miller.

He, too, formed the view Erdmann was drunk. According to Constable
Moresi, Erdmann's speech was slurred, his breath smelt of alcohol, he
swayed from side to side when he walked, and had to support himself by
placing his hands on the Watchhouse counter (pages 5271-2). Nevertheless
Moresi was able to understand what he was saying and in particular the
complaints he was making at the fact he had been arrested.

Constable Moresi recalled that at about 2.00 a.m. Miss Morrow arrived
at the Police Station and asked to see Erdmann. Although he conceded
this visit could well have taken place at 1.30 a.m. (page 5295) he had no
recollection of her earlier visit at 12.30 a.m. Nevertheless he was not
prepared to deny that at that time he had told Miss Morrow Erdmann
would be released at 1.30 a.m.

Constable Moresi's account of the 1.30 a.m. visit was substantially
the same as that given by Miss Morrow and Erdmann. He recalled the
fact that Erdmann wanted a blood test of some description (page 5272)
and the fact that he told Erdmann that he would have to wait until the Inspector arrived (presumably—before he could make a complaint) (page 5292).

According to Moresi, Miss Morrow returned at about 3.15 a.m. with Doctor Giles and the witness Molnar. When Doctor Giles asked for permission to take a blood test from Erdmann Moresi told them he was not sure of the procedure and that he would call the Divisional Inspector. In due course Inspector Miller arrived and thereafter handled the situation.

Constable Moresi was a comparatively inexperienced Police Officer having only been in the Force for a period of some 6-7 months. Whilst I will be critical of certain aspects of his evidence, I do not take the same adverse view of his behaviour I do of the behaviour of Howard, Ure and Inspector Miller. To my mind he might well be described as the unfortunate victim of circumstances—an unwilling participant in the events that evening who now considers he must support the side.

The evidence given by Inspector Miller was highly unsatisfactory and left me with no alternative but to conclude he was deliberately attempting to "cover-up" for Howard and Ure. Not only was his account highly improbable, in certain instances to which I shall later refer, it was demonstrably false.

According to Inspector Miller, he first arrived at the Carlton Police Station at approximately 11.40 p.m. Upon visiting Erdmann in the cells he had the following conversation with him (page 5195-6): "I said, 'Are you all right? Is everything O.K.' This person said, 'What am I charged with?' I had a conversation with Constable Moresi who was standing beside me in the cell block. I said to this person, 'What is your name?' He said, 'Frank Erdmann'. I again had a conversation with Constable Moresi. I then said to Mr. Erdmann, 'You are not charged with anything, you have been picked up for being drunk and you are being held for four hours under Section 458 of the Crimes Act and you will be released in four hours time.' . . . He said, 'Will you let my friend Pam Morrow know where I am, she won't know where I am.' I told him I would let her know. He again said, 'I'm not drunk, will you let Pam Morrow know where I am. She won't know where I am.'"

Inspector Miller then left the cells and on entering the main area of the Watchhouse saw Howard and Ure at the Watchhouse window. He asked Howard whether he was the person who had picked up Erdmann. When Howard replied that he was, he alleged he said to Howard, "Erdmann has stated he wasn't drunk, I am convinced he is". He then had Howard tell him of the circumstances in which Erdmann had been arrested (but did not ask his opinion as to Erdmann's state of sobriety), instructed him to notify Miss Morrow, and left the Station.

At 2.40 a.m. Inspector Miller received a call from D24 to attend at Carlton. On his arrival at 3.15 a.m. he observed Molnar, Miss Morrow and Doctor Giles inside the entrance foyer of the Station. What then occurred is best described in his own words as appearing at pages 5197-8 of the transcript.

"I can't recall whether the three were there at that stage. There was a female and a male that I can recall, but I am not sure of three at that stage. I went through into the office part of the Watchhouse where I saw Mr. Erdmann and Constable Moresi. Mr. Erdmann said, 'They said I'm a poofie. I want a blood test.' I said to him, 'Who said you're a poofie.' He said, 'They did.' I said to Constable Moresi, 'Did you call this man a poofie', and he said, 'No.' Mr. Erdmann said, 'They said I'm a poofie, I want a blood test'. I then asked Constable Moresi the exact location where this person was picked up from, and he informed me it was at toiletes near the football ground where perverts were known to associate. Mr. Erdmann again stated that he was not a poofie and he wanted a blood test. I then went to the Watchhouse counter where the three persons were, two males and a female. I ascertained their names. The person who said he was Doctor Giles stated he was a personal friend of Mr. Erdmann's. The conversation I had with Doctor Giles . . . I do not know whether I can remember it fully but we discussed the matter of a blood test with Mr. Erdmann. I stated it was not a matter for a person charged with being drunk—not a normal Police procedure. I spoke to Constable Moresi and said he stated that the Property Sheet of Mr. Erdmann had not been signed at this stage. I asked Mr. Erdmann to sign the Property Sheet and he would be free to go if he wished. He again said, 'I am not going, I want a blood test'. I then went and made a telephone call to the City Watchhouse and had a conversation with a person there. This was in relation to any procedure at the City Watchhouse they knew of, of prisoners having a blood test.
The Erdmann Matter

Because of Mr. Erdmann's attitude, I asked if they knew whether Doctor Birrell was available. The person who I spoke to stated that he was in Sydney and that Doctor Busch would be available, if required. I then had a look at some books that were in the Watchhouse and found the Crimes Act (Blood Test) Regulations. I then went to Doctor Giles and said, 'Do you know the procedure to be adopted in the taking of blood tests?', and he said 'Yes'. Doctor Giles had a conversation with Mr. Erdmann and Mr. Erdmann said, 'I will sign my sheet'. I then gave Mr. Erdmann the Property Sheet, I filled in the amount of 97 cents in the cash part of the sheet, and he signed it. I asked him to check the contents, the 97 cents, the belt, private papers and, I think, keys. There were only three articles plus the money on the sheet, which he did.

Mr. Erdmann then said, 'I am not making any complaint'. I said to Doctor Giles, 'You heard him say that he had no complaint'. Doctor Giles said, 'Yes'. I then said to Miss Morrow, 'Did you hear Mr. Erdmann say he had no complaint?' She said, 'Yes'. I said to Mr. Molnar, 'You heard Mr. Erdmann say he had no complaint'. He said, 'Yes'. I then entered these Police particulars in the Station Occurrence Book.

Later Inspector Miller was asked, "So far as you made enquiries as to getting a Police Surgeon, what did you have in mind in doing that?", to which he replied, "The longer this matter went the more I was becoming convinced there was something more than alcohol involved. And if Mr. Erdmann was going to have this blood test and if it, perhaps, proved negative, there would be some doctor from the Police Department to give his examination of this person" (page 5199).

When later asked, "What other thoughts crossed your mind, drugs?", he replied, "The matter of drugs" (page 5202).

There was not the slightest evidence to suggest Erdmann was in any way affected by drugs, nor did Counsel appearing for the Police Association ever hint, let alone suggest he was. What was Inspector Miller's motive to give his examination of this person? (page 5199).

If one had nothing more to go on in this matter than the evidence in chief of the four Police Officers called before the Board, one might well have concluded Erdmann was under the influence of liquor when intercepted at 11.10 p.m. that evening, and that the Police acted quite properly in locking him up. After all, four Police Officers including an Inspector and Senior Constable had sworn he was drunk—on the face of it fairly compelling evidence to that effect.

Close scrutiny of their evidence given during the course of cross-examination however, disclosed so many unsatisfactory features—including what I consider to have been deliberate falsehoods—that in the event Erdmann's evidence had been uncorroborated I would have preferred it to that of the four Police Officers concerned. When one added the evidence called on Erdmann's behalf to his own testimony, it put the matter beyond any doubt.

I turn now to consider some of the more unsatisfactory aspects of the Police evidence. I deal firstly with the accounts given by Senior Constable Howard and Constable Ure.

Howard and Ure steadfastly denied that they intercepted Erdmann as he was leaving the toilet block, that they referred to him as a "poofter", or made any reference to "poofters". On their version of events Erdmann was arrested as he was walking along the driveway in the vicinity of the toilet block and no reference was made to the toilet block or the undesirables who frequented it whatsoever. That is evidence I am not prepared to accept. When one considers the state of mind of the two Police Officers that evening, and their purpose in visiting the toilet area, I think it highly probable the reference was made to the fact that homosexuals frequented the toilet, and Erdmann was accused of being one. In this connection, certain of the evidence given by Ure was quite fanciful.

During the course of his evidence Ure swore that the area around where the two men were stationed was renowned for homosexuals and as part of their duty they were required to check that particular toilet block (pages 5144-5). In the event they found anyone there, their practice was to take that person's name and address, ask what they were doing there, warn them that the area was frequented by homosexuals, and
advise them not to come back again (page 5146). As he said at page 5149, if he found a person there again, he would consider charging him with loitering. Although Ure at first denied he used the expression "poofter" from time to time, when pressed he conceded he had used the term before, but maintained he did not use it on that evening (page 5146).

If the purpose of visiting the toilet block was that sworn to by Howard and Ure, one could be forgiven for assuming that on those occasions they called at the toilet block, one or other of them would enter the toilet block and question any person found loitering inside. Incredibly, the evidence both men gave was to the contrary. They maintained that it was not their practice to go into the toilet block. They would simply drive past and interview anyone they found outside. To my mind Ure's evidence in this connection at page 5145, page 5147 and page 5151 of the transcript is so farcical as to be worthy of inclusion in this summary.

Q. The reason you went to the toilets was to check for homosexuals?
A. We just go to the toilets there and check.
Q. And that involves going into the toilets and seeing who is there?
A. No, I have never gone into the toilets by myself.
Q. You might not have gone into the toilets by yourself in the past, but that involves members of the Police going into toilets to check who is there?
A. I have not gotten out of Police cars in order to check, just drive in the courtyard and out again and speak to persons who are there.
Q. If you have never gone into the toilets, you have never really conducted a check of them?
A. The sight of the Police car is usually sufficient.
Q. Mr. Ure, they have brick walls?
A. They also have windows.
Q. Yes, up pretty high?
A. When you drive in the toilets there, you usually find one or two persons looking out the window.
Q. Do you take their names?
A. If they approach the Police car, yes.
Q. If they come and approach the Police car?
A. Or come outside.
Q. Or come outside, you take the names, is that what you said?
A. Yes.
Q. If they just keep looking out the window you just drive off, is that what you said?
A. The sight of the Police car, 99 per cent of the time they come out. Me, personally, I have never known anyone . . .
Q. How do you know?
A. You look at the toilets again on the way out, I have never seen anyone at the window.
Q. If they are not looking out the window, how do you know there is anyone there?
A. If you see some person and they walk out, you assume it is the same person.
Q. What sort of windows are they?
A. Louvre windows. They are now broken.
Q. Were they opaque glass?
A. Plain glass.
Q. Plain glass?
A. Yes.
Q. There is no way known by looking at the windows from the outside that you can tell how many people are in the toilets?
A. As I said, the windows are broken, you can see the head of a person in there.
Q. There, is no way known you can tell how many people are in the toilets by merely driving past?
A. That is correct.
Q. If your job is to check the toilets, you go in and check them?
A. It suffices the officer in charge of the Station if you drive past.
Q. The situation is that you just do not want to admit you were ever in the entrance of the toilet that night, do you?
A. That is incorrect.
Q. So that unless people come out, there can be twenty or thirty homosexuals inside quite safe from any scrutiny from any members of any patrol you are on?
A. As I stated, it suffices the officer in charge that you drive in the car park sufficiently.
Q. Just answer the question, they are quite safe?
A. Yes.
Q. Inside?
A. Yes.

Q. Would not you run into a bit of trouble back at the station if you were asked by Senior Sergeant Silver if you had checked over the toilets in Royal Parade and you said "Yes"; his next question might be "Did you see anyone there?" to which, assuming you had seen someone there at the window, you say "Yes"; surely his next question would be, "Who was it and what were they doing there?" and you would have to say, "I don't know, we didn't go in"?
A. The Senior Sergeant would accept that a drive through the car park is sufficient.
Q. If you said "Just the usual two or three people looking out the window at the park, we didn't go in, we just drove past," he would be quite happy with that?
A. He would accept that.

If one was minded to accept Ure's evidence in this connection, one would be entitled to describe the toilet block as "a sanctuary for homosexuals" rather than "a haunt of homosexuals". So long as any homosexual in the area could beat the Police into the toilet block he would be perfectly safe. Once inside the toilet block he would be safe from prying eyes.

When witnesses swear such nonsense as that, it can only have the effect of destroying their credibility.

Having regard to the purpose of their visit to the toilet block that evening, I have not the slightest doubt Ure in fact went to the toilet entrance, encountered Erdmann as he was leaving, and asked him for his name. When Erdmann then asked him why he wanted his name it would be the most natural thing in the world for him to say: "We have to check this place to keep poofters and perverts away"—after all that was their very purpose in being there. It would be equally probable that as the men walked towards the car Ure would say "If we find you here again we will charge you with loitering". Again that is the very thing he would do, in the event he found Erdmann there on a second occasion.

Further, it is too much of a coincidence that Erdmann has allighted on the very matter which brought the Police to the toilet block on that evening as constituting the content of the initial conversation which he alleged took place between himself and the Police.

It will be recalled that according to the Police version of that conversation, Erdmann told them he had been to the London Hotel and was walking home from there and that he had ten to twelve beers and a couple of whiskies.

It is clear from the evidence that one place Erdmann had not been to that night was the London Hotel. The evidence of Bullen, Heard and Stephen established beyond any doubt that the hotel Erdmann had been in that evening was Naughton's Hotel, and then only between 9.30 and 10.00 p.m. Why then should Erdmann tell the Police he had been to the London Hotel? In my opinion the answer to that question is that he did not. As both Howard and Ure swore in evidence—the London Hotel is a haunt of homosexuals. I consider they have falsely sworn Erdmann told them he had come from the London Hotel, to create the impression Erdmann might in fact have been a homosexual.

As to Erdmann's statement that he had ten to twelve beers and a couple of whiskies—the fact is he does not drink whisky. See his evidence at page 4957, Miss Morrow at page 5057 and Doctor Giles at page 5019. Nor had he had anything like ten to twelve beers that evening. See the evidence of Bullen, Heard and Stephen.

The statements the Police allege Erdmann made as to where he had been drinking, and the amount of alcohol he had consumed, bore so little relation to the truth, that I had little hesitation in concluding they were never made by him in the first instance, but were simply fabricated by Howard and Ure.

I now turn to consider certain discrepancies and contradictions in the evidence the two men gave.
In the first instance Ure would have it that by the time Erdmann arrived at the Police Station there was a noticeable improvement in his condition, that he was able to get out of the Police car unaided, and walk into the Police Station unaided (page 5141 and page 5155). Howard, on the other hand, maintained that on arrival at the station Erdmann's condition was the same as it had been at the toilet block, and that he in fact assisted him from the Police car (page 5089A and page 5117).

At a later stage of his evidence, Ure swore that by the time Erdmann was placed in a cell he was in a fit condition to give proper consideration to the alternatives of being dealt with by a Court or simply detained for a few hours and then released (page 5166). As Ure said in answer to the question: “At that stage he was a very well spoken drunk?” , “I would say he was a quiet spoken—he was not boisterous. He was quite a well spoken gentleman ” (page 5166).

In this same connection Howard maintains he told the Watchhouse keeper to bail him any Tuesday or Thursday in the event he wanted bail. In other words, in the event Erdmann elected to go before a Court when his rights were explained to him by the Watchhouse keeper, he was to be bailed out to appear at Court on one of those days, those being the two days of the week on which the Magistrates' Court sat at Carlton (page 5112). Ure swore however, that Howard said nothing to the Watchhouse keeper about bail (page 5166). The purpose of Howard's evidence (evidence which I reject) was to convey the impression that this was a genuine charge and one which he was prepared to prosecute before a Court.

One of the complaints Erdmann made to the Board concerned the state of the two blankets he found in the cell. Whilst it is only a small matter, Ure swore that after Erdmann was placed in the cell Constable Moresi obtained two clean blankets from a cupboard near the Watchhouse area (page 5180). Howard, on the other hand, swore that Moresi picked up two blankets from the far end of the passage between the cell blocks—presumably from a heap of blankets (page 5091). When the Board visited the Carlton Police Station on the 22nd September, 1975, Chief Inspector Bennett indicated that the blankets for prisoners were stacked in a heap immediately outside the gate leading into the cell block area (page 5180). Both officers were at pains to emphasize the fact that neatly folded (and obviously clean) blankets were handed to Erdmann. I prefer Erdmann's account to the effect that the blankets he was expected to use were the two filthy ones he found on the cell floor.

The next matter I propose to advert to concerns the arrest later that evening of a man called Thompson. After Erdmann was lodged in the cells and before Howard and Ure called on Miss Morrow, the two men went to Grattan Street Carlton in answer to a call from D24 where they arrested Thompson. He was charged with being drunk and disorderly, and was also lodged in the cells at Carlton. It is interesting to compare the evidence the two Police Officers gave in connection with him. At page 5122 of the transcript Howard had this to say:

Q. We find one gentleman booked in at a quarter to 12 and released at 5 a.m.?
A. Yes.
Q. What does that make it?
A. Five and a quarter hours, but that one also booked in at that time is the person whom we went and arrested and he was lying flat out in Grattan Street in a very, very drunken condition. He had to be carried to the Police car. He urinated his trousers and he was in a very, very drunken condition. It would have taken him a long time to sober up.
Q. No doubt his breath smelt strongly of liquor?
A. Yes.
Q. And his speech was slurred?
A. Not this time.
Q. He was incapable of speech?
A. That is correct.

At pages 5176–7, Ure gave this description.
Q. Any conversation with him at the scene?
A. As I said yesterday, we just awoken him, obtained his name and conveyed him to the Carlton Police Station.
Q. How did you convey him to the Police Station?
A. This is Mr. Thompson?
Q. Yes.
A. We just awoken him, supported him on either side and conveyed him to the back seat of the Police car.
Q. Assisted him to walk to the car?
A. That is correct.
Q. I suppose you would be surprised to know that Mr. Howard swore he had to be carried to the car?
A. No, he was assisted by both of us.
Q. He was not carried to the car?
A. No, he was not carried, he was assisted.
Q. You asked his name at the scene and he told you, that is so, is it not?
A. That is correct.
Q. Did he say anything else?
A. No, he just woke, we just got his name and conveyed him to the Carlton Police Station.
Q. He was not loud-mouthed when he was awoken, was he?
A. He did not directly say anything to us, but he did say a few words;
I cannot recall his words but it was just about being woken up and being disgruntled.
Q. What did he say?
A. I can't recall the words, he was just disgruntled and boisterous.
Q. How was he boisterous?
A. I can't recall the words he said.
Q. Never mind the words, how was he boisterous?
A. He was just disgruntled, and I would say angry at being awoken.
Q. I suppose it would surprise you to know that Mr. Howard swore that at the scene Mr. Thompson was incapable of speech?
A. That would surprise me.
Q. Does that surprise you?
A. As I say, he was disgruntled and angry at being awoken. I do not recall the words.
Q. You are not just making this up as you are going along?
A. That is incorrect.
Q. Anything else about him you noticed?
A. Mr. Thompson had an old jacket on, old dirty pants, to the best of my memory I am sure he had on odd shoes and just generally dirty in appearance.
Q. Did he have saliva dribbling out of his mouth?
A. No, he was asleep.
Q. Would it surprise you to know that Mr. Howard swore that he, Mr. Thompson, urinated in his trousers?
A. Yes, it would.
Q. You are not the one that is making it up, Mr. Ure, it is Mr. Howard who is mistaken?
A. I do not know what Mr. Howard has spoken about.

The point I make is the fact that, on the one hand, both men give almost identical accounts of the arrest, &c., of Erdmann that evening, yet on the other give such divergent descriptions of their apprehension of Thompson. I consider the only reasonable conclusion one can draw from that fact, is that they have collaborated together in relation to their evidence concerning Erdmann, and have rehearsed it to ensure their accounts were the same.

Somewhere in the vicinity of midnight Howard and Ure called on Miss Morrow to tell her where Erdmann was. According to Howard, Ure stayed at the car whilst he went to the door to speak to her. He alleged that during the course of that conversation Miss Morrow told him that she and Erdmann had had an argument during the evening, and that Erdmann had gone out saying he was going to get drunk (page 5093). Whilst Miss Morrow conceded she had made reference to an argument between herself and Erdmann, she flatly denied that she told Howard, Erdmann had gone out saying he was going to get drunk (page 5071).

In my opinion there were so many unusual features about this very damaging statement attributed to Miss Morrow that one could not accept Howard's evidence in respect of it in preference to the evidence she gave.

It will be recalled that from the moment of his apprehension Erdmann had maintained he was not drunk, and at the first available opportunity had complained to Inspector Miller to that effect. Here now was a statement from his girl friend to the effect that when he left home that evening his whole purpose in going out was to get drunk. On the face of it a most
important piece of evidence. When asked whether he had made a note of that conversation, Howard replied he had not. When asked why, he replied: "Because at that stage I didn't believe it was significant or important" (page 5128).

Knowing that Erdmann was complaining about his arrest, I find that statement impossible to accept. It would seem to me very relevant to record what Miss Morrow said in relation to the matter in the event Erdmann took his complaint further, a not unlikely step having regard to his behaviour to that time.

A more unusual aspect of the matter was the failure of Ure to give evidence of the fact Howard told him of the conversation when he returned to the car, during the course of his evidence in chief. When cross-examined it was clearly suggested to Howard that he had recently invented that portion of his evidence. To counter such a suggestion it was permissible for Ure to give evidence of what Howard told him when he returned to the car. The fact is that it was not until he was specifically asked about the matter during the course of cross-examination that he did so. Ure was then asked the following questions concerning the matter (page 5185):

Q. When you prepared your document that you destroyed, did you write down that conversation?
A. No, I just put down all the relevant information I could remember about the incident.
Q. You did not remember that conversation until Mr. Howard jogged your memory, did you?
A. No, I just put down that Howard went around and informed her.
Q. The answer is no to that question?
A. Senior Constable Howard did not—he did tell me—he did not tell me, he refreshed my memory at the conference.
Q. Had you forgotten that fact up until that time?
A. About getting drunk, I know that they had a fight. It did stay in my memory.
Q. But not about him going out and getting drunk?
A. No.

If Howard told Ure that night, that Miss Morrow said Erdmann had gone out to get drunk, it is inconceivable he would have forgotten about it. That would have offered a perfect explanation for Erdmann's condition at the time he was apprehended at 11.10 p.m. The conclusion I have arrived at in the matter is that Miss Morrow's account of the conversation is the more reliable account and that that comment was never made by her. Again, and in this connection it is significant that Inspector Miller was never told that Miss Morrow had said that (page 5220).

In the passage of evidence to which I have just adverted the reader will note reference to "a document that you destroyed". On Friday the 19th September, 1975, i.e. three days before the Board commenced to hear the Erdmann Matter, Howard, Ure and Moresi had a conference together at the Carlton Police Station. As Ure said in evidence, during the course of the conference "we corroborated on the matter" (page 5157). Ure would have the Board believe that the three men sat down at a table, each wrote down everything he could recollect, then each compared his notes with the notes the others had made. Having done so the notes were then destroyed (page 5172). It seemed to me very odd that if the men went to the trouble of preparing notes they would then destroy them before giving their evidence, not so of course, if they were initially completely divergent accounts.

In the course of his evidence Ure also swore that later that afternoon Inspector Miller attended the conference and spoke to the men about the matter (page 5172). In addition to discussing the events of the 14th/15th May, 1975, he asked for production of the running sheet and Erdmann's property sheet. Miller, on the other hand, swore quite categorically that he did not attend the Carlton Police Station at all that day (page 5206 and page 5214).

Having made reference to Erdmann's property sheet, Ure was asked whether it had any significance so far as the Erdmann Matter was concerned. To that question he replied that he was aware it could have a bearing on the case (page 5175). When asked whether he looked at it that day, he replied No. When asked whether there was any discussion about it, he replied No, even though, as he later said—he was curious (page 5176).
The significance of the property sheet is the clarity of Erdmann's signature at the time his property was taken from him immediately before he was lodged in the cells. A comparison of that signature with his signature when he was released at 3.30 a.m. reveals them as virtually identical. That, too, is another factor indicative of his state of sobriety at 11.10 p.m. on the 14th May. Being curious about the matter I cannot accept Ure's statement to the effect he did not examine the property sheet or discuss it with the other men on the 19th September.

As in other matters heard by the Board, there were many discrepancies and inconsistencies in the evidence of the Police Officers primarily involved in this matter—discrepancies and inconsistencies which had a most damaging effect upon their credibility. I see no useful purpose in detailing further unsatisfactory aspects of the evidence of Howard and Ure, as such matters will be apparent to any reader of the transcript.

I turn therefore to say something about the evidence given by Moresi and Inspector Miller.

I consider Moresi was very much a victim of circumstances that evening. He had only been a member of the force some 6–7 months and had obviously had little experience as a Watchhouse keeper. It was clear from his demeanour in the witness box, that he was uncomfortable about his role in the matter, and he gave every impression of wishing he had never been on duty that night. He was clearly in error in relation to many aspects of his evidence and to his credit was prepared to concede that possibility. His times were obviously incorrect, as was his recollection of much of what occurred that evening. One valuable aspect of his evidence, however, was that it demonstrated the falsity of much of the evidence given by Inspector Miller.

I propose now to deal in some detail with the evidence given by Inspector Miller and to point to those matters which I consider to be of significance.

In the first place I instance his evidence to the effect that Erdmann may have been affected by drugs rather than alcohol. In my opinion there was not the slightest justification for that suggestion and I can only conclude it was one put forward by him in sheer desperation. If that had been his view that evening, what better person to ask about it than Doctor Giles—an expert in that very field. It is to be noted that Counsel appearing for the Police Association repudiated the suggestion at the first available opportunity.

In his evidence Inspector Miller, contrary to the assertions of Howard and Ure (pages 5092, 5123 and 5142), flatly denied that he asked them for their opinions (page 5234). Not only did he flatly deny it, he was prepared to go so far as to state that Ure's evidence in relation to the matter was false. Because of the importance I attach to this matter, I consider it appropriate to set out the evidence Inspector Miller gave in relation to it at pages 5234–5 of the transcript.

Q. I think you said you did never ask them their opinion whether he was drunk or not, you had formed your own opinion?
A. Yes, because I spoke to them about delivering the message to Miss Morrow at 48 Park Street.
Q. That is the extent of the conversation you had with them, is it?
A. Yes, I would say so.
Q. Not only did you not seek their opinion, but there was no need to seek their opinion about Erdmann's condition, which was plain to see?
A. To me, yes, it was.
Q. Would it surprise you to learn that Mr. Howard and Mr. Ure told Mr. Chairman that you did have a conversation with them and you asked them about Mr. Erdmann and his condition? Would that surprise you?
A. It would, sir.
Q. Mr. Ure told Mr. Chairman that you asked him if he thought Erdmann was drunk. If he has sworn that, it would appear that he was mistaken, wouldn't it?
A. It does very much so.
Q. If that was said by you, it would indicate a deal of uncertainty, a very real deal of uncertainty in your mind, that he was drunk?
A. If I said that, yes.
Q. He has sworn that you did, and that is false?
A. That is false.
Q. Mr. Howard told Mr. Chairman that you asked him where Erdmann had been picked up and what his condition was?
A. No, no, I asked...
Q. Does that surprise you?
A. No, I asked him where he had been picked up from.
Q. And his condition?
A. No, sir, no.
Q. Does that surprise you?
A. Yes.
Q. Is that true or false?
A. That I was surprised he said that?
Q. No, that you asked him that?
A. No, I didn't say that second part of the question.
Q. If indeed you had asked him that question that would indicate a very real deal of uncertainty in your mind, wouldn't it?
A. It would, yes.
Q. That never happened?
A. No.

I am satisfied Inspector Miller did ask Howard and Ure for their opinions. I consider he did so because from his own observations of Erdmann, Erdmann did not appear to be drunk. I am satisfied that thereafter he did everything he could to back them up and cover-up the matter. In this connection I refer in the first instance to his instructions to Moresi when he left the station following his 11.40 p.m. visit.

Inspector Miller would have the Board believe that when he left the Station following that initial visit, everything was normal and as it should be (page 5241). The evidence Moresi gave, however, was to the effect that before Inspector Miller departed he told him if he had any doubts or queries to call him back (page 5279). When asked whether he was surprised at the fact Miller had said that to him, he replied "No", then added that he knew Erdmann was complaining that he wasn't drunk and had been falsely arrested (page 5288). It is clear from Moresi's evidence that he was required to contact Inspector Miller in the event there were any developments.

Why was Inspector Miller so concerned about the complaints of an obviously drunken man that he instructed the Watchhouse keeper to contact him in the event anything developed? Complaints from intoxicated persons are of every day occurrence.

In my opinion Inspector Miller gave those instructions to Moresi because he appreciated that Erdmann was not drunk and he deduced from his indignant attitude that there could well be trouble from him later. In this Mr. Miller was prophetic. Trouble arose in the shape of the presence at the Station of Doctor Giles seeking to take a blood test from the man vigorously asserting he was sober and had been wrongfully locked up, and corroborative trouble there was in the shape of Miss Morrow and Mr. Molnar.

It is clear from the evidence, that Doctor Giles, Miss Morrow and Molnar arrived at the Station shortly before 2.30 a.m. that morning. Although those witnesses did not give specific evidence to that effect, it follows from the fact that Inspector Miller was contacted by D24 at 2.40 a.m. and asked to return to the Station (page 5197 and page 5255); and that Doctor Giles had visited at the Station some 10 to 15 minutes before the Constable on duty (presumably Moresi) attended to him (page 5000 and page 5009). In other words, Moresi would not have contacted Inspector Miller until he had ascertained the identity of Doctor Giles and that he wished to take a blood test.

Having been told by D24 at 2.40 a.m. that he was required at the Carlton Police Station—a journey he could have made from Russell Street in approximately 5 minutes—Inspector Miller did not arrive until 3.15 a.m. (page 5197 and page 5255). His explanation for the length of time involved was that at the time he received the call at Russell Street he had just sat down to have a cup of tea and sandwiches (pages 5255–6). It is my opinion that when Inspector Miller received the call from D24 at 2.40 a.m. he realised trouble was brewing and determined to delay his arrival for as long as possible, knowing that the longer Erdmann was kept from his friends the more difficult would be their prospect of establishing Erdmann was not under the influence of liquor when apprehended at 11.10 p.m. In my view this delay was part of the general delaying tactics adopted by the Police that evening to ensure that in that event a blood test was taken, by the time it was, it would be worthless. That this was so is further supported by Inspector Miller's behaviour once he arrived at the Police Station.
The Erdmann Matter

Inspector Miller would have the Board believe that the primary reason for Moresi requesting his attendance at the Police Station in the early hours of that morning was that Erdmann had refused to sign his property sheet. In this connection I refer to his evidence at pages 5235, 5238 and 5240 of the transcript. That this was not so was clear from the evidence Moresi gave. At page 5273 Moresi said quite categorically that the reason he called D24 and asked D24 to have Inspector Miller return to the Station, was that Doctor Giles said he wanted to take a blood test. At page 5279 he swore that when Inspector Miller arrived he told him that Erdmann wanted a blood test, and that he did not know the procedure. I accept Moresi's evidence on this point as he had no motive to lie about it.

Why did Inspector Miller falsely swear to the Board that he thought he was only called to the Station because Erdmann had refused to sign his property sheet, when in fact he was told immediately upon his arrival that the reason Moresi had sent for him was that Doctor Giles wished to take a blood test? Was this a further attempt on his part to explain away the abnormal delay between the time at which he received the message from D24, and the time at which he attended the Station? In other words, thinking he was merely being recalled to the Station because Erdmann had refused to sign his property sheet, there was no urgency about the matter. I am firmly convinced that was his purpose.

Inspector Miller maintained that although he told Doctor Giles he wanted the Police Surgeon present whilst the blood test was taken, he did not tell him that a blood test could not be taken unless the Police Surgeon was present. In fact he was prepared to swear on oath that Doctor Giles had deliberately lied about the matter (page 5230).

I have no hesitation in finding that the person who did lie about the matter was Inspector Miller. Even had Doctor Giles' evidence on this point been uncorroborated, I would have had little hesitation in accepting it in preference to the evidence Inspector Miller gave. The fact is that Doctor Giles' evidence was not only supported by Miss Morrow and Molnar, it was supported by Constable Moresi.

At page 5296 of the transcript Moresi also swore that so far as he could recollect, Inspector Miller said to Doctor Giles, "Well you cannot give a blood test unless there is a Police surgeon present".

Inspector Miller agreed during the course of his evidence that he told Doctor Giles that the Police Surgeon was in Sydney and that his replacement was at Box Hill and would take at least an hour to get there (pages 5231-2).

Why did he first demand that the Police Surgeon be present then say it would be at least an hour before his replacement could arrive at the Police Station? As he swore in evidence—by that time there wouldn't be much point in taking the test (page 5232).

To my mind the reason is obvious. Inspector Miller was doing his utmost to procrastinate, so that by the time any blood test was taken (if it ever was), the result would be worthless.

In this same connection Inspector Miller swore that to the best of his belief all blood tests taken from persons in custody involved taking the prisoner from the Police Station to a hospital or surgeon (page 5233). I find that statement completely unacceptable. In the circumstances that existed that evening, there was no reason whatsoever why Doctor Giles should not have taken a blood test from Erdmann at the Carlton Police Station, immediately upon his arrival there.

I might add that Inspector Miller's statements at one stage of his evidence to the effect that it came as a surprise to him that Erdmann wanted a blood test and that he could not say whether or not Doctor Giles said he wanted to do one, were two of the more blatant lies he told (page 5240). Also lies were his statements to the effect that at the conference he attended with Howard, Ure and Moresi on the Sunday before he gave evidence before this Board, he did not call for the running sheet or Erdmann's property sheet (page 5219).

That an Inspector of Police should attempt to cover up the outrageous behaviour of the men under his command in the way in which Inspector Miller did, gives one little confidence in Police claims of the absolute integrity and independence of commissioned ranks.

I turn now to consider the views expressed by Inspector Miller and the other Police Officers involved in the Erdmann Matter concerning Section 438 of the Crimes Act.
The provisions of Section 458 are as follows:

458. (1) Any person, whether a member of the Police Force or not, may at any time without warrant apprehend and take before a justice to be dealt with according to law or deliver to a member of the Police Force to be so taken, any person—

(a) he finds committing any offence (whether an indictable offence or an offence punishable on summary conviction) where he believes on reasonable grounds that the apprehension of the person is necessary for any one or more of the following reasons, namely:—

(i) to ensure the appearance of the offender before a court of competent jurisdiction;

(ii) to preserve public order;

(iii) to prevent the continuation or repetition of the offence or the commission of a further offence; or

(iv) for the safety or welfare of members of the public or of the offender;

(b) when instructed so to do by any member of the Police Force having power under this Act to apprehend that person;

(c) he believes on reasonable grounds is escaping from legal custody or avoiding apprehension by some person having authority to apprehend that person in the circumstances of the case.

(2) For the purposes of paragraph (a) in sub-section (1) "offence" means offence at common law or a contravention of or failure to comply with a provision of an Act of Parliament and unless otherwise by Act of Parliament expressly provided does not include a contravention of or failure to comply with a rule regulation by-law or other law made under an Act of Parliament.

(3) A person who has been apprehended without warrant pursuant to the provisions of paragraph (a) in sub-section (1) in respect of any offence punishable on summary conviction (not being an indictable offence punishable summarily) and taken into custody shall be held in the custody of the person apprehending him only so long as any reason referred to in the said paragraph for his apprehension continues and where, before that person is charged with an offence, it appears to the person arresting that person that the reason no longer continues the person arresting that other person shall, without any further or other authority than this sub-section, release that person from custody without his entering into any recognizance of bail or cause him to be so released and whether or not a summons has been issued against him with respect to the offence alleged.

There can be no room for argument as to the effect of Section 458.

However, and on the 10th December, 1973, the following circular was distributed by the then Metropolitan Co-ordinator, Chief Superintendent F. G. Holland (exhibit 337)—

Office in Charge

Operations Department.

Subject: Release of a certain class of prisoners charged with Drunk and Disorderly.

At the recent Superintendents' Conference a discussion took place on the Crimes Powers of Arrest Bill in relation to the arresting of persons with the offence of being Drunk and Disorderly. A number of these persons are first offenders and usually are allowed bail under the provisions of Section 19 of the Summary Offences Act. They do not appear at the Court and the amount of bail is usually the fine for the offence. Even though they do not appear the member of the Force is required to appear and give evidence.

This amounts to a considerable number of hours for this type of duty and it has been decided to use the release powers of arrest for what can be termed "first offenders" for the offence of Drunk and Disorderly.

When a member of the Force has decided to arrest a person for Drunk or Drunk and Disorderly and for safe custody places him in the Watchhouse he is to be detained under these provisions (Crimes Powers of Arrest). The Watchhouse keeper, in the exercise of his discretion founded on his knowledge of the offender, i.e. is he known or otherwise, may release that person without charge. This person will not be required to attend Court. The arresting member will not be required to attend Court as the offender's name will not be on the Court Register. The time of release will be decided by the Watchhouse keeper, his main concern
being that the person is fit to be allowed his liberty and is capable of
fending for himself. He will sign for his property. The Watchhouse Book
will be endorsed by the Watchhouse keeper as follows:—

"Released from custody, showing the date and time of release."

It is to be clearly understood that before the member of the Police
Force exercises his power of arrest for the offence, he is to be satisfied
that there has been an offence committed and if need be he can give that
evidence at the Court should it be necessary at any time to bring the
person to the Court. The Watchhouse Keeper will ensure, as he does at
the present time, that the person being charged is properly charged.

The prisoner's particulars will be entered in the Watchhouse Book
to show the arrest is lawful and as a matter of record of persons in
custody.

Entry in Watchhouse Book will be deemed 'complete' when entry
shows—date, time released from custody witnessed by the Watchhouse
Keeper.

It is hoped to save considerable hours of members' time by exercising
this release power and the success of the scheme is dependent on the
members assuring themselves that the person they are arresting is under
the influence of alcohol to such an extent to warrant the charge. Care is
to be exercised in relation to persons who may be ill or suffering from
the effect of drugs.

This procedure is to be used only for the offences of found Drunk and
Disorderly or Drunk in a Public Place. Any other offences will be dealt
with in the usual manner and the bail provisions of the Crimes Act used
for the release of those offenders. It is important for members to note that
the Crimes Act, Section 460, has been amended by Act 8410 and members
of the Force are required to take certain action in regard to the bailing or
non-bailing of offenders.

It will be the responsibility of the Watchhouse staff to contact the
informant if required to attend Court.

F. G. HOLLAND,
Chief Superintendent.
Metropolitan Co-ordinator.

Whilst I have no doubt as to the bona fide nature of the practice
recommended in that circular, the fact is that the Police were not
empowered at that time to adopt the course suggested, but were required to
bring the offender before a justice or a Magistrates' Court. In permitting
that course of action to be adopted, the Police Department created the
very circumstances which led to the abuse which occurred in the case of
Erdmann. A completely innocent member of the community was arrested
on a trumped-up charge—detained for some hours in circumstances which
gave him no opportunity to obtain evidence establishing his innocence,
then released and never brought before a Court.

The potential for abuse of this Police practice was highlighted by the
evidence Inspector Miller gave at page 5226 of the transcript.

Q. Now, you are saying to Mr. Chairman that if you were confronted by
a man being deprived of his liberty and locked up on the ground he
was drunk and demanding a doctor, you would not know what to do?
A. Each matter would be a specific instance and I cannot answer overall
but, as far as I was concerned, on that night this was not said by
him.
Q. I appreciate that but, if he had said that, what would you have done?
Are you really telling Mr. Chairman you would not have known what
to do?
A. I would not have done anything—put it that way.
Q. You would not have given him a doctor?
A. No.
Q. Why not?
A. I was convinced he was drunk. I formed my own opinion.
Q. But you would refuse his request for a doctor in order to be medically
examined?
A. Yes.
Q. And, in adopting that attitude, Mr. Miller, are you complying with the
Chief Commissioner's Standing Orders, do you think?
A. I think so.

Perhaps we shall turn to those in a moment.
Q. What opportunity, then, does a person who has been arrested and charged with being drunk, have to gain any evidence himself to show that he is not drunk? If that answer is correct, the answer to my question is, "None"?

A. I was going to say that. The only time I have taken a drunken person from a cell to a hospital would be if, perhaps, the person had fallen and cut himself—any injury.

Q. If they are obviously suffering the effects of an injury, I appreciate that, but, let us assume you have a person who has been arrested because, in the opinion of the arresting officer, he is drunk; he is taken and locked in a cell. Then, it would follow from what you have said, that there is no way at all that that person can get any evidence that would indicate he was not drunk?

A. No, Sir, that is correct.

Q. That, of course, is really a monstrous state of affairs, is it not, Mr. Miller?

A. Yes, yes.

Q. And one, I suggest to you, which is totally and completely contrary to the Chief Commissioner's Standing Orders?

A. No, Sir.

Inspector Miller agreed the practice was monstrous. One can do no more than agree with Inspector Miller.

How those responsible for the administration of law in this State can have permitted such a procedure to be adopted is puzzling. It is quite illegal.

Police Investigation
Not only was there no investigation into this complaint, Inspector Miller did his utmost to cover up what had occurred that evening.

FINDINGS

In this matter I make the following findings:

1. That at approximately 11.10 p.m. on the 14th May, 1975, at Carlton, Senior Constable Barry William Howard and Constable Peter Charles Ure wrongfully arrested 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.

2. That at Carlton on the 14th May, 1975, Frank Erdmann was harassed and intimidated by Senior Constable Howard and Constable Ure.

3. That in breach of the Chief Commissioner's Standing Orders, in particular Standing Order 409, there was no proper investigation of the complaint made by Erdmann by Inspector Norman Hamilton Miller.

4. That Miller, Howard and Ure conspired to give false evidence to this Board in relation to the matter, and did so.
## THE ERDMANN MATTER

### APPENDIX

### LIST OF WITNESSES

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<td>GILES, Doctor Michael Peter</td>
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<td>HEARD, David Andrew Cory</td>
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<td>HOWARD, Senior Constable Barry William</td>
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<td>MILLER, Inspector Norma Hamilton</td>
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CHAPTER 15

THE GIBB MATTER

Introduction

Peter Robert Gibb was aged 21 at the time he gave evidence before the Board. He is a member of the more violent criminal element in the community having convictions for a number of armed robberies and other offences of dishonesty (see exhibit 16).

His complaint to this Board was that on the 11th January, 1974 and following his apprehension by Police in Princes Street, St. Kilda, he was deliberately shot by Senior Constable Francis Anthony Kealy at a time when he, Gibb, was unarmed.

Let me say at the outset that having considered the whole of the evidence placed before this Board, I am not satisfied there is credible evidence raising a strong and probable presumption that Gibb was shot in the manner he alleges he was. Despite certain unsatisfactory aspects of the Police evidence called in relation to the matter, in particular certain aspects of the evidence of Senior Constable Jeffrey Bruce Major to which I shall hereafter refer, I consider it more probable that at the time he was apprehended Gibb was armed, threatened the life of Senior Constable Edward John Krzyskow, and was shot by Senior Constable Kealy in circumstances warranting no criticism of Kealy's action but indeed the strongest commendation.

I was most impressed with Kealy and Krzyskow both as witnesses and Police Officers, and had no hesitation in accepting their evidence in preference to that of Gibb and his sister, Ann Mawson.

It is a matter for regret, however, that the behaviour of other Police Officers both at the scene and at Russell Street later that evening left much to be desired, and that Senior Constable Major later gave evidence at Gibb's trial which I consider was clearly false.

As no adverse finding is made against Senior Constable Kealy in relation to the shooting of Gibb, I do not propose to deal with the circumstances surrounding that incident in the same detail I have in other matters. Nevertheless I shall summarise the case put forward on Gibb's behalf and on behalf of Senior Constable Kealy, then indicate the matters which have influenced me in arriving at the decision I have.

Evidence of Gibb and his sister, Ann Mawson

In the vicinity of 9.00 p.m. on Friday, the 11th January, 1974, Gibb, his sister Ann Mawson, and another notorious criminal, Alan McDougall, were passengers in a car being driven by James Renata Tehei in the St. Kilda area. It is relevant to note that Gibb had only recently been released from Long Bay Gaol in New South Wales and that by the 11th January, 1974 both he and McDougall were being sought by Victorian Police in connection with a number of armed robberies which had taken place in Victoria following his release. In fact it is relevant to note that following his apprehension on the 11th January, 1974, Gibb was charged with and pleaded guilty to the armed hold-up of the Black Rock T.A.B. on the 14th December, 1973, and the armed hold-ups of the Abbotsford T.A.B. and North Richmond T.A.B. on the 18th December, 1973 (pages 4709-10).

It is common ground that in the car that evening were two .32 Browning pistols.

At all events whilst they were being driven in the St. Kilda area they were observed by a mobile patrol crew consisting of Senior Constable Michael Edmund Williams and a Constable Brown. Recognising the vehicle from a description they had been given earlier that day, Williams and Brown pursued it, and eventually pulled it up in Princes Street, St. Kilda. Having done so they alighted from their car, preparatory to approaching the occupants of the other vehicle. Before they approached the other vehicle however, Mrs. Mawson and Tehei alighted from their car, and walked back to the Police vehicle. As Mrs. Mawson made clear in her evidence, it was in her mind to talk to the Police Officers before they could approach the car she was in, in the hope she may have been able to bluff her way out of the situation. As events turned out, that was not to be. Being undeterred by the approach of Mrs. Mawson and Tehei, Senior Constable Williams went to the other vehicle, immediately recognised Gibb and McDougall sitting in the rear seat, returned to the Police car and radioed for assistance.

According to Mrs. Mawson she was then placed in the Police car and Tehei was handcuffed to the railing of a nearby fence.
I turn now to consider the account Gibb gave as to what transpired after Senior Constable Williams returned to the Police vehicle.

According to Gibb, within five minutes, three other Police vehicles arrived at the scene. Following a short conference, three Police Officers came to the passenger side of the car, i.e. the side on which McDougall was sitting, and three came to the driving side. The passenger side rear door was opened, McDougall was pulled out of the car and forced to stand facing the car with his hands on the roof preparatory to being searched.

Immediately after McDougall was taken from the car, the driving side rear door was opened by one of the Police Officers. Gibb maintains that he then commenced to alight from the car, but whilst in the process tripped, causing his glasses—a pair with large black frames—to slip off his nose. As they did so, he took hold of them in his hand, began to straighten up, was grabbed by the left arm and immediately shot—the bullet passing through his chest and out his back. In this connection I think it desirable to set out Gibb's own account of the actual shooting. I have deleted passages of his evidence which I consider to be irrelevant. The passages quoted are taken from pages 4699-4701 of the transcript.

Q. But you do remember that your glasses slipped off, down towards the end of your nose?
A. That's right. I took my glasses off. They started to come down. I started to straighten. I was grabbed by the arm and I was shot.

Q. When you were in the course of turning to put your hands on the roof of the car preparatory to being searched, as you told us, did you notice anything about the Police?
A. There is one thing that caught my attention, that is there was a gun pointing at me, close to me. The next thing there were sparks coming out of the barrel of the gun. I felt as though I was lifted into the air.

Q. The gun that you just mentioned, who was holding that?
A. I cannot actually say.

Q. When you saw that gun, it was pointing at what part of your body?
A. At my chest.

Q. About how far away from you was it?
A. It was very close.

Q. When you saw the gun pointing at you, did you call out anything to the Police?
A. No, I do not think I did.

Q. At any stage that day before you were shot, did you tell them you were clean?
A. There is one thing I said. I told them I was clean at one time, that was just normal. Any time I get picked up by the Police I say I am clean.

The account Mrs. Mawson gave of the actual shooting was little different from Gibb's. At page 4736 of the transcript she gave the following evidence:

He (Gibb) got off the seat. He was crouched like this, bent over, he grabbed the glasses in his hand, he stood up straight like this. They were still holding on to him. He stood up straight and as he stood up straight he was shot and I started screaming. I think I kicked the Policeman who was holding him.

There were two guns pointed at him. I saw where the shot came from. When I finally—when I got away from the Policeman who was holding me and I went straight to the Police, I looked straight at the Policeman who did it. There was still smoke coming out of the gun and I started screaming at him, "Why did you do that? You didn't have to. You were holding on to him."

Mrs. Mawson also swore that before the actual shooting she heard one of the Police Officers present say, "Don't take any chances with them, shoot them," (page 4733) and "Watch what we do to smarties, your brother." (page 4735).

I do not accept her evidence to that effect. For reasons I shall indicate in due course, I consider that so far as the actual shooting of her brother was concerned Mrs. Mawson would literally swear whatever suited her, regardless of whether it bore any relation to the truth.
The evidence in chief of Senior Constable Kealy appears at pages 4775A-4782 of the transcript. It is convenient to set out his account of the actual shooting of Gibb verbatim commencing at page 4777.

A. I turned around and saw the two male persons in the back seat. I saw Cook approach the left rear passenger door and he had his service pistol in his left hand. When I saw this I took my pistol out of the holster, I cocked it, put the safety catch on and held it by my right side.

Q. What sort of pistol did you have?
A. I had a long-barrelled Browning 32 automatic.

Q. You held it in that way. What did you say and do after that?
A. I saw Cook open the door, the left rear passenger door, and I saw a man who I know now to be McDougall get out of the car. His hands were placed above the doorway of the car. As he got out he said, "I am clean". It appeared to me that Cook was about to search him and he was not going to cause any trouble so I then turned to my right to go to the right rear passenger door.

Q. Will you describe whereabouts you were when you made these observations of McDougall getting out?
A. I was directly behind the boot of the Impala, about a foot out from the back part of the boot.

Q. It is quite a large boot on that particular car?
A. They have got a large boot, yes.

Q. Describe what you saw and did from then on?
A. After I saw that Cook had the situation well in hand there, I turned to my right to go to the right rear passenger door and Senior Constable Krzyskow who had been behind me was now in front of me and he reached the right rear passenger door as I drew level with the rear tail light of the Impala. As Krzyskow reached out to open the door, the door was flung open by a man who I now know to be Glbb. He put Krzyskow between himself and me and I heard him say, "Freeze, copper, freeze. I have got you covered."

Q. You say he put Krzyskow between himself and me, do you mean he did that physically or that is how he ended up when he jumped out?
A. When he jumped out he sort of turned to his left and he was actually sort of-his back was facing along the street, his back was pointing towards Barkly Street. He was facing Fitzroy Street and Krzyskow was directly in front of him and I was, as I say, behind the right rear tail light of the car.

Q. Did the men stay in that position or what happened?
A. No. They were moving in a circular movement to their left. When they nearly got side on to me, Krzyskow jumped away from Glbb towards the open doorway and as he did this he exposed Gibb and I noticed that he had an automatic pistol in his right hand with his left hand on it and it appeared that he either cocked it or was about to cock it and fire it at Krzyskow's stomach.

Q. How close to Constable Krzyskow was the gun?
A. I would say when Gibb jumped out of the car it would have been a matter of inches away from his stomach. When he jumped, I suppose no more than 2 feet.

Q. Mr. Kealy, in the time that was available to you, did you form any belief as to what might occur?
A. I thought that Gibb was about to shoot at Krzyskow.

Q. What did you do?
A. I let the safety catch off my gun; I raised it and fired it at Gibb with one round. He immediately fell to the roadway and dropped the gun.

Q. You have described Mr. Gibb falling to the ground and dropping the gun. What next occurred that you know?
A. I heard a scream from behind me, a woman screaming. She said "You have shot him, you have shot him" and then a women I now know to be Gibb's sister pushed between me and him. She said, "You did not have to shoot him". Miss Gibb said she did not have to shoot him. Did you reply?
A. I did. I said "He should not have pulled a gun on us", and she said, "He did not have a gun". As she did this, or as she said this, she lifted her right leg up and was putting or trying to cover the gun with a long dress she had on.

Q. Perhaps if you just stick to her movement. Would you just describe what effect the movement had?
A. She was looking at me when she said "He did not have the gun" and her leg appeared to go up and over the gun.
Q. What happened to the gun?
A. I reached for it. Senior Constable Krzyskow grabbed the gun before I did.

Q. He picked it up?
A. He picked it up, removed the magazine.

Q. What did you notice about that?
A. I noticed there was a live round in the top of the magazine. He then proved the pistol and I saw that it was empty. The gun was eventually handed to Senior Constable Cook at the scene. Whilst I was waiting for the ambulance to arrive I inspected Gibb. I noticed that he had been shot in the high stomach region on the left hand side and that the bullet had exited just left of his spine. Eventually the ambulance arrived. He was placed in the ambulance and taken to the Alfred Hospital. Various other cars arrived at the scene after the shooting. Somebody at the scene told us that all police involved had to go back to Russell Street. Eventually I left the scene in Section Car 44, the car I arrived in with Senior Constable Krzyskow and we went back to Russell Street. We there made a statement to Inspector Tobin regarding the matter.

The evidence of Senior Constable Kealy was corroborated by Senior Constable Krzyskow and the other Police who attended the scene. As I indicated at the outset of this summary, I was most impressed with Senior Constable Kealy and Senior Constable Krzyskow, and had no hesitation in accepting their evidence in preference to that of Gibb and his sister. I propose to now outline some of the matters which influenced me and caused me to arrive at that conclusion.

I reiterate that Senior Constable Kealy and Senior Constable Krzyskow impressed me as being honest and reliable witnesses. They made no endeavour to embellish their accounts of the events of that evening and, unlike certain other Police Officers called before the Board, gave their evidence in a forthright and candid manner. As members of the Mobile Traffic Section of the Police Department they had no real knowledge of Gibb and his associates, and merely attended the scene that evening in answer to the urgent radio call from D24. To suggest that in those circumstances, and in the presence of a number of other Police Officers and bystanders, Senior Constable Kealy would deliberately and cold-bloodedly shoot Gibb at a time when he was unarmed, was a suggestion so highly improbable that one obviously required the most convincing evidence before one would entertain it. The fact is that such evidence was not forthcoming. The evidence given by Gibb and his sister was not only unconvincing—in the case of Mrs. Mawson it was, in many respects, quite false.

Subsequent to the events of that evening Gibb was charged with using a firearm to prevent his apprehension, and the three armed robberies I have already adverted to. At his trial in December, 1974 he swore quite categorically that the Police Officer who shot him in Princes Street, St. Kilda on the 11th January, 1974 was in fact Detective Senior Constable Jeffrey Bruce Major—(page 4723 and exhibit 313). At the hearing before this Board he was not able to identify the Police Officer concerned apart from saying he thought he was wearing a white shirt with the sleeves rolled up (page 4702 and page 4723). On the other hand, Mrs. Mawson described the Police Officer who fired the shot as having a very dark moustache, very very dark hair, very dark eyes and wearing a pale blue shirt (page 4737). By no stretch of the imagination could that description fit Senior Constable Major or Senior Constable Kealy. For that matter it did not fit any of the Police Officers at the scene that evening prior to the shooting. Mrs. Mawson also gave a similar description during the course of her evidence at Gibb’s trial in December, 1974 (see exhibit 313).

Why was it that Gibb was able to identify Senior Constable Major as the officer who shot him when he gave evidence at his trial in December, 1974, but not able to identify the officer concerned when he gave evidence before the Board in September, 1975? The view I formed of the matter was that Gibb probably changed his evidence in that respect before the Board, to ensure there was no conflict between his account and that of his sister as to the identity of the Police Officer responsible.

I might also add that on the evidence called before me there was not the slightest doubt that the Police Officer who shot Gibb was in fact Senior Constable Kealy, not Senior Constable Major. The fact that at his trial Gibb identified Major as the officer responsible, did little to assist his credibility. The fact that Mrs. Mawson gave the description she did caused me to doubt the veracity of her testimony almost from the outset.
Equally damaging so far as Mrs. Mawson was concerned was the evidence she gave concerning the statement she made to Inspector Tobin at Russell Street later that evening.

Before the Board Mrs. Mawson gave a very detailed account of the shooting of her brother and of the events which immediately preceded it. In particular she was adamant that when Gibb alighted from the car he was holding his glasses in his hand—not a gun—(page 4736). When making her statement, however, she said that she did not know whether Gibb was wearing glasses or not, and that she was not in a position to see whether he had a gun in his hand or not (pages 4744–5 and exhibit 315). Before the Board she swore that those portions of her statement were true. When asked why she had said that to Inspector Tobin she replied, "Because it was being suggested to me that Peter did have a gun in his hand and until I agreed he did have a gun in his hand I was never going to get out of Russell Street" (page 4745). Mrs. Mawson was an extremely vocal witness before the Board, and in my view, a person with a very strong personality. I cannot accept that she made the statement that she was not in a position to see whether Peter had a gun in his hand or not, because she thought that unless she agreed he had a gun in his hand she was never going to get out of Russell Street.

Mrs. Mawson's statement conflicted in so many other respects with the evidence she gave before the Board that on that count alone one would have required very strong corroboration of her testimony before placing any reliance on it. Apart from the evidence of her brother, evidence which from its very nature was suspect, that corroboration was not forthcoming.

During the course of her cross-examination Mrs. Mawson was referred to a number of discrepancies in the evidence she gave at her brother's trial and a number of significant omissions from that evidence—such things as her omission to refer to the fact that Gibb stumbled as he was getting out of the car, and that the Police Officer who shot him had a black moustache. Her explanation for those omissions and a number of others, was that she was only allowed answer the question she was asked and that her answers were cut short (see, for example, page 4750). That this was not so is immediately apparent from a reading of the transcript of her evidence given at the trial (exhibit 313). For instance, at page 463 of that transcript and in answer to an interrogative, Yes, Mrs. Mawson gave some 15 lines of evidence. In other instances, her answers to simple questions exceeded 30 lines of evidence in the transcript.

In view of the fact no adverse finding is made against Senior Constable Kealy, I feel it serves no useful purpose to detail the host of unsatisfactory features about the evidence Mrs. Mawson gave. I had no hesitation in rejecting her account of the shooting wherever it was in conflict with that of Senior Constable Kealy and Senior Constable Krzyzok. In my opinion Mrs. Mawson was prepared to swear whatever she felt best suited the interests of her brother. In this connection some appreciation of her state of mind can be gained from the following passage in her evidence at pages 4750–1 of the transcript.

Q. Mrs. Mawson on that night, would you have believed your brother Peter would threaten anyone with a gun?
A. No.
Q. You, doubtless, love your brother and did then?
A. Would you say that again.
Q. You love him?
A. I love him, yes.
Q. You would regard as unthinkable a suggestion that Peter would do a thing like that—point a gun at someone and menace them, wouldn't you?
A. I wouldn't regard it as unthinkable.
Q. You wouldn't believe it if it was alleged?
A. Well, if it was proved to me, yes. I suppose anybody is capable of anything.
Q. Do you believe Peter has done that very thing on other occasions?
A. What?
Q. Point a gun at someone and threaten them?
A. Well, in a different situation, he could have done, I don't know, I wasn't there.
Q. Do you believe he has?
A. Do I believe?
Q. Yes?
A. No, I don't believe it.

Q. You do not think Peter would be capable of doing a thing like that?
A. I didn't say I didn't think he would be capable of it. I said, I do not believe it.

The fact is, of course, that Gibb menaced a number of people with a gun during the course of the armed hold-ups of the three T.A.B.s on the 14th and 18th December, 1973. From the evidence she gave before the Board it is clear Mrs. Mawson will never face the fact that her brother could do such a thing and in fact did so.

I now propose to advert to certain aspects of Police behaviour that evening which in my opinion reflected little credit on the part of the Police Officers involved. I refer to the detention at the scene of Mrs. Mawson and Tehei, and the treatment meted out to Mrs. Mawson at Russell Street later that evening.

Let me say at the outset that having regard to the events of that evening the Police would have been perfectly justified in arresting Mrs. Mawson and Tehei in Princes Street, St. Kilda, and forcibly taking them to Russell Street had they been so minded. Having found them in the car with Gibb and McDougall they would have had ample grounds for arresting them on suspicion of being involved in the armed robberies committed by Gibb and McDougall; and, for that matter, any number of associated offences. The fact is they did not. Rather than adopt what I consider would have been the appropriate course in the circumstances, the Police involved simply forcibly detained them at the scene, and in the case of Mrs. Mawson compelled her to accompany them to Russell Street despite her strong protestations.

The reader of this summary may ask, if the Police had the right to arrest Mrs. Mawson and forcibly take her to Russell Street, what does it matter that they forcibly took her to Russell Street without first formally arresting her? The answer to that proposition is this. A Police Officer has no right to compel a person to accompany him to a Police Station unless that person is under arrest. Once a person is under arrest, a number of consequences flow from the arrest itself, not the least of which is that the person arrested should be formally cautioned before being interrogated. To avoid the necessity of warning a person of his right to remain silent, certain Police Officers adopt the practice of not formally arresting the individual concerned but simply take him (by force if necessary) to whichever Police Station they have in mind, and there interrogate him. In the event a complaint is later made, it is invariably contended (as in this case) that the individual involved willingly accompanied them to the Station to enable them to complete their inquiries into the matter (see also the Stupak and Olding Matters and the evidence given by the Coppins in the Lawless Matter). The vice of the matter is that the rights of the individual—he be suspect or not—are simply ignored.

Despite the denials of the Police Officers involved, I am satisfied that between 9.30 and 10.00 p.m. on the 11th January, 1974, Mrs. Mawson was forcibly taken from Princes Street, St. Kilda, to Russell Street, stripped, searched, interrogated and detained until approximately 3.30 a.m. the following morning. At no time was she formally placed under arrest. At no time was she cautioned. At all times she strongly protested at being detained, stripped, searched and interrogated, but such protestations were ignored. Not the least of her complaints was that her handbag containing some $30-$40 in cash and other articles of a personal nature was taken from her and despite requests made by her to senior Police Officers and the Crown Law Department for its return had not been handed back to her as at the time she gave evidence before this Board.

In fact on the 17th September, 1975, Counsel assisting the Board called for the production of the bag and its contents (page 4773-4). Apart from a statement by Counsel appearing for the Police Association to the effect that the handbag could not be located, nothing further has been forthcoming from the Police Department in relation to it; like the notebooks of Mrs. Stupak and Sellers it—and the $30-$40 cash it contained—has disappeared without trace. I am troubled by these examples of interference with citizens' property and the rather unconvincing explanations regarding it.

That Mrs. Mawson was forcibly taken to Russell Street despite her protest to the contrary, was clear not only from her own evidence but from the evidence of Senior Constable Michael Edmund Williams. As Senior Constable Williams said at pages 4920-1 of the transcript, she was screaming at the scene, it was clear she wanted to stay with her brother, and it was necessary to forcibly remove her. See also the evidence he gave at Gibb's trial (exhibit 313). In my opinion the evidence
given by Detective Senior Constable Russell Francis Cook to the effect that Mrs. Mawson was not hostile (page 5515) and did not protest about being taken away from the scene by the Police (page 5520) was false. Senior Constable Cook conceded at page 5520 of the transcript it would have been most improper to take her to Russell Street if she was not under arrest and was protesting. I am satisfied Mrs. Mawson was protesting, realising the impropriety of his behaviour.

The view I formed relating to this matter was supported by the evidence of Sergeant Pittaway and Inspector Tobin.

At page 5526 and in answer to the question put to him by Counsel appearing for the Police Association relating to his interrogation of Mrs. Mawson, Sergeant Pittaway said this “No it was most unsatisfactory. She was most uncooperative. I did not pursue it for very long.”

At page 5532 the following exchange occurred:—

MR. COLDREY: Did you ask her any questions about harbouring?
A. Yes, I asked her—I do not recall the words—one or two questions. It was pointless in persevering with them.
Q. What are the questions you asked her?
A. I do not remember.
Q. I see. It was not a very persistent questioning on your part?
A. No.
Q. Why was that?
A. It is obvious she was not in a frame of mind because she was worried about her brother and the fact that obviously she was anti-Police at this time, it was pointless in pursuing it.
Q. When you say she was not of the frame of mind, it would be fair to say, would it not, that the last place she wanted to be would be the Senior Sergeant's office being questioned by you?
A. I have no idea.
Q. That was her state of mind?
A. No.
Q. It was not?
A. No.
Q. She was certainly unco-operative to you?
A. Yes.
THE BOARD: Was she making any complaint about the behaviour of the Police earlier that evening?
A. No, making no complaint. She was waiting there mainly to receive word of his condition eventually.
MR. COLDREY: What was it that she said that makes you say she was anti-Police at that stage, Mr. Pittaway?
A. Her attitude.
Q. As exemplified by what?
A. I do not recall her exact words but from the answers she gave me it was obvious she was anti-Police.
Q. You cannot help us on that one?
A. My memory is not that good.
Q. After you had had a go at questioning her and had not achieved anything, did you report that fact to anyone?
A. I do not recall.
Q. You would have, would you not?
A. I do not recall.
Q. Is it likely or not, Mr. Pittaway?
A. Depends on the circumstances.

To my mind Inspector Tobin initially told a number of lies concerning the matter. Ultimately the truth came out. I do no more than quote his evidence at page 4863 of the transcript.

Q. Mr. Tobin, when you saw Ann Mawson she was in a highly upset and distraught condition?
A. No, no.
Q. I suggest to you she was crying?
A. She was not.
Q. And she was protesting about being there?
A. She was not.
Q. If she gave that evidence, that would be false?
A. That would be entirely incorrect.

Q. I suggest she made it very clear to you that she wanted to go to the hospital to see her brother?
A. She was concerned and, yes, she did say that she would like to go down to the hospital.

A further illustration of the manner in which certain Police Officers disregard the rights of individuals appears from their action in placing handcuffs on Tehei whilst he was in Princes Street that evening. At no stage was Tehei arrested. At no stage was it alleged he gave any trouble at the scene. In fact as Senior Constable Williams swore, he was passive throughout and in fact co-operative (page 4921). See also the evidence of Senior Constable Major at pages 4905–6 of the transcript. Nevertheless, some unidentified Police Officer saw fit to handcuff him and as in the case of Mrs. Mawson he too was forcibly taken to Russell Street. (See the evidence of Inspector Tobin at page 4874 of the transcript.)

What occurred to Mrs. Mawson at Russell Street can be summarised in the following manner. She was subjected to the indignity of being stripped and searched by Policewoman Patricia Anne Hunter, interrogated by Detective Senior Sergeant Robert John Pittaway and later by Inspector Raymond Edward Tobin without ever being cautioned or advised as to her rights. In all she was detained at Russell Street for some 5½ hours. I am satisfied that throughout this period of time she protested at being detained at Russell Street and did everything she possibly could by way of protest to leave and go to her brother at the Alfred Hospital. I am satisfied such requests were ignored. Whilst I can well understand the necessity for questioning Mrs. Mawson, there was not the slightest justification for detaining her at Russell Street for 5½ hours. In fact and in this connection I consider it appropriate to advert to a passage in the evidence of Inspector Tobin in relation to the matter. (See pages 4864–5 of the transcript.)

Q. Tell me, Mr. Tobin, have you got any knowledge of Mrs. Mawson at Russell Street that night, or in the early hours of the morning, being stripped and searched?
A. No, I have not.
Q. None, whatsoever?
A. No.
Q. She has sworn that after she had refused twice to make a statement she was taken away by a woman Police Officer and stripped and searched—you have no knowledge of that?
A. No, she never refused to make a statement to me, and I have no knowledge of her being taken away by a Policewoman and being searched.

Q. If that happened, of course that would be quite improper, wouldn't it?
A. Well, it didn't happen.
Q. I want you to grapple, please, with the question on the hypothesis it did. If she has sworn it did, that would be quite improper?
A. I would consider it so, yes.
Q. Then she said that after that strip search you again asked her to make a statement, is that true?
A. I asked her to make—I asked her what had happened and then asked her if she was prepared to make a statement. That is about what happened.

Q. Did you ever tell her that if she made a statement she would be allowed to go and see Peter in hospital?
A. No, I did not.
Q. From the time that she was in your presence to the time she left, as I followed you, she was quite calm?
A. She was concerned for her—she was concerned but she was—yes, I would say she was calm.
Q. One gathers, it was quite an amiable and friendly discussion you had with her?
A. That is correct.
Q. So that any suggestion she was upset, crying and protesting, would be wrong?
A. It would.

Q. At the time you saw Mrs. Mawson, of course, you had seen Renata, had you not?
A. Tehei, yes.

Q. And McDougall?
A. Yes, I had.

Q. And you tell Mr. Chairman, you knew from your interview with them that both of them had claimed not to have seen anything of the shooting?
A. Yes, yes.

The situation that prevailed thereafter is probably best described during the exchange which occurred between the Board and Counsel assisting following the earlier discussion relating to the evidence Inspector Tobin gave. That exchange was at page 10,743 et seq. of the transcript. I quote it verbatim.

THE BOARD: In other words, a person must be told not only that he is under arrest, but the reason why he is under arrest.

MR. VILLENEUVE-SMITH: Yes. Now, Mr. Chairman, conceding the genuine arrest of Ann Gibb (Mawson) at St. Kilda in the light of circumstances which made that arrest justifiable, as is conceded, there was nonetheless, we would submit, an obligation put upon the Police to at once clarify the matter regarding this lady by interrogation of her and either reach the stage where it was proper to charge her with an offence or it was proper to restore her to her liberty, one or the other. But what was done, we suggest, was entirely unsatisfactory. As a person under arrest, de facto, as we now know considered as such, she was never advised of her rights as the law requires of an arrested person. She was detained for 5½ hours and she was strip searched by a lady Police Officer. In circumstances which, in our submission rendered that search entirely outside the confines of any lawful authority to so conduct it and, indeed, Miss Hunter seemed to have no idea by what right this lady was strip searched.

THE BOARD: Let us assume, as you have conceded that the Police were justified in arresting her and that the real criticism you make in relation to that aspect is that they did not tell her she was under arrest and they did not tell her why. Is it then valid to be critical of the fact that she was strip searched? In other words, let us assume they had, in fact, told her she was under arrest and told her why she was under arrest, would it not then in the circumstances, have been justifiable for them to have her stripped and searched by a Policewoman.

MR. VILLENEUVE-SMITH: I am not certain that follows, Mr. Chairman. Certainly had she been told, "You are under arrest"—

THE BOARD: Let us say for harbouring.

MR. VILLENEUVE-SMITH: Yes, she, as I follow the Standing Orders, could have been lawfully searched in relation to arms and the like. I do not think that search would necessarily extend to the extent of a strip search of her because a lady may conceal arms in her handbag, conceivably in her brassiere.

THE BOARD: What you are saying is, the real thing the Police would have been looking for in her case in those circumstances would have been concealed arms.

MR. VILLENEUVE-SMITH: Yes.

THE BOARD: Or, conceivably, a large sum of money being the proceeds of one of the armed robberies and their search in that connection could have been carried out adequately without going to the lengths that they went to in this case.

MR. VILLENEUVE-SMITH: Matters are now nicely poised, Mr. Chairman, in view of the concession made that she was under arrest, very nicely poised, and counsel assisting would not wish to present a submission against Police in relation to the search now that that situation has emerged before the Board. Because it is nicely poised, but what we complain of is that if she had been told, "You are under arrest for harbouring," then she could have had no complaint in her own mind about being searched by Miss Hunter, but she is not told she is under arrest. She is simply hauled off to Russell Street and strip searched.

THE BOARD: And detained there for 5½ hours.

MR. VILLENEUVE-SMITH: That is the gravamen of the complaint—"Fair enough, I am under arrest, I have to cop it, the law says so."
THE BOARD: You see the point that was made in defence of the Police Officers who were concerned to keep her there for 51 hours and, I think it was Inspector Tobin, was that as she had lied to the Police at the scene in an endeavour to prevent the arrest of her brother and McDougall, she would of necessity be the last person to be questioned. In other words, because she lied the appropriate way for the Police then to deal with the matter was to question all other persons involved before questioning her, so that any further lies she may have been minded to tell them would immediately have been apparent in the light of the information they had got, for example, from McDougall and the various Police Officers involved. That was the contention put forward. I do not know whether you are aware of that aspect. That was the contention put forward as to why she was detained for the period she was, namely, because she had lied at the outset so then the appropriate procedure to adopt was to get a statement from everyone else involved, including McDougall, and come to her last so that you would immediately be able to pick up any further lies that she told and challenge her in respect of them, that challenge being based on the information the Police and in particular, Inspector Tobin, had obtained from the other persons concerned.

MR. VILLENEUVE-SMITH: I understand the argument, Mr. Chairman, the fallacy buried in it is, of course, that a great deal of time is consumed in the obtaining by way of interview and by other means of the Police account of the shooting of Gibb.

THE BOARD: Which you would say, of course, has got nothing to do with any charge in respect of which she may have been arrested, for example, harbouring or as an accessory after the fact to armed robbery.

MR. VILLENEUVE-SMITH: And we would submit it as a very important principle that the liberty of the subject is always paramount. It is not to be secondary to a matter that can wait. Why should this lady or any person in comparable circumstances wait for X hours deprived of his or her liberty while the Police sort out another matter?

THE BOARD: Yes.

MR. VILLENEUVE-SMITH: And the further fallacy is this, Mr. Chairman . . .

THE BOARD: Dealing with that aspect, the only person from whom the Police could have obtained any information relative to any charge that may have been laid against Ann Gibb was from McDougall.

MR. VILLENEUVE-SMITH: Or Tehei and they could have been concurrently interviewed as, indeed, Hamilton and McGowan were.

THE BOARD: Yes.

MR. VILLENEUVE-SMITH: And very soon the pattern emerges with which you can confront her in order to determine whether or not she is the person to be charged, but to treat her as being a chattel to be kept there pending everyone's convenience before she is to be either charged or released to her liberty, we say, is putting the cart before the horse.

THE BOARD: Yes.

MR. VILLENEUVE-SMITH: And insofar as the Police are obliged in the discharge of their duties to interfere with the liberty of the subject in circumstances as they did with Ann Gibb, then their duty should be reinforced and brought home to them that it is to either charge her or restore her promptly and she is not a person to be kept hanging around while other matters are sorted out. And, Mr. Chairman, I venture to suggest that if by some ill-chance the wife of a prominent businessman had been tricked into being an occupant of that car for some reason or another, the Lord Mayor's wife, or the wife of a County Court Judge, or a Supreme Court Judge, then that matter would have been resolved in a quarter of an hour. But with Ann Gibb, second-class citizen, let her wait. That is what we complain of and this is the attitude emerging from this Inquiry about which we do complain.

It is interesting, Mr. Chairman, though slightly academic now, to note the sheer bare-faced effrontery of the lies told to you in view of the concession that comes from counsel; here is Pittaway swearing to you solemnly at 5529 to 5530 that she was not under arrest. Here is Hunter saying to you at 5510A she was a suspect, but there was no information which she had upon which to base this suspicion. And in relation to the arrest which the Police now justify by saying "harbouring", she was never asked one question about harbouring. She was never asked one question about drugs.
THE BOARD: I do not think she was questioned along any lines that might seek to establish the fact that she was an accessory after the fact to any armed robbery.

Finally, and to add insult to injury, her handbag was taken from her and never returned.

It is true that Mrs. Mawson is the sister of a dangerous criminal. She does, however, have rights. On the evening of the 11th/12th January, 1974, the Police Officers I have named, viz., Inspector Tobin, Sergeant Pittaway, Senior Constable Cook and Senior Constable Major rode roughshod over those rights.

In conclusion I wish to advert to one aspect of the behaviour of Senior Constable Jeffrey Bruce Major which I consider warrants the strongest condemnation. Senior Constable Major was then attached to the St. Kilda Crime Car Squad and attended the scene with Senior Constable Cook. When conducting his investigation into the shooting of Gibb, Inspector Tobin asked Major to prepare a statement the next day setting out his version of the shooting. In that statement (exhibit 327) Major said that when Gibb jumped from the car he called out, "Freeze, coppers, freeze, or you'll get it". When giving evidence before the Board he swore that those were the words Gibb used (page 4876 and page 4894.) The fact is that every other Police Officer who made a statement for Inspector Tobin and/or gave evidence before the Board stated and/or swore that the words Gibb used were, "Freeze, coppers, freeze, I've got you covered". In other words, Senior Constable Major was the odd man out.

Now the fact that Senior Constable Major was the odd man out was of itself of no significance whatsoever. No one's recollection is perfect. He may well have been confused in his mind as to what Gibb actually said, he may have misheard him in the first instance. A discrepancy such as that would, to my mind, have been insignificant.

The regrettable fact is, however, that when Major gave evidence at Gibb's trial he brought his testimony into line with that given by the other Police Officers, and he too swore that the words used by Gibb were, "Freeze, coppers, freeze, I've got you covered". (See page 244A of exhibit 313.) Counsel appearing for Gibb did not have the advantage of seeing the statement Senior Constable Major made for Inspector Tobin (exhibit 327). Accordingly he was unaware of the discrepancy and could make no point of it. Unfortunately for Major his statement to Inspector Tobin was produced to this Board and he had no option but to swear up to it although it meant giving evidence contrary to the evidence he gave at the trial.

I have no doubt Senior Constable Major perjured himself at Gibb's trial to ensure there was no discrepancy in the Police evidence. Whilst the discrepancy was of minimal significance, his behaviour illustrated the lengths to which some Police Officers are prepared to go to ensure that the Police team presents an unbroken evidentiary front, with no seeming discrepancies capable of exploitation by the defence. The fact that such tailoring of evidence is the product of, or is achieved by, suppression, distortion or omission of what factually occurred, does not seem to strike them as being improper, dishonest or unfair; this seems to be a disturbing attitude of mind. Not only a disturbing attitude of mind but behaviour which should not be tolerated in the Victoria Police Force.

FINDINGS

In this matter I find that Senior Constable Jeffrey Bruce Major committed perjury at the trial of Peter Robert Gibb held in the month of December, 1974.

Although I am not required or indeed empowered to do so, I nevertheless commend Senior Constable Kealy and Senior Constable Krzyzskow for their courage and bravery on the evening of the 11th January, 1974, and trust that in the event their behaviour on that occasion has not already received appropriate recognition it will in due course.
## THE GIBB MATTER

### APPENDIX

### LIST OF WITNESSES

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CHAPTER 16

THE HAMILTON MATTER

In the month of August, 1973 Ronald John Hamilton was convicted of the armed robbery of a Post Office sub-agency at Thornbury on the 14th March, 1973, and was sentenced to a term of 8 years imprisonment.

His complaint to the Board was that he was innocent of that offence, and that his conviction had been brought about as a consequence of senior Police Officers conspiring with a Police informer named Eric Grant (alias Heuston) to have him falsely implicated in the robbery, then fabricating evidence against him to ensure his conviction.

In particular he made the following allegations:

(1) That a number of Police Officers including the then head of the Armed Robbery Squad, Inspector Gordon Maxwell Williams, conspired together with Grant to falsely implicate him in the Thornbury robbery and ensure his wrongful conviction in respect of it. As part of this conspiracy Grant took part in the robbery with another criminal named McGowan, then had the Police substitute Hamilton for himself as McGowan's accomplice. To conceal the fact that Grant was a Police informer and had "set up" Hamilton in the manner in which he did, Grant explained the failure of the Police to charge him in relation to the matter by spreading amongst the criminal element in the community, a story to the effect that he had paid Senior Sergeant Richard Ernest Murphy a bribe of $1,000 in order to achieve that end.

(2) That Senior Sergeant Murphy and Senior Constable Philip John Tamblyn had concocted a Record of Interview purporting to be between Senior Sergeant Murphy and Hamilton, had produced it at his trial, and given perjured evidence in respect of it with a view to obtaining his conviction.

(3) That despite his protests he was placed in an Identification Parade at Russell Street and forced to remain in the line-up until such time as the victim of the armed robbery identified him as one of the men involved.

(4) That Police had concealed vital evidence in relation to the Identification Parade which, if produced at his trial, may in itself have been sufficient to ensure his acquittal; and finally

(5) That pressure was brought to bear on Grant's co-offender, McGowan, to name Hamilton as one of those responsible for the robbery in a Record of Interview between McGowan and Senior Constable Graham Irwin Sinclair and Senior Constable Neil Graeme O'Loughlin.

All Police involved in the Hamilton Matter strenuously denied Hamilton's allegations, and maintained throughout the course of the hearing before the Board that Hamilton had taken part in the robbery, had confessed his guilt when questioned by Senior Sergeant Murphy, and was properly convicted of the offence.

At a comparatively early stage of the hearing of the Hamilton Matter by this Board of Inquiry, it became clear that certain members of the Armed Robbery Squad, including the Officer-in-Charge—Inspector Williams—had conspired with Grant to ensure Hamilton's conviction in respect of the charge of armed robbery of the Thornbury Post Office sub-agency. For reasons I shall advert to in due course, the Board was not satisfied that those members of the Armed Robbery Squad had been party to the conspiracy before the actual robbery occurred.

What the Board was satisfied of however, was that Grant had taken part in the robbery, then, and with the active assistance of a number of members of the Squad, was eliminated as one of the offenders; further, regardless of whether or not Hamilton was involved he was arrested and charged on information supplied by Grant.

That Grant had in fact taken part in the robbery was ultimately conceded by Inspector Williams during the course of his cross-examination (page 7990). That Grant had also "set Hamilton up" was also conceded by him at a later stage during the course of his evidence (pages 8176-7). But Inspector Williams steadfastly denied however, there had been any conspiracy on the part of the Police.
For reasons I shall advert to in due course, I ultimately found myself in the unenviable situation where I had no alternative but to find that Inspector Williams and a number of other Police Officers called in the matter had committed perjury when giving their evidence before the Board. Perhaps the most conspicuous instances of that perjury occurred when Inspector Williams and other Police Officers were questioned as to their knowledge of the fact that Grant was a Police informer, had taken part in the robbery, had informed on Hamilton, and in return for that information had been eliminated as an offender.

At this juncture, I think it desirable to say something about the Board's attitude so far as the disclosure of the identity of Police informers was concerned, and in particular the fact that Eric Grant (alias Heuston) fell into that category.

On a number of occasions during the course of the Inquiry I made it clear to Counsel appearing for the Police Association that Police witnesses would not be required to divulge the names of their informers and could refuse to answer any question put to them which might have that consequence. (See, for example, page 384 In Camera et seq. of the transcript). As the proceedings before the Board progressed, a number of Police Officers took advantage of that concession, and refused to answer any questions on the event they considered the answer to a particular question might disclose the identity of an informer. (See, for example, the evidence of Superintendent Carton in the Power Matter and the evidence of Sergeant Fennessy in this matter).

I must confess, however, that when permitting Police witnesses to adopt that stance, it never occurred to me for one moment that instead of simply declining to answer questions which might tend to divulge the identity of an informer, they would instead tell untruths in respect of the matter.

Regrettably that is precisely what occurred in the Hamilton Matter. In my opinion a number of Police Officers who gave evidence in relation to it saw fit to lie about their knowledge of the role played by Grant in the Thornbury robbery and the apprehension of Hamilton, rather than avail themselves of the opportunity given to them to decline to answer. They may seek hereafter to justify those lies on the basis that it was better to be accused of perjury than accused of divulging the name of an informer. Whatever be their rationalisation of the situation, their conduct was appalling and calls for the strongest condemnation.

So disturbing was the evidence produced before this Board in relation to the Hamilton Matter, that in my view steps ought speedily be taken to apply for a re-trial for Hamilton.

In that connection I refer not only to the perjured evidence given by Police Officers in relation to the matter, but also to the deliberate suppression of vital evidence favourable to Hamilton which, if produced at his trial, might of itself have brought about his acquittal. Whatever is the rationalisation of the situation, their conduct was appalling and calls for the strongest condemnation.

I turn now to consider the evidence called before the Board. In this connection it is necessary to first say something of Hamilton's background and his association with Grant, McGowan and Nelson prior to the 14th March, 1973.

Background of Hamilton

As in the case of a number of complainants and witnesses who appeared before the Board, Hamilton had a long criminal history and, by comparison with complainants such as Keeley and Owen, could justifiably be described as one of the more hardened of the criminal element in the community. His first offence was committed at the age of 15 when he was charged with larceny of a bicycle, convicted, and released on probation for a period of 52 weeks. Thereafter he amassed a series of convictions in respect of a variety of offences, ranging from armed robbery to malicious wounding, and culminating with his conviction in respect of this particular armed robbery in August, 1973. (See exhibit 528). Not unnaturally, one was not inclined to accept his testimony in respect of any issue unless it was corroborated by the testimony of other witnesses, or acceptable documentation. It was quite apparent during the course of his cross-examination that Hamilton told a large number of lies in respect of various matters, and this was a consideration the Board bore constantly in mind. It may be asked that if that be the case, how then could Hamilton's complaint to this Board succeed? My answer to that proposition is this.

As a matter of logic it does not follow that if a complainant commits perjury before a Board of Inquiry, his complaint must necessarily fail. One can envisage the case in which that may well occur, e.g. where a complainant has no corroborating evidence before the Board in relation to his complaint. In such a situation rejection of the
complaint would be inevitable. There are other cases, however, where there is such a vast body of extrinsic evidence justifying a finding of misconduct on the part of Police Officers that the complaint is given vitality and credence to the extent that the evidence of the complainant becomes almost superfluous. In my opinion this was one such case. I was not prepared to place any reliance on anything Hamilton said unless it was corroborated to the hilt. As events turned out, the case against the Police in the Hamilton Matter was really established from their own testimony, and the vast body of documentary evidence tendered before the Board.

According to Hamilton, he had known Kim Rita Nelson for some five years, and in fact had had a "de facto" relationship with her until he was sentenced to a term of imprisonment in New South Wales towards the middle of the year 1971.

Following his release from Long Bay Gaol in November, 1972, Hamilton did not resume his "de facto" relationship with Nelson but on his return to Victoria eventually went to stay at the home of some friends—a Mr. and Mrs. Simpson at 86 Lord Street, Richmond.

Kim Nelson who had apparently been living with Hamilton's mother at Thornbury whilst Hamilton was in gaol, moved from that address to a flat in Gertrude Street, Fitzroy shortly following Hamilton's release. It would appear that that move occurred some 4-5 weeks prior to the robbery on the 14th March, 1974 (page 7708).

After her move to Gertrude Street, Fitzroy, Kim Nelson formed a "de facto" relationship with Eric Grant which continued to the date of the robbery, and thereafter. Although Hamilton had seen Grant in prison some years previously, it was not until Grant went to live with Nelson in Gertrude Street, Fitzroy, that Hamilton formed any association with him. Suffice it to say that in the six weeks prior to the robbery in question, that association strengthened to the point where Hamilton considered Grant to be a friend, he not knowing, of course, that Grant was in fact a Police informer (page 7772).

So far as McGowan was concerned, Hamilton maintained he had only met him on one occasion prior to the 14th March, 1973, that meeting having taken place at the home of Grant's parents at 11 Kenneth Street, Braybrook, about a week before the robbery. I make specific reference to that address at this juncture, in view of the part those premises subsequently played in the Hamilton Matter. I turn now to make brief reference to the events of the afternoon of the 14th March, 1973.

The Afternoon of the 14th March, 1973

At approximately 2.30 p.m. on that afternoon, two men forced their way into the Thornbury Post Office sub-agency at 408 Station Street, Thornbury, held up the proprietor, and stole approximately $500 in cash. It is significant to note the following two features of the robbery:

(1) One of the men was armed, the other was not.
(2) The unarmed man forced the proprietor Albert William Cochrane into a room at the rear of the shop premises, tied him up with an extension lead, and gagged him with a handkerchief.

Unfortunately for the criminals involved in the robbery, their behaviour in the vicinity of the Post Office sub-agency prior to the robbery had been such as to arouse the suspicion of a local resident, a Mr. William Brian Jones.

Mr. Jones first saw the vehicle used in the robbery in Rossmoyne Street, Thornbury at about 1.50 that afternoon. His attention was apparently drawn to it by the fact that it was a white Holden Monaro bearing New South Wales number plates. Some 20 minutes later he saw the same vehicle in Mansfield Street, not so very far from the Post Office. According to Jones there were two men in the car, and a third man standing by the car leaning inside the car through the open passenger side door apparently talking to the two men inside. That man was wearing sun-glasses and a hat (see exhibit 577).

Being suspicious of the occupants of the car, Mr. Jones took the trouble to make a written note of its registered number, BGR-010.

Upon hearing of the robbery later that afternoon, Mr. Jones conveyed the information in his possession to Police at the Northcote Police Station. The precise time at which he did so is not of significance. What is significant is the fact that having come on duty at 4.00 o'clock that afternoon, Sergeant Brian Francis Fennessy of the Consorting Squad was told of the robbery by Inspector Williams, and at approximately 7.00 o'clock that evening went to the Northcote Police Station to obtain what
information was available from that source. He was there told that Jones had certain information, and was given Jones' telephone number. I consider his testimony at page 8620 of the transcript relating to this aspect of the matter is worthy of inclusion in this summary.

Q. What did you do at Northcote by way of obtaining any further information concerning this robbery?
A. I spoke with a Policeman there who gave me some information to ring a Mr. Jones, as he had some information. I recall ringing Jones and he told me about a car, a white Holden BGR-010.

Q. Can you recollect whether Mr. Jones was confident about the number when he spoke to you or not?
A. No, he said 010 or a similar number. The BGR part was right, anyway; the other part was similar to 010.

Q. In that conversation did Mr. Jones say anything as to the number of men he had seen?
A. No, I have no recollection of that. I have a recollection of him telling me that one man had a hat and sunglasses.

Q. About how long was your conversation with Mr. Jones on the telephone?
A. Only a matter of probably two minutes. Not very long.

I do not accept Sergeant Fennessy's testimony to the effect that Jones either did not tell him there were three men involved, or if he did, that he had no recollection of the matter. I find it highly unlikely that a Police Officer of Sergeant Fennessy's seniority and experience would not glean every scrap of information he possibly could from a witness such as Jones. In this respect I agree entirely with the propositions put to Sergeant Fennessy during the course of his cross-examination at page 8626 of the transcript.

Accordingly, I am satisfied that no later than 7.00 p.m. that same evening, responsible Police Officers were aware of the make, colour and registration number of the vehicle used in the robbery, and the fact that three men were involved.

In the light of that material, it now becomes relevant to consider an incident which involved Sergeant Fennessy some few days prior to the robbery.

Approximately one week prior to the 14th March, 1973 Sergeant Fennessy had received information from the New South Wales Police to the effect that the occupants of that particular car, i.e. the white Holden Monaro bearing registration number BGR-010, were two men named Dragosevic and McGowan, who were wanted by the New South Wales Police for questioning in relation to certain offences committed in that State.

A matter of a few days prior to the robbery, and whilst on patrol with Senior Sergeant Delianis and a Constable Jolly, Sergeant Fennessy had sighted that vehicle in Wellington Street, Collingwood, and had attempted to intercept it. His endeavours however were fruitless, and the occupants of the vehicle made good their escape. What he did note, however, was that at the time, there were three people in the car, one of them being a fair-haired woman (page 8622).

During the course of cross-examination Sergeant Fennessy agreed that Kim Nelson had fair hair and that it was therefore possible that the woman in the car on that earlier occasion had been Nelson, the two other occupants being Dragosevic and McGowan (page 8625). He further agreed that in the light of the information he had received concerning the robbery on the 14th March, Dragosevic and McGowan then became suspects in relation to it (page 8625).

If one pauses at this point, it is clear that by approximately 7.00 p.m. on the evening of the 14th March, 1973 the following facts were known to the Police:

(i) The car used in the robbery was a white Holden Monaro bearing the New South Wales registration number BGR-010.
(ii) Three men were involved in the robbery, two of whom could well have been Dragosevic and McGowan.
(iii) Kim Rita Nelson had an association with the vehicle and the people using it, and might therefore be a valuable source of information so far as the identity of the persons involved in the robbery were concerned.

But the matter did not end there. In addition to having that very valuable information, by 8.00 p.m. that same evening, Sergeant Fennessy also had one further vital piece of information conveyed to him, viz. that Dragosevic (and in all probability McGowan) were staying at 11 Kenneth Street, Braybrook with Grant's parents, Mr. and Mrs. Heuston.
It would appear from Sergeant Fennessy’s evidence that one of the Dragosevics (there being two brothers) had been intercepted by members of the Observation Squad that day, and when questioned, had given that address. That information had been passed on to Sergeant Fennessy by the Observation Squad at about 8.00 p.m. that evening and whilst he was still at Northcote (page 8628 and page 8630). Thus, by 8.00 p.m. Sergeant Fennessy was not only in possession of accurate information concerning the car and the possible identity of two of the persons who had committed the armed robbery, he was also in possession of the address 11 Kenneth Street, Braybrook.

When asked in cross-examination whether he conveyed that material to Inspector Williams, Sergeant Fennessy swore he did not (page 8625). That is an answer I am not disposed to accept. I consider that if a Police Officer of Sergeant Fennessy’s seniority and experience was in possession of vital material of that nature by approximately 8.00 p.m. that evening, he would have conveyed it to his Superior Officer. I consider Sergeant Fennessy swore that he did not pass that information on to Inspector Williams that evening, to explain away the extraordinary failure of the Police to question Nelson when she was duly taken to Russell Street in the early hours of the morning of March 15th, and the action of the Police in releasing her and Grant somewhere around 10.00 a.m. that morning without even bothering to put them through the Interview Register.

I might also add that it was interesting to note that when later asked to make a statement to Inspector Plant in connection with the matter (exhibit 572), Sergeant Fennessy omitted all reference to the effect that that information was conveyed to him at about 8.00 p.m. that evening, and indeed led Inspector Plant to believe it was not until 8.00 p.m. that he had gone to Northcote, and that the first time he heard from the Observation Squad was at about 11.00 p.m.

I leave it to the reader of the Report to draw what inferences he considers appropriate from those aspects of Sergeant Fennessy’s behaviour.

The statement to which I refer appears as Appendix “F” to this Chapter.

What Sergeant Fennessy swore he did do, however, was to direct members of the Observation Squad to go to Kenneth Street and see if they could locate the Holden Monaro (page 8630). His evidence in this connection is that he was informed at 11.00 p.m. that the car could not be located, and that it was not until 12.35 a.m. that D24 notified him the car had been located in Kenneth Street (page 8631). According to Sergeant Fennessy, he immediately gave instructions that the occupants of the car and/or the house be brought to Russell Street (page 8631). For reasons I shall advert to in more detail in a moment, I do not accept that portion of his testimony. As I shall later demonstrate, when the Holden Monaro was located outside those premises, great care was taken by the Police not to intervene until such time as Grant had roused McGowan from bed and persuaded him to drive him and Nelson to a taxi rank.

In my opinion the failure of the Police at the scene to take action in relation to the matter at 12.35 a.m. can only be explained on the basis that they were instructed by Sergeant Fennessy or some other senior Police Officer not to move in until such time as Grant had sprung the trap, i.e. placed McGowan in the situation where he was intercepted whilst driving the vehicle used in the armed hold-up.

I propose to turn now to the events of the evening of the 14th/15th March, 1973, leading to the apprehension of Nelson, Grant and McGowan in Vine Street, Braybrook at approximately 1.30 a.m. on the morning of the 15th March. I consider the most appropriate way of handling this aspect of the matter is to deal first with the movements of Nelson, Grant and McGowan in Vine Street, Braybrook at approximately 1.30 a.m. on the morning of the 15th March. I consider the most appropriate way of handling this aspect of the matter is to deal first with the movements of Nelson, Grant and McGowan at approximately 1.30 a.m. that morning.

The Evening of the 14th/15th March, 1973, to the time of Apprehension of Grant, Nelson and McGowan

Probably the more reliable account of the events of that portion of the evening from the side of the criminal element involved in the matter, was that given by Nelson.

According to Nelson, that night she and Grant set off by taxi from her flat in Gertrude Street, to go to a party. Although she was unable to recollect where the party was (page 7585), later evidence established it was in the Clifton Hill/Westgarth area (page 7702).
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On the way Grant called at the home of the Simpsons at 86 Lord Street, Richmond, picked up Mr. and Mrs. Simpson and Hamilton, and the group were driven to the party together in the taxi.

At the time Grant picked up Mr. and Mrs. Simpson and Hamilton, Nelson did not leave the taxi and could not recall whether Grant took an overnight bag into the house at the time he went in to pick up the Simpsons and Hamilton or not (page 7565). On her version of events, having picked up the Simpsons and Hamilton, they arrived at the party at some time before 10.00 p.m. (page 7586).

The evidence Hamilton gave in relation to this aspect was that Grant arrived at 86 Lord Street, Richmond at approximately 7.30-8.00 p.m. to take them to the party. When he arrived he had a brown leather overnight bag with him, and asked Hamilton if he could leave the bag there. According to Hamilton, he told Grant he could leave the bag there, but did not see him actually do so (page 7702).

The relevance of this evidence is that when the Police made a raid on the premises at 86 Lord Street following the apprehension of Grant, Nelson and McGowan at approximately 1.30 a.m. that morning, they found a brown leather overnight bag containing a .22 rifle (minus the stock), similar to the one used in the robbery on the afternoon of the 14th March (see page 7966 et seq.). Hamilton claimed that the bag and rifle had been deliberately planted there by Grant at the time he picked the Simpsons and himself up between 7.30 and 8.00 p.m. In the light of later developments, the probabilities are that Hamilton's contention is correct.

At all events, having picked up the Simpsons and Hamilton in the taxi, Grant then took them to the party at Clifton Hill. In my opinion nothing of any significance turns upon anything that occurred at the party. There was a reference by Nelson to firearms being produced at the party, but in the circumstances I attach no significance to the evidence she gave in relation to them (page 7814 et seq.).

Later that evening and at an hour prior to 1.30 a.m., Grant and Nelson left the party by taxi and proceeded to 11 Kenneth Street, Braybrook.

In her evidence Nelson swore that McGowan was at the party with them that evening and accompanied them when they left the party in the taxi to go to Braybrook (page 7587). In this connection I prefer the evidence McGowan gave to the effect that he did not go to the party that night, but was asleep in the premises at 11 Kenneth Street when Grant woke him up in the early hours of the morning of the 15th March and asked him to drive him and Nelson to a taxi rank (page 7831). To my mind, that account is more in keeping with subsequent events that evening, than the account Nelson gave.

I express that view for this reason. Whatever were the circumstances in which Grant, Nelson and McGowan found themselves together at Braybrook in the early hours of the morning of the 15th March, the fact is that at around 1.30 a.m. that morning they were intercepted by Police in the white Holden Monaro registered Number BGR-010 in Vine Street, Braybrook.

If, as an act of charity, Grant had decided to take McGowan from the party at Clifton Hill to 11 Kenneth Street, Braybrook by taxi, then return to the flat of Kim Nelson at Gertrude Street, Fitzroy, why would he dismiss the taxi at Braybrook, then have McGowan drive him to a taxi rank in the Holden Monaro? The answer clearly is that that did not occur.

In my opinion what took place by pre-arrangement with the Police, was that Grant and Nelson took a taxi from Clifton Hill to Braybrook. Grant then dispensed with the services of the taxi driver, woke McGowan, and persuaded McGowan to drive him and Nelson to a taxi rank. By pre-arrangement, the Police were waiting for this to occur, and immediately apprehended the trio. Thus, by about 1.30 a.m. on the 15th March, 1973, Grant had delivered McGowan into their hands in a fashion highly incriminatory so far as McGowan was concerned, i.e. behind the driving wheel of the vehicle used in the robbery on the afternoon of the 14th, in the front seat of which was a sawn-off shotgun. At the same time he had planted sufficient incriminating evidence on Hamilton, viz. the brown overnight bag and .22 rifle, to justify a Police raid on the premises at 86 Lord Street, Richmond, and the arrest of Hamilton.

That this was undoubtedly the situation appeared all too clearly from the behaviour of the Police in the Braybrook area that night. I turn now to advert to that aspect.

By agreement, a number of statements were received in evidence from the various Police who took part in the apprehension of Grant, Nelson and McGowan in the early hours of the 15th March (see Exhibits 573-576 inclusive). In addition to the production of a written statement he had
made on the 3rd May, 1973, Sergeant Fennessy gave evidence to the Board in respect of the matter. I have already adverted to the material I consider he had in his possession at approximately 8.00 p.m. on the 14th March, and his alleged failure to communicate such information to Inspector Williams. I see no useful purpose in covering that ground again. What is of more significance is his behaviour and the behaviour of the other Police involved in the apprehension of Grant, Nelson and McGowan between 12.35 a.m. and 1.30 a.m. that morning.

In the statement tendered on his behalf Senior Constable Melotte said that at about 12 midnight he received information from D24 that he and his colleague (Senior Constable Mair) were required by other members of the Criminal Investigation Branch to assist in apprehending a number of persons who were wanted for armed hold-up offences. I quote, “Our instructions were to watch for a suspect car that at that time was parked at No. 11 Kenneth Street, Braybrook”.

Contrary to what one would have expected having regard to the evidence of Sergeant Fennessy, they did not immediately proceed to 11 Kenneth Street, but in fact took up a position at an intersection nearby. A short time later they saw the suspect car coming towards them and with other Police vehicles intercepted it.

Senior Constable McIntyre in his statement tendered in evidence (exhibit 574) said that at about 1.35 a.m. and whilst on patrol with Sergeant Mangles, he received a message from D24 to assist Constable Nicholson of the Observation Squad with the detection of a motor car which was suspected of being implicated in an armed hold-up.

Again, and as in the case of Melotte and Mair, they chose not to go to 11 Kenneth Street, Braybrook, but took up a position at the intersection of Kenneth Street and Shepherd Street. A few minutes later the suspect car came into view and was intercepted.

In the statement he made (exhibit 575) Sergeant Walsh said that he was on patrol with Senior Constable Alsop when at about 12.30 a.m. they received a message from D24 to attend in the Braybrook area and assist other members with a suspect vehicle. Yet again, they too did not go to 11 Kenneth Street, but took up a position at the shopping centre in Churchill Avenue. Later they were informed the suspect vehicle had been intercepted.

Finally, the statement of Senior Constable Lewis (exhibit 576) was to the effect that shortly after midnight, and whilst on patrol with Senior Constable Dowell, he received a message from D24 to assist Police with the arrest of several offenders suspected of being implicated in an armed hold-up. I quote, “We were then given the number of suspect car which was parked in Kenneth Street, Braybrook”.

By now it should not surprise the reader of this summary to learn that they too did not go to 11 Kenneth Street, Braybrook, but took up a position in Vine Street. A short time later they saw the suspect vehicle approaching and intercepted it.

Thus, of the four Police vehicles detailed to attend to the matter, not one attended at the premises at 11 Kenneth Street, Braybrook. To my mind, that can only have occurred because contrary to what he swore before the Board, Sergeant Fennessy did not give instructions to the effect that Police were to go to 11 Kenneth Street and bring the occupants of the car or the house to Russell Street (page 8631), but in fact instructed Police to “sit off” until such time as the trap had been sprung—in other words, until such time as Grant had persuaded McGowan to leave his bed and drive the vehicle used in the hold-up away from the premises.

Those and other relevant facts relating to the matter having been put to Sergeant Fennessy, he was then asked whether to a casual observer it sounded like a “set-up” by Grant. To that he replied, “If you want to look at it that way you could say it was” (page 8632).

Inspector Williams’ evidence in relation to the matter appears at page 8177 of the transcript and is worthy of inclusion in this summary.

Q. To tie up four cars like that?
A. It has happened before. I have tied up more than four.
Q. What, to stay there all night?
A. Yes.
Q. It does not strike you as odd? It would not have been odd, of course, Mr. Williams, if there were some prior knowledge that within a very short time the car was going to leave Kenneth Street, Braybrook and could then be intercepted?
A. No, it would not be odd then.
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Q. No. And that was what was known, I suggest to you, Mr. Williams, this night?
A. I was not there. I do not know.
Q. You see, if this whole robbery was a set-up organised by Mr. Heuston, he may well have told the Police, "I will arrive at Kenneth Street at a certain time, get one of the co-offenders into the car with me and drive off. You make sure you are there to intercept me"?
A. Are you putting that as a hypothetical set-up?
Q. Yes. That is what I am saying?
A. As a hypothetical answer, I suppose it is possible.
Q. Yes—because we have Mr. Heuston taking a taxi down to Kenneth Street with Miss Nelson late at night, and instead of leaving by taxi, he gets Mr. McGowan up—an offender—to drive him away from the premises in the car used in the robbery. Follow?
A. That is right, is it?
Q. That is what Mr. Heuston says, and indeed, that is what Miss Nelson says.
THE BOARD: It sounds very like a set-up job, does it not, on the part of Mr. Heuston?
A. Yes, that does.
Q. To go all the way over there in a taxi, dismiss the taxi, and wake McGowan up out of bed for the express purpose of getting him to get into that car and drive him to a taxi rank?
A. Well, if that is what happened, it looks that way.
Q. It looks very much like it, does it not?
A. Yes.
MR. COLDREY: And when Mr. Heuston is asked why he goes there at 12 o'clock at night, he says, "I went to pay my father some money". I mean, on the face of it, it strikes one as a very odd time to be knocking up your old father to pay him some money, does it not?
A. I would say so.
Q. Yes. Well then, if, as we agreed before, the Police knew, because Heuston had told them, that he was going to get that car moving from 11 Kenneth Street, Braybrook, it would not be surprising that they might stake out the area?
A. If all these things are as you explain it, it is quite possible.
I should add that the reference to Heuston's account of the matter is a reference to his account as appearing in a statement he made to Murphy at the request of the Crown Prosecutor on the 15th August, 1973 (exhibit 583). As I have already explained in an earlier chapter of this report, efforts were made to have Grant (Heuston) brought to Victoria to give evidence before the Board, but those efforts proved unsuccessful.
In my opinion there can be no doubt that McGowan was “set-up” by Grant that night. Nor can there be any doubt that Hamilton was also. As a matter of logic it would not necessarily follow that they were set-up as part of some conspiracy between Grant and the Police. In the case of McGowan there can be no doubt but that he was. For the four Police vehicles sent to the scene to “sit-off” 11 Kenneth Street until such time as Grant had woken McGowan and induced him to enter the car and drive it from 11 Kenneth Street, is to my mind consistent with that explanation and no other.
If the situation was that the Police were watching the premises with a view to apprehending anyone who might enter them, surely the time at which to swoop would have been immediately after Grant and Nelson arrived at the premises, dismissed the taxi, and entered the house. To place Police cars at strategic points in the immediate vicinity, wait until Grant and Nelson reappeared with McGowan, entered the suspect vehicle, and drove away could only be consistent with the fact they had advance information to the effect that that would occur. Obviously that advance information could only have come from Grant via more Senior Police Officers.
In the event one had any doubt concerning the matter, the behaviour of the Police following the apprehension of Grant, Nelson and McGowan will, I think, remove that doubt.
In the case of Hamilton, whilst one may have the strongest suspicions concerning the matter, the evidence placed before the Board does not enable me to make a positive finding as to whether the Police were part of any conspiracy or not.
I turn now to consider the actual apprehension of Grant, Nelson and McGowan and the relevant events which occurred thereafter.
Apprehension of Grant, Nelson and McGowan

The points I wish to make in relation to the actual apprehension of Grant, Nelson and McGowan are these—

(1) Nelson was found in the car used in the armed robbery but was never interrogated about the robbery or her association with Grant and McGowan, and was released at 10 a.m. that morning without being put through the Interview Register (page 7978 and page 7980).

(2) Grant was found in the car used in the armed robbery. Although he was asked what his movements had been on the 14th March, 1973, he did not have any allegation put to him directly to the effect that he was involved in the armed robbery (page 8179) and was released with Nelson at 10 a.m. the same morning without being put through the Interview Register also (pages 7967, 7978 and 7980).

(3) A loaded sawn-off single barrel shotgun was found on the front seat of the car, yet no charge was ever laid against any person in respect of it (page 8027).

If those matters appear curious to the reader of this summary they pale into insignificance when compared with the events which occurred at Russell Street later that morning. It is in relation to these later aspects that I consider Inspector Williams and certain of the men under his command told deliberate lies when giving evidence before the Board.

I now propose to outline in some detail the events which occurred at Russell Street following the apprehension of Grant, Nelson and McGowan.

Events at Russell Street on the 15th March, 1973, following the Apprehension of Grant, Nelson and McGowan.

It will be convenient in this connection to break the matter up into the following segments: the events at Russell Street prior to the raid on 86 Lord Street, Richmond, and the arrest of Hamilton; the arrest of Hamilton; the events at Russell Street between the arrest of Hamilton and the release of Grant and Nelson at approximately 10 a.m. on the 15th March; the events at Russell Street on the 15th March subsequent to the release of Grant and Nelson, including the holding of the Identification Parade during which Hamilton was identified by the victim of the robbery, Cochrane; and the taking of the Records of Interview from Hamilton and McGowan.

Before I venture into an examination of those matters, I consider it relevant at this stage to note that according to the evidence of Inspector Williams and certain of the other Police Officers called in the matter, virtually the bulk of the Police file relating to the Thornbury robbery and the charges laid against Hamilton and McGowan has been lost (page 8016). The only suggestion Inspector Williams could make as to what had happened to it was that it may have been burnt when there was a clean-up in the area occupied by the Armed Robbery Squad towards the end of 1973 (page 8016).

The observations I make in respect of that aspect are these. In the first instance, it seems odd to me that this very important file should be missing when no difficulty has been experienced in obtaining files from the Armed Robbery Squad in other matters—files, that is, compiled prior to 1973. Secondly, from the moment of his arrest Hamilton has alleged he was “framed” in relation to the matter, and has made constant complaints to the Police Department in respect of it; so, too, has one of the other persons apprehended that night. On the 31st July, 1973, Hamilton was interviewed by Inspector Williams at Pentridge with respect to the allegations he was making (exhibits 532A and 532B). At about the same time an investigation was carried out by Inspector Plant into allegations made by Dragosevic (see exhibits 559 and 572-576 inclusive). In April, 1975, the whole matter was re-investigated by Chief Superintendent Duffy (then Inspector Duffy) (see exhibit 551). It could not be said therefore that following Hamilton’s conviction in August, 1973, the matter was finally closed so far as the Police Department was concerned. From almost the very moment of Hamilton’s arrest he alleged the gun found at 86 Lord Street, Richmond, was planted on him (see Inspector Williams’ evidence in this connection at pages 8027A-28 of the transcript), and since that time has been so vocal as to cause the various investigations I have adverted to, to be carried out. In those circumstances, I find the greatest difficulty in accepting Inspector Williams’ testimony to the effect that the file was probably burnt in a general clean-up towards the end of 1973. In this connection it is perhaps not without significance that when Inspector Williams made his statement on the 10th April, 1975, at
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the request of Chief Superintendent Duffy (exhibit 551), he made no reference to the fact that the Police file had been burnt or lost, but in fact specifically stated that there were files then available which would substantiate his account of the matter. A statement from him to that effect and in the circumstances in which it was made, did little to bolster his credit. It is also not without significance that when Assistant Commissioner Crowley wrote to the Ombudsman on the 15th May, 1975, no reference was made to the fact that the file had been lost (see exhibit 579).

The third matter that struck me as quite odd in this connection, was the fact that the Remand Brief in the matter is still in existence. In this instance I propose to set out the evidence Inspector Williams gave in respect of the matter as appearing at pages 8046-7 of the transcript. In doing so, I have deleted what I consider to be an irrelevant passage.

Q. What happens to the remand briefs in these robbery cases? Are they put in the general Police file?
A. They would be in the file concerning the particular robbery.

Q. Here is a strange thing. We have the remand brief, apparently that has not been burnt?
A. I know you have.

Q. How could that have survived when the rest has gone?
A. I don't know.

Q. It is a little strange because it is in the file, you say, with all the other documents?
A. Yes.

Q. One would expect if the other documents had all been burnt the remand briefs would have been burnt as well, wouldn't one?
A. I understand you have the original statement of Cochrane, so there must be certain parts of the file still in existence.

Q. The question I asked you was not anything to do with other witnesses' statements but you would expect the remand brief to have been burnt along with the other documents, would you not?
A. As I said, I don't know what files have been destroyed and what have not. You would have to go up there and check. This is three years ago and it is quite possible they have been. I don't know.

Q. I will have another attempt. You would expect the remand brief to have been burnt along with the other documents in this particular file, would you not?
A. If that file had been burnt, yes.

I should perhaps add that the original statement of the witness Cochrane referred to by Inspector Williams was not obtained from any Police file, but was obtained from Cochrane himself (page 8046), he having probably kept it as a souvenir.

If the Remand Brief was retained, why was not the whole Police file?

I can only say that the evidence relating to the missing file and a further vital document to which I shall later advert, was not unsatisfactory and left one with the very strong suspicion that it was either deliberately concealed from the Board or had been deliberately destroyed in the sense that it was concealed or destroyed because it contained material prejudicial to certain of the Police Officers involved in this matter.

Events at Russell Street following the apprehension of Grant, Nelson and McGowan and prior to the arrest of Hamilton

When Grant was brought to Russell Street he was placed in an Interview Room in that area of the fifth-floor at Russell Street occupied by the Company Squad (page 8648). Between 1.20 and 2.00 a.m. he was spoken to by Sergeant Fennessy (page 8632).

In accordance with the policy of the Police Association, when Sergeant Fennessy gave evidence before the Board he declined to answer any question put to him, the answer to which might identify Grant as an informer. I consider it of sufficient importance to set out a passage of his evidence from page 8641 of the transcript in relation to the matter.

Q. Am I correct in saying, Mr. Fennessy, that you get information from informers, from time to time?
A. I could, sir.

Q. And you will not answer any questions before this Board that would in any way divulge or assist anyone to divulge or disclose the name of the informer?
A. The identity or name, no, sir.
Q. It is clear that on this night you got information which you passed on to, Mr. Williams?
A. I did.

I now propose to set out two passages of the evidence Sergeant Fennessy gave which make it perfectly clear that when Grant was seen by him between 1.20 and 2.00 a.m. Grant conveyed to him the information the Police required concerning Hamilton, preparatory to their raid on 86 Lord Street.

Page 8636:—

Q. Well, I shall not press you. I withdraw that. Mr. Williams says you told him that Hamilton was residing at 86 Lord Street, Richmond. Is that true?
A. I did.
Q. He says you told him that he was armed and edgy. Is that true?
A. That is true.
Q. He says you told him that he would shoot at the first sound. Is that true?
A. Yes.
Q. Did you also tell him the layout of the house at Lord Street?
A. If I answer that question
Q. I beg your pardon?
A. I would decline to answer that question, Sir.
Q. Did you tell him what type of gun it was expected Mr. Hamilton would have?
A. I decline to answer that question.
Q. Did you tell him that it was expected that an overnight bag would be at the Lord Street premises?
A. I decline to answer that question, Sir.
Q. You decline to answer those questions on the basis that you do not want to reveal the source of your information?
A. I do, Sir.

Page 8650:—

Q. I will not press for an answer in that regard. (To witness) To sum up some of the matters we have been discussing, at the time when the raid on Lord Street occurred, or just before the raid got under way, there was information in the hands of participants in the raid and certainly Mr. Williams that Hamilton was at 86 Lord Street, is that right?
A. Yes.
Q. There was information that there was a gun in a bag at 86 Lord Street?
A. I don't know if the information was that there was a gun in a bag.
Q. There was certainly information that there was a gun?
A. Yes.
Q. There was information that Mr. Hamilton would be in Judy Simpson's bedroom?
A. I don't think I gave that answer.
Q. You mean you did not think you gave that information to Mr. Williams that morning?
A. No, I don't think I have given that answer at this Inquiry.
Q. I will ask it, then. Was there information that Mr. Hamilton would be in Judy Simpson's bedroom?
A. I decline to answer that question.

Having obtained the necessary information from Grant relating to the planting of the gun on Hamilton at 86 Lord Street, and the layout of the premises &c. at Lord Street, Sergeant Fennessy telephoned Inspector Williams at 2.00 a.m., and told him he had Grant, Nelson and McGowan at Russell Street (page 7964).

Upon his arrival between 3.00 a.m.—3.30 a.m. that morning Inspector Williams spoke to Sergeant Fennessy. What follows is his evidence at page 7965 of the transcript as to that conversation.

Q. Did you have any conversation with Mr. Fennessy as to the participants in the robbery?
A. I did.
Q. What did he say to you?
A. That McGowan was one and Hamilton was the other.
Q. You knew then, of course, they already had McGowan?
A. Yes.

Q. Did Mr. Fennessy give you any information as to where Hamilton might be located?
A. Yes.

Q. What did he tell you?
A. That Ronald John Hamilton was at 86 Lord Street, Richmond, that he was armed and very nervous and would shoot at the first sound or sighting of anybody.

Q. And did you then decide to raid the premises at Lord Street?
A. I did.

The fact is that at no stage that evening did McGowan, or for that matter, Hamilton, make any admissions whatsoever to Sergeant Fennessy concerning the robbery (page 8636). In the circumstances I would be very surprised if a conversation along the lines deposed to by Inspector Williams took place at all. I consider that when he arrived at Russell Street early that morning, Sergeant Fennessy would simply have conveyed to him the information he had received from Grant, viz. that everything was going according to plan, and that they were now in a position to raid 86 Lord Street and arrest Hamilton.

The Raid on 86 Lord Street and Arrest of Hamilton

The raid itself on Lord Street has little real significance so far as the Hamilton Matter is concerned. The only interesting aspect of it that is relevant to the matter, is the fact that Hamilton swore quite positively that Grant was present at the time the raid took place (pages 7706-7). The Police to a man denied that he was. Insofar as anything turns on this, I think, that as a matter of probability, and having regard to the somewhat obsessive attitude of the Police toward safeguarding the identity of informers, he would not have been present on the raid.

What is of interest concerning the facts of that raid, however, is that it exposes the total unreliability of the evidence given by the Police Officers in the Sellers Matter concerning the raid they conducted on the flat in Punt Road (see Chapter 25).

It will be recalled that the evidence given by the Police in that matter was to the effect that two dangerous and armed criminals were in the flat in question, who were clearly on their guard so far as the Police were concerned, and who were, ex hypothesi, prepared to shoot it out with them. On that occasion, and in broad daylight, five Police went to the door of the flat, knocked on the door, said “Police here”, or words to that effect, then proceeded to smash the door in with a sledge hammer. Given the situation to which the Police depose, that was a somewhat suicidal manoeuvre. Gone was the element of surprise, gone was the opportunity of overwhelming the two men before they could arm themselves.

For the reasons I adverted to when dealing with that matter, that was evidence I was not disposed to accept. I consider those views were borne out by the evidence given in this matter concerning the raid on Lord Street. I do no more than quote certain passages from the evidence of Inspector Williams and Sergeant Fennessy.

Inspector Williams—page 7968:

Q. Just limiting yourself to what you saw and heard in the house, was the door knocked down?
A. Yes.
Q. And why did you consider it necessary to enter in that fashion, Mr. Williams?
A. Well, I believed that the quicker we could get into the premises, the better; if we knocked and woke up the household, well, anything could happen.

Page 8002-3:—
Q. Do you inform Mr. Patterson or your superiors every time you lead a raid?
A. On a lot of occasions, yes.
Q. All the time?
A. Not every time.
Q. Why on this occasion?
A. Because of the danger involved.
Q. I suppose if you were going on a raid like that when you knew somebody was possibly armed and likely to fire to prevent apprehension, I think you have told us speed was the essence, you wanted to knock that door down quickly?
A. We wanted to get in quickly.
Q. You would not stand outside and go knock, knock, knock, "Police here"?
A. That is right.
Q. That would be ridiculous?
A. We have done it.
Q. Have you? When a fellow is likely to shoot you?
A. As I said, every time we go on a raid concerning armed robberies we could have this in mind.
Q. I suppose so, but if you go to the trouble of getting a sledge hammer?
A. Well, this time we went prepared to get in quickly.
Q. That was the purpose of getting the sledge hammer?
A. That is right.

Sergeant Fennessy—pages 8640–1:—
Q. When you went on the raid, Mr. Fennessy, were you the man with the hammer?
A. I was.
Q. I suppose you would agree that the entry to Lord Street was to be as swift as possible?
A. Yes.
Q. And that was because there was an armed and dangerous man inside?
A. Yes.
Q. There was none of this standing around "knock, knock, Police here" business?
A. That is so.

In due course Hamilton was arrested at Lord Street and together with the Simpsons escorted back to Russell Street. The Police evidence was that they also located the brown overnight bag with the .22 rifle in it, and took it back to Russell Street with them.

The only other matter of significance concerning the raid and the arrest of Hamilton, is that the raid took place at approximately 5.00 a.m. that morning (page 8193 et seq.) and the party arrived back at Russell Street at approximately 6.30 a.m. (page 8201).

Events at Russell Street between the Arrest of Hamilton at approximately 5.00 a.m. and the Release of Grant and Nelson at approximately 10.00 a.m.

As the Police conceded during the course of their evidence before the Board—in retrospect the factual situation at 6.30 a.m. that morning was that they had in their custody at Russell Street, Eric Grant (alias Heuston), clearly a prime suspect in the armed robbery of the Post Office sub-agency at Thornbury the previous day; yet due to confusion, ignorance and/or lack of communication, they released him at 10.00 a.m. without conducting any proper interrogation of him, without obtaining or attempting to obtain a signed statement from him, without placing him in a line-up, without so much as putting him through the Interview Register, and without charging him—as he should have been—with that offence.

As I pointed out to Inspector Williams during the course of his examination before the Board, that was, on its face, behaviour on the part of the Armed Robbery Squad sufficient to make it the laughing stock
of the Force. But if Grant was indeed the man who to Police knowledge had set up McGowan and Hamilton there was method in this seeming madness.

The reader of this summary may well enquire at this point why that situation arose in the first instance. Why was it that the criminal who may well have organised the robbery of the Thornbury Post Office sub-agency and his de facto wife (for lack of a more apt description), were released from Russell Street at 10.00 a.m. that morning without any steps being taken by the Police Officers involved to conduct a proper interrogation of them?

To my mind, there can be only one logical explanation. No steps were taken by the Police to demonstrate Grant's involvement in the crime in return for the assistance he had given them in implicating Hamilton and McGowan. I regret to say that it was because of this that certain senior Police Officers committed perjury before this Board.

In the first instance, I propose to deal with the evidence Inspector Williams gave in relation to the matter.

According to Inspector Williams, when Sergeant Fennessy rang him at 2.00 a.m. that morning he told him that he had three persons at Russell Street, viz. McGowan, Nelson and Heuston (page 7964). On his arrival at 3.00 a.m. he swore that Sergeant Fennessy told him that there were two men involved in the robbery, McGowan and Hamilton; that Hamilton was at 86 Lord Street, Richmond, was armed and very nervous and would shoot at the first sound or sighting of anybody (page 7965).

Pausing at that point, let me make the following observations:—It is clear from the evidence all Police gave that at that stage there had been no interrogation of McGowan or Nelson. For reasons I have already indicated, it is equally clear that from approximately 7.00 p.m. the previous evening, Sergeant Fennessy must have known three men were involved in the robbery. If he did, as I am certain he did, then what Williams said he told him was obviously a lie to protect Grant as indeed was what Sergeant Fennessy swore to the Board in relation to the matter.

Inspector Williams would have the Board believe that following the arrest of Hamilton and the return of the Police to Russell Street, he asked Grant about his involvement in the matter. Upon being asked that question, he alleges Grant denied any involvement in the robbery and produced a betting ticket which indicated he had in fact attended a country race meeting on the 14th March (page 7967). Without making any check on the betting ticket or any attempt to verify Grant's alibi, Inspector Williams then released both Grant and Nelson without even bothering to put them through the Interview Register (page 7987 and page 7980). When asked why he allowed Grant to go without checking his alibi, he replied, "Because I had the names of the two that had committed the robbery" (page 7987). And so we have the situation where a known criminal and prostitute, apprehended in the very vehicle used in an armed robbery some hours previously, found in the company of one of the persons who did take part in the robbery, and in all probability found in possession of a sawn-off shotgun, are released because the male member of the duo produces a betting ticket which he claims provides him with an alibi—a betting ticket which the Inspector in charge of the investigation never bothers to check (page 7987) and which by some unfortunate mishance has now been lost.

As Inspector Williams was subsequently forced to concede—when one looks at all the evidence linking Grant with the robbery, his release at 10.00 a.m. that morning was inexplicable (page 8037A).

Not only was Grant's release at that time inexplicable, Inspector Williams' reasons for releasing him were quite false.

According to Inspector Williams, it was not until 3.20 p.m. that afternoon, and after he had listened to the read-back of McGowan's Record of Interview that he realised there were three people involved in the robbery (page 7970). That evidence was untrue appears from the following passage of the evidence he gave at pages 7979-80, and the evidence of Sergeant Neil Graeme O'Loughlin.

At pages 7979-80 this exchange took place between Counsel appearing for the Police Association and Inspector Williams.

Q. It would appear then that as at 10 a.m., although McGowan may have made some admissions in earlier discussions early in the morning, certainly Hamilton had not made any admissions of guilt when you, let Heuston go?

A. That is so.
Q. What do you say as to your statement regarding Hamilton and McGowan admitting it?
A. Why I said that is because the crew that went to Braybrook came out and said Hamilton was the other offender and then I was quite happy that we had the two concerned in the hold-up.

At pages 8579-80 of the transcript Sergeant O’Loughlin had this to say:
Q. At what time did you get the information that the hold-up car was BGR-010?
A. I would say some time during the morning, perhaps prior to speaking to McGowan.
Q. Prior to 7 o’clock?
A. I would think so.
Q. Any idea from where you got that information?
A. No, I haven’t, I don’t know whether I got it or Sinclair got it.
Q. You see, I suggest to you that the information about the car must have come together with information to the effect that there were three people involved?
A. I think that is true, yes, from Mr. Jones.
Q. Yes, exactly, because you put it to Mr. McGowan in the Record of Interview that you had information there were three people?
A. Yes.
Q. So you must have had the information indirectly from Mr. Jones by 7 o’clock, is that not so?
A. I would feel that we did have that information, yes.
Q. Certainly the information came together with the registration of the car?
A. I think that is true.

To pause there—it is clear from that passage of his evidence that prior to 7 a.m. on the morning of the 15th March the Police did in fact have information from Jones that three men were involved in the robbery. Sergeant O’Loughlin’s evidence in that connection also establishes the falsity of the evidence Sergeant Fennessy gave in respect of the matter. Clearly if O’Loughlin, Fennessy and Sinclair knew prior to 7 a.m. that morning that there were three men involved, so inevitably must Inspector Williams.

That it was known to the Police at about 7 a.m. that morning that the third man involved was Eric Grant is apparent from the following passages of Sergeant O’Loughlin’s testimony.

Pages 8525-6:—
Q. You were involved in an interview of McGowan regarding his part in the robbery?
A. Yes.
Q. In the afternoon of the 15th?
A. I was.
Q. Was the interview read back by McGowan, the read-back being tape-recorded and monitored by Sergeant Williams?
A. Yes, McGowan read part of the interview and I read part of the interview.
Q. Did he also apparently initial some alterations on the document?
A. He did, yes.
Q. Was he locked up getting on towards 6 o’clock?
A. Yes.
Q. It is clear enough, is it not, from reading and listening to the Record of Interview that McGowan made that he was saying there were three persons involved in the robbery?
A. Yes.
Q. Would you tell Mr. Chairman when you first recollect hearing on that day, from McGowan in particular, a reference to a third party in the robbery?
A. It would have been around about 7 o’clock that morning when I first spoke to McGowan.
Q. What was the substance of what he told you then?
The Board: When and where was that in relation to going from Russell Street out to Braybrook?
A. It was prior to that; it was in the Interview Room at the Armed Robbery Squad office.
MR. PHILLIPS: Was Mr. Sinclair present?
A. Yes, he was.
Q. What was the substance of what McGowan had to say?
A. He stated to us in brief that he and Joey Hamilton and a third person by the name of Eric had committed the robbery and that himself and Joey Hamilton had entered the shop and that the person Eric was the driver in the car.
Q. Did he ever alter that?
A. At one stage prior to the Record of Interview he made mention that Eric was the person who went into the shop. He then changed his mind again and placed Hamilton back in the shop with him, which he had originally said.

Pages 8542-3: —
Q. As I understand your evidence, it was in the course of the 7 o'clock in the morning conversation that there was a reference made by McGowan to a third man who had been involved in the Thornbury hold-up?
A. Yes.
Q. At that stage there was just yourself and Mr. Sinclair present with Mr. McGowan, is that right?
A. Yes.
Q. At that stage did McGowan say who the third man was?
A. He said it was a man by the name of Eric.
Q. Yes, whereupon, of course, either you or Mr. Sinclair said "Eric who?"? What did he say to that?
A. I think McGowan said he didn't know his surname.
Q. He was asked by Mr. Sinclair, "Eric who?"?
A. Later.
Q. At the 7 o'clock conversation?
A. I don't think so.
Q. Why not?
A. I think he said "Joey Hamilton and a man by the name of Eric, I don't know his surname ".
Q. He said that at the 7 o'clock conversation, did he?
A. Yes, around seven.
Q. What else was discussed with Mr. Sinclair and yourself and Mr. McGowan between 7 o'clock and 7.15 to 7.20?
A. The exact questions and answers, I can't recall as to what part McGowan took, he told us that.
Q. What part Hamilton took?
A. I think it was in relation to he and Hamilton going into the shop and the person Eric was in the car and there was also a conversation in relation to the money which he said was out at his house.
Q. So it appeared from what McGowan was telling you that the man Eric was the get-away driver?
A. Yes.

At a later stage and at page 8543 of the transcript, Sergeant O'Loughlin swore that Senior Sergeant Murphy was informed by them of the fact that three men were involved but that he didn't think either of them spoke to Inspector Williams about the matter.

I make the following observations concerning the passage of Inspector Williams' evidence to which I have referred and those passages of Sergeant O'Loughlin's evidence:

(a) It is clear that well before 10 a.m. on the 15th March at least four comparatively Senior Police Officers knew three men were involved in the robbery, viz. Murphy, O'Loughlin, Fennessy and Sinclair. (Doubtless, of course, all men involved in the matter did.)

(b) It is equally clear that some hours before 10.00 a.m. that morning Murphy, O'Loughlin and Sinclair knew the third man's Christian name was Eric.

(c) To suggest that McGowan told Police he did not know Eric's surname when he was in fact living with Eric's parents, had taken part in the robbery with Eric, and had been intercepted with Eric some hundreds of yards from Eric's home and in the vehicle used in the hold-up, is quite fanciful.
Further to suggest that such information was never conveyed to Inspector Williams and that Inspector Williams did not know that a third man named Eric was involved in the robbery until he heard the read-back of McGowan’s Record of Interview at 3.20 p.m. that afternoon is I fear a progression from fantasy to perjury.

The Board’s endeavours to arrive at the truth of the Hamilton Matter were much impeded by the resort to falsehood of the Police involved. It is difficult to resist the conclusion that this policy of untruthfulness and equivocation was preconceived. A careful reading of the transcript shows the extent to which Messrs. Williams, Fennessy, Murphy, O’Loughlin and Tamblyn essayed to deceive the Board. The following excerpts are illustrative of this deplorable behaviour.

**Inspector Williams**

(a) At page 7995 of the transcript Inspector Williams swore this:

Q. Out of all the people who left there that night not in the Police custody only two did not go through the Interview Register, Mr. Heuston and Miss Nelson?
A. I know they didn’t go through the Interview Register.
Q. People you spoke to, was it not that you were looking after an informer and wanted to let him out without any record?
A. He wasn’t my informer.
Q. He was a well-known informer?
A. Not to me.
Q. I’m not saying to you?
A. I don’t know.
Q. Don’t you?
The Board: Were you not aware of the fact at that time that he was an informer?
A. I don’t know, Sir.

I am satisfied that it was during Sergeant Fennessy’s interview of Grant between 1.20 a.m. and 2 a.m. that morning that he obtained the necessary information concerning the whereabouts of Hamilton, the lay-out of the property at 86 Lord Street and the fact that the bag and gun were there. That information was obviously conveyed to Inspector Williams prior to the raid and presumably when he spoke to Fennessy at approximately 3 a.m.

Even if Inspector Williams had not been aware of the fact that Grant was a Police informer prior to that conversation at 3 a.m., he was certainly aware of it as a consequence of that conversation. To swear to this Board that he didn’t know at that time that he was an informer was another of the many lies he told to this Board. See his further evidence in this connection at page 8049 and page 8081 of the transcript. Indeed a further fact supporting that proposition is the visit Inspector Williams agrees he made to the room in which Grant was being detained before he made the necessary preparations for the raid on Lord Street (page 7965). Although he swore before this Board he was not sure if he spoke to Grant, the inescapable conclusion is that he went to see him to check the information conveyed to him by Fennessy.

Perhaps the most obvious lie told by Inspector Williams in relation to the matter was that at page 8082 of the transcript where, in answer to the question, “Do you now suspect he was a Police informer?” he replied, “I have not given it any thought”; and when asked, “None at all”; he replied, “No”.

That there was a special relationship existing between Inspector Williams and Grant and that he knew full well at the time he gave that evidence that Grant was an informer was further borne out by the two matters to which I now refer.

During the course of Hamilton’s trial the Crown Prosecutor instructed Senior Sergeant Murphy to endeavour to locate Grant and obtain a statement from him. I consider this passage from the evidence of Senior Sergeant Murphy at page 8186 of the transcript illustrates that relationship.
Q. Did you make contact with him?
A. I did, yes.

Q. Can you recall now how that was effected?
A. I telephoned Williams from the Court. He did not know where he was but he said he believed he was reporting to Sunshine, he would make enquiries to see if he could locate him.

Q. Where did you actually succeed in locating him?
A. He turned up at the office next day.

When it was put to Inspector Williams that he had no idea or belief where Grant was at the time Murphy had to interview him or take a statement from him, he initially replied, "During the trial (of Hamilton) I did not."

That answer was demonstrably false.

The second matter I advert to in this connection was that in October, 1973, Inspector Williams and Senior Sergeant Lalor interrogated Grant in respect to a robbery which had occurred at Dowell Industries. During the course of that interview Grant gave Inspector Williams and Senior Sergeant Lalor the name of a man Finney as a person involved in the robbery. Thereupon Grant's role changed from being a participant in the robbery to an accessory. The very next day Senior Sergeant Lalor went to Sydney and interviewed Peter Robert Gibb in relation to certain armed robberies. It is clear he was able to do that as a consequence of information supplied to him by Grant during the course of the interview conducted by Inspector Williams.

To put the matter beyond any doubt, after Grant was interviewed on that occasion he was released on $1000 bail without any condition requiring him to report to Police, and even though he was then on bail in respect of three separate matters, had absconded whilst on bail in Queensland and had admitted his involvement in a Totalizator Agency Board robbery in New South Wales.

(b) At page 7970 of the transcript Inspector Williams swore that at the time he released Grant he did not know Jones was able to say there were three men involved and in fact did not know about Jones until either very late that afternoon or the next day. For the reasons to which I have already adverted, that statement must clearly be false.

(c) To suggest as he did at page 7965 that Fennessy told him at about 3.30 a.m. that only two men were involved, viz. McGowan and Hamilton must surely be false, and in fact if Fennessy's evidence as appearing at page 8635 of the transcript is correct, it is demonstrably so. At that page Fennessy was asked, "And if one of the important facts you had at your fingertips at 3 a.m. on the morning of the 15th March was that there were three persons seen near the scene of the robbery, that important fact would have been imparted to Mr. Williams, would it not?", to which he replied, "I imagine so". It is surely beyond doubt that by 3.30 a.m. that fact was at Mr. Fennessy's fingertips.

(d) To suggest that he believed Grant was telling the truth (page 7967) and therefore made no check of the betting ticket he allegedly produced, and released him without checking his alibi (page 7987) is again hardly the behaviour of an experienced Police Officer, particularly when one considers that Grant was apprehended in the vehicle used in the robbery together with McGowan, that McGowan from the outset conceded he was one of the culprits, and that in that very car was found a sawn-off shotgun (in respect of which oddly enough no charge has ever been laid against any person).

(e) When asked at page 7990 of the transcript about an interview he had with Inspector Duffy in April, 1975 concerning the allegation that Grant had paid Senior Sergeant Murphy $1,000 to have Hamilton substituted for himself as McGowan's co-offender, the following exchange occurred:
Q. When did you first remember again that it was a betting ticket you were shown?
A. I have just got this recollection that it was a betting ticket.
Q. You did not remember anything about this story of the races on the 10th April last year, did you?
A. Yes, I did.
Q. Why did you not tell Mr. Duffy that?
A. There was no need to tell him.
Q. He would have asked you what story had been spun to you by Mr Heuston to cause you to let him go?
A. No, he didn’t.
Q. You would have wanted to tell him about that, would you not?
A. Why?
Q. What did you think the investigation was about?
A. Murphy being alleged to have got $1,000.
Q. A deal that Mr Heuston was getting when he was part of the robbery?
A. I knew this couldn’t have been so.
Q. You would want to make it clear that letting him go had nothing to do with the deal but had something to do with what he told you?
A. It had nothing to do with Murphy.
Q. This is what you told Mr. Duffy, “I cannot recall the exact conversation with Heuston but I was satisfied he did not take part in the robbery”?
A. That is right.
Q. Could you recall any of the conversation?
A. Not to Mr. Duffy, no.
Q. When did it come back to your mind?
A. I suppose when I started reading some of the papers.

The statement referred to is Exhibit 551. It appears as appendix “D” to this chapter of the Report. I consider that passage of the transcript speaks for itself.

(f) At pages 7998-9 of the transcript the following passage appears:
Q. Who was it who told you that those two people were McGowan and Hamilton?
A. As I said before, I am not too sure whether it was Murphy or Sinclair, but it was at the time when they were leaving to go out to Braybrook, and going out, as I understand, to recover some money.
Q. They told you then that Hamilton was one of the men involved?
A. Was the other man, or words to that effect, that I took . . . . I do not know whether they said, “Hamilton is the other man”, or, “Hamilton was in the robbery with McGowan”, or what, but Hamilton was the other offender, anyway, that I was looking for.
Q. Look, that is all untrue, Mr. Williams, is it not?
A. No.
Q. Because at the time you set out to go out to Braybrook, as I understand, you already had Hamilton in the Police Station?
A. That is right.
Q. Well then, on what basis had you got him in?
A. As a suspect.
Q. Who told you he was a suspect?
A. Sergeant Fennessy.
Q. He had never told you he was an offender?
A. No.
Q. Why did you write this, then in your statement? “On my arrival at the office, I spoke to Fennessy, Sergeant Mangles and Detective Mather. Fennessy said that McGowan had committed the robbery
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at Thornbury and Ronald John Hamilton was the other offender." Why did you write that, Mr. Williams?

A. Well, from my recollection of it, we went out to get him as a suspect.

Q. That is wrong?

A. Well, he turned out to be the offender.

Q. Oh, he did, yes—so it is alleged, yes. That is wrong, as it is written there, is it not, on what you have just sworn?

A. Yes.

Q. How did you come to make that mistake?

A. As I said, it was only last year, and I had been off sick for five months and I had been back only about three weeks when I made that statement.

Q. Well, where had Fennessy got his information that Hamilton was a suspect?

A. I do not know.

Q. Oh, Mr. Williams. You would have asked him that, would you not?

A. What he told me, I took it on face value.

Q. But you are in charge of the whole investigation?

A. Yes.

Q. And it is very relevant, in determining what course the investigation will take . . . ?

A. That is right.

Q. To find out where the information that Hamilton is a suspect came from?

A. Not necessarily.

Q. Oh, look, if it had come from the co-offender, then it would be a pretty good start, would it not?

A. Well, I take it that that is where it did come from, that . . .

Q. You "take it". You never asked, though, did you?

A. No.

Q. So you say?

A. I am going on what either Mr. Murphy or Mr. Sinclair said when they were going out to Braybrook.

Q. So we have Mr. Fennessy telling you, not that he is an offender—Hamilton—but that he is a suspect, and from where he has got that information, you have no idea?

A. That is right.

Q. Certainly not Eric Grant? He would not have told him, I suppose?

A. I do not know.

Q. No—because you were not curious enough to ask?

A. I did not ask him where he got it from.

The following statements in that passage of the transcript are false:

(i) "Sergeant Fennessy never told me Hamilton was an offender".

At page 8636 of the transcript Sergeant Fennessy swore categorically that he did.

(ii) "I don't know where Fennessy got his information that Hamilton was a suspect".

The inescapable inference is that Fennessy must have told him he got it from Grant.

(iii) "I don't know whether Eric Grant told him".

Again that must be false—as was his statement at page 8099 of the transcript that he never asked who did.
At page 8004 of the transcript Inspector Williams was asked, "Where do you think Mr. Sinclair would have received his information about the sunglasses and the hat?" (those being the sunglasses and hat worn by the man Jones had seen leaning into the Holden Monaro at Thornbury shortly before the robbery) to which he replied, "I don't know". When then asked, "You could not hazard a guess", he replied, "No".

Again at page 8097 he swore he did not know to whom the Northcote Police had passed the information.

At page 7993, however, he was asked, "Where would Mr. Sinclair get that information? He has alleged that one of the men was wearing sunglasses and a hat. Where would Mr. Sinclair get that from?", to which he replied, "I don't know".

Apart from the patent inconsistency in the answers Inspector Williams gave to those questions, it was in fact Sergeant Fennessy and Detective Raynor who went to Northcote and obtained the information conveyed to the Police at Northcote by Jones (page 8620).

Another lie told by Inspector Williams was demonstrated at pages 8041–2 of the transcript. I do no more than set out the passage including the assertion by Counsel for the Police Association which in the circumstances was completely without foundation.

Q. When did you first hear that the reason Hamilton was likely to be edgy was because of trouble with John Joseph Power?
A. I think Sergeant Murphy told me that.

Q. When did he tell you that?
A. That was later in the day.

MR. COLDREY: Yes. How did he come to mention it?
A. Well, I think it was only to sort of corroborate what we had heard earlier in the morning.

Q. You swore on oath yesterday you knew because you read it in Hamilton's interview, did you not?
MR. PHILLIPS: He did not say he read it, as I recall it. He said it was in the interview which I submit is entirely consistent with the answer he has now given.

MR. COLDREY: It would be untrue to say you read it in the interview in that context sometime that day?
A. Yes.

Q. Let me read this answer to you: "I knew when we were going out that Hamilton was edgy, but I did not ask why. You asked me how did I know, I took it to be later and I read it in the interview of Hamilton's or I saw it in the interview of Hamilton's". That is a lie, Mr. Williams, is it not?
A. I cannot recall ever saying I read the Record of Interview.

Q. Here you are swearing on oath as large as life because when you were pressed as to how you knew he was edgy you grasped at the answer that seemed appropriate at the time, "I read it in the interview of Hamilton"?
A. That is not so.

Q. Because you read it, did you not?
A. No.

Q. Why is it there on oath?
A. I do not know.

At pages 8067–8 of the transcript Inspector Williams was questioned concerning the failure of the Police to put Grant and Nelson through the Interview Register. The passage in his evidence relating to the matter is worthy of inclusion in this summary.

Q. How soon after Nelson and Heuston were released did you make the enquiries about the Interview Register?
A. I think it was a few days later.
Q. What arose to cause you to make enquiries about it?
A. I think it was because of a complaint by somebody else that Inspector Plant had and we said they will be in the Interview Register and we went and got it and checked it through and found that two, I think it was three, were not entered at all.

Q. A mere few days after their release?
A. It may have been even longer than a few days.
Q. It was not much later, you said a few days, it was not months or years, was it, a few days?
A. Days, yes.
Q. It was then you made enquiries of members of the Armed Robbery Squad as to why they had not been put through the book?
A. Yes.
Q. Did you, at least, ascertain at that stage who it was who let them go, who took them down and released them?
A. No, I don't think I did. I'm only guessing, but I think it was Mangles from the Crime Car Squad.
Q. You think it was Mangles?
A. I have just got that idea, I'm not saying I'm right.
Q. Had not Mangles left long before Heuston and Nelson were released?
A. They were around for a while. I thought the Crime Car fellows stayed later, but then I could be wrong.
Q. The enquiries you made about the Interview Register were made of member people of the Armed Robbery Squad, were they not?
A. Also enquiries were made from the Crime Cars at Ascot Vale and Sunshine.
Q. You felt concern enough about this breach of Orders that you wanted to get to the bottom of this?
A. I think I was entitled to find out why they were not put through the book.
Q. I certainly agree with that. Are you telling us now that only some days after nobody owned up to saying, "I took them down and let them go, I made the mistake, I didn't put them through the book"?
A. That could be the position.
Q. Nobody owned up to it?
A. Not that I can recall. I would say that if someone had I could recall who it was.
In my opinion it was Inspector Williams who failed to put Grant and Nelson through the Interview Register. If it was not Inspector Williams who failed to do so, it is a sad commentary on the members of the Armed Robbery Squad at that time, that no one was prepared to "own up" to it. Clearly it was no part of the function of the members of Ascot Vale and Sunshine Crime Car Squads to do so.

The extent of Inspector Williams' untruthfulness during the course of his evidence in the Hamilton Matter was such that ultimately I was not prepared to accept any statement made by him unless it was corroborated by the acceptable evidence of other witnesses.

Of necessity, I shall be obliged to refer to other falsehoods told by Inspector Williams at a later stage of this summary. For the moment however, I move on to consider certain aspects of the evidence Senior Sergeant Murphy gave—aspects that is, unrelated to the Record of Interview he alleged took place between himself, Senior Constable Tamblyn and Hamilton on the 15th March, and the identification parade held during the course of that Record of Interview.

Senior Sergeant Murphy

(a) In the first instance Senior Sergeant Murphy swore that Grant was never mentioned to him that night or morning and that he did not know he was at Russell Street. He first learnt he had been at Russell Street a couple of days later, at which stage that information came as a complete
surprise to him (page 8191A). Later he swore that he did not see, speak to or hear of Eric Grant on that day (page 8222).

I reject those statements.

I find it inconceivable that Senior Sergeant Murphy who was second in charge of the Squad (page 8190) would not have known of Grant's presence at Russell Street.

The second matter is that having been brought into Russell Street at 3 a.m., he spoke to Kim Nelson (page 8192), but would have the Board believe that although he knew who she was and had a detailed knowledge of her background, did not ask her her address, did not ask her who she was living with, did not ask her what she was doing in the car with McGowan and did not ask her if there had been anybody else in the car (pages 8192-3). At the same time he would have the Board believe he was attempting to get any information he could from her (page 8193).

One simply cannot accept the proposition that on his arrival at Russell Street at approximately 3 a.m., Sergeant Fennessy did not tell Murphy, a senior colleague, that McGowan, Nelson and Grant had been apprehended in the car at Braybrook. It is unbelievable that he did not hear some mention of Eric Grant during the course of that day. I find that he did.

At page 8206 of the transcript Murphy swore that the name Eric was mentioned by McGowan whilst they were either driving from Russell Street to Braybrook or Collingwood shortly after 7 a.m. that morning, (see a further reference to the matter at page 8331 of the transcript), and that during the course of that same trip McGowan pointed out the house of Nola Grant at 360 Wellington Street, Collingwood. Pausing there, one simply cannot accept that he did not link the two together—Eric and Nola Grant.

At page 8211 he swore that although he didn't hear on the 15th March that Eric Grant was involved in the robbery, he heard that a man called Eric was. It is also of interest to note that at that page of the transcript as at page 8219, he agreed there was a note on the file that day (probably that morning) containing the information the witness Jones had conveyed to the Northcote Police, viz. that there were three men involved. (This is just another factor which demonstrates the falsity of Inspector Williams' evidence to the effect that he too did not know there were more than two men involved until he monitored the read-back of McGowan's Record of Interview shortly after 3 p.m. that day.)

To suggest in these circumstances that Senior Sergeant Murphy did not link up the name Eric mentioned by McGowan shortly after 7 a.m. with the third offender "Eric" is unacceptable. At all events the falsity of his statement that he never heard of Eric Grant on the 15th March is adequately demonstrated by the following passage of evidence.

At page 8223 of the transcript Senior Sergeant Murphy swore that later that day (the 15th March) he spoke to Inspector Williams about McGowan's Record of Interview. He asserts that Williams mentioned that according to McGowan, a third man had been involved in the robbery although he did not mention him by name.

At pages 8122–3 of the transcript Inspector Williams had this to say:

Q. Eric Heuston became wanted after that playback, did he not?
A. To be further interviewed, yes.
Q. You would have made very sure that all the members of your Squad knew that Eric was wanted for further interviewing?
A. They would have known that.
Q. You would have made sure because that is your function, to supervise their operations?
A. Yes.
Q. You would have made sure that the members of your Squad were on the lookout for him and to bring him in for further questioning?
A. Yes.
Q. Why is it that when you spoke to Mr. Hamilton on 31st July you said to Mr. Hamilton, "Well, there is nothing to say that he even has been now . . .", that is in relation to the hold-up?
A. Even though I thought he was the third one, I wouldn't tell him.
Q. That is a lie, is it not?
A. That is a lie.
Q. That was not the truth, was it? You did not tell him the truth?
A. No.
Q. When you do not tell the truth and you know you are not telling the truth, for whatever reason, that is called a lie, is it not?
A. If you want to put it that way.
Q. You told him a lie, did you not?
A. I didn't tell him the truth.

I included the latter portion of that exchange in this summary to indicate that Inspector Williams will lie if he considers the occasion warrants it. Further instances of lies of that nature appear at pages 7986-7 and page 8172 of the transcript.

At a later stage Inspector Williams said he supposed that everyone working with him would have known Grant and Nelson were at Russell Street that night. A moment later he asserted he would not know (page 8136A). I see little point in elaborating further in this summary on Mr. Williams' somewhat elusive concept of the truth.

(b) In the second instance Senior Sergeant Murphy swore that when he was briefed by Williams at Russell Street at 3 a.m. that morning, Williams only told him that McGowan had been arrested in the car, that Kim Nelson was in the car at the time and that the other suspect was Joey Hamilton. So far as Hamilton was concerned, Williams did not know where he was at that time but hoped to find out soon (page 8190). See also his statement to Chief Superintendent Duffy to this effect (exhibit 585) which appears as Appendix "E" to this Chapter of the Report.

In my opinion that evidence contained the following falsehoods:

(i) As the Officer Second-in-Charge, it is inconceivable he was not told that Grant (a criminal with a lengthy list of prior convictions) had been apprehended in the car with McGowan and Nelson.

(ii) According to Sergeant Fennessy's evidence he spoke to Grant between 1.20 and 2 a.m. (page 8632). At 3 a.m. that morning Fennessy told Williams that Hamilton was at 86 Lord Street, Richmond, and was armed and edgy, etc. (page 8638). To say, therefore, that Williams told him he did not know where Hamilton was but hoped to find out soon, cannot be true. To state that he understood Williams did not obtain that material until about 5.15 a.m. (page 8191A), is quite contrary to the evidence all other Police Officers gave concerning the matter.

(c) As in the case of Williams, Murphy first denied that Grant was a Police informer then watered his denial down somewhat by saying he did not know. It is interesting to note the passage of his evidence at pages 8270-1 of the transcript concerning the matter.

Q. Mr. Murphy, you understood, did you not, that Heuston was a Police informer?
A. I know nothing of the sort.
Q. You are not prepared to deny that he is a Police informer, are you?
A. I am. He has not... He has never given me any information in his life.

Q. Never given you any?
A. No.

Q. You are not prepared to deny that he may be a Police informer?
A. I repeat, he has never given me any information. I do not know if he is a Police informer.

Q. You do not know? You have never heard any mention of it?
A. He has never given me any information. I do not know that he is a Police informer.

Q. Have you ever heard it suggested by members of the Armed Robbery Squad, that Heuston is a Police informer?
A. Nobody has ever told me, in the Armed Robbery Squad, that he is a Police informer, Sir.

As I observed at an early stage of this summary, why not adopt the attitude Sergeant Fennessy adopted and simply decline to answer the question put (see Fennessy's evidence at page 8650).

There were so many unsatisfactory aspects of Senior Sergeant Murphy's evidence it is impossible to enumerate them all in this summary. What I propose to now do is to refer to a further selection of them as briefly as possible.

(d) Senior Sergeant Murphy swore that at the time he commenced his interview of Hamilton he had never heard of the name Eric Grant (page 8252). That interview commenced subsequent to the trip with McGowan to Braybrook and Collingwood. During the course of that trip McGowan not only referred to Eric but pointed out the home of his wife, Nola Grant, at 360 Wellington Street.

As I previously indicated, I cannot accept the proposition that he did not link the two together.

(e) At page 8190 of the transcript Senior Sergeant Murphy swore that when he was briefed by Inspector Williams at 3 a.m. that morning he was told that McGowan had been arrested in the car at Braybrook and that Kim Rita Nelson had been brought into Russell Street because she had been in the car at the time he was arrested.

At Hamilton's trial in August, 1973, he was asked, "Did you ascertain who had been brought with her?" (i.e. to Russell Street) to which he replied, "No sir." He was then asked, "You didn't ascertain she had been arrested with one Stanley McGowan?", to which he replied, "No". (See page 95 of exhibit 539.)

Those were clearly lies as was the lie he told at pages 95-6 of the same transcript, viz. "You didn't ascertain that she had been travelling in the vehicle which was allegedly used in the armed hold-up?"—"No, I did not ".

(f) Before this Board Murphy swore he spoke to Jerry Dragosevic at Russell Street that morning (page 8192 and page 8199). At Hamilton's trial he swore he did not. (See page 97 of exhibit 539.)

(g) At page 8200 of the transcript he swore that Hamilton had a gun (at 86 Lord Street), was likely to be edgy and shoot at the first sound. When asked: "Did he (Williams)
tell you where he got that information from?" he replied, "No"; when asked, "You did not ask him?" he again replied, "No.".

I do not accept that Williams' source of information of such a serious nature would not have been conveyed to his second in command.

(h) At page 8207 he swore that in the car trip to Collingwood McGowan pointed out various places where he said he had been with "other offenders". (In fact in Senior Sergeant Murphy's diary appears this statement allegedly made by McGowan, "I have been there with other offenders").

At page 8209 he swore he was keen to learn who the third man was. (At that stage he already knew, so he alleged, that a second offender was Hamilton). Yet when asked at page 8207 did either he or Sinclair or anyone in the car ask who the third man was he said—"No".

Again, that is evidence I am not disposed to accept. To suggest that, being keen to ascertain the identity of the third offender, he did not question McGowan concerning the matter at the very time McGowan was pointing out the places where he and the offenders had been on the day of the robbery, viz. 360 Wellington Street, Collingwood, and 206 Gertrude Street, Fitzroy, is ludicrous.

(i) Senior Sergeant Murphy took no part in the compilation of the Record of Interview of McGowan. That was done by Senior Constable Sinclair and Senior Constable O'Loughlin. At page 8219 of the transcript he swore he did not see that Record of Interview until the committal proceedings. Again, and in view of the fact he was second in charge of the Squad that day, and in fact took part in the compilation of the Record of Interview with Hamilton, that is an answer I am not disposed to accept.

Although I shall advert to this aspect when considering the Records of Interview of Hamilton and McGowan, it is interesting to note that when Murphy gave evidence to this Board on Friday the 13th February, 1976, he swore that the interview with Hamilton concluded at 1.30 p.m. (page 8183A). When questioned about the matter by Counsel appearing to assist the Board on the following Monday, he changed that time to 3.30 p.m. At Hamilton's trial, however, he swore that the interview concluded at about 3.15-3.30 p.m. (See page 102 of exhibit 539). By sheer coincidence, when Senior Constable Sinclair was giving evidence at the trial concerning McGowan's Record of Interview he swore that it had concluded at 3.20-3.25 p.m. (See page 8 of exhibit 539).

There were many other unsatisfactory features of Senior Sergeant Murphy's evidence which can have no other effect than to completely destroy his credibility as a witness. As in the case of Inspector Williams, in the event the reader of this summary is left in any doubt concerning the matter, I invite him to read the whole of the transcript relating to the Hamilton complaint.

The next Police Officer I propose to advert to at this juncture is Sergeant Brian Francis Fennessy.

Sergeant Fennessy

As I indicated at an early stage of this summary, one factor in favour of Sergeant Fennessy is that when asked any questions as to whether or not Grant was a Police informer, or any questions, the answer to which might enable that inference to be drawn, instead of lying about the matter, as I am convinced both Williams and Murphy did, he accepted the invitation offered him by the Board and simply declined to answer. See, for example, his answers at page 8641 and page 8630 of the transcript. There are however, certain aspects of his evidence which require consideration.

(a) At pages 8620–1 he swore that although he had spoken to the witness Jones somewhere in the vicinity of 7.00 p.m. on the 14th March, he had no recollection of Jones telling him of the number of men involved, and following that conversation, had no belief concerning the matter. For reasons I have already adverted to, I consider that portion of his evidence was false, as was his statement at page 8626 that he had no recollection of asking Jones the number of men in the car.
(b) At page 8631 he swore that at about 12.35 a.m. he told D24 to have Police go to 11 Kenneth Street, Braybrook and bring the occupants of the car or the house to Russell Street. Again, and for the reasons I have adverted to, I consider that portion of his evidence is false. By then, and despite his denial at page 8632 that he knew the car parked at Braybrook would be leaving the premises in a short time, he obviously knew Grant was “setting-up” Hamilton and McGowan, and had instructed the Police to “sit-off” 11 Kenneth Street until Grant woke McGowan for the purpose of driving him and Nelson to a taxi rank, thereby enabling the Police to apprehend him at the wheel of the vehicle used in the robbery. (See the statements of the Police Officers involved—exhibits 573–576 inclusive.) In fact at page 8632 he ultimately was driven to concede it was “a set-up”.

(c) Sergeant Fennessy swore that before the raid at 86 Lord Street, Richmond he took the names, addresses and dates of birth of all the persons who had come to Russell Street (from 11 Kenneth Street). He then checked those persons out at the Information Records Section at Russell Street and the Central Recording Bureau in Sydney (page 8623).

It follows, therefore, that on his list would have been the name of Eric Grant together with the relevant details applicable to him. It is inconceivable that that information was not given to Inspector Williams prior to the raid, and placed on the Police File for the assistance of those Police Officers investigating the robbery. That this was so appears clearly from the evidence Senior Constable Tamblyn gave at page 8276 of the transcript.

Q. And in the early hours of the 15th March, did you come on duty at approximately 2 a.m. and go to Russell Street?
A. Yes, I did.
Q. At Russell Street on the fifth floor, did you see a number of people who it appeared had come in from Braybrook with various Police?
A. Yes.
Q. And at some stage did you note down the names?
A. Yes, I did.
Q. Of some of them?
A. Yes, I did.
Q. Does your diary record that you noted the name and date of birth of a Phillip Michael Kitchener?
A. Yes.
Q. A Harold Eric Grant alias Heuston?
A. Yes.
Q. And also his docket number?
A. That is correct.
Q. A Neil Heuston?
A. Yes.
Q. Two people called Dragosevic?
A. That is correct.
Q. And you recorded the address of all of those people as 11 Kenneth Street, Braybrook?
A. That’s right.
Q. And have you also recorded in your diary a Stanley Thomas McGowan with a New South Wales address?
A. I have.
Q. Have you recorded a Kim Nelson without any address?
A. Yes.
Q. Can you recollect now Mr. Tamblyn, whether you wrote those names directly into your diary or whether you initially wrote them on a piece of paper and later transferred them to the diary?
A. I got them from a piece of paper from another person and I transferred them to my diary.
Q. Can you recall now, did you know then who wrote on the piece of paper?
A. No, I don't.
Q. Do you know now?
A. No.
Q. Did you preserve the piece of paper in the sense of keeping it yourself?
A. No.
Clearly the piece of paper was on the Police File opened in respect of the matter, as was the information from D24, Cochrane and Jones.
This evidence makes the evidence of Williams and Murphy all the more ludicrous.

(d) I have already adverted to the fact that Fennessy spoke to Grant between 1.20 and 2 a.m. that morning and passed on the information he had received from Grant to Williams. There is little point in making further reference to that aspect. Clearly, Williams was aware of Grant's presence at Russell Street as he indeed swore (page 7965) and that he had set-up McGowan and Hamilton.

Sergeant O'Loughlin
As in the case of Williams, Murphy and Fennessy, there were various aspects of the evidence Sergeant O'Loughlin gave which caused me to doubt its veracity. I have already dealt with the information he gleaned from McGowan concerning Eric Grant during the course of the trip from Russell Street to Braybrook, Collingwood and Fitzroy between 7 a.m. and 10.30 a.m. that morning, and do not propose to re-cover the same ground. Perhaps I have not made clear at this stage the fact that the purpose of that trip was to have McGowan point out the places he had been to on the day of the robbery, i.e. the flat of Kim Nelson at 206 Gertrude Street, Fitzroy, and the home of Nola Grant at 360 Wellington Street, Collingwood, and as well to obtain his share of the proceeds of the robbery from 11 Kenneth Street, Braybrook.

In view of the information he had obtained from McGowan during that trip, and in view of the information available to all other officers on the Police File, O'Loughlin's testimony to the effect that he did not know that Grant had been at Russell Street that morning until after the read-back of McGowan's Record of Interview is patently false (see his evidence at pages 8525-8527).
In fact when one considers that before they left Russell Street after 7 a.m. (or 8 a.m. as he would have it—page 8548) to go to Braybrook, Collingwood and Fitzroy, he had spoken to McGowan for some 20-30 minutes, and that McGowan told him Eric was involved but that he didn't know his surname (page 8542), to suggest he made no real attempt to find out from McGowan who Eric was (page 8547), is even more unbelievable.
I consider the following passages from the evidence of Sergeant O'Loughlin probably highlight the absurdity of the situation better than others.

(page 8605:-)
Q. At any rate, a colleague gave him a slip of paper with a number of names on it and Mr. Tamblyn tells us he was impressed by all of this to the extent that he wrote it in his diary. Do you follow me, Mr. O'Loughlin?
A. Yes.
Q. It turns out, when we compare one thing with another, this list of names that this gentleman gave Mr. Tamblyn were the people who had been brought in as suspects in the armed robbery, do you follow me?
A. Yes.
Q. And among the people appearing on the piece of paper as suspects for the armed robbery was an Eric Grant alias Heuston, do you follow me?
A. Yes.
Q. That, of course, would have been very important information for you and Mr. Sinclair to have in your possession when you commenced to interview McGowan at seven in the morning, would it not?
A. It would have.
Q. Because it would have disclosed the presence there and then at Russell Street of an Eric?
A. That is right.
Q. An Eric Grant alias Heuston?
A. Yes.

Q. And a moment’s check, had Mr. Tamblyn disclosed to you the piece of paper with a name Eric on it, would have disclosed that Eric Grant alias Heuston was a criminal with a record in three States, would it not?
A. It may have conveyed that to me.

Q. And that would have been a very important piece of information for you to, first of all, confront McGowan with, would it not? Question him about it?
A. The list of names?
Q. The Eric Grant alias Heuston, a criminal with a three-State record?
A. I would say this problem may have never arisen if that information had been conveyed to me at that time.

Insofar as that last answer is concerned one can only comment, “How true”.

(page 8607:—)
Q. But at 7 o’clock you certainly knew that he had been picked up in a car bearing New South Wales plates?
A. Yes.
Q. Did you or Sinclair ask him who was in the car with him when he was apprehended?
A. No, Sir.
Q. Why not?
A. I’ve got no idea why not.
Q. Might that not have been important?
A. I don’t think that it was important in relation to the robbery.
Q. Might not that vehicle have also contained malefactors, in addition to McGowan, who could have been involved in the robbery?
A. Yes, it could have.
Q. No question was asked of him?
A. That is correct.

If accepted the following passage of his evidence at page 8543 again demonstrates the falsity of the evidence Senior Sergeant Murphy gave at page 8205-6 to the effect that he did not hear of the name Eric until they were in the car on the way to Braybrook.

Q. Well, Mr. O’Loughlin, doubtless when this information was imparted to you at about 7 o’clock either you or Mr. Sinclair at once went to Mr. Williams and said, “Look, there is a third man involved in this by the name of Eric and he looks like he was the get-away driver. Can you lean on Hamilton and see if you can find out who Eric is, because McGowan said he does not know who he is”? Which of you spoke to Mr. Williams in those terms.
A. I don’t think either of us spoke to Mr. Williams in those terms.
Q. Why not?
A. I think at that stage we were making preparations to go out to Braybrook and my recollection was that Mr. Murphy was told there was, in fact, a third person by the name of Eric.
Q. Mr. Murphy was told?
A. Yes.
Q. At about the same time you were told or before?
A. As a result of us being told I believe Mr. Murphy was told.
Q. By whom?
A. I would say, perhaps, Mr. Sinclair. I have no recollection of saying it, myself, but I have a recollection of Murphy certainly being told there were three persons involved in the robbery.
Q. One of whom was the man Eric who looked like the get-away driver?
A. At that stage Eric was certainly the driver of the car.
Q. That would be relevant information to pass on to Mr. Murphy, would it not?
A. Yes, I believe so.
Q. It is your belief, is it, that Sinclair imparted this information to Mr. Murphy?
A. Yes.
The only other Police Officer to whose evidence I propose to advert at this juncture is Senior Constable Tamblyn.

In view of the fact that I propose to deal in some detail with the evidence he gave relating to the Record of Interview with Hamilton, I shall only touch upon two or three aspects of his evidence.

In the first instance he swore that it was not until some weeks later that he first heard of the suggestion that Grant was the third man involved in the robbery (page 8287). I find this extremely difficult to accept in view of the fact that at approximately 3 a.m. that morning he obtained the name Grant (alias Heuston) from the list of names prepared by some other Police Officer (page 8276 and page 8283) and that during the course of the Record of Interview with Hamilton (exhibit 589) he alleged that on more than one occasion Hamilton referred to a third person who had taken part in the robbery and referred to him in these terms. (I should add I have deleted what I consider to be irrelevant questions and/or answers. The passages I have set out are merely examples chosen at random to demonstrate that on the 15th March it must have been apparent to Tamblyn that a third man was involved.)

A. Alright. I’ll tell you right now. She had nothing to do with this.

I knew if I got mixed up with that idiot I would go crash.

Q. Who are you referring to when you say idiot?

A. Look I may be a mug but I’m no dobber.

Q. Are you talking about, McGowan?

A. No, I hardly know him, just met him a couple of times that’s all.

Q. Did you use the gun we found at your place to do the robbery?

A. Yes that’s right, the other mug brought a sawn-off shotgun with him but we didn’t use it. Its only a single shot and if you have to fire it you have had it.

Q. Who else was with you when you did this armed robbery?

A. Well Bronco, you got him, and that other mug.

There are many other references to the third man in that Record of Interview. As it appears as Appendix “B” to this Chapter of the report, I leave it to the reader of this summary to note them for himself.

The point I wish to emphasise in connection with the matter is that from the information in his possession it must have been obvious to Senior Constable Tamblyn that day, that the Eric Grant at Russell Street was the third man involved in the robbery. In my opinion he has simply lied about the matter in an endeavour to conceal the deal done with Grant by the Police.

It is also quite unacceptable for him to suggest, that on the 15th March, he was unaware of the fact that following the read-back of McGowan’s Record of Interview, Inspector Williams formed the view that Grant was the third man involved (page 8360). In this connection see the evidence of Inspector Williams at page 8122 to the effect that following that read back all members of the Squad would have known that Grant was wanted for further questioning.

The second piece of false evidence he gave appears at page 8360 of the transcript. When asked was he ever aware up to the time of Hamilton’s trial that Grant was a Police informer he replied, “No”. When it was then put to him that he would not deny that Grant was a Police informer he replied, “I don’t know”.

That Tamblyn knew full well that Eric Grant alias Heuston was an informer was inferentially inescapable from the evidence he gave at Hamilton’s trial.

At page 8368 et seq. of the transcript he was cross-examined concerning certain answers he gave at the trial of Hamilton relating to the people he had spoken to at Russell Street that morning whose names he had entered in his diary (see page 69 et seq. of exhibit 539). At page 8368A of the transcript it was pointed out to him that at the trial he had never given the Court the name of Eric Heuston. When asked could he give any reason as to why he had not given that name, he simply replied, “No, I cannot”.

Later, and at page 8369 of the transcript, it was pointed out to him, that at the trial and when questioned about Eric Grant’s brother Neil Heuston, (who had also been taken from Kenneth Street to Russell Street on the morning of the 15th March), when asked to spell Heuston, he spelled Hewston. It was then pointed out to him that in the entry he made in his diary relating to the 15th March he had spelt it correctly, viz, Heuston.
In my opinion his omission to disclose the name of Eric Grant, and his spelling of the name Heuston in the manner in which he did, could only be with a view to concealing the fact that Eric Grant was at Russell Street that morning and that a deal had been done with him.

In a similar connection, and when making the relevant entry in his diary, it was of interest to note that Inspector Williams had spelt Grant's name Houghton (page 7907).

As I have previously indicated, shortly after 7 a.m. on the morning of the 15th March, 1973, Murphy, Sinclair and O'Loughlin took McGowan to Braybrook to obtain his share of the proceeds of the robbery then apparently secreted at the premises at 11 Kenneth Street. Having done so, they had McGowan point out the premises at 360 Wellington Street, Collingwood, occupied by Nola Grant and where McGowan alleged the proceeds of the robbery had been split up the previous day, and then the premises at 209 Gertrude Street, Fitzroy, occupied by Kim Rita Nelson. McGowan, of course, denied that he went on that trip at all. He maintained that the Police merely took him back to Braybrook to search the premises at 11 Kenneth Street, then returned to Russell Street (pages 7533-4).

The number of lies told by McGowan before this Board was such that I placed no reliance on his testimony in this or any other connection whatsoever. It did seem odd to me, however, that if the Police went to the premises at 360 Wellington Street that morning, as they allege they did, why did they not, as with others much more remotely connected with the Thornbury robbery, take Nola Grant to Russell Street and interview her. After all, she could have given vital evidence as to the division of the spoils from the robbery at those premises the previous day.

There is one explanation, of course, that readily comes to mind. Nola Grant may have let slip the fact that Eric Grant was one of those who took part in the robbery. A statement from her to that effect at that time, i.e. between 7 a.m. and 10.00 a.m. would have been most embarrassing to all concerned for, at that stage, Eric Grant was still at Russell Street.

In fact it was not until later that day, after Eric Grant and Kim Nelson had been released, that other Police went to Wellington Street and questioned Nola Grant.

Although I shall advert to this aspect at a later stage—it is to be noted that even then they did not obtain a written statement from her, and that that was not done until the 22nd March, 1973.

It is in connection with this visit that I wish to make further reference to Senior Constable Tamblyn, for it was he who accompanied the two other Police Officers who attended the premises on that date.

At page 8377 of the transcript he told the Board that when he went to the premises with Police Officers Crawford and Rickman on that occasion, he did not know the purpose of the trip. That was evidence I was not disposed to accept.

Of more devastating effect so far as his credit was concerned, was his categorical assertion at Hamilton's trial in August, 1973, that he did not know who lived at that address (see page 8279 of the transcript and pages 89-90 of exhibit 539). This was in my view a lie designed to conceal from the Jury the role played in this rather sordid matter by Eric Grant and to defeat the defence allegations that Grant was the true culprit.

I now propose to advert to the visit made by Police Officers Crawford and Rickman to the premises at 360 Wellington Street, Collingwood, subsequent to 10.15 a.m. on the morning of the 15th March, 1973.

Visit to 360 Wellington Street, Collingwood, on 15th March, 1973

The failure of Murphy, Sinclair and O'Loughlin to attempt to interview Nola Grant when McGowan pointed the premises out to them between 7 a.m. and 10 a.m. that morning, was in itself extraordinary behaviour on their part, and this was borne out by the fact that almost immediately after Inspector Williams had released Eric Grant and Kim Nelson from Russell Street that morning, and at 10.15 a.m., he directed two other Police Officers—a Sergeant Crawford and Sergeant Maxwell George Rickman—to go to the premises. As a consequence of a somewhat unusual lapse of memory, Sergeant Rickman (the only Police Officer called in relation to this aspect) could not recall the reason why they were directed to go to the premises (page 9259a); and, although pressed concerning the matter, could not remember if they were given specific instructions or were just told to search the premises (page 9272a).

The fact is that upon searching the premises on that occasion the Police found an urn containing an amount of small change (subsequently produced at Hamilton and McGowan's trial) and a quantity of stolen...
property. In respect of the stolen property, they arrested a man named Gallagher, who they found at the premises at the time of the search, and subsequently laid various criminal charges against him in relation to it. Although they questioned Nola Grant concerning the division of the proceeds of the Thornbury robbery at the house on the previous day, no written statement was taken from her in relation to it.

Insofar as that interview was concerned, Sergeant Rickman maintained that Nola Grant only told them of two men visiting the house on the previous day, and leaving the money in the urn. It is interesting to note his evidence in this respect at page 9259b of the transcript.

Q. Why did you take this particular urn and the money in it?
A. I had a conversation with the woman who gave her name as Nola Grant. It was in her room that I found the urn and she told me how the money came to be at the premises.

Q. What did she tell you, in substance?
A. She told me that on that afternoon—the previous afternoon it would have been—a fellow called Joey and a little fat fellow with beady eyes who she didn’t like the look of came through the house and had some money in a paper bag and left that there, the copper, in the urn.

Q. Did she say anything more about Joey, that you remember?
A. No, she didn’t. I asked about his second name, of course, but she just knew him as Joey and he had been there a couple of times before.

Q. Did she say with whom?
A. I don’t know if he had been there with anybody before, but he had been around the house a couple of times before.

I might add the reference to the “little fat fellow with beady eyes” could only be a description of McGowan (see page 9259b and exhibit 580).

At page 9298 of his evidence Sergeant Rickman swore that he did not know what he was to look for when he went to 360 Wellington Street that morning. That is an answer I am not disposed to accept.

At Gallagher’s trial relating to the other stolen property located at the premises, Sergeant Crawford gave evidence to the effect that the Police had gone to Wellington Street as a consequence of being given some very specific information.

In my opinion that specific information could only have been given to them by Eric Grant; and that information could only have been to the effect that the urn containing the small change was to be found at the house, as was the stolen property concerning which Gallagher was subsequently charged.

Although I am now taking the events out of sequence, on the 22nd March, 1973, Rickman again went to Wellington Street and obtained a written statement from Nola Grant (page 9260). He alleged he did this of his own volition (page 9273) and that in that statement reference was only made to two men coming to the premises on the 14th March and dividing up money (page 9287). He further swore that when he showed that statement to Inspector Williams and Senior Sergeant Murphy, they did not seem particularly interested in it (page 9261 and page 9270); yet, as he agreed at page 9265, in his opinion the statement was an important one (as it clearly was) and Nola Grant should have been called to give evidence at Hamilton and McGowan’s trial. As he agreed, on any view of the matter the evidence she was able to give would have been most damning (page 9264).

Nola Grant was not called to give evidence at Hamilton and McGowan’s trial (page 9265). I shall make reference to that aspect in due course.

Not only has the bulk of the Police File relating to the Hamilton Matter been lost or destroyed (as has the betting ticket produced by Eric Grant as his alibi—in the event one ever was) but so has the statement taken by Sergeant Rickman from Nola Grant (page 9263).

To say, as he did, that it is a matter of concern that that statement is no longer in existence (page 9266), cannot be described as over-stating the matter.

Counsel Assisting said, in another context, that whilst you may stretch the arm of coincidence, you must not wrench it from its socket. I agree. I do not think the disappearance of Nola Grant’s statement was coincidence at all, any more that I think the failure to call her at the trial was due to oversight, or to a misconception of her evidentiary status as a former
wife of Eric Grant. I think the view was formed, accurately enough, that any involvement of Nola Grant in the Hamilton trial would lead to the inevitable and highly embarrassing projection into it of Eric Grant, with possible highly injurious repercussions to the Police case against Hamilton.

What is of more interest so far as her statement is concerned, however, is what Inspector Williams had to say in respect of it during the course of his cross-examination. At page 8045 of the transcript he was being questioned as to why Nola Grant did not give evidence at Hamilton and McGowan's trial. The following is the relevant passage:

Q. Who gave you to understand that Nola Grant would not go to Court?
A. I don't know.
Q. No idea?
A. No.
Q. That was your understanding, was it?
A. I never even—I didn't know that she wouldn't go to Court.
Q. You did not know she would not go to Court?
A. No.
Q. Let us look at what you said yesterday, "Taking her into account", Nola Grant, "she is only competent but not compellable and from my understanding of it she was not prepared to go to Court". They are your own words, Mr. Williams?
A. I remember saying that.
Q. You remember now, do you? You did not a second ago. Who gave you to understand that?
A. As I say, I cannot recall who it was. I could have a wild guess but I am not certain.
Q. Do you swear now that it was your understanding, as you swore yesterday?
A. I also believe she was his legal wife.
Q. Answer the question. Is it now your understanding that she would not go to Court?
A. Yes, as I understand it.
Q. Why would she have been asked to go to Court?
A. Why wouldn't she?
Q. Why would she have been asked?
A. If she was prepared to give evidence it would have been evidence against Heuston.
Q. May we take it that the fact that we find she would not go to Court—there must have been some material evidence that she could have given against Heuston that would have resulted in her being asked if she would go to Court?
A. Yes.
Q. Was that not in her statement?
A. I can't recall exactly what was in her statement but from my understanding of it the three went to the house in Wellington Street. Whether this is right or not, I don't know.

In the light of the evidence I have just been canvassing, I am satisfied of the following facts:

(a) Grant told Inspector Williams that the urn and small change was to be found at 360 Wellington Street.
(b) Inspector Williams deliberately waited until he had released Grant and Nelson before sending Crawford and Rickman to obtain it.
(c) Inspector Williams gave no instructions to Crawford or Rickman to take a statement from Nola Grant.
(d) When Sergeant Rickman of his own volition obtained a statement from Nola Grant, that statement implicated Eric Grant in the robbery. As a consequence of the deal that had been done with Eric Grant, Inspector Williams and Senior Sergeant Murphy were disinterested in the statement, the statement was subsequently lost or destroyed along with the Police File relating to the matter, and although she would have been a vital witness at Hamilton and McGowan's trial, she was not called to give evidence.

I turn now to a brief consideration of the apprehension of Gallagher. This matter is only of interest as illustrating a further aspect of the deal between the Police and Eric Grant, on that day.
It will be recalled that if one has regard to the evidence of Sergeant Rickman, it was only by pure chance or good fortune, that when searching the premises at 360 Wellington Street, Collingwood, they located there a large quantity of stolen property.

The fact is that it was not by pure chance or good fortune that that occurred. Clearly the information relating to such stolen property, and Gallagher's implication in respect of it, came again from Eric Grant.

That this was so was made clear in the Record of Interview conducted between Sergeant Rickman and Gallagher (exhibit 604). I do no more than set out this passage appearing at page 9283 et seq. of the transcript.

Q. There are a number of references to a man Eric in the Record of Interview?
A. Yes.
Q. That, of course, is Eric Grant?
A. Yes.
Q. There are a number of references to " Nola " in the Record of Interview?
A. Yes, I think . . . . Yes, I seem to remember the name coming up.
Q. That is Nola Grant?
A. Yes.
Q. The wife, or former wife, of Eric Grant?
A. Yes.
Q. Can you tell Mr. Chairman why, throughout this Record of Interview with Gallagher taken on the 15th March, 1973, the name Grant does not appear?
A. On what? On that Record of Interview?
Q. Yes?
A. I thought you said Nola Grant's name was on there.
Q. The name Nola is there; the name Eric is there. Why is the name Grant not there?
A. I wonder if I could refresh my memory on that.
Q. Yes, certainly. Well, we shall go through it together. You see, there is page 1—" Eric, who used to be married to Nola ". Page 2—" Do you see this Eric very often? " There may be, Mr. Rickman, other references. And a third reference to " Eric ". But you satisfy yourself that I have not missed something. (Document handed to witness?)
A. Thank you.
A. There is no reference to the name of Grant but, of course, at this stage, I knew the name of Nola Grant because I had already had a conversation with her up at the house prior to interviewing Gallagher.
Q. Would you be good enough to tell Mr. Chairman why the word Grant never appears in the Record of Interview?
A. She was not charged.
Q. Is that an honest and truthful answer?
A. We were interviewing Gallagher as to his . . .
Q. Would you mind answering my question? Is that an honest and truthful answer?
A. Of course it is.
Q. Is it meant to be a helpful answer to Mr. Chairman?
A. It is meant to be a truthful answer to that question.
Q. Is it meant to be helpful?
A. Well, I think if you are truthful, you are helpful. Don't you?
Q. Yes. Mr. Rickman, I shall ask you again. Do you know of any reason why, where the word Eric appears in the record of interview as a Christian name, the surname Grant does not appear?
A. I think it is self-explanatory. If the man's name is Eric and he is married to Nola Grant—or he was married to Nola Grant, his ex-wife—it goes without saying that his name is Eric Grant.
Q. Quite. Why does the word Grant not appear after the Christian name Nola in the record of interview?
A. I do not see any reason to refer to her as Nola Grant.

The only conclusion open from that Record of Interview was that the surname of Grant was not mentioned in it because of the deal done by the Police with Grant. In fact, although I have dealt with this matter in some depth when dealing with recommendations consequent upon the
findings of the Board, one has the uncomfortable feeling that that particular Record of Interview was a fabrication or, expressed in colloquial terms, "a verbal".

In that connection it was interesting to note that it was unsigned.

Curiously enough when Sergeant Rickman was asked, "Did he read it back?", his reply was, "Yes and then he said he had nothing personal against us but he was not going to sign it" (page 9255). One cannot but note, the similarity between that explanation for Gallagher's failure to sign his Record of Interview and the explanations or reasons given by Hamilton and McGowan for adopting a similar course.

In Hamilton's case I do no more than quote the following passage which appears towards the end of his so-called Record of Interview (exhibit 589).

Q. Are you prepared to read it out to us?
A. Yes, I don't mind doing that but nothing personal but I'm not signing it.

In McGowan's case the relevant question and answer appearing in the Record of Interview is along similar lines (exhibit 590).

Q. If you find that it is a true account of our interview will you be prepared to sign it as such?
A. I will read it through aloud for you, there is no worries about that but I don't want to sign it. The only reason I don't want to sign it is for personal reasons and nothing against you.

True it is McGowan did read back his Record of Interview. He alleged, however, that he did so because he had been "bashed by Sinclair and O'Loughlin" and feared further violence in the event he refused to do so (page 7855). Whilst the similarity between that one aspect of the three so-called Records of Interview is of the greatest significance, because McGowan would obviously swear what best suited him at a particular time, and because his testimony in that connection (i.e. relating to the alleged assaults on him) lacked corroboration, I was not prepared to make a finding adverse to the Police in respect of such assaults. I have dealt, however, with what I am firmly convinced is a most unsatisfactory method of interviewing suspects, in Chapter 8 of this Report.

I turn now to consider what to my mind were the worst aspects of the Police investigation relating to the Hamilton Matter, viz. the identification parade held at Russell Street at approximately 11.30 a.m. that morning (see exhibit 558), and the interview of Hamilton by Senior Sergeant Murphy and Senior Constable Tamblyn.

The Identification Parade Held at Russell Street at 11.30 a.m. on the 15th March, 1973

At approximately 10.30 a.m. that morning, the interview of Hamilton by Senior Sergeant Murphy and Senior Constable Tamblyn commenced. Between that time and the holding of the identification parade, it is alleged Hamilton had been asked a number of questions by Senior Sergeant Murphy but had made no answers incriminating him in the Thornbury robbery.

At approximately 11.30 a.m. he was taken from the room in which the interview was allegedly being conducted, and placed in a line-up to ascertain whether or not the victim of the robbery, Cochrane, could identify him. It is of significance to note that McGowan was placed in the same line-up as were Grant's brother, Neil Heuston, and another criminal named Binkie (page 7699).

Whilst the complaints Hamilton made concerning the identification parade pale into insignificance when compared with what subsequently occurred in relation to it at his trial, because my Terms of Reference specifically require me to investigate the conduct of identification parades, I propose to set out his account of that particular parade, and certain aspects of the evidence Inspector Willinms gave in relation to it.

At pages 7698-9 of the transcript Hamilton had this to say:

Q. In relation to the line-up which was conducted, have you got any complaints about the way in which that was done, and, if so, would you be good enough to tell Mr. Chairman?
A. Only that I now know I did not have to take part in the line-up and I was never told that. I was taken to the line-up. During the line-up I made complaints that I did not wish to stay in the line-up because they were bringing people there, you know, at random, and I think they brought approximately four people to view the line-up.

Q. These were not persons being brought to take part in the line-up; these were persons to look at the line-up?
A. Yes, and in fact they were identifying people from that line-up and in general I argued that I did not wish to remain in the line-up. I stepped out of the line-up on occasions and made complaints to other people in the line-up, asked them for their names, would they give me their names and addresses which they would not. There were people in the line-up that I knew but the other people would not give me their names and addresses. I was continually told, shut up and get back in the line-up by Inspector Holmberg. I made complaints all the way through the line-up and did not wish to be in it. Finally they brought Mr. Cochrane in to view the line-up and he walked up and down the line-up a couple of times, walked back and spoke to the Inspector, walked up the line-up again and then walked back to the middle to the Inspector who was standing directly in front of me, said something to the Inspector and the Inspector said something to him and he nodded his head like that (indicating) indicating towards me.

Q. Who nodded his head?
A. Mr. Cochrane and I thought he was indicating to me and I was pretty excited because I had been arguing that I did not want to be in the line-up and I stepped out of the line-up and I said, "You don't know me" and he said, "No, I don't" and with that Detective Holmberg said "You have had enough to say. Get back in the line-up" and when I started arguing, I did not want to be in the line-up to start with and they took me away.

Q. They are the complaints you have about the conduct of that line-up?
A. 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.

Q. How were you dressed?
A. I had on a pair of check patchwork pants, about 5-inch squares 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.

Q. How many did you know in the line-up?
A. Three.
Q. Who did you know?
A. Stan McGowan, one of Eric Heuston's brothers and Terry Binkie.
Q. Do you say that Mr. Cochrane, in the course of the line-up, identified you as one of the persons who came into his shop?
A. Well, he indicated with his head and later on he said that I had a similar hairstyle.

At page 7969 Inspector Williams was asked about the manner in which identification parades are arranged and had this to say:—

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 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.

Placing on one side Hamilton's complaint that he was placed in the line-up contrary to his wish, the point I make is the very point made by Hamilton at page 7699.

How can an identification parade ever be carried out in a manner fair to the suspect, when the suspect has been "dragged out of bed, has his hair everywhere, looks pretty scraggy in every way", whilst the other persons making up the numbers are members of the public service, neatly attired and of tidy appearance?

Because of the serious nature of the matter I am now about to advert to insofar as the purported identification of Hamilton was concerned, I shall say no more touching upon that aspect at this juncture. I have adverted to the matter in more detail in the Chapter of the Report dealing with Recommendations (Chapter 8).

In considering the matter I am now about to deal with, it must be borne in mind that Hamilton and McGowan were so dissimilar in appearance that one could never confuse the one with the other.

Hamilton is of rugged appearance and athletic build. Without wishing in any way to be offensive to him, the regrettable fact is that McGowan is, as described by Nola Grant to Sergeant Rickman, "a little fat fellow with beady eyes" (page 9529n).

In fact to put it bluntly, he is of "ape-like" appearance, and once seen could never be forgotten. See the evidence of Sergeant Rickman at page 9259n, the evidence of Senior Constable Tamblyn at page 8405 and the evidence of Senior Sergeant Murphy at page 8241 in this connection.

I move now from the identification parade to the evidence the witness Cochrane 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) he 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 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, stated at an identification parade that the accused looked like the man who tied him up but that he could not swear to it (he at the trial having sworn that the accused looked very similar to the other criminal, viz. the one with the gun, and that he 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 that witness so far as the question of identification was concerned.

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.

As Inspector Williams agreed at page 8052 of the transcript—it was an extraordinary conflict.

How did this situation arise whereby neither the statement made by Cochrane to Inspector Holmberg at the line-up was brought to the attention of the Police Officers investigating the Thornbury robbery, nor his report (exhibit 558)?

As 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 is said by witnesses at an identification parade, but on this occasion he did not.

It is of interest to note at this point what Senior Sergeant Murphy said at Hamilton's trial concerning Cochrane's identification of Hamilton, and what he said before this Board.

At page 108 of the transcript of the trial (exhibit 539) and having described the preliminary proceedings which took place before Cochrane walked over to the line of men, he swore this:

Q. But who walked over to the line?
A. Mr. Cochrane.
Q. And did he do anything?
A. He identified the accused.
Q. How did he do that?
A. By saying words to the effect that 'he looks like the one' ".

I invite the reader to note the careful omission of the words, "He is similar, but I could not swear to it ", and the words, " who tied me up "—words most vital to the Defence.

Not unexpectedly, Senior Sergeant Murphy was cross-examined concerning the matter before this Board. I do no more than set out this passage appearing at pages 8237-8 of the transcript.

Q. When you gave evidence at the trial, at page 110a, you were asked these questions by the Prosecutor: "Was in fact the accused man asked if he had any objections to anyone in the line-up?" "He was, yes ". "What was his reply to that?" "He said no ". You did not have any qualifications on having heard him say that when you were giving evidence at the trial, did you?
A. No.
Q. So it appears you did hear that?
A. If I said it at the trial, yes.
Q. So we have you there hearing the introductory comments?
A. Yes.
Q. Hearing what was said afterwards in relation to him being satisfied?
A. I can't recall if I did at the time.
Q. Hearing him say, " He looks like the one "}?
A. Yes, or words to that effect.
Q. What you did not hear him say, you swear on oath, is the rest of that sentence, " He looks like the one ", or " He looks like the fella who tied me up ", is that what you are swearing?
A. Yes.
Q. Those last four words, "... who tied me up", missed going in through your ears, did they?
A. Yes.
Q. You missed hearing him say, "He is similar but I could not swear to it", did you?
A. Yes.
Q. Do you often suffer from this selective deafness, Mr. Murphy?
A. I do not know whether you are trying to be insulting, Sir, but doesn't it depend on the manner in which the person who is talking speaks? If I speak in a low voice at the beginning of the sentence my voice at the finish of the sentence—surely it is commonsense I will surely hear the sentence that is being spoken in a high-pitched voice.
Q. Are you saying "He is similar but I can't swear to it" was said in a low voice?
A. If I didn't hear it it is probably the reason why.
Q. Did he say "Who tied me up" in a low voice?
A. I don't know, do I?

In my view this was an instance of selective deafness.

In my opinion the concealment by the Police of that vital material was one of the most distasteful aspects of Police misbehaviour uncovered by this Board. Had that evidence been forthcoming at Hamilton's trial, it, together with the other matters I have previously adverted to, may well have resulted in his acquittal.

Before passing from this unhappy topic, it is worthy of note that when Cochrane was shown a photograph of Eric Grant during the course of Hamilton's trial, he swore that that could have been the man who came into his shop with the gun (see page 53 and page 137 of exhibit 539).

I turn finally to the last major aspect of the Hamilton Matter, viz. the interview of Hamilton by Senior Sergeant Murphy and Senior Constable Tamblyn. I do not propose to waste time in this summary by dealing with the interview held by O'Loughlin and Sinclair with McGowan. Counsel assisting made no submission to the effect that any adverse finding should be made against Police Officers O'Loughlin and Sinclair in relation to it, and I am of a similar view. Whilst there are certain curious aspects of it, McGowan's testimony in relation to it is uncorroborated, and in the absence of corroboration I would make no finding based on his testimony alone.

**Interview of Hamilton by Senior Sergeant Murphy and Senior Constable Tamblyn**

Was this Record of Interview concocted as alleged by Hamilton, or was it in fact the product of a genuine interview? Having regard to the probabilities in relation to the matter, the various lies told by Murphy and Tamblyn during the course of their evidence before this Board, not only in relation to the Record of Interview itself, but as well other matters, I am satisfied the so-called Record of Interview was a fabrication.

Let me deal first with the probabilities, then the Record of Interview as such, and finally, the further falsehoods I considered Murphy and Tamblyn told this Board.

In the first instance, I want to make this observation.

Whatever else one might say about Hamilton, whatever view one may take concerning his life of crime (see exhibit 528), he is clearly intelligent and shrewd. One had only to observe him in the witness box over the course of the three days during which he gave evidence before the Board to arrive at that conclusion. He also has a highly developed aversion for, and mistrust of Police.

One asks, is it likely that a criminal of his calibre would commit an armed robbery, the proceeds from which could at best only amount to hundreds of dollars? This was not a Post Office or Bank. It was a small suburban sub-agency.

Would he, in any event, commit the crime in so amateurish a fashion as the Thornbury robbery.

That is what amateurish was conceded by Inspector Williams at page 8025 of the transcript. At that page the following exchange occurred—

Q. Would you have regarded that particular robbery as a fairly amateurish attempt?
A. Yes, Sir.
The Hamilton Matter

Q. Hanging around in a conspicuous car—conspicuous because of its interstate plates? . . .?
A. And even using a car that they could be connected to.
Q. Yes. No attempt at disguise at all?
A. No. To us, it was just a very ordinary hold-up. I know the seriousness that is implicated in hold-ups, but to us it was just a hold-up, and that was that.

The Holden Monaro was registered in Dragosevic's name, and from the material in the possession of the Police even prior to the 14th March, 1973, traceable to the premises at 11 Kenneth Street, Braybrook, and thence to McGowan, who from time to time even used the surname Dragosovic himself.

Counsel appearing for the Police Association argued that the mere fact that the proceeds of the robbery did not exceed $600 and the fact that it was carried out in an amateurish fashion would have no bearing on the question as to whether Hamilton took part in it or not. In the former connection he pointed to the fact that it was an easy way to obtain the money they did—a robbery with little risk. In the latter connection he maintained that had it not been for the astuteness of Jones, the vehicle used would not have been identified, thereby leading to the apprehension of the culprits. I do not regard either argument as convincing. To my mind, a criminal of the calibre of Hamilton would hardly bother to rob a Post Office sub-agency knowing that at best he might steal $500-$1,000 when as we read all too frequently, there are other and better targets. In the event he was minded to do so, he would make all reasonable efforts to disguise himself, to use a vehicle not easily traceable, and generally seek to minimize detection and apprehension.

At any event, whether that be so or not, having committed such a robbery would he be likely to make a confession of the type suggested by the Police?

In this connection, and dealing, of course, with the probabilities in relation to the matter, I consider it of significance to first note the views expressed in the Antecedent Reports prepared in relation to him by the various Police Officers who had had dealings with him over the years. (See exhibit 567.)

In an Antecedent Report dated the 3rd October, 1956, one finds in respect of an offence committed when he was aged approximately 14, the following statement: "At first denied this offence but finally admitted it and made statement". In one dated the 28th January, 1960 (at which stage Hamilton was then aged 17), appear the following words: "He is a difficult person to interview unless the member concerned has enough information about the matter under inquiry". In the next report dated the 5th July, 1961, appears the following statement: "This offender was born at Melbourne, on 5/12/42. He is a particularly deceiving type who I predict will involve himself in very serious trouble before he is much older. He is difficult to question and will cry and maintain his innocence".

In the Antecedent Report of the 1st April, 1962, appears the statement: "The offender is a plausible liar who needs to be handled firmly when being questioned".

On the 30th April, 1962, one finds the following observation in an Antecedent Report of that date: "On this occasion the offender made a written statement and readily admitted these offences. Pleased not guilty in court and stressed the fact that he was not properly cautioned when interviewed. When interviewing this offender particular attention should be given to this aspect".

31st March, 1965.—"He is a competent liar but will respond to persistent questioning and even offer to give information at times. He should be questioned firmly and the interrogator should be in possession of all the facts beforehand".

13th September, 1965.—"Hamilton will readily admit the offence if confronted with sufficient of the facts".

25th March, 1970.—"He is a hardened criminal who cannot be given an inch and will either attack the arresting officers or attempt to escape. He will make unfounded accusations in Court and always engages competent barristers".

6th April, 1970.—"Very difficult to talk to except when confronted with all the facts".

17th March, 1973.—"Hamilton will not make admissions to Police".

(I should add this Antecedent Report related to an offence committed prior to the 14th March, 1973.)
3rd April, 1973—"He must be treated firmly and will deny all allegations unless confronted with irrebuttable facts and then will only concede the obvious to the interviewer". (This is the Antecedent Report prepared in relation to the matter, the subject of this Chapter of the report.)

Thus, one finds that in the minds of the Police who have had any dealings with Hamilton, he has gradually evolved from a person difficult to question and one who would cry and maintain his innocence (5th July, 1961), to a person who would not make admissions to Police (17th March, 1973) or only concede the obvious when confronted with irrebuttable facts (3rd April, 1973).

Of course, Hamilton himself maintains that he never makes admissions to Police at all (pages 7710-11). Whilst Hamilton would doubtless swear anything he felt suited him, that assertion is nevertheless borne out by the evidence given by a Solicitor, Alan George Roberts, who was called before the Board (pages 8522-23). The evidence Mr. Roberts gave at those pages left one in no doubt as to how wary Hamilton was of the Police, and how he would refuse to speak to the Police unless a Solicitor was present.

Why then, having denied his complicity in the robbery of the Post Office sub-agency for almost an hour, should Hamilton then confess his guilt following the Identification Parade?

Counsel appearing for the Police Association maintains that he did so at that time because he was then confronted with irrebuttable facts, viz.:
(a) being found in possession of the rifle used in the robbery;
(b) being identified by Cochrane.

In my opinion those submissions are quite unconvincing.

So far as being found in possession of the rifle used in the robbery is concerned, at page 8027A of the transcript Inspector Williams had this to say—

Q. Listen to my question now. When did you first learn that Mr. Hamilton was alleging that the gun had been planted there in a bag by Mr. Heuston?
A. Oh, it was some time that day; I cannot recall when. It was earlier in the morning.
Q. That he made that allegation?
A. Yes.
Q. Yes. That was something he was saying right from the start—"This is a plant"?
A. No. In the early part of the morning he did.
Q. What do you mean by "early part of the morning", Mr. Williams?
A. Well, there again, it was before the interview and before the line-up.

Thus, not only was Hamilton not induced by that fact to make any confession, from the outset he was clearly maintaining the rifle had been planted at 86 Lord Street, Richmond by Eric Grant (as I am, in fact, satisfied it was).

So far as being identified by Cochrane was concerned—as Senior Sergeant Murphy said at Hamilton's trial (see page 108 of exhibit 539)—either before or after Cochrane allegedly identified Hamilton, Hamilton stepped forward from the line and said, "You don't know me, do you Mr. Cochrane?"

As Hamilton swore at his trial (page 135 of exhibit 539), "He (Cochrane) was walking side on to the line-up and he had his head down like that (demonstrating) looking up and down the line-up. He then turned his head to the side and indicated his hand like that (demonstrating). I thought he was indicating to me and I stood out of the line-up and said, 'Mr. Cochrane you don't know me', and with that he said, 'No, I don't'. When I did this, I stepped out from the wall we were lined-up against, and the detective with us in charge of proceedings of the line-up said, 'You get back into that line and keep quiet' . . .

Hardly, one would have thought, an irrebuttable fact connecting Hamilton with the robbery.

In this connection it was interesting to note the different versions given by Senior Sergeant Murphy as to the effect the identification parade had on Hamilton, and the evidence of Senior Constable Tamblyn in relation to the matter.
When first questioned concerning it, Senior Sergeant Murphy was asked whether it was his belief that the identification parade tipped the scales thereby causing Hamilton to make admissions. To that question he replied, "I don't know. It could possibly have done so; I don't know". When cross-examined about the matter by Mr. Richter at page 8323 et seq. of the transcript he had this to say:—

Q. Because, apart from the identification evidence which we have discussed, was there any irrebuttable fact that was put to Hamilton, was there, to force him to confess?
A. Up to the stage of the line-up, no.
Q. And after the stage of the line-up there was no irrebuttable fact put to him to force him to confess?
A. He obviously believed this.
Q. What?
A. That there was an irrebuttable fact.
Q. You consider he believed the line-up of the identification evidence was an irrebuttable fact, that is in front of him?
A. He completely went to pieces.
Q. At what stage?
A. After the line-up.
Q. In what way did he go to pieces?
A. His attitude changed from cocky, self-assured man to a man who seemed to want to do anything to please us.

On the face of it a clear contradiction.

Senior Constable Tamblyn's view of the matter appears at page 8386 of the transcript and is simply to the effect that after initial admissions Hamilton became a little more co-operative.

Of more significance, however, were certain of the statements appearing in the Record of Interview and attributed to Hamilton—statements of fact which are clearly incorrect. I propose to enumerate the more significant of them.

(1) On page 1 of the Record of Interview the following question and answer appears—

Q. Did you cut down the rifle?
A. It's not been cut down the stock has been taken off as you can see.

The fact is the rifle was not cut down—its stock had simply been unscrewed. If this was a genuine interview and the rifle found earlier that day at 86 Lord Street, Richmond (minus the stock) was there in the interview room as the Record of Interview suggests it was—how could Sergeant Murphy make such an error, i.e. suggest that it was cut down when in fact it was not, the butt having been simply unscrewed?

In this connection it would seem to me there is substance in the submission Mr. Richter made as appearing at page 10,308 of the transcript. I quote—

"Now, it is quite clear that that rifle that was at Russell Street at the time was not cut down but that indeed it was one of those in which the butt is also the holster for the mechanism, so that the butt is screwed off the mechanism. The reason he says, 'Did you cut down the rifle? ', in my submission, is that at that stage Murphy had no way of knowing that the butt itself would be produced, as it was. So it seemed like a good sort of question, to try to show the kind of equivocal answers that Hamilton gives, by saying, 'Did you cut down the rifle? ', and having Hamilton appear to be over voluntary, by saying things like, 'Oh, well, that rifle isn't cut down. The butt is taken off'—something which is quite obvious, but something which, in the context of Murphy not knowing that the butt can be produced, can be asked and an answer concocted, whereas if Murphy had known that the butt was available that Jerry Dragosevic would produce it at the trial, in my submission, there is absolutely no way known he would ask, about that gun, 'Did you cut down the rifle? ', because it was quite clear the rifle was in no way cut down."

(2) Again, and on page 1 of the Record of Interview, the following questions and answers appear—

Q. Where is your mother's place?
A. At 144 High Street, Preston.
Q. Why did you give your address as 86 Lord Street, Richmond?
A. Well I have been staying there for a couple of weeks because they have been firing shots through my windows at Preston.
The fact is that Hamilton's mother lived at 441 High Street, Preston, and no shots had ever been fired through her place (page 7725 and page 7902).

(3) Earlier on that same page, the following questions and answers appear:

Q. Why did you have this rifle in your possession?
A. You know that I got shot, well the gun is just for protection.
Q. Protection against who?
A. John Joseph Power, he has fired shots through Judy's windows and I'm just looking after myself.

The Judy referred to is Judy Simpson whose address, of course, was 86 Lord Street, Richmond. Shots had never been fired through her window.

Generally in relation to the address of Hamilton's mother and the premises into which shots were fired, I consider it of assistance to note the evidence Hamilton gave at page 7725 of the transcript in relation to the matter.

Q. Can you tell the Board how it is that the Police could have got an address in High Street, Preston if you didn't tell them?
A. Yes. They would have to have that address because I was paroled to Victoria from New South Wales to that address, my parole officer lived 50 yards from my mother's place, he knew my address and he would notify the Police. The Police had been to that house to a flat on that premises to see a Daniel Frederick Stubbs and they had spoken to my mother there.
Q. This is prior to your arrest?
A. Yes. They knew I lived there but what he has done there is my sister reported the shot through the window, which he knew. When they went out to check the files—because I wouldn't tell—he has found out that, but it wasn't at my mother's place, there was never any shots fired at my mother's place, they were fired at my sister's place at Thornbury.
Q. To your knowledge no shots were ever fired at Judy Simpson's place or your mother's place?
A. No, no shots have ever been fired.
Q. You put that down to the fact that the Police had confused themselves as to which place the shots had been fired at?
A. Of course they had.
Q. You would not be subject to any confusion because you were very concerned about the shooting?
A. My sister had been to Northcote Police Station three times to come down and investigate it and they wouldn't send anyone down and she rang an Inspector at Russell Street but no-one ever went. There were approximately ten shots fired through the window and one missed one of her children by inches, so there was no confusion in my mind about where the shooting was.
Q. As far as you were aware did the Police ever send anyone down there to investigate?
A. No. My sister ended up moving because the Police never went there and she was frightened. She went up to the Northcote Police Station on three occasions and rang the Inspector and they never ever went there.
Q. Do you know the name of the Inspector she rang?
A. No, but my sister does.
Q. There is then the question: "Who lives at this address in Preston?" and you are supposed to say: "My mother and the wife."?
A. The Police still presume I'm married. I was married but have been divorced for ten years, I think, and I haven't lived with my wife for ten years and she has never lived with me or my mother ever. I suppose they have gone back to the record and seen my name and said, "He lives with his mother" because on occasions I have lived there.
Q. When you say you have lived with your mother, you have said that on previous occasions?
A. They knew that, yes.
Q. Did you say it on this occasion?
A. No.
The factual statements made by Hamilton in those answers were not challenged by Counsel appearing for the Police Association. As they could easily have been disproved in the event they were false—I accept them as being correct.

I therefore conclude that page 1 of the Record of Interview is clearly a concoction.

(4) Finally, and so far as page 1 of the Record of Interview is concerned, it is alleged that when Hamilton was asked, "Where does all this money come from?" he replied, "That's what I won playing cards".

At page 7724 of the transcript Hamilton swore that he never gambled. Having regard to the knowledge the Police had concerning his background, that was a statement they could easily have challenged had they wished. The fact is it was not. In the absence of any such challenge, I again accept the submission by Mr. Richter that that question and answer was a further concoction.

(5) On page 2 of the Record of Interview we have the following exchange—

Q. The owner of this shop Mr. Cochrane is coming in and it is my intention to place you in an identification parade to see if he can identify the persons who held him up. Have you any objections to going into the parade?
A. Well that depends, is Stan McGowan going to be there as well?
Q. Yes he will be there. Have you any objections?
A. Would it make any difference if I did. He won't pick me but I reckon he'll pick Bronco.
Q. What do you mean by that?
A. Look I know that Bronco was in it.
Q. Who do you mean by Bronco?
A. Stan McGowan.

Interview then interrupted by Detective Sergeant Williams and identification parade conducted.

Q. You have now been identified by Mr. Cochrane at the identification do you still deny that you took part in this armed robbery?
A. What can I say, I didn't think that he would pick me.
Q. Well having now been identified, is there anything you want to tell me about this armed robbery?
A. Can I talk to Judy about this first?
Q. Yes that can be arranged. If you like we will have lunch and you can talk to her then.
A. Alright. I'll tell you right now she had nothing to do with this. I knew if I got mixed up with that idiot I would go crash.
Q. Who are you referring to when you say idiot?
A. Look I may be a mug but I'm no dobber.

The points I wish to make at this stage are these—

(a) The interview with Hamilton commenced at approximately 10.30 a.m. that morning (see Tamblyn's evidence at page 8455A). The identification parade was at 11.30 a.m. (see exhibit 558). Between 10.30 a.m. and 11.30 a.m. precisely one-and-a-quarter pages of the Record of Interview were typed. Why so little? The following exchange with Sergeant Murphy at page 8218 of the transcript illustrates the point I make—

Q. You have told us you are a four-finger typist. Can you tell Mr. Chairman why it took you about 50 minutes, possibly more, to type the first page and a bit of this Record of Interview?
A. I don't know.
Q. Not very much, a bit of formal material up to the identification parade. It was a genuine Record of Interview?
A. It certainly was.
Q. But you do not know why it took so long to do that first page and a bit?
A. No, I don't know.
Q. Not the difficulties of a creative artist composing, Mr. Murphy?
A. Certainly not.
I reject that evidence. In my view a four finger typist would have typed that page and a bit in a third of that time, if not less.

(b) What a remarkable coincidence that the interview was interrupted by Detective Sergeant Williams to enable the identification parade to be held at the very time Sergeant Murphy was telling Hamilton that Mr. Cochrane was coming in and it was his intention to place Hamilton in an identification parade.

(c) It is to be noted that at one point Hamilton was nominating Stan McGowan as one of those responsible for the robbery; at the next he was saying he was not a "dobber". If one pauses and analyses that situation one cannot but note the following factors—

(i) In the first instance there is this remarkable inconsistency—Stan McGowan was in it—I'm no "dobber".

(ii) "Cochrane won't pick me but I reckon he'll pick Bronco". The fact is that Cochrane did not pick McGowan but in fact picked Hamilton.

Thus, before the identification parade takes place and before McGowan is implicated, we have Hamilton nominating him as one of the offenders. This, of course, was a devastating piece of damning evidence so far as McGowan was concerned. Despite any direction given by the trial Judge, that statement thus implicating McGowan, would have a most damaging effect on McGowan's case in the eyes of a Jury.

Because I am satisfied the Record of Interview was a concoction (both for the reasons I have already expressed and for reasons I shall advert to hereafter), I find as a matter of probability that when Cochrane failed to identify McGowan, it was then thought necessary by Murphy and Tamblyn to implicate him in this fashion, in Hamilton's Record of Interview.

(d) Why would Hamilton wish to speak to Judy Simpson about the matter? By no stretch of the imagination was she implicated. Whatever may have been the relationship existing between Hamilton and Mrs. Simpson prior to the 14th March, 1973, the fact is that on the 14th March, 1973, Mr. Simpson was released from Pentridge and resumed his normal matrimonial relationship with his wife. In my opinion that passage has simply been inserted to lend an air of verisimilitude to the document. In any event, would the Police break off their interrogation for lunch at the very time Hamilton was about to make a clean breast of the matter?

(e) Again, and when dealing with a person of the calibre of Hamilton, would the Police break off their interrogation for lunch at the very time Hamilton was about to make a clean breast of the matter?

(6) What was it that took until 3.20 p.m. in order to complete the Record of Interview? Of course in this connection it will be recalled that initially Senior Sergeant Murphy swore that the Record of Interview concluded at about 1.30 p.m. (page 8183A). When later he changed that to 3.30 p.m. and was asked why he had said 1.30 p.m., he replied he did not know (page 8225). It was then pointed out to him that at Hamilton's trial he had sworn 3.20 p.m. (page 8225) which by a remarkable coincidence was the very time at which McGowan's Record of Interview was completed. (See the evidence Sinclair gave at the trial of Hamilton and McGowan—page 8 of exhibit 539.)

As some measure of Senior Sergeant Murphy's candour as a witness, one could point to the following passage in his evidence at page 8225 of the transcript—

Q. Yes, all right. Well, just this, you see. The first coincidence, I suggest to you, is the perfect timing of the identification parade. The second coincidence, I suggest to you, is that these two interviews should finish about 3.20, both of them. Does that strike you as a bit of a coincidence?

A. No.
Q. Mmm?
A. No.

Q. Of course, if you wanted to cover any suggestion that somebody might have had McGowan's interview with him whilst he was typing Hamilton's, it would be a good idea to say they both finished at the same time, would it not?—because then there would be no way that anybody could have McGowan's whilst Hamilton's was being typed?

A. Of course, it is a suggestion you could put up, yes.

Q. Yes?
A. It is not true, in fact.

Q. So this is a mere coincidence that they finish at the same time? There is nothing sinister to be drawn from that?
A. You could say there is something sinister to be drawn from that but I can assure you there was nothing really sinister about it.

The Record of Interview between Murphy, Tamblyn and Hamilton is Appendix “B” to this chapter of the report. I leave it to the reader to consider whether it would have taken Senior Sergeant Murphy from 10.30 a.m. to about 3.20 p.m. to prepare it—even allowing for the identification parade and meal break. I might add that according to Inspector Holmberg's report—exhibit 558 (Appendix “C”) the identification parade lasted a mere 10 minutes.

In this connection it is alleged that Senior Constable Sinclair typed his six-page Record of Interview with McGowan between 1 p.m. and 3.20 p.m. even allowing for the identification parade and the meeting with Mrs. Simpson, it has taken Murphy from 10.30 a.m. to 3.20 p.m. to type a 4½-page Record of Interview.

In this same connection why does the Record of Interview not include the time at which it commenced and the time at which it concluded? Both times are absent in this case.

The Standing Orders require that the Record of Interview be endorsed with the fact that a copy was handed to the suspect (see S.O. 609). No such endorsement appears in this case.

(7) I have already dealt with the similarity of the reasons given by Hamilton, McGowan and Gallagher for not signing their Records of Interview, an aspect described by Mr. Coldrey during the course of his final submissions as the "nothing against you personally syndrome" (page 10,904), and see no useful purpose in going over that ground again. As I pointed out to Mr. Coldrey at that page of the transcript, it was indeed an extraordinary coincidence that on the one day six Police Officers conducting three Records of Interview, should all be met with the "nothing personal" explanation.

I turn now to other aspects of the Record of Interview which satisfy me it is a concoction.

On page 4 of the Record of Interview appears the following question and answer—

Q. Was Bronco or the other man concerned in the robbery there when you burnt the bags?
A. No Bronco was there, he left as soon as he got his share.

It is clear from the Record of Interview that the sharing of the money had occurred at a time prior to the burning of the bags. The answer to that question should have read therefore, "No, Bronco wasn't there, he left as soon as he got his share".

According to the Police, Hamilton read the first four pages of the Record of Interview including that passage: if so why was not that obvious error corrected and initialed? Despite what the Police would have one believe was Hamilton's keenness to adopt the Record of Interview by reading it, no attempt was made to get him to initial that and other errors in it. It is interesting to note what Senior Sergeant Murphy had to say in this connection at page 8259 et seq. of the transcript.

Q. Firstly, perhaps you could tell us this. The procedure, when there are mistakes in a Record of Interview, is to invite an accused person to initial them, is it not?
A. If he agrees to sign it, yes.
Q. Whether he agrees to sign or not, Mr. Murphy, he is asked if he will initial the mistakes, is he not?
A. Oh, sometimes he is, sometimes he is not.
Q. Sometimes the interviewing officers ask if it is all right by him if they correct the mistakes?
A. Yes, that sometimes happens.
Q. That was not done here, was it?
A. No.
Q. Why not?
A. I have no idea why.
Q. But you were the man in charge of the interview?
A. Yes, that is right.
Q. Why did you not ask him to initial the mistakes?
A. I do not know. I really did not give it a thought.
Q. Did not give it a thought?
A. Mmm.
Q. But that is one of the good ways of getting the document adopted, is it not—one of the oldest tricks in the trade?
A. Is it?
Q. You know it is, Mr. Murphy, do you not?
A. It has been used occasionally.
Q. You will often "suck" them in, will you not, when they say they will not sign it, by saying to them, "Look, there are a few mistakes in it. Would you mind just initialing the alterations?" And sometimes you will get them to do that, will you not?
A. Oh, occasionally, yes.
Q. It worked with McGowan. He signed one?
A. Did he? Mmm.
Q. Initialled an error.
Q. Initialled it And you were pretty keen to get this Record of Interview adopted?
A. Yes.
Q. So this would be one of the first things you would try—"Would you initial these errors?"—would it not?
A. Not necessarily.
Q. Well, why wouldn't you try it?
A. I do not know why I would not try it, or did not try.
Q. Might I suggest you did not try it because the thing was never read aloud and you never noticed the mistakes?
A. Well, that is not true, no.
Q. You did notice the mistakes, did you, as it was read aloud?
A. There were a number of mistakes in it, yes.
Q. Why wasn’t any attempt made to correct them?
A. By whom?
Q. By you, either with the accused signing the alterations, or by you, with the accused agreeing to you altering them?
A. I did not ask him to do anything with it apart from signing it.
Q. Well now, this man was quite agreeable and co-operative in reading the Record of Interview back?
A. Yes, he agreed to read it back.
Q. And you can give Mr. Chairman not one reason why you did not ask him to initial mistakes in that Record of Interview?
A. No, except that he would not sign it.

Why weren't those errors initialled; why wasn't the Record of Interview signed? The Police assert that Hamilton was co-operative and eager to please; that he had freely confessed to the part he had played in the robbery, and had read the Record of Interview over (if he did, he must have known from prior experience that the read-back would be tape-recorded); yet he was not asked to initial the errors in it and refused to sign it.

Why did this otherwise cooperative man refuse to sign the Record of Interview? In my opinion the answer can only be the one Hamilton gave. The Record of Interview was a fabrication. As I pointed out in the Cox Matter (Chapter 11) when Hamilton refused to sign it, why was the direction previously given by Assistant Commissioner Crowley not complied with (page 9901 and pages 9913-4)? Why wasn't an independent Inspector brought to the Interview Room to question Hamilton as to the reason for his refusal? Again, that can only be explained on the basis that the Record of Interview was a fabrication.
That it was a fabrication was made even clearer by the fact that there was no tape-recording of the read-back the Police allege occurred.

As to this both Murphy and Tamblyn swore that the room they used was wired for tape-recording and did not ascertain until after the read-back that it was not. I might add that this was the very explanation Tamblyn had given for his inability to produce a tape-recording of the read-back of a Record of Interview by an accused named Aldersea, at Aldersea's trial in May, 1973. (See page 8395 et seq.)

In this connection I am content to adopt the submissions of Counsel Assisting the Board appearing at page 10,905 et seq. of the transcript.

"The failure to tape-record any read-back: the importance of taping Hamilton was not lost on Murphy, because of his knowledge of Hamilton's antecedents (page 8257). Indeed, the importance of taping read-backs generally was not lost on members of the Armed Robbery Squad. It would therefore be important to choose a room that was wired for tape-recording. Murphy claimed the belief that the Company Squad room was wired for sound. Tamblyn chose the Interview Room (page 8380), giving no thought, he says, as to whether it was wired for sound, because he did not understand the relevance of taping (page 8381). That a keen young Detective like Mr. Tamblyn should fail to appreciate its importance, after some four months in the Squad at that time, is totally unacceptable, Mr. Chairman. Tamblyn says other rooms were available. Murphy, before the Board, at page 8256, and at the trial of Hamilton, indicated that they had run out of room. Although they occupied the room for over five hours that day, no permission was sought from the Company Squad to use it (page 8215). That a keen young Detective like Mr. Tamblyn should fail to appreciate its importance, after some four months in the Squad at that time, is totally unacceptable, Mr. Chairman. Tamblyn says other rooms were available. Murphy, before the Board, at page 8256, and at the trial of Hamilton, indicated that they had run out of room. Although they occupied the room for over five hours that day, no permission was sought from the Company Squad to use it (page 8215).

The identical evidence by Tamblyn at the Aldersea trial of the mistaken picking of an unwired room in May, 1973, throws further doubt on the validity of the Police explanation in the present case. That Tamblyn is a man whom no-one would believe on oath I will discuss later.

The lack of discussion after the failure to pinpoint the room that was unwired is quite incredible also. You will remember, Mr. Chairman, that O'Loughlin at page 8587 and Tamblyn at page 8392 both said there was no discussion in the Armed Robbery Squad that 'we picked the wrong room'; there was no attempt to pinpoint that as 'that is the room we must not use because it is unwired'. In those circumstances, the probability is whether or not there was an interview—and we say there was not—there certainly was no read-back."

I must confess the cross-examination of Tamblyn as to his knowledge of how many Interview Rooms there were at Russell Street, and which were, and were not, wired for taping left his credit in shreds. It is impossible to deal with such matters in a summary of this nature. I can
only invite the reader to study the transcript of that evidence. Perhaps this passage taken from Mr. Richter’s submission at page 10,310 of the transcript (a submission I entirely endorse), will give the reader of this summary some indication in relation to the matter.

“When one considers his evidence before you at the time when he did not know that the Aldersea matter was going to be put to him, it is clear that Mr. Tamblyn, in my submission, committed perjury before you, Sir, if one considers the oath that he took. The oath that he took was to tell the truth, the whole truth and nothing but the truth, and one of the operative parts of that oath is to tell the whole truth, because it is quite clear from the evidence that he gave to you initially in relation to the number of Interview Rooms that he was suppressing something with the hope that it would not be raised and that, in my submission, was perjury. The evidence that he gives in relation to the Aldersea matter when viewed in relation to what happened, what is alleged to have happened in the Hamilton Matter, is just utterly incredible. You will recall, Mr. Chairman, that his explanation for the non-making of a tape-recording in the Hamilton Matter was that the room was not equipped for tape-recording. This was a room in the offices of the Company Fraud Squad, and unbeknown to him the room was not ‘bugged’ as it were, but we find that in May of the same year he is once again present at an interview of a man called Aldersea who is interviewed in the Company Fraud Squad offices. Once again, there is no tape-recording, and why is there no tape-recording in the Aldersea interview? Well, the answer Tamblyn gives is that he did not know the room was not bugged. When one combines that explanation with his evidence about the number of rooms which were bugged and were not bugged on the fifth floor, when one combines that with Mr. Phillips’ observations when we had the view of the fifth floor, that room No. 17, that is the third room from the end, was not used as an Interview Room in 1973. Then, in my submission, there is the clear inference that Tamblyn in an effort to extricate himself from a lying explanation gave perjured evidence before you in relation to either the Aldersea Matter or the Hamilton Matter or both, but certainly in relation to the Aldersea Matter.”

The final matter I propose to advert to concerning the Record of Interview was the submission made by Counsel for the Police Association to the effect that Hamilton had such a fear of gaol he was prepared to confess to the part played by him in the Thornbury robbery in the hope that by so doing he would be released on bail.

The fact is that prior to any admissions being made by Hamilton, it was made clear to him that the Police would oppose bail (page 8230). Additionally, as a prior absconder, he would know his hopes of obtaining bail would be slight in any event.

For those reasons I consider there is no substance in the submission made.

I propose to go no further so far as the Record of Interview is concerned. In my opinion it was a fabrication.

I turn now to deal with events subsequent to the alleged interview with Hamilton at Russell Street that day.

Events subsequent to the Alleged Interview with Hamilton

The matters I now propose to advert to demonstrate again the falsity of the Police evidence and the deal done with Grant. Although I have already covered a number of these matters, it is convenient to enumerate them again at this juncture.

One must bear in mind at this stage the fact that, if believed, at about 3.30 p.m. that afternoon Inspector Williams suddenly realised Eric Grant was the third man. Put to one side—

(a) the fact that he released Grant without checking his alibi or putting him in a line-up (page 7991, page 8131 and page 8167); and

(b) that he never checked the betting ticket (page 7988) and that it has now been lost (page 8131) along with the bulk of the Police File (page 8016) and Nola Grant’s statement (page 8045)—a statement he believed contained reference to three men going to the premises at 360 Wellington Street, Collingwood, on the afternoon of the robbery (page 8045).
Ignore the fact—

(a) that when he spoke to Kim Nelson on the 15th March, although he knew she was living with Grant, he did not ask her what Grant's movements had been on the 14th March (page 8058);

(b) that when he made his statement to Inspector Duffy on the 10th April, 1975, he could not recollect the exact conversation he had had with Grant, or the fact that he had produced a betting ticket (page 7990 and exhibit 551); and

(c) that fingerprints were not taken from the car, the shotgun, the urn etc. (page 8575 et seq.), or that the fingerprint experts were only given the names of Hamilton and McGowan to check so far as fingerprints were concerned (page 8137).

Now let us see what the Inspector of Police in charge of this important investigation did, or more accurately, failed to do when "the penny dropped".

I commence by quoting a passage from his evidence at page 7974A of the transcript.

Q. All right. Now, what steps, if any, did you take in that connection?
A. Well, the next day I . . . I do not know whether it was that afternoon or not, but I spoke to Sergeant Crawford about it

Q. Yes?
A. To follow up this address at 360 Wellington Street. I know they went there the following day, because he told me that there was no-one home.

Q. Yes?
A. And then I said to them, "Well, you had better go at a later date and contact her, and see what she has to say".

Q. All right. Can you recollect any other actions you took by way of locating him?
A. No, not at that stage.

Q. All right. When is it your recollection that you saw him again?
A. Well, I saw him a few times, and I cannot recall which was the first time. I know I saw him when the trial was on.

Q. Yes?
A. I know we saw him after a hold-up had occurred at a Totalizator Agency Board at Braybrook.

Q. Yes?
A. Also when a Totalizator Agency Board had been held up at South Yarra.

Q. Prior to you seeing him during the trial, was there any understanding between you and either the men in your Squad or any other men that you wanted to see him if he could be located?
A. Every member of the Squad knew we wanted to locate him and speak to him.

Did he make any notes of the conversation he had had with Grant on the morning of the 15th March? No. (page 7988).

Knowing that Grant was living with Kim Nelson at 206 Gertrude Street, Fitzroy, did he immediately send Police to search those premises?—No. (page 8039). Moreover he lied to the Board in relation to that failure to search the premises; see for example page 7984A where he swore that the reason was that he did not have enough men available.

Why did he not ensure Grant's name appeared in the daily circular with a view to having him apprehended? (page 7986 and page 8039). Or reference made to him in the relevant C.O. and M.O. Report? (See exhibit 555 and page 8555, page 8559 and pages 8617-19.)

When McGowan's Antecedent Report was prepared, why was Grant's name not included in it as an associate? (page 7997, page 8589 and page 8591).

Although he knew Grant was required to and was in fact reporting regularly at the Sunshine Police Station (page 7991), when a two hour interview was subsequently had with him, was any Record of Interview obtained? No. (page 7975, page 8019). In fact if one looks at the statement subsequently obtained from Grant by Senior Sergeant Murphy on the 15th August, 1973 (exhibit 583), Grant states, "I have been questioned by the Police three times about this robbery, the last time was last Sunday at Sunshine when I was questioned for two hours ", yet at no
time was a proper Record of Interview relating to the Thornbury robbery ever obtained (page 8019). Who were the Police? They were never identified, nor were statements made by them produced.

The further matters I wish to advert to as demonstrating the conspiracy between Inspector Williams those men under his command (and to whom I have already adverted), and Eric Grant, are the statement Grant made to Senior Sergeant Murphy on the 15th August, 1973 (exhibit 583) and the statement Inspector Williams made to Chief Superintendent Duffy on the 10th April, 1975 (exhibit 551). I attach such significance to those statements that they appear as Appendices “G” and “D” respectively to this Chapter of the Report.

It will be recalled that one allegation made by Hamilton was that Grant had paid Senior Sergeant Murphy the sum of $1,000 to ensure he would not be charged. In those circumstances, when Grant chose to make himself available at Russell Street on the 15th August, 1973, and during the course of the Hamilton trial, one would have thought the last person who would have been assigned to question him would be Senior Sergeant Murphy.

To describe the document produced (exhibit 583) as a statement—the product of an interrogation of a suspect by a Police Officer—is ludicrous. I invite the reader of this summary to note the following aspects of that document.

In the document Grant alleges that on the night of the 14th/15th March, 1973, he had gone from the party at Westgarth to 11 Kenneth Street, Braybrook, to pay his father some money. (One can picture in one’s mind the probability of a journey for that purpose at that hour of night.)

Was he asked where he got the money from?—No. Was he asked what races he had been to on the 14th March or how he had got there?—No. Was he asked who his associates were on the 14th March?—No. Was he asked which Police had questioned him three times and which Police questioned him at Sunshine?—No.

The fact is that as Senior Sergeant Murphy said at page 8267 of the transcript, he was prepared to take everything he said at face value. If the situation was not so serious from Hamilton’s point of view, it would be farcical. It is no wonder that following that so-called interview, Inspector Williams swore he didn’t think he had sufficient evidence to charge Grant (page 7975).

That was clearly so. But was that the whole purpose of the exercise? There are but two competing hypotheses:—On the one hand, that Murphy in this particular instance, and the Armed Robbery Squad in general, were guilty of the grossest inaptitude and incompetence in the handling of the Thornbury robbery; on the other hand that what occurred was not the product of bungling or stupidity, but the full fruits of the deal between Grant and the Police. I am driven to conclude it is the latter hypothesis which is correct.

That this was so was put beyond any shadow of doubt by what occurred when Hamilton complained prior to his trial, that he had been framed. Who was it sent to interview him at Pentridge on the 31st July, 1973, in respect of his complaint, but the man I find most responsible for the conspiracy to ensure he was convicted of the Thornbury hold-up and not Eric Grant—Inspector Gordon Maxwell Williams. (See exhibit 551.) If ever a situation justified the recommendation that the handling of complaints by citizens against Police Officers—whether they be prisoners or not—be subject to the overall scrutiny of an independent body, this situation did.

Before concluding this summary and stating the findings made by the Board, I consider it appropriate to observe that from the evidence placed before the Board, it is my opinion that in all probability Eric Grant did take part in the Thornbury robbery on the 14th March, 1973. As Inspector Williams was prepared to concede, in all probability he was the driver of the car (page 7990).

As I indicated in the remarks I made in the introduction to Chapter 6 of the Report, it is not for this Board to determine whether Hamilton took part in the robbery or not. This Board’s function has been to investigate whether or not there was malpractice on the part of the Police Officers investigating that robbery and who gave evidence at Hamilton’s trial.

So clearly was that the situation that insofar as this Board is empowered to do so, it will ultimately recommend that Hamilton be granted a new trial.
FINDINGS

I make the following findings in this matter—

1. That Inspector Gordon Maxwell Williams, Senior Sergeant Richard Murphy, Sergeant Brian Francis Fennessy, Sergeant Neil Graeme O'Loughlin, and Senior Constable Philip John Tamblyn were guilty of criminal conspiracy in that they conspired together to protect a criminal and an informer, Eric Grant, from prosecution and thereby obstructed the course of justice.

2. That Senior Sergeant Murphy and Senior Constable Tamblyn fabricated evidence against Ronald John Hamilton and committed perjury in respect of that evidence at his trial.

3. That Senior Sergeant Murphy committed perjury at Hamilton's trial in that he deliberately distorted evidence of identification relevant to the trial; that Senior Sergeant Murphy suppressed vital evidence of identification at Hamilton's trial.

4. That Inspector Williams, Senior Sergeant Murphy, Sergeant Fennessy, Sergeant O'Loughlin, Sergeant Maxwell George Rickman and Senior Constable Tamblyn conspired together to give false evidence before this Board of Inquiry and did so.

RECOMMENDATION

Insofar as my power to make recommendations consequent upon my findings enables me to, I recommend that Ronald John Hamilton be granted a new trial.
**THE HAMILTON MATTER**

**APPENDIX “A”**

**LIST OF WITNESSES**

<table>
<thead>
<tr>
<th>Name</th>
<th>Transcript Reference</th>
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<tbody>
<tr>
<td>FENNESSY, Sergeant Brian Francis</td>
<td>8620-8660</td>
</tr>
<tr>
<td>HAMILTON, Edna Jean</td>
<td>7902-7904</td>
</tr>
<tr>
<td>HAMILTON, Ronald John</td>
<td>7695-7823</td>
</tr>
<tr>
<td>McGOWAN, Stanley Thomas Andrew</td>
<td>7823-7869</td>
</tr>
<tr>
<td>MURPHY, Senior Sergeant Richard Ernest</td>
<td>8183A-8275 and 8304-8343</td>
</tr>
<tr>
<td>NELSON, Kim Rita</td>
<td>7579-7689</td>
</tr>
<tr>
<td>O’LOUGHLIN, Sergeant Neil Graeme</td>
<td>8524-8592 and 8599-8619A</td>
</tr>
<tr>
<td>RICKMAN, Sergeant Maxwell George</td>
<td>9259-9305</td>
</tr>
<tr>
<td>ROBERTS, Alan George</td>
<td>8522-8523</td>
</tr>
<tr>
<td>SIMEON, James</td>
<td>7880-7902 and 7904-7918</td>
</tr>
<tr>
<td>TAMBLYN, Senior Constable Philip John</td>
<td>8276-8288 ; 8344-8429 ; 8442-8497 and 8501-8520</td>
</tr>
<tr>
<td>WILLIAMS, Inspector Gordon Maxwell</td>
<td>7962-8032 and 8037-8183</td>
</tr>
</tbody>
</table>
APPENDIX "B"

Record of interview between Detective Sergeant MURPHY 12256 and Ronald John HAMILTON at the Russell Street Detective Office on the 15th day of March 1973. Detective Sergeant MURPHY asking the questions and typing. Senior Detective TAMBLYN 15271 present.

Q. Your full name is Ronald John HAMILTON.
A. Yes.
Q. What is your address.
A. That place you got me at this morning. 86 Lord Street.
Q. What's your occupation.
A. I'm a pensioner.
Q. Earlier this morning we went to your address at 86 Lord Street, Richmond and when your room was searched, this cut down .22 rifle was found in your bag, together with all this money. I have reason to believe that this money is the proceeds of an armed robbery committed on a Mr COCHRANE at the Post Office situated at 408 Station Street, Thornbury. I also believe that this rifle was used in the armed robbery. I intend to ask you some questions about this but before I so I must warn you that you are not obliged to say anything. Do you understand.
A. Yes I understand but you are barking up the wrong tree I know nothing about any armed robbery.
Q. Do you agree that this rifle was found in your possession at your address.
A. Yes, but I'll tell you what the score is with that.
Q. Did you cut down the rifle.
A. It's not cut down, the stock has been taken off as you can see.
Q. Why did you have this rifle in your possession.
A. You know that I got shot, well the gun is just for protection.
Q. Protection against who.
A. John Joseph POWER, he has fired shots through Judy's windows and I'm just looking after myself.
Q. Where does all this money come from.
A. Thats what I won playing cards.
Q. Do you know how much money there is there.
A. No, about five dollars I suppose.
Q. Mr. TAMBLYN has counted the money and there is $18.00 in silver. What do you say about that.
A. Well I'm a pretty good card player.
Q. This robbery took place at about 2.30pm on the 14th March, thats yesterday. Where were you at this time.
A. Let me think I was home, yes I was at home all day.
Q. By home do you mean at 86 Lord Street, Richmond.
A. No. At my mother's place.
Q. Where is your mother's place.
A. At 144 High Street, Preston.
Q. Why did you give your address as 86 Lord Street, Richmond.
A. Well I have been staying there for a couple of weeks because they have been firing shots through my windows at Preston.
Q. Who lives at this address in Preston.
A. My mother and the wife.
Q. It is alleged that you and Stanley McGOWAN robbed the shopkeeper at 408 Station Street, Thornbury of about $500.00 and that you were armed with the rifle and that McGOWAN tied him up. What do you say about that.
A. I thought you said that it was a Post Office that was robbed.
Q. Yes it was, the premises are listed as a sub-agency of the Post Office. What do you say about the allegation.
A. Like I told you, I know nothing about it.
Q. The owner of this shop, Mr COCHRANE is coming in and it is my intention to place you in an identification parade to see if he can identify the persons who held him up. Have you any objections to going into the parade.
A. Well that depends, is Stan McGOWAN going to be there as well.
Q. Yes he will be there. Have you any objections.
A. Would it make any difference if I did. He won't pick me but I recon he'll pick Bronco.
Q. What do you mean by that.
A. Look I know that Bronco was in it.
Q. Who do you mean by Bronco.
A. Stan McGOWAN.
   Interviewed then interrupted by Detective Sergeant WILLIAMS and identification parade conducted.
Q. You have now been identified by Mr COCHRANE at the identification do you still deny that you took part in this armed robbery.
A. What can I say, I didn't think that he would pick me.
Q. Well having now been identified is there anything you want to tell me about this armed robbery.
A. Can I talk to Judy about this first.
Q. Yes that can be arranged. If you like we will have lunch and you can talk to her then.
A. Alright. I'll tell you right now she had nothing to do with this I knew if I got mixed up with that idiot I would go crash.
Q. Who are you referring to when you say idiot.
A. Look I may

Q. Are you talking about McGOWAN.
A. No I hardly know him, just met him a couple of times thats all.

Q. Have you spoken to Judy are you prepared to tell me about this armed robbery.
A. Yes that's right, the other mug brought a sawnoff shot gun with him but we didn't use it. Its only a single shot and if you have to fire it you have had it.

Q. Who else was with you when you did this armed robbery.
A. Well Bronco, you got him and that other mug.

Q. Who is this other person.
A. Now look I told you I'm no lagger. Bronco I can't help you've got him but don't ask me about anyone else.

Q. How did you travel to the shop.
A. We used Bronco's Monaro.

Q. The shop wasn't robbed until about 2.30 p.m. What were you doing all this time.
A. Thats what time the other bloke went to the shop to have a look, it might have been later than that.

Q. After you had driven around the streets did you park the car in the same spot.
A. No, I found a spot a bit nearer the shop so that we wouldn't have so far to walk.

Q. What happened when you and McGOWAN arrived at the shop.
A. It was closed.

Q. What happened inside the shop.
A. I just showed him the barrel of the gun and told him to keep quiet and give us the money.

Q. How did you carry the gun to the shop.
A. I had it wrapped in paper in that bag (pointed to brown overnight bag on desk).

Q. Where did you get the money from that you took.
A. Out of the safe and the cash drawer.
Q. How much money did you get.
A. About a hundred.
Q. The complainant states that there was over $500 stolen.
A. Oh I thought you meant what was my share. No I suppose that would be about right.
Q. Did you only get a hundred dollars from this robbery.
A. Yeah that’s right, the other bloke got the lion’s share, he had some trouble he wanted to take care of.
Q. This silver and the notes is that your share of the money.
A. Yeah but some of that was dropped off.
Q. What do you mean.
A. Well I got landed with most of the change so I changed some and gave the brownies away.
Q. What do you mean when you refer to brownies.
A. The copper.
Q. Who did you give it to.
A. Well I didn’t exactly give it to anyone. I went to this place in Wellington Street, Clifton Hill with the others. That’s where we split the money up. I got left with most of the silver and the copper so I left the copper there.
Q. Is this the money that you left at this address (shown large amount of 2c and 1c coins).
A. Yes that’s right, have you been out there already.
Q. Did you put it into this urn.
A. Yes that’s right.
Q. Why did you leave it at this address.
A. Well I wasn’t going to get stuck with it.
Q. Who was present when the money was split up.
A. Me, Bronco the other bloke and this girl Nola I think her name is.
Q. Did you tell her what you were doing.
A. No. You don’t tell birds anything.
Q. Why didn’t you divide it up in the car.
A. Well it wasn’t too far from where we pulled the job and I wasn’t going to go to Mum’s place or Judy’s place.
Q. Why didn’t you divide it up on the car.
A. I don’t know what we had and there may have been something in it that we had to get rid of in a hurry. Just as well we did the bags had writing on them.
Q. What did you do with the bags.
A. Burnt them and flushed them down the sink.
Q. What was written on the bags.
A. I don’t know but it was writing of some sort, amounts or something like that.
Q. Was Bronco or the other man concerned in the robbery there when you burnt the bags.
A. No Bronco was there, he left as soon as he got his share.
Q. Where did you go after you had divided the money.
A. To the T.A.B. backed the favourite in the last race and got done.
Q. How much did you put on it.
A. Forty.
Q. Was that part of the proceeds of this armed robbery.
A. Well it certainly wasn’t mine.
Q. What was the name of the horse.
A. Liquor Brandy.
Q. You are going to be charge with armed robbery on Albert William COCHRANE at Thornbury on the 14th March, 1973 it is my duty to warn you that you are not obliged to say anything further and that anything you do say will be taken down in writing and may be used in evidence. Do you understand.
A. Yes.
Q. Is there anything that you want to say.
A. No I told you all there is to know.
Q. You have seen me type this record of my interview with you here today are you prepared to read it through aloud and if it is true and correct sign it as such.
A. No I’m not signing anything.
Q. Are you prepared to read it out to us.
A. Yes I don’t mind doing that but nothing personal but I’m not signing it /
FIRST FOUR PAGES READ ALOUD BY HAMILTON——PAGE FIVE READ IN TYPE WRITER.
Q. Having read the record of my interview with you do you agree that it is a true account of the interview.
A. Yes as far as I remember its right.
Q. Is there any reason why you won’t sign it.
A. Yes I’ve got to look after myself some how.
APPENDIX “C”

Conducted by: Detective Inspector A. G. Holmberg
Suspect: Ronald Joseph Hamilton, 30 years, 107 Gooch Street, Thornbury

IDENTIFICATION PARADE

Location:—Russell Street Police Headquarters
Time:—11.30 a.m.
Date:—15th March 1973
Number of persons in parade:—thirteen other men

I said, “You have had the object of the identification parade explained to you”.

Suspect replied:—“Yes”

I said, “You realize that you are at liberty to take any position in the parade you wish and you can change your position after each witness has viewed the parade. Do you understand that?”

Suspect replied:—“Yes”

The witness Albert William Cochrane then came to the identification parade. I said to him, “At about 2.30 p.m. on Wednesday 14th March of this year you were at your place of business at 408 Station Street Thornbury when two men, one of whom was armed with a .22 rifle entered and menaced you; your hands and feet were tied by these men and they stole the sum of $507.18 from you. I want you to look along this line of men and see if you can see either or both of those men there; if you do would you indicate them to me.

The witness viewed the identification parade and indicated Hamilton; as he moved forward and said, ‘Do you know me.’ The witness did not reply to Hamilton and said, “He is similar, but I could not swear to it; He looks like the fellow who tied me up.”

I said to suspect, “Are you satisfied with the manner in which the parade was conducted?”

Suspect replied:—“Yes”

Parade dismissed at:—11.40 a.m.
Name and address of witness:—Albert William Cochrane, 408 Station St., Thornbury.

A. G. HOLMBERG,
Det. Insp.

APPENDIX “D”

Gordon Maxwell Williams States:

I am a Inspector of Police stationed at Communications Section.

On the 15th March 1973, I was Detective Senior Sergeant in charge of the Armed Robbery Squad.

At about 2.30 a.m. on Wednesday the 14th of March 1973, an armed robbery was committed on the Thornbury Post Office by two men, one armed with a .22 rifle and the other tied up the complainant with the cord from the vacuum cleaner. They were seen to drive away in a Holden Sedan motor car with New South Wales registration plates. Money stolen $507.18.

Later that day I checked with the Stolen Car Squad and a Holden Sedan registered in New South Wales was on their list as a stolen car. I obtained this registration number and had a broadcast to all cars and stations to keep a lookout for this vehicle as it was suspect for the above mentioned armed robbery.

I gave those particulars to the late shift working from the Consorting Squad, which was Detective Sergeant Fennessy and Detective Rayner.

At about 2 a.m. on Thursday morning the 15th of March 1973, I received a telephone call from Detective Sergeant Fennessy of the Consorting Squad, that he had Stanley McGowan of 11 Kenneth Street, Braybrook in the office with Kim Nelson and Eric Heouston of 120 Gertrude Street, Fitzroy. They were detained outside of 11 Kenneth Street, Braybrook by the Sunshine Crime Car with Sergeant Mangles in charge. When arrested they were in a white Holden Sedan with New South Wales plates.

On my arrival at the office I spoke to Fennessy, Sergeant Mangles and Detective Rayner. Fennessy said that McGowan had committed the robbery at Thornbury and Ronald John Hamilton was the other offender. Hamilton was residing at 86 Lord Street, Richmond and was armed and very edgy and will shoot at the first sound. After being told this I decided to raid the address in Lord Street, Richmond.

The members in the raid were myself, Detective Sergeants Murphy, Crawford, Wylie. Detectives Sinclair, O'Loughlin, McGrath, and Tamblyn from the Armed Robbery Squad. Detective Sergeant Fennessy and Detective Rayner of the Consorting Squad, Sergeant Mangles and Senior Constable McIntyre of Sunshine Crime Cars and Senior Constables Aiolp and Walsh from the Ascot Vale Crime Cars.

Because of the danger to members I contacted Chief Superintendent Patterson and informed him of my decision in case someone was injured.

I led the raid and on entering the front door we went to a room on the left at the end of the passageway. We entered this room and found Judy Simpson and her husband Ronald Simpson, who had been released from gaol on the 14th of March 1973 in bed.
Matter

The Hamilton Mutter

My attention was drawn to Ronald John Hamilton, who had been sleeping on the couch in the lounge room off the bedroom that we had entered. I saw Detective Sergeant Lalor holding a .22 rifle in the room. A search was made of the house and Hamilton's room. There was a .22ibre which had been stolen during a robbery on Public Service Street. I saw Hamilton and Nelson being placed in a police car parked out of the front of these premises in Lord Street. I went to the front room where I spoke to an elderly lady, Mrs. Richardson, mother of Judy Simpson. She told me that Judy was asleep and she told me that the boy was her grandson, Judy Simpson's son.

Hamilton, Judy and Ronald Simpson were taken to the Armed Robbery Squad office. At the office I spoke to both Eric Heuston and Kim Nelson. I first interviewed Heuston re his movements the previous day the 14th March 1973, and he denied being involved in the armed robbery on the Thornbury Post Office. I could tell the exact conversation but I was satisfied that he did not take part in the robbery. Heuston and Nelson were interviewed in the interview rooms on the 5th floor alongside of the Company Squad.

After McGowan and Hamilton had admitted their part in the robbery and to my knowledge there were only two offenders involved, I decided to let some of the people leave the office to relieve the congestion on the 5th floor. It was my decision to let Heuston and Nelson go, and nobody else. Murphy did not speak to Heuston and could not have without my knowledge, and it was my decision to release Heuston and no one else. Heuston and Nelson left the office at about 10.00 a.m.

Before Detective Murphy and Detective Tamblyn commenced to interview Hamilton, Hamilton requested to see me. I spoke to him in the Senior Sergeant's office and Hamilton asked me to allow him bail and he said that he hated gaol and would die if locked up. He further stated that if he went to gaol he would never come out alive as there were some who wanted him dead. I told Hamilton that we would be refusing bail at the Magistrates Court but it was up to the court to decide. If bail was refused he could apply to the Supreme Court.

Later Hamilton was interviewed by Detective Sergeant Murphy and Detective Tamblyn. Hamilton and McGowan were both later charged with the armed robbery on the Thornbury Post Office. On Wednesday the 28th of March 1973, I received a telephone call from the police at Northcote that Ronald John Hamilton wanted to talk to me. I went there with Detective Sergeant Lalor where I spoke to Hamilton in the upstairs C.I.B. office. Hamilton again requested that if we reduce his bail and he would tell us who is committing other armed robberies. In the conversation he mentioned that Laurie Chaming was committing robberies and that he would set him up if given bail. This request was refused.

After Chaming was shot dead at the Moonoe Valley Hotel, Brunswick Street, Fitzroy, a .38 revolver was found in his hand. When checked it was found to match a spent cartridge found in a bag which had been stolen during a robbery on Public Service Street, Melbourne. During this robbery a shot was fired at the complainant; when he was pursuing the offender. It appears from this that Chaming could have been involved in this robbery.

When we raided the house at 86 Lord Street, Richmond, Heuston did not come on this raid. Heuston remained on the 5th floor until we returned and I released him approximately 10.00 a.m.

The reason Heuston and Nelson were let go at the above time I did not believe Heuston was involved in the robbery. Reports showed only two men committed the offence. I did not make any deal or arrangement with Heuston to let him go, nor did any other member.

I did not have any knowledge of Detective Sergeant Murphy or any other member being offered money to let Heuston go and it would have been impossible for this to have happened without my knowledge.

I have spoken to Heuston on a number of occasions since the 15th of March 1973, I have questioned him about a number of armed robberies and on one occasion with Detective Sergeant Lalor he admitted organising a hold up on the C.B.A. bank, Heidelberg. Heuston was charged with accessory to this offence and was released on $1000 bail, to which he failed to appear and a warrant has been issued.

I did not give evidence at the trial of Hamilton.

I cannot give any explanation as to why Heuston and Nelson were not put through the Interview Register. It must have been an oversight on the member who let them go. There has been no effort to conceal the fact that Heuston or Nelson was at the Armed Robbery Squad that morning. There are files and diary entries to substantiate this fact. Fourteen persons were interviewed by members of the Armed Robbery Squad that day and all were put through the interview register except these two.

G. M. WILLIAMS, Inspector.

On the 31st of July 1973, I went to Pentridge Gaol with a letter of complaint written by Ronald John HAMILTON. I interviewed HAMILTON about his complaint and at my request I had C.P.O. KERLEY record the interview on tape.

During the interview HAMILTON stated that MURPHY received one rotten grand, $400 that night that Heuston had on him and $600 next day.

This statement could not have been true as MURPHY was never in a position to receive this money and it could not have happened without my knowledge.

Later Inspector ROBINSON spoke to me about a complaint he had from Ronald John HAMILTON at Pentridge Gaol that Heuston paid money and the bedroom where MURPHY. I told Inspector ROBINSON that Inspector Plant and Inspector RYAN of Flemington had the same type complaints and they were doing inquiries. I also informed him that I had received a similar type letter and that I will have to go to Pentridge and interview him.

(G. M. WILLIAMS), Inspector.

Statement obtained and signature witnessed by me at 4.45 p.m. on the 10th day of April 1975.

H. M. DUFFY, Chief Superintendent.

E. E. SNELL, Det. Insp.
Richard Ernest Murphy States:

I am a Detective Senior Sergeant attached to the Armed Robbery Squad at the Russell Street C.I.Branch.

On 15th of March 1973, I was attached to the Armed Robbery Squad as a Detective Sergeant.

At about 2.20 a.m. on the 15th of March 1973, I received a telephone call from Inspector Williams (who was at that time Detective Senior Sergeant, Williams, Officer in Charge, Armed Robbery Squad). I was instructed by Williams to report to the office as a suspect had been arrested for armed robbery on the Thornbury Post Office the previous day.

I arrived at the office at approximately 3 a.m. and I was briefed by Williams as to what had occurred. He informed me that a short time before he had named McGowen had been picked up by the Ascot Vale Crime Cars in possession of a sawn off shotgun in a New South Wales registered Holden Sedan in the Braybrook area. He informed me that the second suspect was Joey Hamilton, but at that stage he did not know the whereabouts of Hamilton but hoped to learn of his address shortly. He also informed me that Kim Rita Nelson had also been in the car, he told me this in response to a question put to me as to what Nelson was doing in the office. She was at this stage in the main office asleep in a chair.

I saw a number of other people in the office all, with the exception of Nelson, who were present. I spoke to Nelson, as far as I can remember my conversation with her was in relation to her activities over the last ten years. I made no mention about her relationship with McGowen or anyone else that was in the car with her that morning.

At about 4 a.m. I spoke to a man named Phillip Kitchener who gave an address as 11 Kenneth Street, Braybrook as best I can recall, I asked him about his association with Nelson who he claimed not to know. I also spoke to a man named Jerry Dragosevic I am not sure if it was at the same time or I spoke to the other two or later. My conversation was just general as to his antecedents etc.

At about 5.15 a.m. Williams informed me that he had learned the whereabouts of Joey Hamilton, he stated that he was living at 86 Lord Street, Richmond. He then detailed a number of men to accompany him to this address and gave us various positions to take up at this location. I was instructed to take up a position at the rear of the house near a laneway in company with other members. I can not now remember who else was with me in this position but I believe that it was some members of the Ascot Vale Crime Cars. The members who were detailed to enter the house by the front door were Williams, Fennessy, Sinclair and Tauchlyn. There may have been others who entered by the front door but I can not say who they were. I entered the premises by the front door two or three minutes after the door had been opened.

I remained at this house after Hamilton had been taken to Russell Street and made a search of the nearby streets for a car that Williams believed may have been used by Hamilton but was unable to find it. I returned to the Armed Robbery Squad office about half an hour after the others.

During the course of the search of the house at 86 Lord Street, Richmond, I saw Hamilton with company with Sinclair and Tamblyn. In a bedroom of the house I saw a man I later learned was a Donald Simpson and a woman I believed to be his wife, Judith Simpson. Also present in the house was a woman named Richardson who I believe was the mother of Judith Simpson. Mr. and Mrs. Simpson were also taken to Russell Street with Hamilton but not necessary in the same car.

At about 7 a.m. the same day I was instructed by Williams to accompany Sinclair, O’Loughlin and the suspect McGowen to an address at 11 Kenneth Street, Braybrook where McGowen was going to recover some of the money he had stolen during the armed robbery on the Post Office at Thornbury. We arrived at this address and McGowen after some search found the money and handed it to Hamilton, a search was made of the house but nothing else was found. A man, who gave the name of Bronko Dragosevic, was seen at the house and he was returned with us to Russell Street. We then drove to 69 Wellington Street, Collingwood where McGowen pointed out a house where he had visited with Hamilton soon after the robbery, and then to premises at 206 Gertrude Street, Fitzroy which he had also visited on the day of the robbery either to pick up Hamilton or drop him off. These premises I later learned were occupied by Kim Rita Nelson who had a room above the Hamburger Shop at that locality.

We returned to the office where I conferred with Williams and later at about 10.30 a.m. I commenced to interview Hamilton in a Company Fraud Squad interview room. This interview was interrupted at about 11.30 a.m. when Hamilton was taken to the 7th floor for an identification parade, which was conducted by Detective Inspector Holmberg. There were thirteen men in this parade of a similar description to Hamilton. The complainant in the armed robbery, Mr. Albert Cochrane, was brought in to view the line of men and as he was walking up and down the line, Hamilton stepped out of the line and said, “You don’t know me do you Mr. Cochrane”. The complainant identified Hamilton as being the man concerned in the armed robbery on him.

The interview with Hamilton was resumed after lunch when he was given the opportunity to talk to Judith Simpson at his request. Hamilton admitted his part in this armed robbery and was subsequently charged with the armed robbery.

During the course of the morning I spoke to a man named Neil Heuston, who was apparently a friend of McGowen. I spoke to him very briefly about what he did for a living and where he lived.

At no stage did I ever see a man named Eric Harold Heuston & Eric Grant on that day. The first time to my knowledge, that I have ever seen or spoken to this man was on the 15th of August 1973. On the 14th of August, 1973, I was asked by the Coroners’ Coroner Mr. Collis if it was possible to locate this Heuston. I was then thinking of calling him as a witness to re—but evidence given by Mrs. Richardson that he, Heuston, had dropped a bag in the passageway of her house at 46 Lord Street, Richmond, prior to the arrival of the police on the 15th of March 1973. I did not know of Heuston’s whereabouts and I contacted Williams who informed me that he believed that he was reporting on bail at Sunrise and would make inquiries.
The following day 15th August 1973, I spoke to Eric Heuston at the Armed Robbery Squad and I took a statement from him which I later handed to the Crown Prosecutor. I also took Heuston to the County Court so that he would be available if required by either the defence or the prosecution.

I have heard the allegation that I received a sum of $400 and a promise of $600 to enter into a conspiracy with this man Heuston to let him go and not charge him with the armed robbery on the Post Office at Thornbury. I have never received any money from Heuston or anyone else for this purpose or any other reason. I have investigated this armed robbery and there is no evidence in which to charge Heuston with this offence.

I can give no reason why this allegation would be made about me by this person.

The first time I heard of this allegation was when I was told by Detective O'Loughlin at the trial of McGowen. I was informed by O'Loughlin that an allegation had been made by McGowen that I had received a $1,000 from Heuston to let him go.

R. E. MURPHY, Senior Sergeant 12256.

Statement obtained and signature witnessed by me at 2.50 p.m. on the 10th day of April, 1975.

H. M. DUFFY, Chief Superintendent.

E. E. SNELL, Det. Insp.

APPENDIX “F”

Brian Francis Fennessy States

I am a Sergeant of Police attached to the Consorting Squad at Russell Street C.I. Branch.

At about 8 p.m. on Wednesday the 14th March 1973, I went to the Northcote Police Station, I was in company with Detective Senior Constable B. Rayner, 15296. I there received information that a vehicle had been seen near the scene of an armed robbery on that date at premises at 408 Station Street, Thornbury. The vehicle was described as being a Holden Monaro, New South Wales registration, similar to BGR.OlO.

On a day in the previous week, with Detective Senior Sergeant Delianis and Senior Detective Jolly, I had seen this vehicle with a number of people and a woman as the occupants. We chased this vehicle but lost it in Collingwood. I was aware that the occupants may have been Stanley Thomas McGowan, and Jerry Dragosevic, both Sydney men. There was also information to hand that these persons may have been armed.

With this information in mind I circulated the description of the vehicle through D24, to all cars on duty. I then commenced a search of areas where I believed that this vehicle may be.

At about 11 p.m. that same night I met members of the Observation Squad and I discussed with them the vehicle in question. One of these members was aware of the occupants and some possible addresses. They were going to check the address before conclusion of their duty.

I then went about a further patrol and arrested Myran Maslanyck wanted on warrant and charged him at the City Watch House. On leaving the Watch House, I was advised by D24 that the car had been located at an address in Kenneth Street, Braybrook. I requested that available police at the location should go into the house and bring all occupants and the vehicle to Russell Street.

Later at about 2.30 a.m. Sergeant Mangies from Sunshine Crime Cars and other members bought a number of suspects to Russell Street. They were taken to different offices in the building and seated. Among these persons was Jerry Dragosevic, born 22.9.51, of 4 Carlton Crescent, Summerhill, New South Wales. He was seated in the office of the Armed Robbery Squad.

Members of the Armed Robbery Squad arrived and continued enquiries regarding the armed robbery at Thornbury. Enquiries were also made at Sydney regarding all suspects. I did not personally interview Dragosevic.

I did not see Dragosevic in possession of a wallet or $40. I did not see him in possession of a pen knife, or spanners or papers. I did not assault him, nor did I see him assaulted by other members of the Force.

I was present at 1 p.m. when he was asked at the Reception Office when Senior Sergeant Thompson asked him if he had any complaints. He did not make any complaint at all. Dragosevic left the office at 1 p.m.

(Sgd) B. F. FENNESSY.

Statement taken and signature witnessed by me this 3rd day of May, 1973.

D. PLANT, Detective Inspector.
Eric Harold Heuston states—

I am a professional gambler and I reside at flat 8/247 Gover St., Preston.

I am also known as Eric GRANT and Eric JAMES. I am a convicted person and I was at present on bail for house breaking and stealing.

On the 15th of March, 1973 I was picked up by some police in a motor car driven by one Stanley MC GOWEN. It was about 1 am or very close to it. My girl friend Kim NELSON was also in the car. She was sitting in the back with me when the police pulled us up. They ordered us out of the car and they started to search the car. One of the police found a shotgun under the front seat; he questioned me about the shotgun and I told him that I knew nothing about it which I didn't. We were then taken to Russell Street where I was questioned by some detectives about the shotgun and about an armed robbery they said happened earlier that day. I said that I knew nothing about it and that I didn't do it.

I was later questioned by Sergeant WILLIAMS about this robbery. He accused me of taking part in the armed robbery on the post office. He told me what time it was and I told him that I couldn't have done it as I was at the races and I showed him some betting tickets or a gate ticket I can't remember what it was and he took them. I was kept at Russell Street for about seven or eight hours. They also questioned Kim NELSON about my movements and later they let us both go. I was told not to leave the state because they said they wanted to question me again.

The day prior to being picked up by the Police that's the 14th of March, 1973 I went with Kim NELSON, Joey HAMILTON and Terry BEINKI to 86 Lord Street, Richmond in a taxi where we picked up Donnie SIMPSON and his wife Judy to go to a party at a friend's place in Westgarth. At this particular time I was living with Kim NELSON in a flat over a hamburger shop in Gertrude Street, Fitzroy. Joey HAMILTON arrived at the flat between 7 and 7.30 pm; he was with Terry BEINKI. We went to Lord Street in a taxi and we took the same taxi to Westgarth. They were not carrying anything when they arrived at my place. They got the beer at Northcote. I did not go inside the house I waited outside in the taxi with Kim and Terry.

The party was a welcome home party for Judy's husband Donnie who had just got out of Gaol that morning. I didn't stay at the party all that long. I left at about 12 midnight. Well everyone left at that time I went straight from there to Braybrook because I had to pay my father some money. I arrived at the house at Braybrook in a taxi just before lam and the taxi left. I saw my father and paid him some money and then I asked Stan McGOWEN to drive me to Gertrude Street, Fitzroy. He agreed to do this and we were on our way when we were picked up by the police as I have previously stated.

I have been questioned by the police three times about this robbery, the last time was last Sunday at Sunshine when I was questioned for two hours.

I know nothing about this robbery and I have at no stage told the police who did this robbery because I do not know who did it. I have no information as to who committed the robbery on the post office on the 14th of March, 1973 all I know is that it wasn't me.

ERIC H. HEUSTON

Statement taken and signature witnessed by me at Russell Street on the 15th of August, 1973 at 10.30 a.m.

R. E. MURPHY, Senior Sergeant 12256.
CHAPTER 17
THE HEWAT MATTER

Introduction

The evidence called in the Hewat matter was such as to enable the Board to arrive at a conclusion with little difficulty.

Peter John Hewat was a young man aged 20 at the time of his appearance before the Board. He was unemployed and had a number of prior convictions in respect of the larceny of motor vehicles, the illegitimate use of motor vehicles, and the driving of motor vehicles (see exhibit 405).

At approximately 1.15 p.m. on the 11th April, 1975, he entered the Fitzroy Police Station. Shortly thereafter he was interviewed by Constable Paul John Strang and Constable Robert Arthur Clark. At the time Hewat entered the Police Station he bore no sign of injury to his face or head whatsoever.

Shortly after 2.00 p.m. on that same day Hewat's Solicitor, Mr. Paul Marin, attended at the Fitzroy Police Station with a view to securing Hewat's release. Upon seeing Hewat seated in an Interview Room at the Station he immediately observed injuries to Hewat's face which he described in evidence as consisting of swelling of the nose and lips extending across one side of his face with associated redness of the swollen areas. The fact that Hewat had sustained such injuries was later confirmed by the evidence of Doctor Bertram Barney Wainer, William Martin Hitchings, (a Journalist and Author in the employ of the Sun News Pictorial), and Doctor Paul Gerrard Carman, (a Resident Medical Officer at St. Vincent's Hospital).

According to Hewat, he sustained those injuries as a consequence of being struck in the face on a number of occasions by Constable Strang during the course of the interview Strang had with him. Constable Strang on the other hand denied that he ever laid a hand on Hewat that afternoon, as did the various Police Officers called to corroborate his testimony. In fact the case put forward on behalf of the Police called to give evidence in this matter, was that Hewat's physical condition was the same when he left the Fitzroy Police Station that afternoon as when he first entered it.

In my opinion the evidence called in the Hewat matter left one no alternative but to find that Strang had assaulted Hewat in the manner alleged. I turn now to consider the evidence called in greater detail.

Background

Before considering the evidence in relation to the actual assaults on Hewat at the Fitzroy Police Station that afternoon, I consider it necessary to say a little about the circumstances which caused Hewat to present himself at the Police Station that day in the first instance. In this connection I was prepared to act on the Police version of what transpired on the morning of the 11th April in preference to that of Hewat and the witnesses called on his behalf.

According to the evidence of Constables Strang and Clark, at approximately 10.00 a.m. on that morning and whilst on duty in a divisional van, they observed Hewat driving a motor vehicle in the Fitzroy area. Knowing that Hewat was not licensed to drive a motor vehicle they pursued the car he was driving with a view to apprehending him and charging him with that offence. As events turned out however, and by virtue of the reckless manner in which Hewat drove his vehicle, those efforts proved unsuccessful. Hewat eluded the divisional van and for the time being made good his escape.

Later that same morning and whilst still on duty in the Fitzroy area, Constables Strang and Clark came across Hewat's vehicle abandoned at the intersection of York and Nicholson Streets, Fitzroy. Believing that Hewat and his companion, Alan Roy Stone, would subsequently return to the vehicle with a view to driving it away, Constable Clark removed the rotor button from the engine of the vehicle and interfered with the distributor leads thereby immobilising it.

As anticipated, at approximately 11.00 a.m. that morning Hewat and Stone returned to the vehicle and attempted to drive it away. Upon ascertaining that the rotor button had been removed and the distributor leads disturbed, the two youths made enquiries at a nearby service station in an endeavour to ascertain who had been responsible. At the service station they were told that a divisional van had been observed near the car that morning, and the Police from the divisional van had been seen to raise the car's bonnet. Hewat and Stone immediately realized that the Police from the divisional van had removed the rotor button and interfered with the distributor leads.
Having unsuccessfully endeavoured to obtain some legal advice in respect of the matter from the Fitzroy Legal Aid Office, Hewat and Stone then decided to retire to the Napier Hotel in Moore Street Fitzroy to consider the situation. Either on the way to the hotel or at the hotel itself, they encountered Sergeant Douglas Ewan De Wardt. According to Sergeant De Wardt he met the two youths whilst on his way to the hotel to purchase his lunch. Hewat and Stone on the other hand maintained they ran into Sergeant De Wardt inside the hotel itself. As nothing turns on the matter I see little point in attempting to resolve that conflict. The fact is that having regard to the manner in which he was dressed it was immediately apparent to Hewat and Stone that Sergeant De Wardt was a Police Officer, hence their approach to him (see the evidence of Sergeant De Wardt at page 6661 of the transcript and that of Hewat at page 6414). What occurred at that encounter is adequately described in the evidence Sergeant De Wardt gave at page 6662 of the transcript.

Q. First of all, who did the talking? Did they both speak?
A. They both spoke.
Q. What were they saying to you?
A. Well, the substance of the conversation was that their car was somewhere up in St. George's Road, and the Police had apparently removed the rotor button and they had been told this by a garageman.

Q. Were there some spark plug leads mentioned too?
A. I think they did say there were some leads off, and what they should do and what right did the Police have of doing it. Not knowing the circumstances I asked them did they know what sort of police car it was and they said it was a van so I directed them to the Police Station and said if you go around there now, I think the van is there now having lunch, if you go there and ask for Constable Strang you will be able to sort something out.

Having been given that information by Sergeant De Wardt, at approximately 1.15 p.m. that afternoon Hewat and Stone attended at the Fitzroy Police Station and asked to see Constable Strang. The Constable to whom that request was directed told Hewat and Stone to take a seat in the foyer of the Police Station then—and I quote—"sang out for Constable Strang ".

What occurred thereafter is best described in the evidence Hewat gave at pages 6414 et seq. of the transcript. (As in other matters I have deleted irrelevant and repetitious passages).

Q. What was the next thing that happened then, Mr. Hewat?
A. The bloke behind the counter opened a door and he sang out for Constable Strang, and then—you can see kind of up the corridor—Strang started kind of running down towards me.

Q. Yes?
A. And, as he got closer to me, he said, "You'll never learn ", or something like that—" You'll never learn ".

Q. Did you know Constable Strang before this day?
A. By face, not his name.
Q. Can you describe the way he came towards you?
A. At a fast walk, a bit of a jog, you know, running towards me.
Q. We saw what might be described as a swing door today when we were at the Police Station; that was in an open position?
A. Yes.
Q. Was it in the same position on this day?
A. It was open.
Q. You have told us Constable Strang said words to the effect of " You will never learn ". What happened then?
A. I was sitting down. He grabbed me by the front of the T-shirt, and, I think, by the hair, and pulled me up.
Q. What part of your hair did he grab?
A. The top, or—I think the top, up here somewhere (indicating); I am not sure.
Q. He was pulling you up? All right, What happened after you got to your feet?
A. He was behind me, and he said to me, "You'll never learn ", or something. I said, " Leave me alone. I have done nothing "—something like that.
Q. " Leave me alone. I have done nothing "?
A. Yes.
Q. Was this the second time he had said, "You'll never learn"?
A. Yes. I am not sure if it was the first or the second. It all happened so fast. He grabbed me and sort of said, "You'll never learn", "You'll never learn", like that—grabbed me.

Q. What happened then?
A. Then he had the back of my—or he had hold of me by the hair, and he was pushing me up the corridor, kind of hitting me in the back of the head.

Q. Can you describe those hits?
A. He had me at the back, and he was hitting me like that (demonstrating) at the back, at the back of the head.

Q. How many times did that occur?
A. Two or three, I think.

Q. Well, you have told us you were taken down a corridor. Were you taken into the room that you indicated to us today on the view?
A. Yes.

Q. What happened to you once you were taken in there?
A. He was saying that I was driving, and I denied it, and then

Q. At that stage, were you standing up, or seated, or where were you?
A. I think I was still standing.

Q. He said to you you were driving, and you denied it?
A. Yes, and I kept denying it, and he hit me a few times.

Q. Well, first of all, will you tell us where he hit you?
A. He grabbed me by the hair first, I think, and hit me on the face just about there (indicating).

Q. That is on the right side of the face, is it, that you are indicating?
A. Yes.

Q. And can you tell us whether that was a hit with an open hand, or with a clenched fist, or how?
A. Just a clenched fist, like that (indicating).

Q. And how many times?
A. Two or three.

Q. What was the next thing that happened to you after that? Incidentally, before you tell us that, did you call out or say anything after you were hit?
A. I think I asked for a solicitor—I wanted to make a telephone call, or something—and I asked for an Inspector as well.

Q. Was that after you were hit on this occasion?
A. I asked him a couple of times for an Inspector. He laughed at me. He said, "You are not getting one", or something.

Q. You told us that before you were struck you were denying that you were driving?
A. Yes.

Q. Did Mr. Strang say anything to you at the time he struck you?
A. He was saying, "You were driving".

Q. What is the next thing that happened to you, Mr. Hewat?
A. He hit me a couple of times, then he made me sit on the floor.

Q. The time you were struck on the first occasion in the room, you say you do not know that the other man was present. Was there any other person present on that occasion?
A. Yes.

Q. Who was that?
A. A young Policeman in the corner typing. I do not know his name.

Q. You have told us that after you were hit on that first occasion you were made to sit on the floor. Had you been seated on a chair at any stage prior to this?
A. Yes. When I came in I was standing and I think that is when they hit me and I sat down.

Q. On a chair?
A. Yes, and he hit me a couple more times and then he made me sit on the floor. That is when the other bloke from the divisional van came in again and he sat on the desk.

Q. We have you seated on the floor?
A. Yes, and he was seated on the desk.
Q. You were seated on the floor, as indicated today, in an area very nearly where you were seated on a chair?
A. Yes.
Q. Is that near a radiator that is against the southern wall of the room you were taken to?
A. Yes.
Q. What happened to you whilst you were seated on the floor?
A. The other bloke in the divisional wagon came in and he sat on the seat, on the bench thing. I had a blood nose about then and he went to put his boot up to kick me, it looked like to me.
Q. He went to kick you?
A. Yes.
Q. And what happened?
A. He never, just put it back again.
Q. You say you had a blood nose at this stage. When did you first realise that your nose was bleeding?
A. I cannot remember.
Q. Apart from this threat to kick you which did not eventuate, did anything else happen to you whilst you were seated on the floor?
A. I cannot remember.

Following those incidents Hewat alleges he was taken to a washroom by Constable Strang and told to wash himself. According to Hewat his nose was still bleeding and there was blood over his face and left arm, that being the arm he had used to wipe his nose.

Hewat stated that initially he refused to wash himself. However, when Constable Strang made a threatening gesture with his fist he took the sheet of wet paper towelling that was offered to him and wiped his face. He was then taken back to the Interview Room and remained there until his Solicitor, Mr. Paul Marin, arrived at approximately 2.00 p.m. that afternoon.

Counsel appearing for the Police Association made much of the fact that when Mr. Marin asked Hewat whether he had any complaints, Hewat replied either "No" or "Not really". Counsel for the Police Association further made much of the fact that when Hewat was put through the Interview Register and asked whether he had any complaint to make about his treatment by the Police that day he replied "No".

I have already made my views clear so far as the existing practice of "putting a person through the Interview Register" is concerned. I see no useful point in reiterating them in this summary. Whilst I have not the slightest doubt Hewat would lie on oath in the event he considered it would suit his purpose to do so, in this particular instance I was quite prepared to accept the answer he gave when asked was there any particular reason why he had not made a complaint to Mr. Marin when invited to do so, viz. I "just did not want to start anything there" (page 6418).

In my opinion it would require a great deal of courage for a 20 year old youth to make a complaint in the circumstances as they existed at the Fitzroy Police Station at approximately 2.00 p.m. on the 11th April, 1975; courage which in my view Hewat would be incapable of exhibiting.

At that time Hewat was still in Police custody and from his prior experience with members of the Police Force would well know that he would remain in Police custody until such time as bail was fixed and the formalities of "bailing him out" attended to. As events transpired, following the departure of Mr. Marin from the Interview Room, Hewat was in fact denuded of his property and placed in the cell block at the Fitzroy Police Station for a period of some 15 to 20 minutes. In the light of what did occur to Hewat after Mr. Marin left the Interview Room, I can well understand his behaviour in not making a complaint to Mr. Marin when given the opportunity to do so.

Following his release from the Fitzroy Police Station that afternoon Hewat was taken by Mr. Marin to the home of Doctor Wainer at Ivanhoe. There Doctor Wainer made a cursory examination of the injuries to Hewat's face, obtained a brief statement in writing from him as to what had occurred whilst he was at the Fitzroy Police Station (exhibit 406) and arranged for him to be interviewed by Mr. Hitchings, then taken to the Casualty Department of St. Vincent's Hospital. The only matter of relevance so far as Hewat's account of those events is concerned is that on the journey from Doctor Wainer's home to the offices of the Sun News Pictorial, Hewat called at his home in Fitzroy and changed his blood-stained T-shirt for a clean one (page 6424).
As I have endeavoured to indicate when dealing with the evidence Hewat gave to the Board, Hewat both by his demeanour and own admissions, is a person who would lie on oath whenever the occasion suited him. In the ordinary course of events one has reservations about relying on anything he deposed to unless his testimony was supported by acceptable corroborative evidence; all the more so in the event his evidence was contradicted by that of experienced members of the Victoria Police Force.

In this particular case however, Hewat's evidence was so adequately corroborated by the evidence of Stone, Mr. Marin, Wm. Hitchings, Doctor Wainer and Doctor Carman that one had no hesitation in accepting it in preference to that of Constables Strang and Clark. I turn now to consider the evidence those witnesses gave.

Evidence Called in Corroboration of Hewat's Complaint

The evidence Alan Stone gave as to the events of the morning of the 11th April was in the main the same as that given by Hewat. I see no necessity to repeat it in this summary but take up his account following the arrival of the two youths at the Fitzroy Police Station between 12.30 p.m. and 1.00 p.m. that afternoon.

Having taken a seat in the foyer of the Station as directed by the Police Constable at the Inquiry Counter, Stone observed Constable Strang enter the foyer, walk quickly over to where Hewat was sitting, grab Hewat by the hair and the shirt and drag him to his feet saying as he did so, "You'll never learn" (page 6473). Strang then pushed Hewat across the foyer towards the passageway or hallway leading towards the rear of the Station and as he reached the doorway leading from the foyer to the passage struck Hewat twice on the back of the head with the fist he was using to hold Hewat's hair. As Strang was pushing Hewat down the passageway in that fashion another Police Constable who had entered the foyer pointed at Stone and said, "What about him?" To that Strang replied, "Leave him there". Having risen to his feet when Strang entered the foyer, Stone then sat down again. Some 2 minutes later the second Constable left the foyer. At that, Stone got up from his chair and walked out of the Police Station, his intention then being to telephone a Solicitor (page 6474).

Following his departure from the Police Station, Stone did in fact endeavour to contact a Solicitor but initially without success. For some reason which he was unable to explain to the Board he then telephoned the home of Doctor Wainer. As it transpired a Solicitor (Mr. Paul Marin) was then at Doctor Wainer's home and through Doctor Wainer's Secretary, arrangements were made for Mr. Marin to immediately proceed to the Fitzroy Police Station to meet Stone, then endeavour to secure the release of Hewat.

Shortly before 2.00 p.m. Mr. Marin arrived at the Station, met Stone and learnt from him of the assault on Hewat by Constable Strang.

Pausing at this point, I consider it important to stress the significance of the conversation Mr. Marin had with Stone before he left the Station. As is apparent from the outline of events to date, there had been no communication between Hewat and Stone once Hewat was removed from the foyer by Constable Strang. Yet shortly before 2.00 p.m. Stone described to Mr. Marin exactly what Hewat later described to him following his release. Had the two youths been in communication with each other between the time Hewat was removed from the foyer and the time of Mr. Marin's arrival, it doubtless would have been contended that Hewat and Stone had concocted their allegations of assault with a view to discrediting Constable Strang. The fact is they had no opportunity to do so, yet independently gave the same description of events to Mr. Marin. In my opinion that is a factor which weighs very heavily in support of their contention that Hewat was assaulted in the foyer and passageway of the Police Station in the manner both youths alleged.

The remainder of Stone's evidence dealt with the events which occurred following Mr. Marin's arrival at the Police Station at approximately 2.00 p.m. As I shall deal with those events when considering the evidence Mr. Marin gave, I see no useful purpose in referring to Stone's evidence in relation to them. Suffice it to say, that when Hewat was finally released from the Police Station later that afternoon, Stone also observed that his nose was swollen, his face was puffed up and red, there was a little blood on his lip, and his bottom lip seemed to be swollen (page 6475a).

Mr. Paul Marin gave evidence to the effect that following his conversation with Stone he entered the Police Station, went to the Inquiry Counter and informed the Police Constable on duty that he had come to
bail Hewat out. What occurred following that announcement is best described in the evidence Mr. Marin gave at page 6254 et seq. of the transcript.

Q. What happened when you entered the Police Station?
A. We approached the reception counter, and I think that I said I had come to bail Hewat out. Then, I think, Constable Strang was called, and he came out to meet me and he said they were still questioning Hewat, and I think I asked if I could go in and inform him of his rights. I was told I could. We were told to sit down. We were kept waiting for ten minutes or so. I was then led down the corridor into quite a large room. There was a desk in the left hand far corner of the room, and there was a Police Officer sitting behind the desk; there was Hewat sitting on a chair in the middle of the room, and I think Strang was pacing around in the room; there may have been another police officer there; I am not sure.

Q. At this point of time, had you ever met Mr. Hewat?
A. No, never.

Q. Was it indicated to you by any of the Police Officers that the gentleman seated in the chair was Mr. Hewat?
A. I assumed it was Hewat, because he was the only one who was not a Policeman.

Q. Did you have a look at him?
A. Yes, I did.

Q. What did you notice about him, Mr. Marin?
A. Both his nose and his lips appeared swollen. His nose actually appeared lopsided; there was a sort of swelling that, you know, continued across the side of his face. I'm not sure which side of his face it was.

Q. Did you notice anything about either the right or the left side of his face in terms of colour?
A. Oh, yes, it was red. This swelling sort of went across his face.

Q. Yes?
A. It was sort of a continuation of . . . His nose really looked lopsided, inflated on one side, and it continued across his cheek.

Q. What side of his face, as you recall it, bore the signs of redness and Swelling?
A. I do not remember, I am sorry.

Q. The witness was indicating his left cheek.
A. That was just a mannerism. If I had been using my other hand, it would have been my right cheek.

Q. I follow. Well, having observed Mr. Hewat, did you say anything to him?
A. Yes. I think the first thing that I did was that I asked the Police Officer if there had been any Record of Interview, and I think I was told that there had not, there had been some questions asked but there had not been any Record of Interview. Then I informed Hewat of his rights to remain silent, and asked him if he had any complaints, and the first time I asked him, he did not answer anything, he did not say a word. The second time I asked him, he reluctantly gave some sort of negative answer. He either said "No" or "Not really," but he was obviously very tentative about giving any sort of an answer, and I did not press him.

Q. When you observed Mr. Hewat, when you saw his face, did any particular thought cross your mind as to what might have happened?
A. Yes, it did. It instantly crossed my mind that he might have been beaten up in the Police Station, or assaulted in some way.

Q. Did you convey any of these thoughts to the Police Officer?
A. No. It would have been the last thing to do.

Q. Why not?
A. I do not think it would be good tactics. Well, I never do it, you know. In my estimation, if you are a Solicitor and you go in to see a client and you see that he has marks on his body, and it is possible that it could be the result of a Police beating, the last thing you do is tell the Police about it, because they would firstly make sure—or try to
make sure that he signs the complaints book, as having no complaints. They would ask him in the presence of Police Officers, and, as far as I am concerned, that procedure is totally ineffective, because it is intimidatory to be asked in the presence of a number of Police Officers whether you have any complaints. I did not think it was good tactics. I was concerned with getting him out of there as quickly as I could, and I did not want to prolong the whole procedure.

Q. Yes, all right. What happened next?
A. Ah...

Q. Did you make any inquiries about bail?
A. Yes. We left the room, and I think I said to Strang, "Well, can I bail Hewat, or could Mr. Stone bail Hewat out?" I actually said to Strang, "Can the Officer-in-Charge of the Police Station set bail?" and Strang said to me, "No, but the Watchhouse keeper usually sets bail, and he is out to lunch, but you leave now, because Hewat will be bailed out soon as a matter of course." I said, "I do not want to leave I want to take him with me, so that I can get instructions." I think I told him I was taking him back to the office—I think I probably told him that—and that I wanted to get his instructions straight away, and Strang said, "In that case, you will just have to wait", and sat me down next to Stone in the foyer of the Police Station.

In due course Mr. Marin was successful in his efforts to have Hewat released and he, Hewat and Stone left the Police Station. They then proceeded to Hewat's car, replaced the rotor button, connected the distributor leads, and drove to the home of Doctor Wainer at Ivanhoe. Immediately Mr. Marin left the Police Station he inquired of Hewat as to what had happened to his face. According to Mr. Marin, Hewat told him that Strang had been questioning him trying to get him to admit that he had been driving the car that morning but when he continually denied that he had, Strang struck him in the face (page 6528).

Counsel appearing for the Police Association made much of the fact that although it was apparent to Mr. Marin that Hewat had sustained injury to his face whilst in the Police Station, he made no complaint or protest concerning it, and did not insist that a complaint be recorded when Hewat was put through the Interview Register.

I think it relevant to set out certain of the questions asked by Counsel for the Police Association and Mr. Marin's replies to them (see page 6533 et seq.).

Q. You said nothing to the Policeman at the desk?
A. No.

Q. Why was that?
A. Why did I not mention the assault?

Q. Yes?
A. What would I gain from it? I would antagonise the Police.

Q. It may not have occurred—you could have prevented a continuance of an assault going on?
A. I knew I had a right to caution him about his rights; I was going to get to see him within the next ten minutes, so at that stage a Policeman does not beat a person when a solicitor is there and, you cannot predict what is going on at a Police Station—you have to play it by ear.

Q. How do you know a Policeman does not beat people while a solicitor is there?
A. It has never happened to me.

Q. Do they beat them when the solicitors are not there?
A. Yes, I believe it happens.

Q. It never occurred to you . . . is this what you are saying, that you felt your presence there was sufficient to stop any assault continuing in another room—is that right?
A. Yes, I think so.

Q. The first time he made no reply—this is as to whether . . . what was the exact question you put?
A. Whether he had any complaints to make.

Q. Why did you ask that?
A. That was because I had seen his face and I knew, in the event of a court case, it is always advisable if he has complaints to make against Police Officers to have them recorded in the Complaints Register.
Q. What would you have done if he had said, "Yes, I have been assaulted"?
A. I would have asked that it be entered in the Complaints Register.
Q. So you left the Police Station, did you not, knowing that Mr. Strang and whoever the other Policeman was in the room, could get in the box at the Fitzroy Court and truthfully swear that you had asked him if he had any complaints and that he had said he did not?
A. Yes.
Q. You knew that when you left the Police Station?
A. Yes.
Q. Did it not occur to you that that left your client in a somewhat compromised position?
A. Yes.
Q. What did you consider doing about it?
A. Well, from past experience, I knew that there was nothing I could do about it. I have always regarded the complaints procedure as a bit of a farce. As far as I remember, I have never had a man tell me in front of Police Officers that he has a complaint. You get complaints when they tell you in the corridors but they are not entered in the Complaints Register.
Q. Have you ever seen a complaint recorded in the Complaints Register?
A. Seen one that has been recorded?
Q. You know, a formal question that is asked? Have you ever seen a complaint that was recorded?
A. No, I do not think so.
Q. Your criticism of the Complaints Register procedure, as I understand it, is that the Police are there when he is asked?
A. Yes, it is intimidatory, in my opinion.
Q. It is intimidatory?
A. Yes.
Q. In what way is it intimidatory?
A. Because it is asking a man who is already under the total control of the Police whether he has any complaints to make against those specific Police; they are the Police who, for a start, have him in their custody. They are the Police who are going to be investigating the complaint. Who better to be forewarned of complaints against themselves?
Q. Are you suggesting this was the situation where you were present with the Police?
A. Yes.
Q. Why?
A. Because, if Hewat had, for example, said "Yes, I was hit", Constable Strang or whoever could get three of his colleagues to say, "We were with him at all times—we will testify he was not hit". What would prevent Strang later approaching Hewat in the street and saying, "You shouldn't have done that, son, now you are going to get charged with something else"; say, in the case where the person being charged has had prior experience with Police Officers and knows the Police Station.
Q. All right, having said that—that you thought it was highly desirable to have a complaint in the register—do you still want to tell Mr. Chairman that you thought the complaints procedure was a waste of time?
A. I am not sure that I said it was a waste of time. I said it was an intimidatory procedure.
Q. But that is what you are implying . . . ?
A. No.
Q. Is it not? It is really a farce?
A. Yes, it is a bit of a farce, because so very few people will make a complaint, even though they have perhaps got a justifiable complaint.

It was most disturbing to note that the attitude expressed by Mr. Marin during the course of that exchange bore such a similarity to the testimony of Mr. Natoli in the Whyte Matter (Chapter 30) and the evidence of Mr. O'Brien in the Cox Matter (Chapter 11).

That experienced members of the legal profession are of that view, viz. that the Interview Register procedure is farcical and that the making of complaints against Police Officers is a sheer waste of time, clearly calls for alterations to Police procedures either of the type I have adverted to in Chapter 8 of the Report or in some other fashion which will result in the rights of the citizen vis-a-vis the Police being safeguarded.
Although Doctor Wainer examined Hewat when he arrived at his home later that afternoon, he made it clear during the course of his evidence that he had not wished to become involved in the matter and accordingly made no more than a cursory examination of him (page 6488 et seq.). Upon refreshing his memory from a medical report he had subsequently forwarded to Mr. Marin (exhibit 416), he was able, however, to give a general description of the injuries he had observed to Hewat's face. In substance that was to the effect that Hewat had facial swelling and bruising, particularly to the nose and lips which was consistent with him having received a blow to the face. As he suspected that Hewat may in fact have suffered a fracture of the nose Doctor Wainer advised that he be taken to St. Vincent's Hospital where an X-ray would be taken if deemed necessary.

Quite properly Counsel for the Police Association pointed to certain discrepancies between the evidence Doctor Wainer gave concerning Hewat's injuries, and the evidence given by Doctor Carman. I feel it only fair to point out in defence of Doctor Wainer that he made it clear at the outset of his evidence he had never wished to become involved in the Hewat matter, that he only made a cursory examination of Hewat before suggesting he be taken to St. Vincent's Hospital, and that he would defer to the opinion of Doctor Carman who had made a far more thorough examination of Hewat than he had had.

Before Hewat actually went to St. Vincent's Hospital, he was taken by Mr. Marin to be interviewed by Mr. Hitchings, a Journalist employed by the Sun News-Pictorial. The substance of the evidence given by Mr. Hitchings was that when he viewed Hewat he observed that his nose was bent, one cheek was slightly swollen and there was some redness on the face.

I must point out at this stage that the bent appearance of Hewat's nose as deposed to by a number of witnesses was not the result of any assault on Hewat by Constable Strang. Some years prior to 1975 Hewat had sustained a fracture of the nose leaving him with that deformity.

Whilst at the offices of the Sun News-Pictorial, Mr. Hitchings arranged for a photographer to take photographs of Hewat's face (exhibit 407). As Doctor Wainer pointed out, however, the photograph he was shown was not a very good photograph, and although in his view it depicted swelling across the bridge of the nose and to the left of the nose, he would not—and I quote—"care to go on record on a black and white photograph." (page 6490). That the photographs were not good photographs would appear to be borne out by the evidence Mr. Hitchings also gave at page 6510 of the transcript.

Following his interview with Mr. Hitchings, Hewat proceeded to St. Vincent's Hospital where in due course he was examined by Doctor Carman. On examination the most obvious feature observed by Doctor Carman was a large bruise over the right-hand side of the upper cheek, consistent with Hewat having been punched in the face (pages 6481-2 and exhibit 415). A suggestion was put to Doctor Carman by Counsel appearing for the Police Association to the effect that the injury he observed to Hewat's face may well have been self-inflicted. As Doctor Carman pointed out, however, it was a large bruise and although it was theoretically possible it could have been self-inflicted, it would be a very difficult thing for an individual to do unless he was fairly desperate (page 6484).

To suggest that the injury Hewat sustained to the side of his face may well have been self-inflicted (or inflicted by Stone as was suggested during the course of his cross-examination—page 6511) merely served to demonstrate the desperate position the Police involved in the Hewat matter realised they were in, and the lengths they were prepared to go to in an endeavour to exculpate themselves.

I turn now to consider the Police evidence relating to the matter.

**Police Evidence in the Hewat Matter**

Both Constable Strang and Constable Clark gave evidence in relation to Hewat's complaint. As I indicated at the outset, both men denied that Hewat had been assaulted in any way whatsoever whilst at the Fitzroy Police Station that afternoon and both maintained his physical condition was the same when he left the Police Station as when he first entered it.

The evidence in chief Constable Strang gave in relation to the matter appears at page 653 et seq. of the transcript. The following passages appear to me to be the more significant.

Q. What was the substance of the message?
A. That Peter Hewat and Alan Stone were in the foyer of the Police Station,
Q. What did you do as a result of that?
A. I left the muster room area and walked up the passageway to the foyer in a hurry. When I arrived at the foyer, I went through the swinging door.
Q. Was the swinging door open or did you have to open it?
A. I pushed it open as I walked through.
Q. What did you see?
A. I saw Alan Stone seated on a wooden chair. I saw Peter Hewat the driver of the car earlier in the morning, standing very close to the watch-house counter.
Q. What did you say, if anything?
A. To whom?
Q. To anybody, when you got into the foyer?
A. The first thing I said when I walked through the door, I said to Hewat when I walked through the door, his attention turned around and he looked at me and I said to him, "Come with me".
Q. Did you say anything to him as to whether he was under arrest?
A. Not straight away. He said to me, "What for" and I said "Unlicensed driving".
Q. Did he make any comment about that?
A. He replied, when I said to him, "For unlicensed driving", he said, "You will not prove that on me".
Q. Did you take hold of him?
A. Yes.
Q. In what way, Constable?
A. By the left arm.
Q. Is that the traditional fashion of indicating to a person he is in custody?
A. I would say so.
Q. I do not mean the left arm but one or other arm?
A. Yes.
Q. Where did you take him?
A. Back through the door that I had come through and down the passageway to a general muster room.
Q. Did you remain in the room, Constable?
A. No.
Q. Where did you go?
A. As soon as I went in the room Hewat was seated. Clark came into the room just after I did. I do not know whether it was said or it just happened that I went up to the front to get the Interview Register.
Q. When you got up the front did you go near the foyer?
A. I went to the foyer area, yes.
Q. Did you go into the foyer or just pass the foyer and into the Watch-house, do you remember?
A. I do not remember exactly whether I went through the foyer but I would have jumped over the counter.
Q. Was Stone there then?
A. No.
Q. Did you return to the room?
A. Yes.
Q. Was there any conversation between you and Hewat?
A. Yes.

Constable Strang then set out what he maintained was a series of questions he asked Hewat and Hewat's answers to them. Those questions and answers related to Hewat's driving earlier that day and added nothing to the allegation of assault Hewat made against Constable Strang. I should point out, however, that Hewat denied he made the confession Constables Strang and Clark alleged he did, and in fact contended he was "verballed". Having regard to the state of the evidence relating to the interview I am unable to make any finding adverse to the Police so far as that aspect is concerned.

According to Constable Strang, the only incident which occurred during the course of the interview was that Hewat asked to go to the toilet and was in fact taken to it. During the course of the hearing it emerged that Constable Clark followed both Hewat and Strang to the toilet and stood near the entrance talking to Strang whilst Hewat was at the toilet.
To my mind that was a somewhat unusual occurrence. If Hewat had been as co-operative throughout the course of the interview as Constables Strang and Clark would have one believe, and nothing untoward had occurred during the course of the interview, why should Constable Clark follow Hewat and Strang when Hewat simply wished to go to the toilet.

When questioned about the matter Constable Strang swore that he didn't ask Clark to accompany them but as they had been talking together when Hewat asked to go to the toilet it would have been rude of Clark not to follow him to the toilet and thus break-off the conversation. When asked what this obviously important conversation was about, Strang replied: "We were talking about lunch" (page 6602).

The contention of Counsel assisting the Board was that that explanation was so much nonsense. The submission he made was that contrary to Strang's evidence to the effect that Mr. Marin was only kept waiting for some two minutes before he was taken to the Muster Room (page 6552), he was in fact kept waiting for the period of ten minutes as he alleged (page 6524, pages 6560-4 and page 6572), and was kept waiting for that period of time to give Strang and Clark an opportunity to remove the blood from Hewat's face and arm (see page 10,772 et seq.). In other words the story to the effect that Clark followed Strang and Hewat to the toilet so that their discussion concerning lunch should not be broken off was so much nonsense. Clark followed them to the toilet to ensure any visible sign of injury to Hewat in the way of blood on his face and arm was removed. In my opinion in all probability that is precisely what occurred.

The remainder of Constable Strang's evidence dealt with Mr. Marin's meeting with Hewat in the Muster Room, the lodgement of Rewat in the cell block after he had been put through the Interview Register, and the final release of Hewat on bail. As there is no dispute concerning such matters, I see little point in elaborating upon them in this summary.

Perhaps one final matter I should advert to so far as Constable Strang's evidence is concerned, is the evidence he gave as to his knowledge that a Solicitor would probably be making a visit to the Police Station to secure Hewat's release. I refer to the evidence he gave at page 6551 of the transcript.

Q. Were you surprised or not surprised, that a solicitor had arrived?
A. No, not at all, I knew he was coming.
Q. How was that?
A. When I came down the back the first time with Rewat and Clark arrived shortly, later I went back up the front to get the interview book and I either went across to the Watchhouse counter or through the foyer or in that area and I noticed Stone was not there; the last time I had seen him he was sitting up there and someone in the Watchhouse I was talking to and I said something along the lines of where is Stone and they said "He's gone to get a solicitor".

The argument put forward by Counsel appearing for the Police Association was that as Strang and Clark had knowledge of the fact a Solicitor was coming to the Police Station to bail out Rewat, it would be unthinkable one or other of them would assault Hewat, as an injury to Hewat would have been immediately apparent to the Solicitor and undoubtedly reported to a superior officer. For reasons I shall advert to when dealing with my conclusions in this matter, I do not accept the testimony of Strang and Clark to the effect they were forewarned of Mr. Marin's arrival.

The evidence Constable Strang gave was corroborated by that of Constable Clark. He too denied that Hewat was ever assaulted at the Fitzroy Police Station that day and maintained that throughout the time Hewat was at the Station he was treated courteously and in accordance with correct Police procedure. Even though he conceded that the behaviour of Hewat earlier that day had endangered his life, the life of Constable Strang, and the lives of numerous members of the public (page 6612) and that he considered Hewat to be "cheeky", "anti-Police" and "irritating" (page 6612) nothing occurred to Hewat that day which would justify criticism of the Police Officers who dealt with him. So far as the interview with Hewat was concerned, he was at pains to point out (as was Strang) that the door to the Muster Room was open all the time, so that anything occurring in there would have been visible to other Police as they moved around the Station.

Unfortunately for Constables Strang and Clark certain important aspects of their evidence were not corroborated by other witnesses called on their behalf and in fact were flatly contradicted by it.
Both Strang and Clark swore that when Strang went to the foyer in answer to the call from the Constable on duty at the Inquiry Counter, Hewat was not seated but was standing up (see Strang at page 6589 and Clark at page 6616). Both men also swore that although Strang moved quickly down the corridor he did not appear at all angry and certainly did not say, "You'll never learn" or behave in the manner deposed to by Hewat and Stone (see Strang at page 6589 et seq. and Clark at page 6616 et seq.).

On the 11th April, 1975, a Mrs. Loretta Gibson and a Mrs. Noreen Card were employed at the Fitzroy Police Station as typists. Mrs. Gibson was called on behalf of Constables Strang and Clark to give evidence as to her observations of the manner in which the two Police Officers dealt with Hewat that day.

According to Mrs. Gibson, at about lunch time that day she passed through the foyer on her way out of the Police Station to purchase her lunch. As she did so she saw Constable Strang bending over speaking to a young man seated on a chair (page 6582). Although her recollection was that Constable Strang was speaking in a normal voice, to her observation he appeared to be angry (page 6583). When asked what it was that indicated to her Constable Strang was angry she replied, "I think it was more the look on his face that gave me that impression that he was angry" (page 6586).

Later in her evidence she was questioned as to whether or not the doors to the Muster Room were closed during the time Hewat was being interviewed by Strang and Clark. Her evidence relating to this aspect was to the effect that when she returned to the Station at about 1.15–1.20 p.m. it was necessary for her to pass through the Muster Room to get to the room she and Mrs. Card occupied. She was then asked whether the door leading to the Muster Room or Interview Room was open or closed, and whether the door leading from the Muster Room to her office and that of Mrs. Card was open or closed. Her evidence relating to those aspects of the matter appears at page 6584 of the transcript.

Q. The door to the Interview Room—that is what we are calling the room where you saw the young man seated—was that open or closed, do you remember?
A. That would be closed.
Q. Is that usually the case or do you actually remember that?
A. No, I remember that.
Q. Did you open it?
A. Yes.
Q. Did you speak to anyone in the room when you got in?
A. I mumbled an apology.
Q. Whom did you see in the room?
A. Constable Strang, Constable Clark and a young man.
Q. Where was the young man?
A. He was seated on a chair.
Q. While you were in the room, first of all, do you remember whether the door to your room and the Interview Room was open or not?
A. I think it was slightly ajar.
Q. Did it stay that way or did someone close it?
A. Someone closed it later on.
Q. Who did that?
A. Constable Clark.

The fact that the door leading to the Muster Room was closed whilst Hewat was being interviewed was also confirmed by the evidence Sergeant De Wardt gave at page 6662 of the transcript.

Q. Where did you believe Hewat was being questioned?
A. The first Muster Room, it is called the Muster Room, it is about two rooms up from the mess room.
Q. Is it your recollection that while you were in your Mess Room the door to that room was closed?
A. Yes.

The other evidence called on behalf of Constables Strang and Clark in this matter was that of a civilian clerk employed at the Fitzroy Police Station that day, Richard Edward Schoeffer, Senior Sergeant Harold Leslie Parker, and Detective Senior Sergeant Laurence Cecil Briant. In my opinion that evidence did not advance the Police case to any significant extent.
According to Mr. Schoeffer he was seated at a desk in a room leading off the foyer at the time Constable Strang came into the foyer and took Hewat from it to the Muster Room. His testimony was to the effect that he saw Constable Strang move hurriedly from right to left past the doorway to his room, heard him talking to someone, then a few seconds later saw a person move from his left to right again just past his room followed by Constable Strang. In the position in which he was seated he could not see Constable Strang talking to Hewat nor could he see what, if anything, Constable Strang did to Hewat at the doorway leading from the foyer to the passage to the Muster Room. In this connection it is to be remembered it was at the actual doorway it was alleged that the blows to the back of Hewat's head first occurred (see Stone's evidence at page 6474). In my opinion there is nothing in Mr. Schoeffer's evidence which is inconsistent with the evidence Hewat and Stone gave.

The evidence Senior Sergeant Parker gave was similar in many respects to the evidence of Mr. Schoeffer. According to Senior Sergeant Parker he observed Hewat and Constable Strang pass his door on their way along the passage to the Muster Room. During the fleeting glimpse he had of the two men he noted nothing untoward about their behaviour. One important aspect of his evidence, however, related to the practice at the Fitzroy Police Station so far as putting persons through the Interview Register is concerned.

Contrary to the evidence of Constables Strang and Clark he swore that the last thing that is done with a prisoner before he is charged or released is to put him through the Interview Register (page 6673). Constables Strang and Clark would have it that the Interview Register was taken to the Muster Room within minutes of Hewat's arrival in the Muster Room, and remained there until he was interviewed and charged an hour or more later. That is evidence I am not disposed to accept. I consider that story was a concoction designed to show foreknowledge of the expected arrival of Hewat's Solicitor and hence the unlikelihood of any assault on Hewat.

The final Police witness called in the Hewat Matter was Detective Senior Sergeant Briant. He alleged that a few minutes after he saw Constables Strang and Clark enter the Interview Room with Hewat he went into the Interview Room to see if Hewat was being interviewed in respect of a crime which may have concerned him. At that stage he noticed no injury to Hewat and so far as he could ascertain a normal interview was in progress. Again, and having regard to the time at which he entered the Interview Room, there was nothing inconsistent between his evidence and the evidence Hewat gave.

Conclusions

As I indicated at the outset of the summary relating to this matter, in my opinion the evidence called in support of Hewat's claim to the effect that he was assaulted by Constable Strang at the Fitzroy Police Station on the 11th April, 1975, was overwhelming.

To suggest, as he was driven to, that Mr. Marin had lied about the matter, that Doctor Wainer had lied about the matter and that Mrs. Gibson was mistaken as to the identity of the persons she saw in the foyer of the Police Station as she went to lunch, viz. that she actually saw Clark talking to Stone not Strang talking to Hewat, demonstrated the desperate plight of the Police Officials involved. I dismiss out of hand the suggestion that Mrs. Gibson was mistaken. Mrs. Gibson had known both officers for some 18 months and was on Christian name terms with them (see page 6583 and page 6586). In those circumstances she could hardly have been mistaken as to which of the two she saw talking to the youth in the foyer. There was such a dissimilarity in the appearance of the two youths, I consider she could not be mistaken in that connection either.

As to the suggestion that Hewat inflicted the injuries observed by Doctor Carman himself, or had Stone do it between the time the two youths left the office of Mr. Hitchings and arrived at St. Vincent's Hospital, I say no more than this—that too is so much nonsense and again indicates the desperate position in which Constables Strang and Clark were.

There were a number of features concerning the evidence of Constables Strang and Clark which assisted me in arriving at the conclusion I did. It is unnecessary to deal with the more minor conflicts and irregularities in their testimony in this summary.

There is however, one final matter to which I wish to advert concerning an aspect of the evidence given by Constable Clark. I refer to it because it again demonstrated the disturbing practice of certain
Police Officers who choose to flatly deny a matter put to them in cross-examination, when the reality of the situation is that they have no recollection concerning it, and accordingly are in no position to swear positively one way or the other.

In this instance Constable Clark was asked why he had left out of the statement he made at the request of Inspector Hall concerning Hewat's complaints (exhibit 423), the fact that Strang had left the Muster Room within five minutes of bringing Hewat in to get the Interview Register, and why he had left out of that statement the fact that when Strang returned he had told him a Solicitor was coming (page 6618).

His initial answer to the question at page 6618 was that Mr. Hall never asked about it, and that it did not occur to him when he was meeting Hall. At pages 6619-20 the following exchange occurred:—

Q. What you were saying first is, "No, I was not asked about these things"?
A. Yes, I do not recall.
Q. There is a difference between not being asked and not recalling. You follow that, do you not?
A. Yes.
Q. Are you in the habit of saying something does not occur merely because you do not recall it?
A. Yes.
Q. Why did you on this occasion?
A. Because I did not recall that that had been included in the interview.
Q. That is the best answer you can give, is it? You understand the question?
A. Yes, that is the fact of the matter.
Q. So that not recalling it you were prepared to deny on oath that it happened?
A. That is correct. I did not recall it.
Q. And you understand the difference between denying that something has occurred and merely not recalling whether it has occurred or not?
A. Yes.

As I have indicated in this and other matters dealt with by the Board (see for example the Olding Matter—Chapter 20) this is a most dangerous practice and one which could seriously prejudice an accused person.

FINDINGS

The following are the findings I make in this matter:—

1. That on the 11th April, 1975, at the Fitzroy Police Station between the hours of 1 p.m. and 2 p.m. Peter John Hewat was assaulted by Constable Paul John Strang, aided and abetted by Constable Robert Arthur Clark.

2. That Constable Strang and Constable Clark conspired together to give false evidence before this Board concerning the matter and did so.

3. That on the 11th April, 1975, and without lawful justification Constable Strang and Constable Clark removed a rotor button from Hewat's motor vehicle.
# THE HEWAT MATTER

## APPENDIX

### LIST OF WITNESSES

<table>
<thead>
<tr>
<th>Name</th>
<th>Transcript Reference</th>
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<tbody>
<tr>
<td>BRIANT, Senior Sergeant Laurence Cecil</td>
<td>6675-6685</td>
</tr>
<tr>
<td>CARMAN, Doctor Paul Gerrard</td>
<td>6481-6487</td>
</tr>
<tr>
<td>CLARK, Constable Robert Arthur</td>
<td>6554-6556 and 6611-6655</td>
</tr>
<tr>
<td>DE WARDT, Sergeant Douglas Ewan</td>
<td>6661-6667</td>
</tr>
<tr>
<td>GIBSON, Loretta</td>
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<td>HEWAT, Peter John</td>
<td>6412-6440 and 6450-6470</td>
</tr>
<tr>
<td>HITCHINGS, William Martin</td>
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<tr>
<td>MARIN, Paul</td>
<td>6521-6541 and 6557-6572</td>
</tr>
<tr>
<td>PARKER, Senior Sergeant Harold Leslie</td>
<td>6668-6675</td>
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<tr>
<td>SCHOEFFER, Richard Edward</td>
<td>6655-6661</td>
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<tr>
<td>STRANG, Constable Paul John</td>
<td>6542-6554 ; 6572-6581 and 6587-6611</td>
</tr>
<tr>
<td>STONE, Alan Roy</td>
<td>6470-6481 and 6496-6513</td>
</tr>
<tr>
<td>WAIGHT, Constable Edward Shepherd</td>
<td>7008-7018</td>
</tr>
<tr>
<td>WAINER, Doctor Bertram Barney</td>
<td>6488-6496</td>
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