CHAPTER 14

ARGYLE

14.1 INTRODUCTION

In the early 1990s, the Western Australia Police Service ("WAPS") investigated allegations as to the theft of diamonds from Argyle Diamonds Pty Ltd ("Argyle"). There were three investigations undertaken, the first two of which were terminated without any satisfactory result. A third investigation resulted in charges being laid against three persons, who were ultimately convicted of participating in conspiracies to steal diamonds. From an early stage, allegations have been made that the failure of the first two investigations was a result of corruption within the Police Service.

The allegations centre on one of the principal suspects in all three investigations, Mr Lindsay Roddan. Roddan was one of those who were ultimately convicted. The essence of the allegations was that Roddan, who apparently had a variety of business interests, was said to have had associations with police officers, which he was able to exploit in order to ensure that he was not charged in relation to the first two investigations. It has been suggested that high-ranking police officers frustrated and limited those investigations in order corruptly to protect Roddan. In respect of the second investigation, it is alleged that the officer in charge, Senior Sergeant Jeffrey Noye, formed a corrupt relationship with Roddan, pursuant to which he concluded that investigation by exculpating Roddan of any involvement in the theft of diamonds.

The allegations regarding Noye became the subject of charges, including conspiracy to pervert the course of justice, that were preferred against him and Roddan. Those charges were the subject of a lengthy preliminary hearing that resulted in both men being committed for trial. However, the charges were discontinued by the Crown prior to the trial. This left at least the perception that there had not been a conclusive determination of the allegation that there was a corrupt relationship between Roddan and Noye. There were also concerns expressed about the circumstances of the discontinuation of the charges brought against them.

The allegations that senior officers had corruptly interfered with the first investigation, led by Senior Sergeant Robin Thoy, and that officers, in addition to Noye, were associates of Roddan, were referred to during the course of the preliminary hearing and at Roddan's later trial with respect to the conspiracies to steal diamonds. Those proceedings could not, however, determine conclusively the allegations of corrupt interference. In order to deal

with these allegations the then Commissioner of Police, Mr Robert Falconer, requested the assistance of the Australian Federal Police ("AFP") in setting up a joint task force to investigate the claims. That task force was not able to investigate the allegations relating to Noye because charges against him were still pending at that time. Notwithstanding that limitation, the task force produced a large and detailed report. It conducted extensive interviews, however, it could not compel witnesses and it was, to some extent, frustrated when a small number of former police officers refused to co-operate. When the task force report was made public, it contained recommendations with respect to individual police officers that were critical of their conduct. Many of those individuals felt aggrieved at the recommendations and sought to challenge them. This has given rise to some doubt as to the accuracy and reliability of the report.

Public disquiet regarding the allegations has persisted for many years and Royal Commission hearings offered the opportunity to conduct an open and thorough investigation of all of those allegations. Furthermore, a significant number of statements and transcripts of interviews were tendered in respect of witnesses who were either not available or in respect of whom no tangible benefit could be obtained from their being called to give oral evidence. The allegations will be detailed in this chapter, though it must be appreciated that what was alleged was not a series of unrelated corrupt acts but a course of conduct of which the individual matters referred to were said to be manifestations.

This segment of the Royal Commission hearings used valuable resources and caused the Royal Commission to obtain an extension of time. This summary is also lengthy, and its volume is disproportionate to the significance of other issues which are dealt with more shortly in this Report. However, the matter has attracted serious and long-standing public concern, and a great deal of ground had to be covered. Accordingly, it has been considered appropriate to provide an extensive report on the investigations.

14.2 HISTORICAL CONTEXT

Police investigations into alleged diamond thefts commenced in late 1989, following a report from the then Chief of Security at Argyle, Mr Richard Corfield. In November of 1989, Corfield had obtained diamonds from a Perth based diamond polisher, Mr Noel Newton. Those diamonds were removed for testing with Newton's consent. The testing showed that some of the diamonds bore characteristics that were indicative of their having originated from Argyle.

The testing also revealed that some diamonds were what is called "pre-acid", that is, they were in the raw state prior to the acid cleaning that takes place at the mine site. No such pre-acid diamonds were to be released from the mine, and it was therefore believed that there could be no Argyle diamonds of this nature legitimately in circulation. A report in relation to the testing was sent to WAPS. That report was later to assume some significance, as it was alleged that a copy of it had been handed over to Roddan by Noye.

The diamonds had been placed with Newton by Roddan so that they could be cut and polished. After the initial testing, the diamonds were returned to Newton in order to allay any suspicions on the part of Roddan and so that investigations could continue. The intention was that the diamonds would be recovered at a later stage by means of a search warrant. In fact, no warrant for their recovery was executed for several months. In the intervening period, some of the more significant diamonds were cut, with the consequence that any evidentiary value they might have had was lost.

A police investigation, headed by Thoy, was commenced on 2 February 1990. Sergeant Clayton Gwilliam was assigned to assist with the investigation. During the course of it, Thoy became aware of evidence that he believed indicated that Roddan had knowledge of the investigation.

Thoy asked Corfield to identify an employee involved in operational security at the mine site who could be trusted. The person identified was Mr Barry Crimmins. Crimmins was given a briefing by Corfield, which included his being told that the principal suspect was Roddan. Crimmins knew Roddan, as they had both been involved in breeding dogs some years earlier. In fact, it was later established that they had formed a partnership in the late 1980s to steal diamonds from the Argyle mine site. Not surprisingly, Crimmins did not reveal that he knew Roddan, but thereafter he was in a position to obtain information regarding the investigation.

As the investigation progressed, Thoy was required to give briefings to his superior officers. The number of these briefings, and the detail required in them, were unprecedented in his experience. He also believed that he was effectively ordered to discontinue certain lines of inquiry, and that his position had been undermined. This caused him to commence taping his meetings with the officers in question. Gwilliam also believed that decisions regarding the inquiries that could be pursued, and the resources which were available, compromised the effectiveness of the investigation.

On 10 April 1990, Gwilliam was effectively removed from the inquiry and sent to Belmont Police Station as the relieving officer in charge of detectives. Thoy protested against this

move, claiming that it made his continuing investigations extremely difficult. The following day, Thoy executed a search warrant at a property owned by Roddan. More diamonds were seized. On the same day, Superintendent Bruce Dalton gave a press interview, following a newspaper article in which a view had been attributed to him that the investigation had failed to produce any evidence of an offence.

In June 1990, Ms Rae-lene Shore, Roddan's former *de-facto*, approached police regarding a separate matter. In the course of discussions, she revealed that Roddan and Crimmins were known to each other and that Crimmins had been at Roddan's home in recent times. This raised an obvious line of inquiry, as it provided a means by which Roddan might have obtained possession of stolen diamonds. Crimmins was confronted by Argyle as to why he had not earlier revealed this connection, and he was forced to resign from his position in operational security at the mine.

Thoy asserted that, in October 1990, approaches by senior officers confirmed in his mind that an attempt was being made to pressure him into writing-off the inquiry. He was spoken to by Inspector Max Kiernan who, Thoy said, encouraged him to do what "they" wanted and to write-off the investigation. Further, he was ordered to attend the home of Superintendent Kim Chadbourne, who proceeded to ask questions about Crimmins. Chadbourne had no responsibility for the investigation, but said that he was making the inquiries on behalf of Mr Rodney Bates, who was the Argyle mine manager at that time.

On or about 1 December 1990, Thoy said that a filing cabinet in which he kept items relating to the investigation had been broken into. He said that, at that time, some of the tapes he had made of conversations with his superiors had been stolen. He reported the matter, and an investigation was conducted, without result. It has also been suggested that other documents relevant to Thoy's investigation were later found to be missing.

Thoy was required to produce a final report on the allegations concerning the theft of diamonds, which he did on 14 December 1990. In Thoy's view, the investigation remained incomplete, due to orders he had been given to limit the scope of his inquiry. In particular, Thoy identified inquiries in relation to the Western Australian Diamond Trust ("WADT") and inquiries into the alleged relationship between Crimmins and Roddan as being matters that required further investigation. Thoy complained in the report about what he saw as a concerted effort on the part of senior officers to undermine him. He went on stress leave shortly after the delivery of his report. A decision was then made by senior officers to conclude the investigation, and Argyle was informed accordingly.

On Thoy's return to work, he was transferred to the uniformed branch, the ostensible reason for this being that questions had been raised regarding his judgment and attitude, though he was never specifically told this. His perception was that this was an attempt to silence and punish him for his honesty and perseverance.

Thereafter, no active investigations were pursued by the Police Service until 1992. Argyle, however, continued its own investigations as the ownership of the diamonds seized from Roddan remained in dispute and was the subject of interpleader proceedings in the Supreme Court. In June 1991, Corfield and another officer from Argyle, Mr John Burton, met with Assistant Commissioner Bruce Scott. There were two such meetings, the purpose of which was to advise the police of information that Argyle had obtained regarding Roddan. The second of these meetings is said to have concluded with Scott saying, "One day when we're both retired I'll tell you what this is all about", or words to that effect.

Early in February 1992, Corfield and Burton met with Deputy Commissioner Frank Zanetti. Zanetti indicated that he had seen Thoy's report, and that he intended to order a review of the previous investigation. Zanetti said that the person he had in mind to do the review was Noye, but that Gwilliam would be seconded to assist him. Noye was so appointed, with instructions to review the files, with particular attention to what were described as the "grey areas", by which it was understood that he would endeavour to determine whether there were matters that were worthy of further investigation.

Noye produced a preliminary report on 25 February 1992, recommending that a new investigation be commenced, and indicating that there was a "probability that further inquiries will reveal sufficient evidence to charge Roddan and Crimmins with conspiracy". A decision was then made to commence a new investigation, led by Noye.

Shortly after producing his preliminary report, Noye began meeting with Roddan. These meetings took place in cafés, without any other police officer being present. At one such meeting, Noye provided Roddan with a copy of a report relating to the testing of the diamonds. It has also been alleged that other police documents had been handed to Roddan on later occasions and that Noye had adopted an unreasonably negative attitude to interviewing prospective witnesses and he had failed to interview Crimmins.

Early in the second investigation, Noye met with Thoy and, it is alleged, said that Roddan had told him that he had paid $25,000 to get his diamonds back. Noye had not acted upon this claim, but rather had dismissed it as fanciful. He is also said to have been scornful of suggestions from Thoy that a case of conspiracy could be constructed.

Mrs Lynette Crimmins, the former wife of Barry Crimmins, said that she met Noye a number of times in Roddan's presence, and can recall Noye saying that he expected to receive diamonds and cash for assisting Roddan. Roddan is alleged to have said that Noye would protect her, and that he was to receive a substantial sum of money for writing the matter off. Noye took a statement from Mrs Crimmins that served to explain away any connection between her former husband and Roddan that was, she said, almost totally the work of Noye.

On 4 August 1992, Noye was fined $200 on a disciplinary charge relating to the improper release of confidential information from the police computer. That charge was not related to the Argyle investigation. Noye was at the time in the process of writing his final report that was to recommend that the Argyle investigation be terminated. At about this time, Roddan instructed his solicitors to approach Argyle and to tell the company that the police did not have a case against him.

On 3 September 1992, Mrs Crimmins reported that her house had been broken into. Noye attended and, Mrs Crimmins claimed, suggested that she inflate her insurance claim by including additional items of property that had not been stolen. In return, Noye was to receive 10 per cent or $1,000. Mrs Crimmins said that she later gave money to Noye, and that he led her to believe it was to be used to travel to Victoria on a private trip, during which he planned to see her former husband.

On 16 September 1992, Noye produced his final report. That report was strongly supportive of Roddan. In particular, Noye wrote:

> I can categorically state that I am confident that at no future time will any evidence be disclosed that will provably show that the diamonds claimed by [Roddan's company] were illicitly removed from the control of the complainant … by any person [or that] there is any valid evidence of the existence of an organised consortium of mine staff and/or others engaged in the theft of diamonds from Argyle mine.

The report was also highly critical of a number of potential witnesses. The recommendation that the investigation be concluded was accepted by Noye's superior officers.

On 18 November 1992, Noye travelled to Victoria on a private holiday and, whilst there, he arranged to meet with Crimmins. It has been alleged that, during this meeting, he gave assurances that no one would be charged, and that Crimmins should seek to get back his job at Argyle.

In January 1993, Noye was working at the Morley Central Intelligence Bureau when he was telephoned by Roddan. Roddan said that he had purchased some firearms that he believed had been stolen. Noye examined the police computer, confirmed that the firearms had been stolen and provided Roddan with other details that enabled him to locate the true owner. Roddan then approached the owner and persuaded him to pay $700 for the return of the firearms.

On 18 January 1993, Mrs Crimmins attended at the home of Roddan. She was in a drunken state and was seeking, according to her, the repayment of money that she had lent to Roddan. She tried to effect an entry by "bashing" on the door. She broke a side window, crawled into the house, gashing herself in the process, and was physically removed from the house by Roddan. She suffered a broken finger as a consequence. The police were called and she was taken to the Warwick Police Station. These events caused Mrs Crimmins to make admissions about her own previous activities and allegations regarding those of Roddan. In particular, she admitted to her involvement in the sale of stolen Argyle diamonds and implicated Roddan and Crimmins in the theft of those diamonds. She also made allegations regarding a corrupt relationship between Noye and Roddan. These allegations were not, however, reduced into a written statement for several months.

An Internal Affairs Unit ("IAU") investigation was commenced. That investigation focused on the allegations as they related to Noye. Mrs Crimmins, however, asserted that Roddan had claimed to have other police "mates", who were referred to by nicknames that she repeated to the IAU. She also later identified Zanetti as a person whom she had seen meet with Roddan at a café. She further said that Roddan had told her that he had paid out money in order to have Thoy demoted.

In early July 1993, Gwilliam was instructed to conduct a further investigation into the diamond theft allegations. There was a strict demarcation between this investigation and that being conducted by the IAU. Orders were also given to Gwilliam and his team to limit their inquiries to the investigation of alleged thefts by Roddan, Crimmins and Mrs Crimmins. Information that indicated the commission of other offences was to be referred for investigation by others. Issues arose in the course of this investigation concerning the inadequacy of resources and the propriety of management decisions. Gwilliam and some of his fellow officers were of the view that inappropriate attempts were still being made by those in superior positions to limit the investigation.

On 11 November 1993, charges of conspiracy to pervert the course of justice were preferred against Noye and Roddan. There were also charges against Noye in relation to

the allegedly false insurance claim and the disclosure of official secrets in relation to documents allegedly given to Roddan.

Between April and September 1994, a preliminary hearing was held in the Perth Magistrate's Court in relation to each of the charges then pending against both Roddan and Noye. In the course of those proceedings, Mrs Crimmins gave evidence of statements that she alleged had been made in her presence by Roddan and Noye. In particular, she said that Roddan had referred on numerous occasions to "Uncle Max and the boys" and to others such as "Zed, Kim, Bernie, Barney and Barnsey". It was her understanding that these were references to police officers whom Roddan had called on for assistance.

As at June 1995, the allegations that senior officers had inappropriately stymied the earlier investigations remained unaddressed. These allegations received an airing on the *Four Corners* programme on ABC television on 1 May 1995 and, as a consequence, a Victorian firm, Forensic Behavioural Investigative Services ("FBIS"), approached Argyle with a proposal to conduct a review of the previous investigations. This offer was accepted and, with the co-operation of Commissioner Falconer, FBIS was given access to the police files. FBIS provided a report to Argyle on 31 August 1995, a copy of which was given to Falconer. FBIS concluded that a number of matters had not been adequately investigated, and that there had been a failure in respect of investigative practices and supervision. As a consequence, Falconer approached the AFP and a joint task force was established by WAPS and the AFP to investigate the matters that had been identified by FBIS.

The joint task force reported on 10 July 1996 ("the WAPOLINV Report") and concluded, that "[i]n each of the three investigations there is evidence of mismanagement and the inability of some serving and former members of WAPOL to meet the responsibilities of their rank". The report did not specifically consider the allegations of corruption made against Noye, as they were still pending before the courts at that stage. The report did, however, recommend that a number of officers who had been involved with the various investigations be subject to counselling in respect of identified failings. Almost without exception, the officers concerned subsequently sought to dispute those findings and a number of formal counsellings that were based upon the report have subsequently been set aside.

In May 1996, Roddan gave evidence at his trial on charges of conspiring to steal diamonds. He denied having any corrupt associations with police officers or of having paid any money to police officers.

On 8 October 1998, the charge of conspiring to pervert the course of justice (and other charges) against Noye and Roddan were discontinued. One of the factors referred to as

being relevant to that decision was the health and general attitude of Mrs Crimmins, who was the principal Crown witness. Insofar as there was a suggestion that Mrs Crimmins was unwilling to give evidence at the trial, she made public comments shortly afterwards, disputing that suggestion. There was, in fact, another significant reason why the matter was discontinued, namely, that a perjury charge had been preferred against Gwilliam in respect of evidence he had given at the preliminary hearing. He was considered to be a witness of importance at the forthcoming trial. The perjury charge was pending at the time, and it was not considered appropriate for the Crown to call him as a witness of truth in circumstances where a charge of that nature remained unresolved. The perjury charge was itself later discontinued by the Director of Public Prosecutions ("DPP").

14.3 ALLEGATIONS

The failure of the first and second investigations needs to be seen in the context that it was later established at the trial of Roddan that there had in fact been a conspiracy to steal diamonds from the Argyle mine, and that Crimmins and Mrs Crimmins were parties to that conspiracy. It cannot, therefore, be suggested that there was never merit in investigating the complaints made by Argyle. This does not, however, necessarily mean that the conduct of those investigations must have been marred by corruption. Investigations into real offences sometimes do fail because it is impossible to obtain sufficient evidence to charge anyone.

Whether the actions of the senior officers responsible for the supervision of the investigations can be explained as being legitimate decisions by officers properly concerned to ensure that limited police resources are utilized appropriately, is a critical issue. A similar issue arises in respect of Noye. Are his actions explicable as being those of a police officer properly carrying out a complex and difficult investigation? In examining these issues, it should not be assumed that actions or decisions that, with the benefit of hindsight, now seem to be wrong, are necessarily indicators of corruption, rather than being examples of poor management or errors of judgment. Whether such actions and decisions do point to corruption depends, to a considerable extent, on whether the evidence as a whole would support a conclusion that Roddan had associates within the Police Service upon whom he was able to rely to protect and assist him. For this reason, it is intended first to consider the evidence that could be said to support the existence of such associations. Attention will then turn to the issue of whether any police officers attempted to corruptly limit or subvert the first investigation.

Whilst it will be necessary to consider the evidence in relation to each of the incidents identified by Thoy and Gwilliam, it is accepted that the interpretation of those incidents

should properly be viewed in the whole historical context. The extent to which it can be said that there was some pattern or course of conduct that was only consistent with an improper effort to prevent the investigation proceeding, will be considered.

It is then intended to move on to consider the second investigation. The evidence in this respect raises a separate consideration. Even if there is no conclusive evidence of corruption amongst the senior officers responsible for the supervision of the three investigations, there still remains the question of whether Noye (in his own right, rather than as an agent for others) corruptly wrote-off his inquiry. In this latter respect, some attention must, of necessity, be paid to the credibility of Noye as a witness.

Consideration will then turn to the third investigation, in order to determine whether orders were corruptly given to limit the scope of the inquiries, and to wind up the investigation prematurely. Some attention will also be given to whether those involved in the inquiry have been victimized because of their persistence and because of the claims of corruption that they have advanced.

14.4 DID LINDSAY RODDAN HAVE CORRUPT POLICE ASSOCIATIONS?

It has been alleged that Roddan had, at the time of the Argyle inquiries, and perhaps continues to have, improper associations with police officers. At its highest, it has been suggested that such connections have enabled Roddan to influence police activities and investigations and to evade police scrutiny. At its lowest, it has been suggested that such associations enabled Roddan to have the advantage of access to information and material in relation to police activities.

These allegations are based upon statements that Roddan is purported to have made to others, his apparent awareness and knowledge of police investigations in the Argyle matter, that he is said to have telephoned police for improper purposes, and that he met with police officers for improper purposes. It is appropriate to give consideration to the evidence in respect of these matters to determine whether it discloses an improper relationship.

STATEMENTS ALLEGEDLY MADE BY RODDAN CLAIMING POLICE CONNECTIONS

It has been alleged that Roddan has told various people at various times that he has contacts in WAPS whom he is able to influence to his own advantage. There has been widespread conjecture about the identity of those persons. His statements are most conveniently dealt with by referring to the evidence of those to whom they were made.

DAVID KARPIN AND RICHARD CORFIELD

Mr David Karpin was formerly the managing director of Argyle. He told the Royal Commission, very early on in the inquiry, that he had received a telephone call from Roddan. He asked Corfield to join him, and placed the call on speaker-phone. Karpin and Corfield both gave evidence about this conversation, and about the notes that Corfield took of the conversation. The notes summarize Roddan's remarks, on 25 January 1990, that he "has friends in the [Criminal Investigation Branch ("CIB")] and knows that accusations have been made about him".

Karpin confirmed in evidence that, during this conversation, Roddan "mentioned a number of things, and that issue of having friends in the CIB and that he knew that there were accusations made about him by Argyle". Roddan did not nominate who these friends were during the conversation. Karpin was aware that Corfield had been in touch with the Police Service by this stage.

Karpin told the Royal Commission that Roddan made claims that he had heard "your person has had my phone bugged" and said "I'm under Police Department surveillance". Karpin's belief was that Roddan was referring to Corfield as "your person". In fact, Roddan did come to be the subject of a covert listening device ("LD") and to be under police surveillance in respect of this matter, but not until some time later.

In relation to the reference in the notes to Roddan having friends in the CIB, he told the Royal Commission, "I've got no friends and never had any friends in the police force". Roddan said he did not say what had been attributed to him. It was not possible, he said, that he could have claimed to have friends in the CIB.

Roddan accepted that he may have made comments regarding his suspicion that his telephone was being bugged, and that he was under surveillance. He explained those comments in the following way: "Well, according to what I was hearing on the streets, Corfield had sooled them on to me, but my understanding was that he was conducting some sort of undercover police operation". He had not heard this from any police officers, but "on the streets".

RAE-LENE SHORE

Shore was living with Roddan during the early stages of the first police investigation. Shore gave evidence to the Royal Commission that Roddan "told [her] that he had mates in CIB and he talked about mates at Midland branch. He told [her] that he had a cop mate that he

used to do gun deals with called Max". Shore told the Commission that Roddan did not refer to this person as "Uncle Max", or to any other person as "Uncle Max". She said that Roddan referred to this person on and off over the years and sometimes said that he was going to meet with him, but Shore never met "Max".

Shore was interviewed by the IAU in February 1993 and it appears from the transcript of her interview that the surname Kiernan was put to her. She told the Royal Commission that she had not heard that surname while she was with Roddan, but that she had heard of "Max" in the context of guns.

At the preliminary hearing, Shore gave evidence that Roddan had "bragged" that he had a contact in the police with whom he had dealt in relation to firearms. Roddan denied this. He told the Royal Commission that he knew a firearms dealer called Max, who was not a police officer. The name of this person was provided in confidence to the Royal Commission. Roddan said in evidence that he had not told Shore he had friends in the "Midland branch". He said that he had some dealings with an officer in relation to a particular issue, and he was "greatly appreciative of the officers from Midland for the information that they were able to supply". He denied that, even in such a context, he would refer to a police officer as a "mate".

Shore gave evidence that she had overheard Roddan use the name Zanetti whilst on the telephone. She said "he was talking to somebody else and he was making reference to the name Zanetti. He was passing a message through to someone, "Tell Zanetti". Shore was interviewed by the AFP in relation to this matter on 10 June 1996. During this interview, Shore said that she had heard the name Zanetti mentioned by Roddan in several telephone calls. Her evidence to the Commission was that she could "definitely recall one phone call". Shore was not able to recall a time when Roddan had said he had firearms stolen, but "[h]e always made complaints that he was being thieved from". Shore's evidence to the Royal Commission was that, at some later time, she saw, or read, something about Deputy Commissioner Zanetti's retirement and the name triggered her memory.

Roddan said, "I have never, ever, in the presence of Ms Shore, made a reference to Zanetti. I have never, prior to the commencement of these proceedings in [1994], seen, spoken to, known of the existence of, any person by the name of Zanetti, other than a young detective called Zanetti who recovered a pump-action shotgun that had been stolen from my farm … and he telephoned me to advise me … ". Zanetti has sons who were police officers at the time, and this could be a reference to one of them. However, the incident Roddan is referring to was, on his own evidence, after his relationship with Shore had ended, so it could not account for her evidence regarding the name.

In 1992, Shore was interviewed by Noye and Gwilliam at the Whitford City Shopping Centre. At this time, Gwilliam put a number of police officers' names to her. A note was made of those whom she recognized. However, the note cannot now be located, having been last seen by Gwilliam on the inquiry file around June 1992. Gwilliam gave evidence that Shore said she had heard the name "Max" or "Uncle Max" and the nickname "Zed". Gwilliam put the names to Shore on the basis that "she'd discussed with us that Lindsay Roddan had close liaison and friends within the Police Department and they were senior police officers". Gwilliam told the Royal Commission that, after having exhausted her memory, names were put to her. He said that she recalled, unassisted, that "Uncle Max" was a senior police officer. He could not remember whether the name "Zed" was recalled unassisted, or following a suggestion. Gwilliam said that there had been a reference to Max Kiernan earlier on in the inquiries. This was said by Shore and he was unsure whether she had said "Max", "Uncle Max" or "Max Kiernan".

LYNETTE CRIMMINS

During January 1993, Mrs Crimmins made certain allegations in conversations with police investigators. IAU Inspector Stephen Robbins and Inspector Stuart Syme went to her home on 20 January 1993 and spent several hours with her. Later in the day, she attended at the East Perth office of the IAU. The first conversation was not recorded, but the second was recorded. It was conducted in the presence of her solicitor.

Robbins did not take a statement from Mrs Crimmins during their meeting, which was tape recorded, and told the Royal Commission that she made general allegations about police corruption and only mentioned Noye specifically towards the end of their conversation. It should be noted, however, that Mrs Crimmins asserted from the commencement of the interview on 20 January 1993 that she had been told by Roddan that money had been paid by him to police officers in order to get Thoy "off the case". She said that she had heard the name Max mentioned by Roddan, but "it hasn't been connected with anything definite". She said that whilst she had been waiting at Warwick Police Station, she had mentioned police corruption and a number of different names were suggested to her, one of which was "a Max someone".

An IAU Information Report, dated 19 January 1993, purports to record allegations made by Mrs Crimmins on her attendance at the Warwick Police Station. In particular, it records that "[Lynette Crimmins] had paid $1,000 per month to Max Kiernan over a 12 month period". In relation to that report, Mrs Crimmins gave the relevant evidence as follows: "I'd always heard "Uncle Max". I had heard the surname Kiernan but I hadn't linked the two together …

I think that may have been this person's interpretation of it". Roddan had told her he was paying "Uncle Max" $1,000 a month.

Senior Sergeant Anthony Horner has confirmed to the Royal Commission that he had submitted the Information Report. He had "some memory of receiving this information" from Allen Thompson, who was a sergeant at the Warwick Police Station at the relevant time. Thompson telephoned Horner to relay "information he obtained from" Mrs Crimmins. Thompson has no memory of passing information to the IAU that specifically referred to Max Kiernan. He accepted that the first time he met Mrs Crimmins was when she was brought into the Warwick Police Station. "I remember seeing her and hearing her. I may have had a word to her but if I did it would not have been in any real depth of conversation. This would have been, as noted on the IR shown to me, in January 1993". Mrs Crimmins has never claimed in evidence to have paid $1,000 a month to Max Kiernan.

It is now impossible to determine whether such a statement was made by her or whether there has been an element of interpretation by the police officers involved. Those issues cannot be resolved, given the state of knowledge and memory of those involved. What should, however, be noted is that there is no evidence that could possibly substantiate that Kiernan was paid $1,000 per month by Mrs Crimmins or, indeed, was paid any money at all either by, or on behalf of, Roddan.

Mrs Crimmins told the Royal Commission that the police to whom Roddan referred were described to her as "Uncle Max and the boys". Roddan, she said, indicated that "the boys" were "Bernie, Barney, Barnsey; I think you had Zed … there was a Ronnie, there's a Colin, but they went on …". " … [t]hey were mates, and so sometimes it'd be in the context of a, you know, Zed … but then he'd throw in other names. Like, the Ronnies. There were two Ronnies … there was Big Ronnie and Little Ronnie. I don't know whether they were actually policemen … and then I met another policeman at another stage that he introduced me to him as Killer. Well, I don't know who Killer is". Mrs Crimmins accepted that she had also previously mentioned "Kim". In relation to any surnames having been mentioned by Roddan, she said that she could recall the names Trewin, Dalton and Devlin, the last of whom she believed to be a jeweller.

Mrs Crimmins told the Royal Commission that all the names were mentioned at the interview with Robbins on 20 January 1993. Unfortunately, that tape has apparently been erased since that time. The recollection of Robbins does not accord with that of Mrs Crimmins. Furthermore, a transcript of that interview, assuming it is accurate and complete, refers only to general allegations and the name "Max" and contains a specific allegation only in respect of Noye.

Mrs Crimmins stated that she had "always mentioned" the two Ronnies and Killer. However, these names do not appear in the later interviews of 7 October 1993 or 22 December 1993 or in a handwritten statement taken by Gwilliam. The names that were referred to in either examination-in-chief or cross-examination at the preliminary hearing were "Uncle Max", Kim, Bernie, Barney, Barnsey, Griffo, Colin, Zed, Chris and Paul.

Mrs Crimmins accepted that, at some stage, interviewing officers had "prompt[ed] [her] with the names of people such as "Uncle Max", Barnsey, Barney and names like that". She denied that Gwilliam had done this, but could recall an occasion when another officer was attempting to determine to whom the nicknames related and at this time additional names were mentioned.

In order to properly test whether this evidence has significance, an attempt must be made to determine whether the names could apply to any officers who were then serving. Zanetti accepts that he was known by the nickname Zed. An assumption has been made that Max could be Kiernan, though he was not the only serving officer with that first name at the relevant time. Barnsey could possibly refer to Detective Sergeant Wayne Barnes, who was an officer in the drug squad at the relevant time. Kim could be a reference to Chadbourne, who was Zanetti's staff officer at the time of the first investigation.

Roddan denied in evidence knowing any of these men. All of these officers have had some involvement in the events surrounding the Argyle investigations, and this might lend some credence to the evidence of Mrs Crimmins. On the other hand, it seems at least possible that Mrs Crimmins may have been influenced by suggestions made to her and by her knowledge of subsequent events. This issue will be canvassed in more detail in the following sub-section.

ARTHUR MOORE AND MANUEL BARRIERO

Mr Arthur Moore worked for Roddan on his farming property in Chittering Valley, Marblon Park. This was for a period of two years from around October of 1988 or 1989. Moore told the Royal Commission that, on the day his employment was terminated, Roddan had arrived at the property with two other people. Having told Moore he was to be sacked, Roddan said he was going to telephone "Uncle Max". He spoke to someone on the telephone after Moore indicated he would not leave the premises until he had received a payment. Roddan then said "I'll ring my mate, Max, and he'll have you evicted off the property". Moore told the Royal Commission he had heard Roddan refer to "Uncle Max" many times, but he did not know the occupation of this person. Moore believed, however, that "Uncle Max" was a policeman, because Roddan said that he would have him removed

from the property. Roddan said, "I can't do it, but the police can". This was before he placed the call to Max.

One of the people present when Moore was sacked was Mr Manuel Barriero. Barriero recalled that Roddan did use the telephone, or was going to use the telephone, that "he had the power, he had the people and, you know, could do things". Barriero could not recall that any names were mentioned at the time. Roddan denied that he had threatened to throw Moore from his property, or that he had telephoned anyone called "Uncle Max".

Moore said that, on another occasion, Roddan told him that he had friends in the Police Service. This was in the context where Roddan offered to make an inquiry in relation to a firearm of Moore. He said, "I'll soon get that fixed up for you. I've got people I know in the register where you do your guns".

Barriero gave evidence that Roddan told him "many times" that "he's got friends in high places in Midland, anywhere, and he could just sort things out just like that". It is unclear in what capacity these friends were employed, if, indeed they existed. In an interview with the AFP, Barriero said that in the car coming back after the incident involving Moore, Roddan said he had "good friends in the police force, but he didn't say who or what … ranks or how high or low". Barriero stated that similar claims had been made to him by Roddan on many other occasions.

FORMER WAPS OFFICER

A former police officer, who had previously been married to a former wife of Roddan, gave evidence at the Royal Commission. In relation to conversations he had with Roddan, he told the Royal Commission, "I don't think the actual inquiry was discussed, but the fact a number of names that he used to throw around, names of high-ranking police officers like you know, who's who in the Yellow Pages". He told the Royal Commission that Roddan mentioned these people "as though he was being protected by them". He said "Jeff Noye topped the list. He never referred to Max Kiernan, other than he was 'Uncle Max', but when he said, 'You know who I'm talking about', I said 'Yes'. He mentioned Frank Zanetti … oh there was a heap of them … ", and Roddan had used the expression "looked after" in the context of CIB officers. The former officer said that "looked after" was not an expression he queried with Roddan, but said "he made no … no doubt about that he was giving them something. And he may have on occasion even mentioned money and favours and diamonds and jewellery and what have you". The former officer said that he never acted upon these claims as he simply did not believe Roddan. He said that "[b]y the time I'd

known him for 10 minutes, he'd been through everybody's name in the pink pages from A to W, I think".

The former officer said that he could recall a dinner at which Roddan was present and that Roddan was "throwing names around". These names were "Uncle Max" and Frank Zanetti. He told the Royal Commission that Kiernan was "always known in the police force as 'Uncle Max'". In a statement that the former officer had previously made, which referred to this matter, he said that he could not recall the names that Roddan had referred to other than that of Zanetti. He was not able to provide a clear explanation as to why neither Max Kiernan nor "Uncle Max" had been referred to in this statement, though he did refer to Kiernan when later interviewed by the AFP. He said that this interview had been more detailed and for a separate purpose.

Roddan denied that he had made any statements of the nature attributed to him by the former officer.

JUSTY JENSEN

Senior Constable Justy Jensen, a police officer who was performing custodial care duties at the East Perth Lockup at the time of Roddan's arrest, provided a statement in which he confirmed an exchange with Roddan. Roddan was demanding that Jensen get him a drink. Roddan said that he had Jensen's "number", and that he knew people on the sixth floor and that his (Jensen's) job "was gone". Jensen stated that Roddan "was indicating that he was talking about Police Headquarters and the fact he knew senior officers … because the Lockup itself faces the Police Building and Roddan was pointing to it … he didn't mention any names, he insinuated that he knew Senior Police Officers". Jensen later stated, "I thought that if he did know someone I would find out … I can't pick anything that would indicate that he did arrange something".

FEMALE ACQUAINTANCE

A female acquaintance of Roddan provided a statement to the Royal Commission. Her evidence was that, on one occasion, she recalled being at the Arcadia Club in Northbridge with a friend and Roddan. She said that, during the course of the night, Roddan pointed out several people as being undercover police officers. She said that Roddan nodded to these people and that they appeared to acknowledge him. Later that night, they went to a bar in Subiaco, and Roddan told the manager that he was a police officer and later boasted that he had given the manager Zanetti's home telephone number. The female acquaintance also stated that Roddan would "constantly talk about things like … people coming to the stables

being undercover police". In fact, there had been an undercover police officer who had worked at Roddan's stables at an early stage of the first investigation.

ROBERT GARDNER

Gwilliam gave evidence that Mr Robert Gardner, a significant witness against Roddan, said that he was reluctant to provide information because "he had heard again of Lindsay Roddan and his police friends". Gardner was interviewed by the AFP on 29 January 1996. This interview records that he was concerned about "who [he] should've been speaking to". This was because "Lindsay had already told [him] before that he knows everything that happens in … the hierarchy, the police know about it because Lindsay gets the information first and boy it travelled pretty quick". Gardner claimed that he (Gardner) had not been approached by the police in the inquiry "[b]ecause Lindsay … had assistance through whatever. He said everything – yeah, so they're not going to touch you – they're not going to come near you because that was being arranged through whoever he was dealing through in the police force at the time and so he used to get the information first. And bloody hell he used to. No question on that at all".

Gardner told the interviewing officers that, in relation to any "friends" in the police, Roddan said that "whatever information that was about him or anything else, that he got the information first … [s]o it'd come directly to him first before it went through any part of the system". He never mentioned any names, but "whether he just mentioned it in passing, that he had a guy that used to feed some information back from the Midland Bailiff's Office section or the Midland section … I don't know, really".

CLAYTON GWILLIAM AND ROBIN THOY

Gwilliam's evidence was that, on one occasion, Noye "made comment that Roddan had told him that some … the figure I think was $25,000 had been paid by Roddan to senior police to have the diamonds returned, or words to that effect". After having been asked by Thoy what he intended to do about it Noye said it was "just Roddan's normal bullshit … and that he wasn't going to take it any further".

Thoy claimed that he had a meeting with Noye in Thoy's office at City CIB. Gwilliam was present, and it took place sometime in 1992. He can recall that Noye told him that Roddan asserted he had paid $25,000 to have diamonds returned to him. Noye said he had not reported this, stating to Thoy, "[y]ou know what a liar Roddan is". Noye did not mention to whom Roddan was alleging that he paid money, but Thoy assumed it was to police.

Roddan denied that any money was paid and Noye denied that any such conversation took place. Noye's evidence was that Roddan made some general, non-specific complaints which he brought to Deputy Commissioner Leslie Ayton's attention. Roddan, he said, did not name any officers. Noye believed that when Roddan later met Ayton, the complaints related to the conduct of investigators in the execution of warrants and the like. Noye's evidence in this regard conflicts with what he had previously said in an IAU interview. In that interview, Noye had said that Roddan had told him that "there are some very senior blokes and you know, I've been, you know, told that I do the right thing and they'll do the right thing with the diamonds … well you know what you coppers are like … all fucking bent". These words accord with what Thoy and Gwilliam said Noye was repeating at the relevant time. Coming, as they do, from Noye himself (i.e. his interview) there is no reason to discount them. It is curious that, in 1993, Noye was content to tell the IAU that Roddan was making such statements, but that he now discounts that possibility entirely.

When asked about this passage, Roddan, assuming it was said, was unable to clarify who he was claiming as being bent. At the time there were some negotiations between his solicitors and some police in relation to the return of the diamonds. He could not recall "a conversation in those terms … and the language quoted … is not the sort of language I would use".

There is significant and convincing evidence from a number of separate sources that Roddan was claiming to have police associates. That does not mean that Roddan did have contacts in WAPS that he could use to his advantage. Roddan appeared to the Royal Commission to be a garrulous but astute individual. Given that he was under investigation at the time, such claims may have been made strategically in order to ensure the loyalty of those who could potentially provide evidence to the police. Such a motivation accords, in particular, with what Gardner has said. The question that remains is whether the claims were true. It should also be noted that the fact that such claims were being made has tended to influence the interpretation of other conversations which are more ambiguous, but which, in all likelihood, were not conversations about police officers at all. Some of the references to "Max" clearly fall into this category. This is not to say that Roddan did not foster and seek to encourage a belief that he had highly placed police associates.

THE "BURNING" OF THOY

An allegation has been raised that Roddan said he arranged for the "burning" of Thoy. It has been suggested that this was a threat against Thoy's life or business in some form, but was perhaps realized in the "demotion" of Thoy back to a posting in uniform. The issue of

Thoy's transfer, and whether it was achieved corruptly, will be dealt with in greater detail later.

On one occasion, during a meeting at Sorrento Quay, at which Roddan, Crimmins and Mrs Crimmins were present, Mrs Crimmins told the Commission that "Roddan came up with he was going to 'burn' Thoy". She explained "in burning him it was … he couldn't be bought and it was to discredit him, and it was actually my interpretation … that he was to be dismissed from the Police Department, discredited to such an extent he would lose his employment".

Mrs Crimmins recalled that Roddan had said that he wanted to "Burn the C". She said that these discussions occurred on more than a dozen occasions at a variety of locations. Roddan indicated that it was police officers who would "burn" Thoy, and they would be paid. She said "… he had a term … coppers in his back pocket who were actually working on burning Thoy. They couldn't come up with anything with him and it was going … and the greedy bastards … they started off with 20,000 and the greedy bastards had put it up to 40". At one time, it was discussed that "they had enough on him" to "burn him".

Mrs Crimmins said that she received a call from Roddan to say that the job had been done and that they had "burnt" him. Crimmins later called her to say that he had not been "burnt" because he was in uniform. Crimmins knew this, she said, because he had seen Thoy on the television in uniform being interviewed about an unrelated matter.

Roddan's advice to Mrs Crimmins was that her husband should not be concerned about Thoy: "Tell him to keep cool. He's under the magnifying glass" or "under the microscope, he can't move. He's fine. He can't do any harm". This, she understood, was a reference to Thoy.

Towards the end of 1990, or the beginning of 1991, in respect of Thoy, Roddan told Mrs Crimmins "that if he couldn't get him one way he'd get him another, and … that one was … to torch the place, like, burn the … deli, terrify his wife, and even if it meant taking out his wife and kids". It is, in fact, the case that Thoy's wife did operate a business at this time that met this description. It was a delicatessen in Swan View, which Crimmins also knew about.

Mrs Crimmins told the Commission that Roddan asked her for $40,000 in relation to the "burning" of Thoy. She obtained this money from Mr Stephen Gorman. She asked him for the money, and said that it was to "burn a cop" and that Roddan later collected it. She explained that, initially, she had asked Gorman for $10,000 or $20,000 and then it went up.

Gorman has previously conceded that he loaned money to Roddan, but does not recall that Mrs Crimmins said that the purpose of the loan was to "burn a cop".

Roddan told Mrs Crimmins that he had paid $40,000 to "Uncle Max and the boys". He was "pretty angry that it had cost him so much money and they hadn't done it properly". During her evidence at the preliminary hearing, Mrs Crimmins recalled that the original amount to be paid was $10,000, which increased to $40,000 "because the brass cost more". She also said that Roddan had told her that, "[o]nce the money was paid, Robin Thoy was out, the inquiry was going to be ordered to be written off and we were home sweet". "Lindsay told me how he had paid half and was waiting for Thoy to be kicked out of the force altogether. He was furious when he found out that Robin Thoy had only been demoted and was in uniform. I don't know if Lindsay paid the rest of the money or not, but the inquiry was finished, over with". Roddan denied to the Royal Commission that he had ever said this.

Crimmins gave evidence to the following effect regarding conversations he had with Roddan: "I can't specifically recall the direct conversations, but he did express to me that he knew that Detective Sergeant Thoy was a straight man and he wasn't able to be influenced in any way". "That basically he couldn't be … got at or corrupted to have an influence on the investigation that would be favourable to Roddan". Crimmins said, "I know there was some conversation in relation to Sergeant Thoy and his wife having a business or something, and there was some mention of being able to do some type of damage to the business … to influence Detective Sergeant Thoy to get off the case or … back off or whatever. I don't really know".

Crimmins confirmed that Roddan indicated the following to him: "Roddan did tell me at one stage that he had a couple of coppers in his back pocket, and he was either going to buy Thoy or set him up". Roddan did not mention the name of any other police officer, and Crimmins "believed it was all a load of bulldust".

During the preliminary hearing, Crimmins explained that Roddan had told him Thoy had a "mixed business" that could be ruined physically. Crimmins added that "there was talk of damaging the premises somehow or other, and intimidating or putting fear into his wife, who I think ran the business". In an interview with AFP officers on 7 February 1996, Crimmins was asked whether he thought Roddan was capable of organizing somebody to "burn" Thoy, and he said "[n]o".

In 1990, Shore had been to speak to Thoy. They had a "very long conversation, fairly detailed" about "Roddan and I guess anything I knew about his activities". Shore had not told Roddan about this conversation, but some time later he spoke to her about Thoy. He

told Shore that Thoy was "going to be demoted … or that he had been demoted or was about to be demoted … He was furious that I was obviously speaking to Robin Thoy". Shore surmised that he knew this through "[h]is mates, I guess, I don't know. He just knew". Shore was of the view that Roddan knew she had spoken to Thoy, and he was aware because, "[h]e made out that he knew everything all of the time". She accepted, however, that he could have been bluffing, as he did not display a knowledge of what she had said to Thoy.

In relation to the allegation that money, sourced from Gorman, was used to pay for the "burning" of Thoy, Roddan told the Royal Commission that he had borrowed about $15,000 from Gorman to pay Gardner to facilitate the purchase of materials in relation to a mining venture. He said that Mrs Crimmins may have been involved in that transaction in "one way or another".

Roddan told the Royal Commission that his son had a police scanner and that they heard that someone had set fire to a metal rubbish bin. They heard Thoy ringing the police requiring attention, "because somebody had set fire to the rubbish bin beside his delicatessen". He said that he may have said something to Mrs Crimmins, "I think we were laughing about it". This appears to be a suggestion by Roddan that comments made in jest regarding this incident may have been misunderstood or deliberately taken out of context by Mrs Crimmins.

Thoy had heard a "tip-off that there was a contract out on [him] at the time, around about this time". The only person he told was his wife. They said this caused him to view Kiernan's advice, to which reference is made later, as a warning. In relation to any connection he drew between the contract on his life and WAPS, Thoy said, "[m]aybe a wrongful one, but I … felt that it was connected."

Thoy said that Mrs Crimmins came to see him at Midland in March 1993. "She told me about her involvement with Argyle diamonds. She told me of her involvement of stealing diamonds, her husband, and her association with Mr Roddan. She mentioned the assaults … by Roddan. Mentioned that there was … a contract or something to have me killed". The exact words she used were "Burn me. They were going to firebomb my house with my wife and family … that's what she said at the time". Thoy said that he later was advised, by Mrs Crimmins, that the amount of the contract was $40,000. Thoy recalled that "[s]he told [him] later that they were going to burn [him]". Thoy does not know if any police were involved in relation to any "contract" that may have existed in relation to him.

Kiernan told the Royal Commission that, other than being called "Uncle Max" by his nephews and nieces, no one else, including police, call him that or know him as that. In

relation to the comment in the FBIS report that "Kiernan has identified himself as probably being the "Uncle Max" referred to", Kiernan said that that was not an accurate interpretation of his position.

Kiernan explained to the Royal Commission that Noye had told him that Thoy was saying, that they had, between them, got $200,000. It was then said that Gwilliam had made such an allegation. Kiernan was aware that Gwilliam had submitted a report concerning an allegation, and he was led to believe that the report gave the amount as $40,000. Kiernan connected this with the evidence of Mrs Crimmins from the preliminary hearing in relation to the payment of money to "Uncle Max" and deduced he "must have been Uncle Max" who was being referred to at that time. He did not say that he *was* the "Uncle Max" being referred to, and the first time he heard the reference to "Uncle Max" was in the newspaper. Kiernan has never conceded (as the FBIS report implied) that he was in fact the person to whom Mrs Crimmins was referring: "No, it couldn't have possibly been me because I don't know Lynette Crimmins. I don't know Lindsay Roddan".

In relation to Thoy's transfer, Kiernan told the Royal Commission that his involvement was as follows. He advised the administration that if Thoy was retained at the CIB for an additional "two or three weeks", in fairness to him he could maintain his Senior Sergeant rank, in uniform. That was "the only action I had in relation to Robin Thoy's transfer out of CIB". Such action, assuming it was taken, was beneficial to Thoy.

Kiernan told the Royal Commission that he had "never refused or declined to be interviewed" as expressed in the WAPOLINV Report. He answered the investigator's questions in the form of a letter through his solicitor. Included at that time was a denial of receiving any payment from Roddan. Kiernan complained that his understanding was that "the federal police inquiry was into the FBIS inquiry, but no one has ever, ever interviewed me regarding the allegations that I got $40,000". He further stated that he was never asked to make his financial records available. Kiernan said, "I was never aware of any contract or alleged contract on Thoy's life".

Zanetti confirmed to the Royal Commission that he was sometimes known by the name "Zed", sometimes by members of the Police Service. Zanetti said that he had never received money from Roddan, or any money in relation to any of the investigations of the Argyle matter. The first time Zanetti became aware of such an allegation was in the newspaper following evidence at the preliminary hearing. Zanetti denied any allegation that he or other police officers were seeking to "burn" or discredit Thoy. Zanetti told the Royal Commission that, during the inquiry, he was not made aware of any report by Thoy that his family may

have been threatened. Zanetti said that he did not have any personal involvement in the decision to transfer Thoy out of the CIB back to uniform.

Ultimately, the allegation that Thoy was to be "burnt" relies upon the evidence of comments Roddan is alleged to have made, together with the actual "demotion" of Thoy to uniform. The comments of Roddan, albeit reliant on the sometimes vague evidence of others, may have been made, but it does not follow that any perceived adverse consequence for Thoy must have occurred at Roddan's behest. It is doubtless the case that Roddan was angry about the investigation led by Thoy and may well have wished Thoy ill in the presence of others. Roddan may even have attempted to claim some credit for Thoy's transfer to uniform. However, there is no evidence that could establish that he did in fact have any influence in that regard. As will be seen later, Thoy's transfer was handled very poorly by police senior management. Thoy's impression that he was being punished for his role in the Argyle investigation should have been anticipated by management. Instead, this impression, not unreasonably based, was allowed to fester and grow.

LISTENING DEVICE PRODUCT 1990

Early in the first investigation, Detective Sergeant Mirfin of the Bureau of Central Intelligence ("BCI") called Thoy in to listen to an excerpt of an LD tape. Thoy told the Royal Commission that this was "[a] small excerpt from the LD in relation to an Uncle Max". An LD had been installed in the home of Roddan, and had captured one side of a conversation between himself and another.

Thoy later received a transcript of that excerpt, which bears the date 28 February 1990. Thoy stated that he heard the audio on 26 February 1990, and deduced that it must have been transcribed on 28 February 1990. The transcript records one side of a conversation between Roddan and a person he calls "Max". Roddan tells Max to "just tell the boss [he's] doing everything he can". The discussion, it seems, was in relation to monies owing.

Gwilliam also identified to the Royal Commission the same LD transcript of Roddan with a person identified as "Max". He said that he was originally shown this by Thoy and the copy he saw had the words typed at the top, " 'Possibly police' or 'Probably police', one or the other". Later, Gwilliam did receive a copy of the same document, without the notations. In his evidence before the Royal Commission, Gwilliam could not recall whether it was the first or the second version that contained the comments about police. No copy with those notations has been located. Gwilliam said that in "1993-94 it [the transcript] began to mean somewhat more to me". Presumably this is because the information about "Uncle Max and

the boys" had by then been received from Mrs Crimmins, and other pieces of information were coming to light relating to a person called "Max" to whom Roddan referred.

In reference to the LD transcript of the conversation between Roddan and "Max", Thoy expressed his opinion that the person is Mr Max Marshall. He "assumed it was either Max Kiernan or Max Marshall". Thoy was firm that it "was a police officer" though it is not apparent what this view was based upon, other than an interpretation of what was said. Marshall was a senior police officer at the time of the first Argyle investigation, though he had no involvement in it. The nomination of Marshall appears to be founded on the fact that Marshall and his wife attended Roddan's trial in the District Court on one occasion. There have also been suggestions that Marshall had some connection with Shore, and that he was seen in a social setting with Roddan's trial lawyer. Marshall provided a statement to the Royal Commission that made it clear that his interest in the trial was not in any sense benevolent towards Roddan, nor that he had any connection with Shore. The suggestion that he is the "Max" being spoken to by Roddan on the LD transcript, is, accordingly, without foundation.

In relation to the transcript, Roddan told the Royal Commission that this person was Mr Max Vinnicombe, who formerly worked as a solicitor for Mr John Roberts. He said that the conversation was about his wanting Vinnicombe to tell Roberts that "he'd have to wait a bit longer for his money". Money was owed in relation to a race horse transaction. Roddan stated that the transcript contained a reference to a Mr Peter Lynch, who was a bookmaker. The later reference to "the boss" was a reference to Roberts. Roddan never referred to Vinnicombe as "Uncle Max". In this regard, it should be noted that the transcript refers only to "Max", and not to "Uncle Max", as Thoy suggested.

Vinnicombe provided a statement to the Royal Commission. He confirmed that, during his employment as a solicitor retained by Roberts, he spoke with Roddan over the telephone. At some stage, Roberts had sold some horses to Roddan, and Roberts asked Vinnicombe to recover the money owed by Roddan in relation to this transaction. Vinnicombe stated that "[o]ver a period of months, [he] contacted Roddan on a number of occasions by telephone" and confirmed that the transcript was "generally consistent with [his] recollections in regard to a number of conversations on the phone and personal interviews [he] had with Roddan in an attempt to recover the debt".

There can be no serious contention that the transcript is other than a conversation between Roddan and Vinnicombe. The suggestion that the mention of a person named Lynch, who later gave a statement in the Argyle investigation, is significant, is not borne out as the

mention of Lynch is equally consistent with a conversation of the type described by Roddan and Vinnicombe.

Gwilliam told the Royal Commission that, towards the end of 1990 he received another page of LD transcript from a police officer, whom he is now unable to identify, near the Causeway. He was told by that officer that it had been "withheld from [them] because it was considered to have an indication of corruption". This transcript is of a conversation between Roddan and an unknown person. There are references in it to matters that have been interpreted as relating to police investigations. In particular, Gwilliam interpreted Roddan's comment, "[y]ou buggers pumping around there", as referring to the police executing search warrants on the banks. There were such warrants at least in contemplation at this time, because it was believed that Roddan may have received monies from overseas. Roddan was unable to recall the context of this conversation, or to indicate to whom he had been talking. In relation to a suggestion that it was a police officer, Roddan was adamant that this was "absolutely impossible … I didn't speak to police, other than for some licensing matter or something of that, to make a complaint about some theft from a property, or some criminal offence by an employee or something of that nature".

This transcript is of only one side of a telephone conversation and it is, therefore, very difficult to interpret. Nothing arising out of it clearly indicates that the person being spoken to is a police officer. Whilst Gwilliam places some reliance on the circumstances in which this transcript was given to him, those circumstances cannot be confirmed.

RODDAN'S KNOWLEDGE OF POLICE INVESTIGATIONS

Karpin and Corfield told the Royal Commission that, by 21 January 1990, Roddan was making claims that he had "heard your person has had my phone bugged" and was saying "I'm under police surveillance". Throughout the various investigations, there have been allegations that Roddan was aware of the activities of police, and some examples of this have been mentioned previously.

If Roddan did have any "inside knowledge" in relation to the Argyle inquiries, then consideration must be given to where that knowledge came from. The two avenues that have been suggested are WAPS and from within Argyle.

Noye's preliminary report records that, "[d]uring the previous operation conducted jointly by Argyle Diamonds and the police, the connection between Crimmins, the senior security officer for the on-duty shift and a suspect, Roddan, was not known, thus leading to information being immediately leaked to Roddan". Noye later continued in his report that,

"[i]t may be that Senior Sergeant Thoy's thinking has been coloured by these refusals at times to allow him to continue the inquiry, which in turn may have been caused by his penchant for secrecy, due to his feeling that there was a leak back to Roddan from within the police department. This suspected leak has now been revealed to be Crimmins at the Argyle mine". Noye told the Royal Commission that this had been put to him by Gwilliam as being an established fact. This was on the basis of Roddan's and Shore's apparent awareness of an LD in the house, and the supposition that Crimmins had told Roddan about it. Noye went on to say in his Royal Commission evidence that, "I know at this point now that of course that was all rubbish".

Corfield told the Royal Commission that, on 23 February 1990, he arranged for Crimmins to meet with investigating police to be familiarized with the substance of the inquiry. Roddan's name was mentioned at this briefing, and Corfield kept Crimmins informed about the inquiry in general terms after that, but he did not provide any detail. Corfield told the Royal Commission that he was not aware that an LD had been installed in Roddan's home, and did not know about any proposed execution of search warrants. Accordingly, he did not discuss these matters with Crimmins. On or about 28 June 1990, Corfield was advised by Thoy that they had an informant, who had relayed to him that Crimmins and Roddan had an association that went back many years. From this point in time, Crimmins was not privy to the investigation.

Early on in the WAPS investigations, Crimmins was in the confidence of Corfield, and had been introduced to Thoy and Gwilliam. In relation to his awareness at that time of what investigations were being conducted, Crimmins told the Royal Commission, "I didn't know a whole lot, apart from I knew the name Roddan had been mentioned". He said that he told Roddan merely that an investigation was underway and who was conducting it.

KNOWLEDGE OF REMOVAL OF DIAMONDS FROM NOEL NEWTON

Corfield told the Royal Commission that, prior to the police involvement, he had borrowed diamonds from Newton, a diamond polisher, for the purpose of having them tested. They were handed to the manager of Rough Sales at Argyle. Two other people were consulted in relation to this, being Mr Topin, the manager in Antwerp, and a diamond dealer, Mr Emile Sarphati. Sarphati prepared a report after examining the diamonds.

In relation to the concerns that he had, that the diamonds might be stolen, Corfield spoke to Superintendent Brian Illingsworth, who then provided him with the contact of Detective Graeme Castlehow. During the time that Corfield was still holding the diamonds, he received a telephone call from Newton, who told him, "[y]ou've got a leak, Argyle has.

Roddan knows that you've got the stones and he's coming round to do a check on them". Subsequent to the return of the diamonds later that day, Newton made a second telephone call to Corfield. Corfield said that Newton had told him that "Roddan had visited his workshop, had done an audit on the stones, counted them all, and said that he didn't know what was going on but he was sure that Argyle had been looking at his diamonds".

Castlehow met with Corfield on 24 November 1989, at Argyle's offices in Kings Park Road, West Perth. The matter was in its intelligence gathering phase at this time. Corfield gave him the names of some persons at Argyle who could be suspects in any possible theft of diamonds. Corfield told Castlehow that he had located some diamonds at the offices of Newton, who was cutting them for a customer, Roddan.

There was subsequent discussion as to whether the police should show their hands by taking out a search warrant and then try to force an issue. It was decided, however, that the diamonds should be returned, and Castlehow said that there was no intention on his part to assist Roddan by having diamonds returned to Newton. Castlehow said, "that was one of the prime reasons we maintained what we were doing. If the police hand had already been shown then that would have been a compromised inquiry". Castlehow stressed the fact that he was a tactical intelligence officer. The return of the diamonds would permit him covertly to monitor the situation to see if any suspects revealed their hands.

During the time that Corfield had a 'second' set of diamonds in his possession for testing, Newton "had a phone call from Mr Roddan asking what his stones were doing at Argyle". Newton told the Royal Commission that he had not previously told Roddan that his stones were at Argyle. Newton asked "[h]ow do you know?" and Roddan told him, "I've got contacts". Newton telephoned Corfield and told him in no uncertain terms that he was most upset that Roddan knew that he had given him the diamonds.

The transcript of a later conversation between Karpin and Roddan, after the diamonds had been tested, indicated that he knew that diamonds had been loaned to Argyle, who had tested them. Roddan said in that conversation that, "[w]ell, when, I suppose within two hours of you taking those stones from Newton, I got a message via a person via a person via a person that come from this building that said we got pinks, half-polished pinks". In relation to this remark, Roddan explained that a person who was in the Argyle building rang a jeweller who rang him. Karpin agreed that "it was not possible to exclude" that Roddan "had a source of information within" the Argyle offices.

To the extent that Roddan was aware of the removal of diamonds from Newton's workshop for testing, the evidence does not establish a clear source for that information. What can be said is that Roddan could, as he claimed, have received the information from sources within Argyle. Thus, the evidence does not establish that Roddan was in receipt of information from police sources with respect to the removal of diamonds from the custody of Newton.

KNOWLEDGE OF 1990 SEARCH AND LISTENING DEVICE

It has been alleged that Roddan had been forewarned that his house was to be searched, and that he knew the search was to occur on 26 February 1990. It has also been alleged that he knew that an LD had been installed in his home in Lakeshore Close, Ballajura. It has been suggested that he received this information from within WAPS, or from someone who had details of the investigations, such as persons within Argyle.

Roddan told Mrs Crimmins that he had given some diamonds to Gardner for safekeeping, because Roddan had been informed that his home was under surveillance. Roddan also told Mrs Crimmins that he was expecting his house to be searched and that he had received this information from a police officer. In relation to the first inquiry, Mrs Crimmins told the Royal Commission that there was a discussion between herself and Roddan. "It was, like, messages from Barry [Crimmins] to myself, messages from Lindsay to myself, and then discussions of the three of us together". There is, however, no clear timeframe for these communications which would indicate that they may have included information regarding investigation activity, such as the execution of the search warrant.

Gwilliam told the Royal Commission that, during the execution of the search warrant "fairly early on in the conversation, in fact, he [Roddan] made mention of the fact that he'd been expecting us for some time". A recorded conversation at the commencement of the search was tendered, and reveals the exchange as follows:

> Police Officer: Were you aware that we were …
> Roddan: (Indecipherable)
> Police Officer: When were you told we were coming?
> Roddan: Oh, before Christmas.
> Police Officer: Is that right?

Shore told the Royal Commission that Roddan had told her to expect that the police would search their house. This "would have been probably several months" before the search was carried out. He did not tell her when they would be searched, "[j]ust that he believed that he'd heard around town … that's what he said about everything … that it was going to happen, and he was pre-warning me of it". He did not say who had told him. Roddan also

indicated to Shore that he believed that the telephones were bugged. She was not aware of any belief he had in relation to LDs as such.

Thoy gave evidence that, "[a]part from telling one of [the] officers that he was waiting for [them] to come, the only odd thing that I found difficult to understand is that a lot of the interviews were done at his ensuite, a fellow sitting on the sink, one on the dunny, and me next to the safe, trying to talk to him. I found that a little bit odd". Thoy was not aware where the LD had been placed, and he assumed it had been installed by technical personnel from BCI. After the search, he found out that the LD was in Roddan's office.

Gwilliam told the Royal Commission that, during the search he "got the impression that [Roddan] was wanting to conduct the majority of the conversations in the ensuite, which is where the safe was, and it ended up with three detective sergeants and Lindsay Roddan in this small, confined area, but only the conversation that was held in the main office area was picked up by the listening device".

The implication of Thoy and Gwilliam's evidence is that Roddan was deliberately avoiding the office, as he knew the LD to have been installed there. This seems largely speculative and based upon a construction of behaviour made after the event. There is no apparent reason why Roddan would avoid the office, given that he was speaking to police officers who, he must have suspected, would record anything he said in any event.

In relation to the search on 26 February 1990, Roddan told the Royal Commission: "I knew the coppers were coming because it was all over town. Corfield had been blabbing his big mouth to Devenish and everyone else and was telling them that they were going to tip me over. I knew they were coming … I was expecting to be tipped over by the coppers and I warned Rae-lene that … "[d]on't get too excited if they come thundering through the door one morning".

Roddan was asked directly whether he had any friends or acquaintances in the Police Service at that time, to which he replied: "There were people I knew that were police officers, and in many occasions … it's only subsequent to all this nonsense happening that I've been aware that they were police officers … I had no association with anyone because they were a police officer and they could do me some favour".

Roddan believed his telephone was being intercepted, but he did not know about any LD being present during January 1990. He denied that he had made any attempt to distance himself from it. He explained that he "was sitting on the bed watching the safe" while it was being searched by the police.

That Roddan knew of, or at least anticipated, the search before it occurred is not seriously in dispute. He suggested that there was no real secret about it, because both Argyle and the police were incompetent in dealing with confidential information. It is equally likely that Roddan simply assumed that, because he was under investigation, a search was likely at some time. In saying that he had expected the police, he may have been engaged in the bravado often displayed by those under investigation. There is no firm evidence that establishes that he knew the details of the police investigation, or to the extent that he did know anything, that any such information came from police sources.

ALLEGED WARNING OF NOEL NEWTON

It has been alleged that, apart from any contact regarding the testing referred to above, Newton was contacted several times by Roddan to give him advance warning of police visits. Corfield told the Royal Commission that he had received a telephone call from Newton, who had told him that Roddan had called him to warn him that Noye was going to call on him. Newton told Corfield, and within an hour or so Noye turned up. This worried Newton.

Newton gave evidence that, during the time that Noye was conducting the inquiry, he received a call from Roddan warning him of an impending visit by the police. Newton said that he, "[r]eceived one call specifically where he said I can expect to have a visit from the coppers", and the "[n]ext day or the day after that" he did get a visit from the police. When Roddan called, he did not mention any names.

Newton's statement in this regard records as follows: "I can remember Roddan telephoning me on at least two occasions and the purpose of these calls was to warn me of an impending visit from the Police. He would say something like, 'You can expect a visit from the cops in the next hour or so'". On the first occasion it was Noye and Gwilliam and on the second occasion it was Noye by himself.

It does not necessarily follow that, even if Roddan did make these calls, it proves he was in possession of inside information. He might well have been predicting what was likely to occur on the basis of what he knew from his own contact with police investigators or what others were telling him. This evidence cannot establish the existence of any broad police conspiracy to assist Roddan. However, the position in respect of Noye is significantly different. There is other evidence, considered later, which indicates the existence of a corrupt relationship between Noye and Roddan. Accordingly, evidence in respect of Newton must be seen in that context.

TELEPHONING POLICE

Mrs Crimmins told the Royal Commission that she gave Roddan her mobile telephone to use, and that she received the accounts for that telephone. She obtained a printout for the period. Initially, she provided these details to the IAU investigator, Stephen Robbins, and later, when she was on witness protection, she handed them to Gwilliam. Gwilliam compared these numbers with an internal police telephone book and said, "I could see a lot of references to Detective Sergeant Noye's number at the Reserve Squad, but I also saw a number of phone calls to senior officers, or the numbers represented senior officers within Curtin House". Gwilliam told the Royal Commission that the accounts were handed back to him by Robbins, with the advice that "it could not be proven that Lindsay Roddan had made these calls".

Roddan agreed that he occasionally did use Mrs Crimmins' mobile telephone. He was not aware of using her mobile to contact the police. When Counsel Assisting advised Roddan that the mobile telephone records indicated that police headquarters had been called, he said it was "almost certainly not" him, "other than to ring Mr Noye up and tell him to get his finger out". Roddan accepted that he could have called Police Headquarters, but these would have been in relation to complaints he was making. Roddan accepted that his personal diary contained the names and numbers of several other police officers. Of course, the fact of a name in an address book does not establish the existence of a relationship, let alone an improper one.

The telephone accounts are problematic, because whilst they show that numbers at police headquarters were called, it is not possible to establish who was spoken to. The extension numbers changed from time to time, and internal telephone books are not, therefore, a reliable indicator as to whose extension was rung. Robbins made an attempt to identify who had been contacted, but he was only able to establish that, on one occasion, Superintendent Bruce Dalton had been called. Dalton conceded that, on one occasion, he answered the telephone and thought that the CIB secretary announced that Mr Lindsay Robbins, a Crown Prosecutor, was on the telephone. It was, in fact, Roddan, but Dalton said that the conversation was brief and inconsequential.

It should not be assumed that the mere fact that Roddan was contacting police officers by telephone during the course of the investigations is indicative of anything improper. Robbins was of the view that it was entirely consistent with Roddan's character that he would frequently call officers with whom he had come into contact. "It was not unusual for Lindsay Roddan, once he got the name of a police officer, to keep bothering him. He did that to officers out at Midland in that stock inquiry, he did it throughout the place, and if he

knew of an officer he could get some sort of attention from to suit his purpose he would continually ring that person".

MEETINGS BETWEEN RODDAN AND POLICE

MANUEL BARRIERO'S SIGHTING OF FRANK ZANETTI

Barriero gave evidence that, on one occasion, he had gone to Roddan's house with another man in an attempt to recover a debt that Roddan owed him. They waited outside for Roddan to come home. Barriero observed another man arrive in a car. The man approached the house and was admitted by Roddan.

Barriero "didn't sort of make much of the gentleman and then he was in there for maybe … 10, 15 minutes". In respect of this man, Barriero said he had "sort of a glance" and he was "not very clear" for a period of about "five seconds". He estimated that he was about 15 metres away from the man and had not seen him before. Sometime later, Barriero was watching television and recognized the man, in a police uniform. He "thought it was Mr Zanetti". It was his "actual face … the hair, the face … it looked to me the same".

When Barriero was later interviewed by the AFP, he was shown a video of the *Four Corners* programme, with the names blacked out and the sound turned down. He identified Zanetti as having been the man he had seen at Roddan's house. At this time, Barriero was also shown a photoboard and he again identified Zanetti, this time with "80 per cent" certainty.

Barriero told the Royal Commission that he had met Shore at the Belmont Races and relayed what he thought he had seen, and the connection he had made. He asked her whether Zanetti was a friend of Roddan's and she said "[y]eah, that's right, they're good mates". Barriero cannot recall mentioning any names to Shore, but "presumed she knew exactly what [he] was talking about". Shore told AFP investigators that she had no recollection of any such conversation.

In relation to Barriero's allegations, Roddan can recall having a meeting with Barriero at a coffee shop in Ballajura. Barriero said that he left the shop and followed Roddan to his home, parking behind him. Roddan cannot recall an occasion when a man arrived with a dark brown briefcase, as described by Barriero. Roddan claimed that the first time he ever saw Zanetti was in the Central Law Courts in 1994.

The "identification" of Zanetti by Barriero is highly questionable for a number of reasons. The circumstances of the observation at Roddan's house were far from ideal. Barriero was

seated in a car parked some distance away, and saw the man in question for only a very brief time. A period of several years elapsed before Barriero was able to identify this person to the authorities as Zanetti. In the interim, he had seen Zanetti on television and this image may well have replaced his earlier memory. The methodology used for identification purposes, namely the *Four Corners* video, was far from ideal and, even with the sound turned down, and the names blacked out, it did not exclude the danger of implicit suggestion. Assuming that Barriero did see someone, the best that can reasonably be said about his evidence was that it was someone who looked to be similar to Zanetti. It is not appropriate to place any reliance on this evidence.

LYNETTE CRIMMINS' SIGHTING OF FRANK ZANETTI

On one occasion when Mrs Crimmins arrived at L'Alba café in Northbridge, she saw a man standing next to the table at which Roddan was seated, as if preparing to leave. They passed each other and the man stood aside for her. She remembered thinking that he had good manners. As she pulled up a chair and sat down, she observed an empty wine glass on the table, in front of where the person had been standing and she assumed that he had been drinking with Roddan.

Mrs Crimmins told the Royal Commission that she had not seen the man before. She did, however, see this person on another occasion later. She said that she was being escorted by witness protection officers through the Central Law Courts building. She recognized the person she had seen at the café. He was "standing in front of the glass panelled areas and he had perhaps four or five other people speaking with him". She said, that as she walked through she looked at him and he looked at her; they both recognized each other, smiled at each other and said, "Hi. How are you?" She asked the officers who he was and they asked her how she knew him. She told them she had seen him at the café with Roddan, who had said he was "the man from the races". The officers told her that it was Frank Zanetti. About twelve months elapsed between the first and second occasions that she had seen him. She says that she is certain that it was the same man.

The two witness protection officers present at the time were Neville Ripp and Allen Thompson. Ripp stated to the Royal Commission that he could recall taking Mrs Crimmins to Court with Thompson, in probably mid to late 1993. He said that Zanetti was present at the reception with other people. Ripp could not recall Mrs Crimmins talking about or indicating Zanetti. He "cannot even really remember what happened after approaching the reception desk. All I can say is that there didn't appear to be anything unusual about this occasion".

Thompson's evidence was also received by the Commission in the form of a statement. He confirmed that, while he was working in Witness Security, he escorted Mrs Crimmins, with another officer, to a court appearance, on the fourth floor of the Central Law Courts. He recalls that she "gestured to a male person who was standing in another area" and asked who he was, but it did not appear that the person noticed them. Thompson recognized that it was Zanetti and at some stage he asked her why she was asking. "She did say something about his being the person she had observed having dinner with Lindsay Roddan sometime previously in Northbridge". On her evidence, she had not in fact observed the person as having dinner with Roddan.

Zanetti accepts that he may well have been at the Central Law Courts at a time when Mrs Crimmins was also there. He denied, however, that he acknowledged or recognized her. Zanetti stated that he had never met Roddan at a Northbridge café. Zanetti is firm that Mrs Crimmins is either mistaken or lying in her identification of him as being present at such a café in Roddan's presence.

Mrs Crimmins' identification, whilst apparently spontaneous, was made in less than ideal conditions. Again, as with Barriero, the identification was not made until a significant time after the first sighting, which itself was very brief. However striking Zanetti's appearance may be, the significant possibility of a mistake cannot be discounted.

BCI OBSERVATIONS OF POLICE ATTENDING AT RODDAN'S HOME

Transcripts of interviews between an officer and the AFP, dated 1 April 1996 and 17 April 1996, were tendered. This was done due to the officer's apparent lack of memory in relation to relevant events. He claimed that, from around 1998, he had undergone a cognitive therapy course that had the effect of selectively removing portions of his memory in relation to the stress he had experienced in the police force. During his interviews with the AFP, the officer said that he had worked in BCI surveillance during 1990, and had been part of a team briefed with conducting surveillance in respect of Roddan and his activities.

The officer told the Royal Commission that there was an unwritten rule at the time that in respect of recording surveillance observations, if "a vehicle got called through and it was a police vehicle, it wasn't recorded at that point in time. It was given to the … OIC of the team and it was up to him to do whatever he wanted to do with it".

In relation to a surveillance conducted on Roddan, Operation Marathon, the officer said that his code number was not on the relevant running sheets. In an interview with the AFP on 17 April 1996, the officer surmised that he may have been tasked in some form of backup,

which may not have been recorded on the main running sheet. He agreed that there was a location known as "The Cave" where, at the end of a day's surveillance, there may be a team meeting. He told the Royal Commission that, in 1990, he did not hear any discussion at "The Cave" in respect of whether an observation regarding a police officer should be recorded or not. This conflicted with his AFP interview, in which he said that he did hear officers referring to police having attended at Roddan's premises.

The second interview with the AFP records that, after the first interview, the officer received threatening telephone calls, which he understood were in reference to the first interview.

Detective Senior Constable Mark Holland, who was a member of the third investigation team, gave evidence that there was an occasion when he met this officer at Bentley Detectives. This was at a time when the WAPOLINV inquiry was underway and Holland was aware that this officer had been interviewed in that regard. Holland asked the officer about that interview and, in this context, the officer remarked "[a]nd I'm fucking sick and tired of looking after Zanetti and Scott".

Gwilliam told the Royal Commission that he had a conversation with the officer at the Raffles Hotel shortly before the officer was dismissed from WAPS. Gwilliam had previously been told by Holland that this officer had seen "senior police officers turning up at Roddan's". During this meeting, the officer had told Gwilliam "[t]hat he would not give that evidence and not say what he had seen". He said, "something like, 'sorry. I can't do it', or 'I can't say it' or something like that. Or I'm not prepared to say it". Gwilliam said that the officer did not specifically identify what evidence it was that he would not give, but that he (Gwilliam) understood it was what he had been told by Holland. Gwilliam said, "It didn't need to be said for both of us to understand exactly what it was we were talking about". However certain Gwilliam may be in this regard, it is difficult to draw from this evidence any clear admission on the part of the officer that he had information regarding police officers associating with Roddan.

The officer was not able to recall any meeting with Gwilliam at the Raffles Hotel. He could not recall saying to Holland that he was sick and tired of protecting Zanetti and Scott, and said that he does not know these two men.

After receiving this information Gwilliam obtained some observation running sheets for the period from 1989, but there was no mention of police officers visiting Roddan. All running sheets relevant to surveillance on Roddan have been examined and, whilst incomplete, there is no mention of police officers attending Roddan's home.

The evidence of the former officer was very unsatisfactory. His evidence conflicted not merely with that of Gwilliam and Holland, but with his own answers, when interviewed by the AFP. However, even if it were concluded that the former officer was not telling the truth, that does not assist, in the absence of some independent evidence in determining what the truth is. Accordingly, there is no acceptable evidence that police surveillance operatives observed police officers, and in particular Zanetti or Scott, attending Roddan's house.

OTHER EVIDENCE OF CONNECTION BETWEEN KIERNAN AND RODDAN

Barriero told the Royal Commission that Kiernan had visited his workshop after Barriero had sold a printing press for his, Kiernan's, son. Kiernan came to see Barriero in relation to the press one afternoon. They were talking generally, and Barriero told Kiernan that he had a float and a tractor he had repaired for Roddan, and was holding them because he had not been paid. Kiernan told Barriero that Roddan was "highly regarded" and he "ought to be careful". He said "[i]f I were you I would just take that back and you know, he'll pay you, don't worry. He's got money". Barriero is not able to say with certainty how the issue of the tractor and the float arose in conversation. During his AFP interview, his recollection was that Kiernan initiated it.

This matter was not put to Kiernan when he gave his evidence, as the transcript of the relevant Barriero interview was not available at that time. An offer was, however, made that he could either be recalled or submit a statement in this regard. He did submit such a statement, in which he said that he did meet Barriero in the context of a printing press purchased, then later sold, through Barriero by his sons. There was a dispute regarding payment when the press was sold. Kiernan denies that in this context, or indeed any context, he discussed with Barriero anything regarding Roddan.

Shore confirmed to the Royal Commission that she had seen Kiernan on the television, and this had prompted her to "feel [she'd] seen Max before and … [feel] that he was introduced to [her] as Les". She said that "[h]is face was familiar and [she] thought that [she] had seen him at the stables". This person was introduced to her as Les by Roddan in the mid to late 1980s. Shore was not certain that the person was Kiernan and it could have been someone of similar appearance.

The evidence of Shore is too uncertain to be relied upon. The evidence of Barriero is disputed, and there is no possibility of independent corroboration. In these circumstances, it would not be possible for any link to be made between Roddan and Kiernan.

DENIAL OF RODDAN DRUG LINK

It has been alleged that police officers deliberately misled Argyle as to whether Roddan had ever been suspected of involvement in drugs. If this had occurred, it is said to be indicative of an attempt corruptly to deflect attention away from Roddan.

Corfield and Burton attended on Scott in July 1991, in order to pass on information which connected Roddan with drugs. Scott remembers sending for Detective Sergeant Wayne Barnes, who was in the Drug Squad at the time. Barnes told him that Roddan was not known to the Drug Squad. He added that he would not expect Barnes to say in front of Corfield if Roddan was known, as it may have been confidential operational information.

Barnes recalls being told by Corfield that a person by the name of Rae-lene Shore could supply direct information as to Roddan's involvement. Scott then asked Barnes if he knew of Roddan, and Barnes told him that he did not. Scott then asked Barnes to carry out an inquiry into the information that had been supplied. Barnes said in evidence at the Royal Commission that he had not heard of Roddan prior to this. He said that his role at the Drug Squad was supervisory and administrative, and that he would not have been aware of all the intelligence that was coming from BCI. The relevance of this is that there did exist some intelligence information at that time that suggested that Roddan was involved in drug dealing.

Barnes and Detective Sergeant Paul Ferguson, who was also attached to the Drug Squad, subsequently interviewed Shore. She stated that she had never seen Roddan with any drugs and that she did not know of any dealing in drugs. After speaking with Shore, Barnes concluded that there was no merit in what he had been told by Corfield and Burton. Barnes said that he subsequently advised Scott that there was "nothing in it". Barnes admitted that he had not checked databases for the purpose of ascertaining if there was any existing intelligence on Roddan. Nor did he recall asking for anyone else to check intelligence databases for this purpose.

Corfield's recollection of the meetings differs from that of Scott and Barnes. Corfield said that he told Scott that he had come across some information about Roddan and did not want to compromise any police operational activity. Corfield stated that Scott told them there was no operation in progress and that Roddan was not suspected of anything. Corfield said that when Barnes attended, Scott said to him, "[y]ou don't know this bloke, Roddan, do you Wayne?" and Barnes replied "[n]o boss". Barnes then left. Corfield stated that Barnes was not told about the information that he had come across. Burton's evidence accords with this.

On 9 July 1991, Corfield and Burton met with Scott. Corfield stated that Scott appeared to be "drunk almost to insensibility" at this meeting. Also present at this meeting were Commander Donald Hancock, Barnes and a person called Paul, whom Corfield believed to be Zanetti's staff officer. Corfield said that Hancock had to keep Scott upright in his chair due to his condition. This meeting was to follow up on the previous meeting of 24 June 1991, to see if any evidence had come to light which would link Roddan with any criminality. Towards the end of the meeting, Corfield claimed that Scott said "[o]ne of these days, Dick, when we're both retired I'll tell you what's really going on".

Scott vehemently denied that he was drunk, or that he said the words attributed to him by Corfield. In this regard, he was supported by other police officers including a number who attested to his good character.

Roddan had been the subject of intelligence reports linking him to suspected drug dealing prior to the meetings between Scott, Corfield and Burton. To that extent, he was "known" to the police. Corfield and Burton appear to suggest that there was some deliberate attempt to deceive them in this regard. It is not clear, however, why there would be any expectation that the police would reveal drug-related intelligence information to Argyle employees. The matter takes on added significance in the context of the apparent failure of WAPS to follow up over a number of years intelligence relating to drug dealing by Roddan, which is referred to later. Barnes' view was that he was simply asked to check the validity of the information in regard to Shore. It is not possible to conclude on this evidence that there was a deliberate attempt to deceive Corfield and Burton in regard to Roddan.

As regards the evidence relating to Scott's alleged drunken state and comments made by him, there is a clear conflict in the evidence. There is no apparent motive for Corfield and Burton to falsely make these claims and there appears to be no room for misinterpretation. However, any resolution of this matter does not appear to be material in any event. Whether or not Scott was drunk could not assist in determining whether there was any police corruption. The alleged comment, even if made, is so ambiguous as to provide no indication of what was meant. Accordingly, even if it were possible to resolve these issues relating to Scott, which it probably is not, there is no purpose to be served in doing so in the context of this matter.

ANALYSIS

There is a significant degree of consistency on the part of the witnesses who attest to Roddan having made statements that he had police contacts and that he was able to call on those contacts to assist him. The comments allegedly made by Roddan were not such as to

clearly nominate any individual police officer, rather they were characterized by suggestion, innuendo and the use of nick-names. Whilst the reliability of some of this evidence may be affected by the passage of time and by the possibility that suggestions have been made and adopted, it is unlikely that so many people could have formed the same views unless they have some basis in fact. It is very unlikely that all of this evidence could have been deliberately and maliciously invented. The fact that the utterances of Roddan, as reported, are sometimes vague and oblique gives them an air of verisimilitude. If, for example, Mrs Crimmins were to have invented her evidence in this regard in order to cause trouble for Roddan, it seems unlikely that she would limit her evidence to nick-names when actual names would have identified senior officers so much more clearly.

On the basis of all of the available evidence it seems likely to the point of certainty that Roddan did make claims that he knew police in high places whom he could call upon to help him. It is also likely that he used names such as Max and Zed, though at least in the case of the name Max, there is evidence to suggest that he knew others by that name whom he may have referred to in conversation. Several witnesses said that they did not take such claims seriously because they considered it part of Roddan's character to drop names in order to achieve a strategic advantage, whether he knew the person named or not. There is also evidence that Roddan deliberately lied to some potential witnesses in order to test their loyalty.

Given the length of time over which Roddan was under investigation, it would not be surprising if he had come to know the names, and even the nick-names, of a number of senior officers. It seems clear from all the evidence that Roddan is a person who lives on the fringe of the law, and has made it his business to become familiar with police officers and police methodology. He is also a verbose and boastful individual and it is sometimes difficult to identify the thin line between fact and fantasy when he speaks. For the preceding reasons it does not follow that, because Roddan made claims in respect of senior police officers, he necessarily had the power or influence of which he boasted.

Ultimately, therefore, there is very little reliable evidence that could establish that the claims made by Roddan were true. Roddan's apparent knowledge of the police investigation is inconclusive. His claim that he was expecting the search in February 1990 does not necessarily indicate that he had been given any specific information. In any event, it must be acknowledged that Roddan had several other possible sources of information, including, obviously, Crimmins.

That Roddan was making claims of having police friends who could assist him and that this was reported to those investigating the matter, obviously, and understandably, influenced

those investigators' view of management decisions made by superior officers. Decisions that might otherwise have been accepted, even if not agreed with, came to be thought of as suspect by reason of the types of claims that Roddan was making. It must be noted, however, that the quality of supervision and the process of decision making by all involved was often so poor as to give apparent support to a theory that there was systemic corruption. The conduct of the investigations will be considered in the parts which follow. Importantly, what must now be said is that, in considering what inferences can be drawn from that conduct, it must be in the context that, whatever claims Roddan made of having high placed friends, the available independent evidence has failed to establish the existence of any corrupt associations between high ranking police officers and Roddan in relation to this matter.

14.5 DID POLICE SEEK TO LIMIT/SUBVERT THE FIRST INQUIRY?

CASTLEHOW'S ADVICE TO CORFIELD TO RETURN THE DIAMONDS TO NEWTON

On or about 22 November 1989, Castlehow, then serving in BCI, commenced undertaking background inquiries into a complaint from Argyle that "rough" or "pre-acid" Argyle diamonds were being cut and polished by Newton on behalf of Roddan.

In early December 1989, Roddan became aware that Corfield had taken diamonds from Newton for the purpose of testing. Corfield contacted Castlehow and discussed the various options that were available. Castlehow's recollection was that it was at an early stage of the investigation and that, in order to establish the "bigger picture", a decision was made to have the diamonds returned to Newton. Castlehow was of the view that this was done in order not to "show the police hand" at that stage of the investigation, as the focus of their investigations was to establish the source of the thefts from the mine site.

It was the view of Castlehow that if police intervened at that stage, it would probably only be possible to establish simple possession of unlawfully obtained diamonds. There is disagreement as to the content of the discussions between Corfield and Castlehow. Corfield stated that he was told by Castlehow to return the diamonds and that he disagreed with the decision. Castlehow's recollection is that Corfield had the view that the police could seize the diamonds, but that they discussed the options available.

Whilst there is some disagreement as to the respective recollections of Castlehow and Corfield on whether the diamonds were to be returned "by agreement" or whether Corfield was "told" by Castlehow, the circumstances presented a genuine dilemma. What is evident, however, is that there appeared to be no well developed intelligence or investigative

strategies attached to the return of the diamonds. This led to a series of lost opportunities, particularly early in the investigation.

Police officers are frequently called upon to make strategic decisions and in this instance there was no credible information to suggest that a large number of diamonds had gone missing from the Argyle mine site. It would have been preferable if some definitive action or investigative strategy had been implemented at this time. It cannot, however, be said that Castlehow's view that the diamonds should be returned was incapable of being justified. This is an example, and there are many more in respect of this matter, of a management or investigative decision that was poorly thought out and implemented by the Police Service, even if genuinely made.

ALLOCATION OF THE ARGYLE INVESTIGATION

Gwilliam stated in evidence that, on 20 February 1990, while attached to the Reserve Squad, he was approached by Thoy, requesting his assistance on a file relating to the investigation of missing diamonds from the Argyle mine. Gwilliam said that he commenced an active role in this investigation on 22 February 1990. At this time, Thoy was the officer in charge of the Reserve Squad and his superior officers were Inspector Colin Trewin and Superintendent Bruce Dalton.

During the initial stages of his involvement with this investigation, Gwilliam said that, in company with Thoy, he attended at least two briefings with Dalton. The first briefing was before the execution of a search warrant at Roddan's home address on 26 February 1990. Dalton questioned Thoy as to how he had come to receive the Argyle investigation without its going through the chain of command, and said he did not want to have two detective sergeants tied up on what he said was likely to be a long, protracted investigation. Gwilliam said that, notwithstanding this comment by Dalton, he had no other file to work on and he was not given any other files.

Thoy said in evidence that, in his normal briefings with Trewin, which would occur probably once or twice a week, he mentioned that he had the Argyle investigation. He was unsure how this topic arose, but stated that Trewin asked him how he got the investigation and Thoy told him that it had come through BCI. Trewin asked Thoy why the file had not come through the normal channels. Thoy said something to the effect, "[w]ell, they advised me that you knew about it" and Trewin replied to the effect "[w]ell I didn't". Thoy stated that this conversation was in the very early stages and perhaps days after he had received the investigation file. Thoy stated that, at this point, he had done little work on this investigation and perhaps he had only seen Corfield a couple of times. When asked if

Trewin expressed any desire for the investigation to be moved from him to someone else, Thoy said "No. I took it [as] just being upset that they hadn't gone through the channels and that I'd had it".

Trewin was Thoy's immediate line manager and responsible, therefore, for his supervision. Trewin stated that BCI had approached Thoy direct, without going through him. Trewin did not agree that Thoy should have the investigation, but when asked why he did not veto this decision, as his superior officer, he replied "Well, it was too late then. He'd already worked the inquiry". Trewin said that he had concerns about the investigation being given to Thoy, because he considered that Thoy was a difficult person to manage and had a tendency to make an inquiry much larger than it needed to be.

Dalton was the superintendent in charge of the Division in which the Reserve Squad was located. Dalton said that there is a proper course or channel for the allocation of investigation matters, ensuring that the inquiry is documented and directed to the appropriate command for instructions. This is necessary so that supervisors know what investigations are being undertaken, and by whom, or where they are going. Dalton stated that he found out at a regular command meeting that Thoy had a multi-million dollar diamond investigation. He said that this was in February, after an LD had been installed, and Roddan's home had been searched. Dalton's evidence was that he had approached Trewin after this meeting and that Trewin had no knowledge of this investigation.

Dalton's initial understanding of the investigation was that there had been some advice received from some person in Belgium that there were Argyle diamonds appearing on the market that had possibly been stolen from Argyle. He also knew that there had been some diamonds taken from Newton, but other than that, he understood that there was no credible evidence supporting the fact that it was a "multi-million dollar inquiry". Dalton accepted, however, that this was only the initial stage of the investigation. At this time, he did not think the investigation required an injection of significant resources, as requested by Thoy. Dalton said that it would have been his decision that, until there was further evidence to support the need, Thoy and Gwilliam could only draw on resources that were proven to be justified. He said that resources, both financial and human, were at a premium at that time in the CIB, so there was a need to prioritize investigations.

Dalton said that, on becoming aware of the investigation, he thought it appropriate to have another inspector, since deceased, come in to overview the matter in conjunction with Trewin. Dalton said that he did not have any reservations about Thoy's ability and he did not think there was ever any suggestion that Thoy should be taken off the investigation.

It was, however, Dalton's view that this investigation had to be watched closely. He put in place a monitoring process in relation to the investigation, because Thoy had suggested initially that this matter would require a task force arrangement. He believed that Thoy was inclined to over-exaggeration. There was a need to monitor resources under his command.

Dalton said that it was not unusual for him to be involved in decisions about investigators' travel or whether further testing should be done. He stated that, at the end of the day, if there was some need for expenditure, the request would come to him. He did not see his involvement in the Argyle investigation as being different from the amount of involvement he had in other investigations.

Scott was an Assistant Commissioner at the relevant time. He was aware that Thoy had been allocated the investigation, because he had discussions with Corfield about the possibility that Argyle could bear some of the costs. In evidence, Scott made the comment that he did not have concerns about Thoy's fitness to be a police officer, but rather his ability to conduct an investigation such as Argyle. He said that he would not have given the inquiry to Thoy in the first place.

When asked why he did not arrange to have the investigation moved to someone else, Scott responded that he could not see the logic in doing that, and that Thoy had proceeded with the investigation for some time before he became aware of it. Scott also commented that more was needed than just what he "felt" in order to justify taking a person off an investigation of this nature.

It appears that several senior officers, at least Trewin and Scott, had reservations about whether Thoy was an appropriate choice for this investigation. Those reservations appear to have been based more on perceptions of Thoy's character than on his ability. The perception was that Thoy would unnecessarily magnify the amount of work and the importance of an investigation he was given. The difficulty with such views is, if they were held at the time, why Thoy was permitted to continue with the investigation. There is a degree of vagueness and self-contradiction in this management approach. It raises the distinct possibility that subsequent events, and in particular the fact that Thoy had made allegations of corruption against senior officers, have coloured the views of those officers.

AN ALLEGED WARNING

Thoy said that, between the time he made the LD application on 14 February 1990 and his meeting with Trewin on 21 February 1990, he had word that Scott was not happy that he had the investigation. Thoy stated that this information was given to him in confidence, and

the person giving this information had been worried about giving it. For this reason, Thoy said he was not willing publicly to name the person, but he wrote the name down on a sheet of paper, which was received as a confidential exhibit.

A statement from the person named by Thoy was obtained. This person was a member of WAPS in 1990 and said that he did not remember having any conversation with Thoy as described by him in his evidence. However, he did not deny that he may have had some conversation with Thoy about Scott. He said that, if Thoy had said to him that Scott or Hancock was unhappy with his having the file, he would probably have said something like, "[t]hat may be true. Just do your job properly and be careful". This would not, in his opinion, have been a warning about any superior officer, but rather a warning to Thoy to get on with the job. This officer further refuted the comments made by Thoy in relation to his being worried, and that he had spoken to Thoy in confidence.

In the face of the former officer's statement, it is not possible to conclude that Thoy received the warning claimed. There is room for misinterpretation, and no reason has been advanced as to why this officer would lie, or seek to mislead, as to what he said.

THE BRIEFINGS WITH DALTON AND OTHERS

Dalton and Trewin sought and received regular briefings from Thoy. Thoy felt that the number and detail of these briefings was unusual. He said he became particularly concerned when he received what he believed to be pressure prematurely to conclude the investigation. During the second of these briefings, after the execution of the search warrant on 26 February 1990, and prior to 1 March 1990, Gwilliam stated that Dalton said "Kick a couple of doors in and write it off. All over, Red Rover". The date of this briefing does not accord with a similar account given by Thoy.

Thoy said that at a briefing on 15 March 1990, Dalton put to him, in the context that he was worried about the expense, "Can't you just kick a couple of doors in and write it off?" Thoy was unable to remember exactly how he replied to this, but said it would have been something to the effect, "Let me finish my inquiry". Thoy recorded in his journal the fact that he and Gwilliam had given Dalton a full briefing of what had occurred in the investigation to date. However, Thoy said he did not record the fact that Dalton told him to "write it off". This might be understandable if he thought that the order was improper. As a consequence of this, Thoy decided that, in order for him to protect himself, he would tape his superior officers' conversations at subsequent meetings. Thoy accepted that this was a very serious step to take, and one that indicated a complete lack of trust in his superiors.

Dalton accepted that Gwilliam and Thoy gave him a full briefing on 15 March 1990. Dalton said that he has no recollection whatsoever of ever telling or ordering Thoy to "write the file off" or "to kick in some doors", but added that, at the time, things were "a bit excited" in his dealings with Thoy.

Whilst Trewin and Dalton accept that the number and detail of briefings involved in this investigation was unusual, it was, they believed, called for having regard to the nature of the matter. This can hardly be disputed. The matter involved very serious allegations, and had the potential to consume considerable resources. It cannot be suggested that there was any impropriety in the level of interest in the matter shown by Trewin and Dalton. Rather, it seems that the allegation is that this interest was of a negative character, that is, that it was directed to frustrating the investigation. This is something Dalton and Trewin strongly denied.

The comment about "writing off" is not independently corroborated, and thus, in the face of conflicting recollections, it is difficult to form a concluded view as to whether Dalton made these remarks. However, assuming that he did make those comments, taken out of context, they are apt to be misinterpreted. It might well have been that such remarks were made by an officer who was quite properly concerned that an investigation that did not appear to him to be showing much promise should be brought to a speedy conclusion. The fact that Thoy and Gwilliam were of a different view does not mean that Dalton was corruptly seeking to terminate the investigation. Subsequent conversations were tape recorded by Thoy and the content and possible interpretations of those conversations will be considered later.

ALLEGED WARNING BY ROBERT IBBOTSON

On 1 March 1990, Gwilliam said that the then Detective Senior Sergeant Robert Ibbotson, whom he considered a personal friend, approached him and indicated that there had been a meeting and that Gwilliam and Thoy should take particular care, because they were going to be ordered to "write it off". Ibbotson then said that those who gave the order were going to deny ever having given it, and that would leave Thoy and Gwilliam out on a limb. Gwilliam stated that when Ibbotson spoke about a meeting, he said "upstairs", and Gwilliam took this to mean the CIB executive.

Ibbotson could only say that, over a period of four to five years and certainly up until the mid-1990s Gwilliam had frequently expressed to him his concern about these issues. Ibbotson said that, if he did express anything to Gwilliam, it would only have been as a friend and he may well have said to him, "Look, Clayton, if you want my advice, let it go".

Ibbotson stated that his position at that time was a uniform position and he was not a part of the CIB command any longer. Accordingly, he could not have been privy to any CIB meeting. Ibbotson had no memory of ever hearing that there was an order given to the Argyle investigators to "write it off".

Clearly, Gwilliam and Ibbotson have very different recollections of their conversation. There must be at least a possibility of misunderstanding or misinterpretation. No reason is advanced as to why Ibbotson should lie or attempt to conceal anything. In the circumstances, it is impossible to conclude that Ibbotson did say what has been attributed to him by Gwilliam, though Gwilliam may have a genuine belief that he did.

QUESTIONING REGARDING SEARCH WARRANTS

Gwilliam stated in evidence that, on 1 March 1990, two senior officers from the Fraud Squad, one being an inspector, now deceased, and the second being either Trewin or Senior Sergeant William Round, came and examined the warrants for Roddan's home and the premises of Newton. Both officers came into the office and advised Gwilliam that they wanted to look at the warrants. They examined the complaint detailing the grounds for the warrant. Gwilliam stated that he commented to both officers "if they were unhappy with the warrants, then, in his view, they would have been granted, even by a judge, and that he was quite happy to take the warrants to get a legal opinion if they wished". After looking at the warrants, they told Gwilliam they were "quite happy with them".

It seems that this is suggested as being indicative of an inappropriate level of supervision. Similar queries were raised subsequently in relation to other warrants. It is difficult to draw any conclusion from the mere examination of the documentation, particularly when the senior officers said that they were satisfied with it. No doubt Gwilliam and Thoy felt a degree of resentment that, as very experienced detectives, they should be subjected to this level of scrutiny. Perhaps such feelings could have been obviated if management strategies and the concerns of supervisors had been better communicated.

TRAVEL TO THE ARGYLE MINE

Dalton became aware of a proposition for officers to travel to Argyle, including BCI technicians, with respect to some LDs. Dalton indicated that he approved this, insofar as he supported the application for the LD, and took it to the Assistant Commissioner for approval. He said he thought Trewin had recommended that Argyle bear some of the expenses of this trip. He said that it was quite normal for a complainant to be asked to bear some of the investigation expenses.

Scott said that, with Hancock, he met Corfield at Argyle House in Perth. During this meeting Corfield made a request for Scott to authorize the expenditure of officers to travel to the Argyle Diamond Mine. Corfield said that, for some time, Argyle had been financially resourcing the investigation, and it was time for the Police Service to assist. Scott did not agree with this. Corfield then brought to Scott's attention some of the outlays Argyle had made. Scott said he was embarrassed about the situation, and this is why he authorized the expenditure. Scott confirmed that he attended the meeting with Corfield with the view that the Police Service should not be paying for officers to go to Argyle. He explained he had this view because of a policy within the CIB that, if a matter was property related and required a large expenditure, expenses of, for example, extradition, would be met by the complainant. Scott also said that it was his opinion that police officers based at Kununurra were better equipped to investigate matters in that area. Scott disagreed with Corfield's claim that there was negativity about his comments. Scott said that he would never disagree with an investigation continuing, his only concern would have been the finance involved, as he had to work to a limited budget.

Corfield confirmed that Scott came to Argyle House to see him, ostensibly about funding all or part of the costs of officers visiting the Argyle mine site. Scott told Corfield that his belief was that the travel was unnecessary, and that he thought it was a "fishing expedition". Corfield said that Scott was negative. Corfield stated that Hancock was not present at this meeting, and that no mention had been made by Scott of using detectives from Kununurra.

The dispute between Corfield and Scott in this regard seems to be largely one of interpretation. Scott may well have appeared to be negative, but only, he would say, as to the idea that the costs should be borne by WAPS, rather than by Argyle. Whatever might be thought of a policy that seeks to have a complainant underwrite part of the costs of a police investigation, an approach in this regard falls far short of any corrupt attempt to frustrate the investigation.

TELEPHONE CALL BETWEEN SCOTT AND CORFIELD

Corfield stated that, during the first week in March 1990, he received a telephone call from Scott. He said that Scott told him that he had had cause to criticize both officers (Thoy and Gwilliam) for telling lies about the investigation. Corfield said that, within an hour of receiving that telephone call, he saw both Thoy and Gwilliam at a routine meeting and told them of the conversation he had had with Scott. Thoy and Gwilliam then warned Corfield that they believed attempts were being made to "write off" the investigation improperly.

On 19 March 1990, Thoy's journal entry records, "To see Mr Trewin regarding the alleged problem with Mr Scott. Mr Trewin asked to ascertain the details of me having lied to my Superintendent". Thoy in evidence confirmed that he went to see Trewin to query why an Assistant Commissioner was telephoning a complainant and saying such things. Thoy appears not to have received a response in this regard.

When asked if he had telephoned Corfield at Argyle, and advised him that the investigating officer had been "paraded in front of the Superintendent" and told off for telling lies, Scott replied, "No". When asked if there was any occasion when Thoy and Gwilliam were told off for lying to their Superintendent, he replied, "Not by me". Scott was not aware of an allegation that Thoy and Gwilliam had lied to their Superintendent. Scott further claimed that he did not recall any telephone conversation with Corfield, apart from when Corfield asked him to come to Argyle.

There is a clear conflict between Corfield and Scott in this regard. Corfield had the impression that Thoy and Gwilliam were being denigrated. Assuming that words which had a derogatory connotation were said, it does not follow that it was because of some corrupt intention to terminate the investigation. There is ample evidence to indicate that senior officers did have an adverse view of Thoy and may, perhaps imprudently, have made this known to people outside WAPS.

DENIAL OF RESOURCES

Gwilliam said that, in his experience as a police officer, he had never before received such interference in an investigation, and not at all from a superintendent level. When asked what Trewin and Dalton did to interfere, Gwilliam said that there had been a total denial of resources. He stated that they were not allowed to use police telephones to call witnesses in Switzerland, and that to avoid this, they had to use Argyle's telephones. Gwilliam added that they were denied travel to the Argyle mine site in order to examine suspects nominated by Corfield. He added that he was not allowed to have the diamonds analysed and that they were being questioned as to how they had got the inquiry in the first place. Finally, Gwilliam said that there were comments made to them, "all the time, like, don't put your heart and soul into the investigation".

Thoy supported Gwilliam's evidence that they were not allowed to use police facilities to telephone internationally, as Dalton had told them it was not cost effective. A journal entry of Thoy on 30 March 1990 states: "To see Mr Dalton re phoning [name suppressed] in Geneva. Mr Dalton stated that the matter should be sent through Interpol for a statement to be obtained".

In response to the request to make overseas telephone calls, Dalton maintained that he said, "No, you're not going to phone [name suppressed]. There is a protocol in place; you follow that protocol. If there's somebody over there, commit it to paper, get the federal police or whoever the authorities are over there, get them to do it and then we've got something on paper that we can hang our hat on".

Corfield said that, on 6 March 1990, Thoy and Gwilliam came to his office and conducted a telephone interview with a person overseas. They said that they were conducting this interview from his office as they did not have the resources at their own office and that he had a loud speaker telephone and an STD line. Corfield said that his office was used on a number of occasions for overseas calls.

Whilst the control of resources is no doubt an important consideration, there appears to have been a degree of pettiness and personality clashes in these matters. The question that arises is whether Trewin and Dalton allowed their concern to exert tight control over this inquiry to obscure the merits of the particular requests. This level of control was liable to antagonize the investigators and to cause them to question the motives of their superiors.

TAPED COMMENTS BY DALTON TO TERMINATE THE INQUIRY

In a taped conversation between Dalton and Thoy on 27 March 1990, Dalton said, "[w]ell, that's what we're working for to see – we're surmising now because unless something comes from Newton and Roddan, it really needs to be important and then written off for future intelligence or whatever we have". Dalton said that he meant that a particular segment of the investigation should be worked through and, if it went nowhere, it should be referred to BCI for intelligence purposes.

Dalton made a further comment to Thoy to the following effect, "I don't want you to put your heart and soul into it". Dalton could not remember exactly what he meant by this, but suggested he was just concerned for Thoy and did not want him to "get tied up in knots" or "sick" over this particular investigation. Dalton denied that he was trying to encourage Thoy to give less than his full attention, and further stated that, from his point of view, if Thoy could get a prosecution out of it, or successfully conclude the investigation, that would be a desirable outcome.

As to the comment to "kick a couple of doors in", Dalton said that, if the investigation had been pursued, but was going nowhere, or if Thoy was not putting his best effort into it, he could have spoken along those lines to get him motivated. He added that, if an

investigation were to go on with no real results, he would expect an investigator to do something constructive with it.

The transcripts of the taped conversations with Dalton, Trewin, Inspector Derek Farrell and others were tendered as exhibits. They certainly reveal that Thoy's superiors, and Dalton in particular, were taking a questioning and critical approach to the investigation. That, in itself, could hardly be viewed, in any sense, as improper. Thoy has relied on certain passages (some referred to above) as indicating impropriety but, when viewed in context, these passages are open to other interpretations. One such interpretation is that the senior officers were unimpressed with the returns Thoy was obtaining for his efforts, and were concerned to ensure that resources were properly utilized. It is impossible to conclude that these tape recorded conversations evidence corrupt attempts to terminate the investigation.

TRANSFER OF GWILLIAM TO BELMONT

On or about 10 April 1990, Gwilliam was transferred to relieve as officer in charge ("OIC") of the Belmont CIB. This effectively meant that he was taken off the Argyle investigation at what he considered to be a critical time. He perceived this to be an attempt to frustrate the investigation. Gwilliam stated that the reason Dalton and Trewin gave for his transfer was that they wanted a more balanced outlook on the Argyle investigation and that it was no reflection on Gwilliam's investigative ability. At this time, there were only Thoy and himself working on the Argyle investigation. In Gwilliam's opinion, the Argyle investigation required more than two people, and he and Thoy had told their superiors that this was the case. When Gwilliam was advised of his transfer to Belmont, he told Dalton he considered the decision to transfer him was wrong, because it would leave the Argyle investigation with only one man working on it. Gwilliam further added that he disputed the decision on the grounds that he had done a "crash course" in diamond identification, he knew the processes of the industry, the way diamonds were sold and marketed, and he had already travelled to the mine site and examined the acidizing process. He added that he had been to other possible diamond sources, namely the Bow River Mine and Wesley Creek Springs, and he had completed initial investigations. He had also been an integral part of the WADT investigation.

Thoy said that Gwilliam was involved in the investigation until he left in early April. No reason was given to Thoy as to why Gwilliam had been taken off the investigation. Thoy said that this left him alone, and he had no way of getting any other help. When queried about other officers who were working at the Reserve Squad at that time, he said that one was relieving and the other did not appear to be interested.

Dalton said that Superintendent Gary Ghockson was responsible for transfers, especially transfers out of his command. He assumed that Gwilliam was transferred to Belmont because the OIC of Belmont CIB had gone on holidays, and it was decided that Gwilliam should go there and relieve him. Dalton said that this was part of the purpose of the Reserve Squad. When asked if it was more appropriate to send someone else in the circumstances, Dalton said that this assumed that there was someone else who could go, which was not necessarily the case. Dalton denied that Gwilliam was transferred to Belmont in an attempt by him, or by his superiors, to limit the resources available to the investigation.

The transfer of Gwilliam appears, at the very least, to have been a questionable management decision. There was no denial, and there could not seriously be any denial, that the Argyle investigation was an important and sensitive one. Even if Trewin and Dalton were genuinely experiencing difficulties in managing Thoy and Gwilliam, to remove Gwilliam and his accumulated knowledge of the matter, and not adequately replace him, seems unwise.

It cannot be doubted that it was Dalton's intention that Gwilliam would no longer work on the Argyle investigation following his removal to Belmont. This has been characterized by Thoy and Gwilliam as an improper attempt to limit the resources available to Thoy. It is more likely it was an effort to deal with a situation that Dalton was finding difficult to manage, namely, the direction and scope of the investigation. Dalton may well have been trying to assert authority by dividing up Gwilliam and Thoy. As a management tool, however, the transfer of Gwilliam was short-sighted and apt to be misunderstood. There was a real risk that, in removing Gwilliam, the effectiveness of the investigation would be compromised. That risk does not appear to have been realized, because Gwilliam continued to assist Thoy, notwithstanding the orders given to him. Management objectives should nonetheless be compatible with investigative goals, and this does not appear to have been adequately appreciated.

Of course, care must be taken that the decision made is seen in the existing context. Resources were limited, and investigations were naturally prioritized. To devote resources to the Argyle investigation would necessarily mean that other matters had to wait. With the benefit of hindsight, it is now apparent that this investigation should have continued to be fully resourced. Even though the decision to move Gwilliam now seems obviously wrong, it may well have been honestly thought to be justified at the time.

THE WESTERN AUSTRALIA DIAMOND TRUST

Thoy and Gwilliam wished to pursue a line of inquiry relating to the Western Australia Diamond Trust ("WADT"). Their perception was that they were improperly prevented from pursuing this line by their superior officers. Gwilliam said that it was considered by Thoy and himself that it was necessary to exclude WADT as a potential source for the allegedly stolen diamonds. WADT was entitled to a proportion of the diamonds mined at Argyle and, in order to exclude the possibility that any of the diamonds found at Newton's cutting works had come from WADT, it was necessary to ensure that all WADT diamonds were accounted for. Initial inquiries made to WADT indicated that gem quality diamonds were being forwarded to East West Diamond Products, a Kalgoorlie based company. As investigations progressed, the emphasis appears to have changed from investigations related to Roddan to a separate concern that diamonds appeared to be going missing within WADT.

In order for Thoy to discount WADT as a source of diamonds for Roddan, he requested the opportunity to audit the WADT books. Thoy confirmed that WADT did not instigate this audit. Nor was there any complaint from it of missing diamonds. On 12 April 1990, an entry in Thoy's journal notes:

> … interview with Mr Dalton. Update him on inquiry. He asked as to the wisdom of checking WADT books and suggested strongly that WADT or Ashton Mining Ltd should do their audit. Explained that they might be the suspects and that they may have given the diamonds to Roddan. Mr Dalton still could not see why Ashton should not do the books. He said that he would review the inquiry at the end of next week. The matter should be wound down.

This conversation was confirmed by Thoy in his evidence.

Thoy decided to obtain a warrant to seize WADT's books for the purpose of conducting an audit. During the execution of the warrant on WADT on 24 April 1990, Thoy spoke with Dalton. He said that Dalton had telephoned him and was extremely upset and was said to be screaming. Dalton wanted to know why the books were being seized, and why the investigators were going to that extent. Thoy said, "Well, we've got to get the books to Coopers and Lybrand. We may have to hire a Brambles truck". Dalton asked, "Why do you have to do that? Why can't we get police officers from Central to come in with their vans, and we'll take all the stuff up there?" Thoy said that he tried to explain to Dalton that the cost of doing this would be so prohibitive that a hire truck was simpler. Gwilliam gave evidence which supported Thoy in this regard.

Dalton said that the telephone call had nothing to do with the books being taken away from WADT by Gwilliam and Thoy. He said that the books relating to WADT had been

surrendered to Thoy to enable him to undertake an audit. Dalton said that he told Thoy, "No, You're not doing that, that's not your function. That is the responsibility of Argyle/Ashton. If they want to do an audit, it is their responsibility, the cost and everything else goes with them". Subsequently, Dalton heard that Thoy was executing a search warrant and seizing the books. Dalton said that his own attitude was that it was unnecessary for Thoy to take out court process to achieve something that had already been achieved. Dalton said that he did not think he was angry during the telephone call, but he was concerned that Thoy was still persisting in an audit, which Dalton believed should be the responsibility of others. Dalton agreed that he did subsequently order Thoy to cease the audit he was doing, and to charge that responsibility to Argyle/Ashton. Dalton said that he and Thoy did talk about confining inquiries to the diamonds already seized. Dalton agreed that it was his position not to allow police resources to be used in the audit.

Trewin said that he and Dalton wanted Thoy to "persevere with the Argyle side of things", as opposed to the WADT side, and that he and Dalton did not want Thoy going off on what seemed to be a tangent.

There was an obvious division of opinion about the employment of police resources to pursue the WADT line of inquiry. Thoy and Gwilliam maintained that there were grounds to suspect that diamonds were going missing from WADT. However, there was nothing to implicate Roddan in such an allegation at that stage. Whilst WADT had initially been considered a possible source for diamonds in Roddan's possession, this was quickly excluded, as all WADT diamonds were post-acid, that is, they had already been through the washing process at the mine site. This was unlike the diamonds that had been placed with Newton. It was not unreasonable, therefore, for Dalton to have taken the view that the WADT line of investigation was separate from the Roddan line of investigation.

Thoy and Gwilliam may have had suspicions that the two lines of inquiry, if pursued, might come together, but they were no more than suspicions. Dalton and Trewin could reasonably have taken the view that resources should be concentrated on the original line of inquiry, which had arisen from the initial complaint, and not diverted to WADT. Doubtless, in this context, Dalton felt a degree of frustration that Thoy appeared determined to pursue the investigation as he saw fit, and not to defer to his superiors.

KALGOORLIE TRAVEL AND "NO MORE OUTSIDE" INQUIRIES

On 26 April 1990, Thoy submitted a report to Trewin. This report requested that two police personnel be permitted to travel to Kalgoorlie in order to conduct further inquiries, and that this should take place on 30 April 1990. Thoy said that he handed this report to Dalton and

that he did not travel to Kalgoorlie for seven to eight weeks after submitting the report. The reason, he said, was that Dalton did not want him to go, because he did not feel that books should be seized from East West Diamond Products. This was, at least in part, the purpose of the travel. The books related to the audit of WADT.

On 27 April 1990, Thoy made an entry in his journal that Farrell had said to him that he had definite instructions as to Thoy's investigation, and that there were to be "no more outside" inquiries in relation to the Argyle investigation until the audit was complete. Farrell further suggested that a police officer from Kalgoorlie conduct some of the inquiries there. Thoy said he did not agree with this, but told Farrell he would accept it, because he had no choice. Thoy felt that, because he had been told there were to be "no more outside" inquiries, control of the investigation had been effectively taken out of his hands. He stopped communicating with the auditors, because he was no longer permitted to do so, and he understood that all the other inquiries were to stop.

On 30 April 1990, Thoy went to Farrell and asked for the instructions to be in writing. This is recorded in Thoy's journal in the following manner:

> To see Superintendent Farrell. Asked him for the instructions he gave Friday to be in writing. He stated that at this stage, he has no intention of putting the instructions in writing. He will consider it further, but at this stage the instruction stands. I was fearful for the repercussions of such a decision and contacted Crown Law for advice for I suspected that by accepting the instructions, I may have entered a conspiracy to pervert the course of justice. Suggested that I engage a solicitor to protect my own interests; contacted union; they cannot help because the matter is operational at this stage. To contact a solicitor at a later time. Regulations state that I now have a right to speak to the Commissioner of Police.

Thoy said that he had requested the instruction from Farrell in writing because he could see "something coming out of it". He felt responsible for the investigation and stated that, if he were to be sued at a later stage for failing to carry out his duty, or charged, he would want the order to have been in writing. Thoy sought legal advice because he believed that the order was unlawful, that he was being hindered in his investigation and that, if he did accept the order, and cease work on the investigation, he may be committing an offence.

Thoy recorded in his journal on 17 May 1990:

> In relation to being off the case, Mr Trewin said, that he thought [the deceased inspector] had made it quite clear that I was in charge of the inquiry. I explained that once I was informed to cease any part of my inquiry, I'm told that I do not have authority or grounds for a search warrant, and that my superiors may authorise a warrant. I am effectively not in charge of the inquiry, and nor can I be

> responsible for the events to date. Mr Trewin then gave me a direct order that I was to continue with the inquiry ….

On 31 May 1990, Thoy met with an inspector, now deceased, and Trewin and noted in his journal:

> Requested that I be given clear instructions. These instructions were that I would need to sell each point before I would be allowed to proceed. [The inspector] explained that the auditor must come across with some sizeable irregularity before I could start executing warrants. In essence, I had to see him or Mr Trewin before I could do anything or issue any warrants.

Dalton confirmed that he had instructed Thoy that approval for travel to Kalgoorlie would not be forthcoming until an examination of the books already seized clearly indicated the need to do so. Dalton agreed that Thoy had suggested that the books in Kalgoorlie were needed for the audit, but Dalton was still not convinced.

Dalton was on leave at the time of the conversation between Farrell and Thoy when the words, "no more outside", were used. Farrell was acting in Dalton's position and may have been carrying out Dalton's decisions. Dalton was not able to say if "no more outside" was a fair reflection of his views, as he did not know precisely what it meant. When told that Thoy had interpreted this as meaning that there were to be no more investigations outside the audit, Dalton said that this was not his position. Dalton claimed that, if Thoy understood that he was being limited by him, this was a misconception on Thoy's part.

Farrell was interviewed by the AFP in regard to this matter. He told Thoy he was not to travel to Kalgoorlie and execute a search warrant on East West Diamond Products, as it was merely "a fishing expedition". Farrell said that this was not his own personal decision, but one made as a result of a discussion with Dalton, Trewin and the inspector. He said that there was a general consensus amongst the senior officers that there was not enough evidence to justify the obtaining of a search warrant and that, accordingly, the police could be challenged. Farrell remembered that, after he had told Thoy that he was not to execute the warrant on East West Diamond Products, Thoy said that he felt he was being hampered, or that some undue influence was being put on him. Farrell said that Thoy could have asked him to put in writing the direction that he was not to go to Kalgoorlie. If Thoy had asked this, then Farrell said that he probably would have said, "No. Do as you were told".

When the WADT audit was completed, an initial discrepancy was found in regard to the diamonds recorded in the books. At this time, Thoy was permitted to travel to Kalgoorlie. This is consistent with the position referred to by Dalton and Farrell. They required that

there be some evidential basis for the seizure of further books in Kalgoorlie and, at least on one view, the audit provided that basis. Whilst Thoy may not have agreed with the initial decision, there is nothing to suggest that it was a corrupt attempt to frustrate the investigation. The "no more outside" comment is not entirely clear in its meaning. Thoy interpreted it as meaning that he was to stop any inquiries. Dalton, who did not make the comment, said this was not his intention. Another obvious interpretation is that Thoy was not to pursue the WADT line of inquiry further until the audit was complete. Such an order would not have been unreasonable. Accordingly, it is not possible to conclude that Thoy was prevented from properly pursuing the investigation as a whole.

THE WADT WARRANTS

Thoy stated in evidence that, on 14 May 1990, both Trewin and the inspector thoroughly questioned him on the warrants he had obtained for the seizure of the books from WADT. Thoy said that they questioned the legitimacy of the grounds of the warrant, but that they did not actually look at those grounds.

On 15 May 1990, Trewin and the inspector attended a meeting with Thoy at which the auditors were to present their report to date. Prior to the meeting commencing, the inspector explained his reason for being present, then proceeded to criticize Thoy and the form of the warrants. He advised the meeting that the warrants that Thoy had for the seizure of the books were no good, and that he had no justifiable grounds for the warrants or the execution of the warrants. Thoy stated that the inspector told the auditors that it was their job to do the audit and that Thoy had exceeded his authority. Thoy said that the inspector continued in this vein until Thoy asked him to listen to the audit report before he continued his criticism. The report was delivered and Thoy said it showed significant discrepancies. Nevertheless, the inspector continued with his criticisms. The senior partner completing the audit expressed concern, and asked if there was a need to return the books. Thoy said that the deceased inspector told them something like, "No. No. It's all done now. We can't turn it back. Go ahead with it". Thoy said that he gave no reason for his view that the warrants were not justified.

Corfield was also present at this meeting, and he made a note as to what had occurred. He recorded in his chronology on 15 May 1990 the following: "[the inspector] publicly tips the bucket over Thoy, saying the search warrants executed on Ashton were illegal and were an abuse of power". Trewin had no independent recollection of this meeting.

Thoy and Corfield clearly had the impression that the inspector was seeking to publicly undermine Thoy's position. Assuming that their account of what occurred is correct, it

would be fair to say that this was not an appropriate forum in which to cast doubts upon the validity of the original warrants. However, as has been noted, senior officers already had, with some justification, concerns that the WADT line of inquiry was a diversion from what ought to have been the main focus. It is likely that it was that view, whether right or wrong, that was the cause of the questioning of the warrants. Accordingly, this evidence is not such that any corrupt intentions could reliably be drawn from it.

LIMIT ON FURTHER DIAMOND TESTING

On 26 February 1990, a search warrant was executed at the home address of Roddan. As a result of this search, a number of documents were seized. Later the same day, another warrant was executed at Newton's premises, resulting in the seizure of a quantity of diamonds.

Gwilliam said that he had a discussion with Trewin, seeking the testing of all diamonds seized on 26 February 1990. Gwilliam estimated the number of diamonds to be approximately 30 at a cost of substantially more than $600 for their analysis. Trewin told Gwilliam to limit the number of diamonds to be examined to four. The cost of the analysis of four diamonds was approximately $600. Gwilliam selected four and prepared a report to Dalton, seeking approval for the analysis. An entry in the journal of Gwilliam dated 1 March 1990 notes discussions about diamond analysis, and the preparation of a report requesting CRA Advanced Technical Development ("CRA") to analyse the diamonds at the cost of WAPS.

Gwilliam stated that, after the preparation of a report requesting authority to have four diamonds analysed by CRA, he and Trewin took the report to Dalton and left it with him for consideration. Gwilliam said that at least one hour later, both Trewin and Dalton entered the Reserve Squad office. Dalton, according to Gwilliam, refused permission to have the diamonds analysed. Gwilliam said that Dalton's comment was that the earlier test obtained by Corfield was not independent, and therefore it was not evidence and was unable to substantiate the commission of an offence. This resulted in a heated argument, and Gwilliam said that he told Dalton that, in his opinion, it appeared that Dalton was being corrupt, and that he would expose him over a prior incident unless he gave permission to have the diamonds analysed. According to Gwilliam, Dalton then took the report back and wrote on it, approving the analysis. Gwilliam claimed that Dalton then threw the file back at him. Gwilliam took the diamonds to be analysed and, in his opinion, what was produced as a result of the analysis was excellent evidence. Gwilliam stated that photographs of the diamonds taken by an electron scanning microscope showed soil adhering to them in "large white chunks".

Dalton denied having had a heated argument with Gwilliam in the Reserve Squad office. He said that, if he had any discussion with Gwilliam, it would have been in his own office, as he would have no cause to go to the office of the Reserve Squad. Dalton had no recollection of Gwilliam stating he was going to expose him over a previous incident, and he suggested that, if Gwilliam had said such a thing, he would have taken him straight to the Commander's office and resolved the matter there and then.

The earlier incident referred to by Gwilliam appears to have been an investigation conducted by Dalton some years earlier, which had resulted in Gwilliam and others being charged, and subsequently acquitted at trial. Gwilliam complained that Dalton had corruptly influenced the evidence given by witnesses in that matter. That allegation was not examined by the Royal Commission. Suffice it to say that there were grounds for animosity between Dalton and Gwilliam, and that appears to have been reflected in this incident. However, regardless of what was said in the Reserve Squad office, it would be difficult to conclude that this incident indicates an attempt to corruptly interfere with the investigation, particularly bearing in mind that the testing had been approved and was completed.

On its face, the concern was about the utilization of resources. Whilst it may seem petty for there to be so many senior officers involved in the expenditure of $600, this may be an indication of how dysfunctional management of this investigation had become, rather than anything more sinister.

MEETING BETWEEN CHADBOURNE AND THOY

On 13 November 1990, Thoy noted in his journal that he received a telephone call from Chadbourne, asking to see him. In 1990, Chadbourne was the Executive Staff Officer to Zanetti, and had nothing to do with the Argyle investigation. Chadbourne told Thoy he wanted to know if the information that they had on Crimmins was correct.

Thoy said that on meeting with Chadbourne at his Dalkeith home, Chadbourne told him that a man by the name of John Kerry Wither had contacted him. He wanted to confirm that Crimmins was an associate of Roddan. Thoy advised Chadbourne that Crimmins and Roddan were associates, and that he suspected that they were involved in the stealing of diamonds. Thoy stated that, during this conversation, Chadbourne advised him that he was making the inquiries on behalf of Wither and Bates from Argyle. After having spoken to Chadbourne, Thoy noted in his journal, "[I]t appears that Argyle wish to verify some information".

Chadbourne stated in an AFP interview on 27 March 1996 that he was never given an official role in any of the Argyle investigations, but that he had spoken to Thoy many times, and on occasions they had spoken generally about the Argyle investigation, but "[n]othing at all which [stuck] in [his] mind". He said that Wither, a former police officer, worked for him at some time and they became personal friends. Chadbourne said he had regular conversations with Wither and from time to time Wither, as the Security Officer for Argyle, would ask Chadbourne for information, or a criminal record of a particular individual. Chadbourne had a vague recollection of Wither asking for some information about a person by the name of Crimmins, who was about to get sacked. Chadbourne said he then called Thoy direct and said, "I've had this inquiry". Thoy replied, "[h]ang on" and then went to Chadbourne's home. Chadbourne relayed the conversation he had with Wither to Thoy and asked, "[s]hould this bloke be sacked or should he not?". Chadbourne was unable to recall Thoy's answer, but whatever it was he then relayed it back by telephone to Wither.

Wither was interviewed on 30 November 1995, and said that, at some time during the Argyle investigation, he became aware Corfield wanted Crimmins sacked, because he had not declared that he knew Roddan. Bates had asked Wither what he knew about Crimmins, to which Wither responded that Crimmins was a good worker, and there was nothing to indicate anything "strange" was happening. Bates became aware that Crimmins had been named by Corfield as a suspect on the basis of his non-disclosure of his association with Roddan. Corfield made representations to Bates to the effect that Crimmins' position was untenable.

Chadbourne's approach to Thoy seems at least unusual. The propriety of Chadbourne passing any information to Wither has to be questionable. It is not apparent, however, how this meeting with Thoy could provide evidence of any corrupt activity. A suggestion that Chadbourne was acting as a conduit in the supply of information to others who were possibly implicated in diamond thefts is entirely speculative.

THE PROPOSED INTERVIEW OF CRIMMINS

Thoy was required to take annual leave owing to him between 30 August 1990 and 31 October 1990. During his leave Thoy was telephoned on two occasions by Trewin. Thoy was unable to recall exactly what the first telephone call had been about, but indicated it had something to do with diamonds being seized, and that they had called another sergeant back to handle that job. The sergeant was also on leave at the time, and Thoy was puzzled as to why the sergeant, who was far less knowledgeable in regard to the Argyle investigation, should be called in rather than himself. Thoy later received a telephone call from the sergeant, saying that he had been given instructions to interview Crimmins

and wanted to be briefed. Thoy telephoned Trewin and this telephone call was taped by Thoy. In the call, Thoy queried why the sergeant had been recalled, and why he himself had not been consulted. Trewin responded by saying it was a matter of "economics" and that Superintendent Ghockson had made the decision.

On 31 October 1990, Thoy returned to work and made an appointment with Ghockson to voice his concern that he had not been consulted about the proposed interview of Crimmins. Thoy was told by Ghockson that it was his decision to recall the sergeant for economic reasons and that, if the sergeant was not up to date with the investigation, then that was Thoy's fault. Thoy was of the belief that he was the only person with the intimate knowledge required adequately to conduct a thorough interview with Crimmins. Thoy said he was ordered by Ghockson to submit his complaints in writing, so that Ghockson might answer them in writing.

Thoy said in his evidence that, on 28 June 1990, he received information from Shore that Roddan had a link with Crimmins. When asked why he did nothing with this information for a period of four months, Thoy explained that he had to finish the WADT inquiry. He stated he was on his own until the sergeant commenced working with him, and for a period of approximately eight weeks he was on annual leave and attending courses. Thoy stated in evidence that another reason for not following up this lead was because Dalton was telling him to "shut it down". Thoy further confirmed that he did not take a statement from Shore until he had returned from leave at the end of October.

Ghockson said that he recalled that they received a telephone call with information that Crimmins was coming to Perth on a flight from the Argyle mine site, and that he could be carrying diamonds. Ghockson was of the opinion that Crimmins only had to be searched at this time, so he arranged for the sergeant to do this. For financial reasons and having regard to manpower commitments, Ghockson instructed Trewin to use the sergeant. Ghockson could not recall Thoy ever coming to him and discussing the matter.
Trewin was unsure, but assumed, after being shown a report submitted by Thoy and addressed to "Officer in Charge number 4 Division", that it was his decision, in conjunction with Dalton, to send the sergeant to search Crimmins when he disembarked in Perth on 29 October 1990. In reply to Thoy's suggestion that the sergeant was not an appropriate person to undertake this task, because he had limited knowledge of the investigation, Trewin replied "[the sergeant] was a very balanced and good detective. He would have been able to pick up on it quickly. I'm certain he knew a lot about it anyway".

Trewin was shown a memorandum addressed to the Detective Chief Superintendent CIB, who at that time was Hancock. Trewin accepted that this memorandum appeared to be his

response to a report submitted by Thoy on 26 October 1990. In the memorandum, Trewin said that Thoy was not recalled to conduct this search because to recall Thoy would incur three days pay for each day he returned to duty. At this time, Thoy was returning from leave on 31 October 1990 and the sergeant was returning on 29 October 1990. Trewin acknowledged a memorandum he had addressed to Dalton, attached to a report by Thoy. The following is noted in the memorandum: "I would point out that I did not give Thoy any instruction to cease the investigation, although I must say I had previously told him to contain the inquiry as much as possible to the original complaint".

In a statement given to the Royal Commission, the sergeant recalled receiving a telephone call to the effect that Crimmins may be flying into Perth Airport and that he was to be searched. He said that he was told that Thoy was on leave, and he was asked to do this. He was at home when he received the call, and he could not remember if he was on weekly leave or not. He then telephoned Thoy to ask if he had any suggestions on how to handle Crimmins. He said that Thoy had a "spit" and said something to the effect, "[w]ell that's it. I'm no longer in charge of this inquiry, I've been relieved of my command". He said that he replied something to the effect, "Robin, no. You're still in charge of the inquiry. You're on leave". The sergeant understood that he was being asked to do this because he was returning to duty in any event, whereas Thoy would have had to be recalled to the job. He did not meet Crimmins as planned, as he received a telephone call cancelling the job. He could not remember the exact reasons, but thought it might have been because Crimmins did not arrive on the scheduled flight.

The allocation of the task of intercepting Crimmins to the sergeant rather than to Thoy, on its face, appears to be questionable. The sergeant, whilst no doubt competent, did not have the depth of experience that Thoy had in this investigation. It would seem that the link between Crimmins and Roddan had been established at this stage, and accordingly the task of stopping, searching and possibly interviewing Crimmins had the potential to be of crucial significance. The explanation that it was more economical to recall the sergeant than Thoy, even if true, appears to show a limited appreciation of the priorities that ought to have prevailed. In fact, in the light of the surrounding circumstances, it seems far more likely that the reason why the sergeant was chosen, rather than Thoy, was because Thoy's superiors had formed an adverse view of him.

Thoy's perception that he was being effectively excluded from decision-making in respect of the investigation was probably correct. The pity was that, when Thoy raised this with his superiors it was denied. In what can only be described as a significant failure of management, Thoy was led to believe that he was fully responsible for the investigation, whereas his superiors had no confidence in him. Thoy was not, as he was later described,

"paranoid" in thinking his superiors were against him. He was, however, misled into thinking that his inquiries were being improperly frustrated by those superiors because they were not frank and honest in their dealings with him.

ALLEGED WARNING BY KIERNAN

On 31 October 1990, Thoy made an entry in his journal regarding a meeting with Kiernan. Thoy told the Royal Commission that this meeting occurred following his having "fronted" Trewin about Ghockson undermining him to Corfield. Thoy said he was upset and quite vocal when talking to Trewin. Kiernan came to him and said something to the effect, "Come on, Rob, let's go for a drive". Thoy stated that Kiernan took him for a drive in a police vehicle around to the back of the Western Australian Cricket Association ground. Thoy said that Kiernan said something like, "[t]hey're not going to kill you or anything, but Robin, you got to write it off. Just write it off. They're going to make you ill, or you're going to get ill. Just write it off and it can't hurt you. Or words to that effect". Thoy said that he told Kiernan that, if they were civilians, he would lock them up for attempting to pervert the course of justice.

On 13 November 1990, Thoy said that Kiernan called him into his office and said something like "[h]ow are you going with the report?". Thoy replied that he had not yet started and Kiernan responded along the lines, "[w]ell, get it written off as soon as possible". Thoy further claimed that Kiernan mentioned a few times that Thoy should "get on with it" and "get the file written off".

Kiernan said that he was aware at this time that the "administration of the CIB" wanted the matter written off because of "the time and finances that had gone into it". Kiernan said that, knowing of this view, and having worked with him in the past, he offered to speak to Thoy. He said that his intention was to "talk him into writing the matter off", because it was clear that it was causing Thoy a lot of concern. He agreed that he had taken Thoy for a drive, and said to him, "Robin, if they want you to write it off, just write it off. Then you've got no problems. They can't criticize you if you write it off. If that's what they want you to do, write it off. It's obviously affecting your health and probably your family. I don't know, but it's not good". Kiernan claimed he was not attempting to have the investigation prematurely concluded, but he was concerned about Thoy's health.

This evidence was considered earlier in another context. Given that Thoy was already of the view that his superior officers were seeking to frustrate his investigation, there was a distinct possibility that he would interpret Kiernan's approach as being a warning. This is so, even accepting that Kiernan's recollection of what was said is correct. However, it does not

follow that that is what Kiernan was doing. It might be thought that this was an unorthodox method of attempting to bring into line an officer who was perceived as being recalcitrant. There is no good reason to reject Kiernan's evidence as to his intentions.

THE BREAKING INTO OF THOY'S CABINET

On 20 December 1990, Thoy saw a psychiatrist and was placed on sick leave for a period of six weeks. Thoy said he was suffering stress. He claimed that, while he was on sick leave, the filing cabinet in his office had been broken into. He said that it appeared to have been forced open. He reported this to Detective Superintendent Barrie Rolinson. Thoy said that fingerprint officers attended and "put black powder, or silver powder, all over the place and then they left". He heard nothing further in regard to the matter. He said that some tapes had gone missing from the cabinet. He was unsure if anything else went missing, as it was too difficult for him to check. The tapes were of covertly recorded conversations with superior officers. Thoy said that, prior to his going on leave, he had admitted to these officers that he had been taping their conversations.

Gwilliam said that, whilst Thoy was on sick leave, he went into the office and saw that the lock on his filing cabinet had been forced. He further stated that the lock was hanging out, and the side of the cabinet was buckled out, so that the locking mechanism could be bypassed and the top drawers opened. Gwilliam said that, to his knowledge, the Argyle investigation files were in that cabinet. Thoy also told him that two tapes of conversations with Dalton in the early stages of the investigation had been taken. Gwilliam said that he had listened to these tapes previously, and that, in his opinion, they were the best tapes in so far as an order was given by Farrell in one of the tapes to the effect, "[y]ou know Dalton's ordering you to write it off, then write it off". Gwilliam confirmed that the incident had been reported, and that Rolinson attended whilst the cabinet was being fingerprinted. Gwilliam said that he never heard the outcome of the inquiry. He later submitted a report requesting the documentation relating to the break, but nothing was forthcoming.

Dalton was aware of an allegation made by Thoy that his filing cabinet had been broken into. He understood that an investigation had been undertaken by Rolinson but he did not know the outcome. He had no further knowledge of the break-in and denied any involvement on his part.

In a statement given to the Royal Commission, Rolinson said he did not recall having requested the attendance of a "scenes of crime" officer to the office of Thoy. Rolinson stated that, even though it appeared to be the view of Dalton that he (Rolinson) was

involved in this investigation, Rolinson stated he did not carry out this function and could not assist any further on this point.

Former Senior Constable Barry James Mott, in a statement given to the Royal Commission, said that, in 1990, he was attached to the photographic section of WAPS. After Mott was shown a computer printout detailing a job that had been attended to on 27 December 1990, he said he did recall going to the office of Thoy in relation to a filing cabinet allegedly broken into. Mott also confirmed that he had taken some photographs of this filing cabinet. The photographs show the location of the cabinet, marks to the top drawer of the cabinet, in particular to the right hand corner, and a close up photograph of this mark. Mott stated that he would have taken the photographs for the purpose of showing what appeared to be a "jemmy" mark in the top drawer. Mott confirmed that he had dusted the filing cabinet for fingerprints, but he observed that there were no suitable prints, and he then placed a "P" sticker on the drawer to indicate the "jemmy" mark only. Mott could not remember the specifics of the job or how he was assigned it.

Ghockson received a report that Thoy's room had been broken into and entered and that something was possibly stolen. Ghockson said that he went to Thoy's office and had a look at the damage with another commissioned officer, who may have been either Dalton or Farrell. Ghockson said that he could not see any marks on the cupboard to support a "break" on the cabinet. Ghockson said that the alleged break in was reported, and that Rolinson may have conducted the ensuing investigation.

It is sufficiently clear that the cabinet was broken into, that it was reported, and that some investigations were conducted. As to who was responsible and what, if anything, was taken, it is impossible now to determine. Gwilliam and Thoy rely upon this event as indicating that other police officers were conspiring against them, and seeking to destroy evidence of any such conspiracy. The circumstance of the "break" at face value appears to provide some support for this theory. The forcible entry into a cabinet containing investigation material is a matter of great seriousness. It would be expected that an urgent and thorough investigation would have been carried out. Due to inadequate records, it is difficult now to determine exactly what inquiries were made, and what the outcome was. This is an important circumstance that must be weighed in the context of all the evidence.

THE TRANSFER OF THOY TO UNIFORM

On 28 February 1991, Thoy was told by Hancock that he was to be transferred to Central Police Station as from Monday 4 March 1991. Thoy advised Hancock that he would lose his rank and any chance of further promotion if he were to be transferred back to uniform at

that time. Thoy said that Hancock then sought advice from Staff Office who confirmed that it would be unfair to Thoy to transfer him immediately, and that his transfer should be deferred to 1 April 1991. Hancock agreed. Thoy said he was never told why he was being transferred. He later made an application under the *Freedom of Information Act 1992*, but claimed he did not receive any information on the matter. Thoy said that he asked what the reason for his transfer was, but was told nothing.

Hancock is now deceased. He had, however, been interviewed by the AFP in regard to this matter, and the transcript of that interview was tendered. In it, Hancock stated that he was absent from his role of Commander, and that Ghockson was relieving in his position when Ghockson submitted a report in relation to a "run in" with Thoy and Corfield. The recommendation Ghockson made in this report was that Thoy be transferred. Hancock claimed that this did not happen at that time. He stated that the ultimate transfer of Thoy was on his recommendation. The transfer was directed because of what he considered to be Thoy's paranoid attitude. Hancock stated that the transfer of Thoy was not only about the Argyle investigation, but was due to ongoing problems. Thoy's attitude following his transfer from Mount Hawthorn was "abominable" and this "paranoid" behaviour carried on into the Argyle investigation. It was Hancock's belief that this attitude was affecting others and that no person wanted to work with him.

Scott said that he agreed with the comments made by Hancock in a minute dated 24 January 1991. He based his views of Thoy on what he had witnessed throughout the investigation, his conduct from previous years and what he knew of Thoy. Scott stated he had a "concerned" view of Thoy. He said that Thoy was not being disciplined, this was simply a transfer. Scott did agree that it may have the effect of disciplining and in this instance he could see why Thoy would view this as a slur on his character.

The transfer of Thoy was evidently based upon the highly adverse view of him formed by his superiors and expressed by Hancock. This view was not, however, communicated to Thoy. He could not respond to it or dispute the comments made about his character and fitness. He felt that the transfer was a punishment for having pursued the Argyle investigation fearlessly. To some extent, he was correct. It was a consequence of a negative judgment, though this was concealed by presenting it as a transfer rather than as a disciplinary proceeding. If, as Hancock, Scott and others have maintained, Thoy was so utterly unsuited to be a detective, it begs the question of why these officers permitted him to continue with the Argyle investigation and why he was not disciplined for insubordination – if that is what it was – rather than transferred. If Thoy suffered such serious deficiencies, it is not apparent how transferring him could possibly be a solution. Even if the adverse views about Thoy were genuinely held by senior officers, his transfer appears to have been

extraordinarily badly managed. It is understandable, in these circumstances, that Thoy would have been left with the impression that he was unfairly victimized because of the complaints of interference he had made against Dalton and others. However, it is an issue of managerial incompetence. It is not one of corruption.

THOY'S FINAL REPORT – WHY LOOSE ENDS WERE NOT PURSUED

A final report, dated 14 December 1990, was submitted by Thoy. Thoy indicated in this report that there were some lines of inquiry that still needed to be followed up. When asked if he had received any response in regard to the outstanding lines of inquiry he answered, "No". The particular lines identified were the WADT audit and the alleged association between Roddan and Crimmins.

Dalton stated that he returned from annual leave on or about 9 December 1990 and saw the report some time after that. When asked what he did about the outstanding inquiries outlined in Thoy's report, Dalton said that the association between Crimmins and Roddan had been addressed by the sergeant referred to earlier, on or about 26 October 1990. This was a result of Corfield having attended the CIB office and insisted that Crimmins be interviewed in relation to his association with Roddan. Dalton understood that, as a result of the sergeant interviewing Crimmins, nothing further was discovered to assist the investigation. Dalton did not speak with Thoy as to whether there were any viable active lines of investigation in respect of the Crimmins/Roddan link.

Dalton did not agree with Thoy's view that the WADT audit was incomplete, and that the matter of the audit, and the shortfall of diamonds, required further urgent attention. As far as Dalton was concerned, no person was doing any further investigation on the matter, and the investigation should be closed down. He supported this view by saying that his use of "write-off" had been misconstrued. A "write-off" of an investigation can be at any given time for reasons such as no suspect, no arrests, or simply because the matter has been filed pending further information coming to hand.

When asked what he did when Thoy told him about the WADT shortfall of 252 carats, Trewin advised that everything he was told was reported to his superiors. He did consider that it was a line that should be investigated, but that Thoy should not be the person to follow it up.

Ghockson said that he discussed the investigation with Hancock who was Acting Assistant Commissioner at the time and Hancock told Ghockson that he wanted Thoy to be directed to write off the investigation. Ghockson claimed that Hancock said something to the effect

of "Look, Thoy's been on that too long. It's time Thoy wrote that inquiry off for the time being".

Scott accepted that he received Thoy's final report with a forwarding minute addressed to him from Hancock. Scott said that he was unable to remember much about the report and he could not recall that serious allegations had been made about senior officers. In a memorandum submitted by Scott to the Deputy Commissioner of Operations, Scott wrote:

> Unfortunately, Sergeant Thoy recently suffered from a stress problem and was absent from duty for a period of 6 weeks. This is possibly the reason for the type of report he has submitted. He has directed criticism towards a number of his superiors, has exaggerated aspects of the inquiry and, in general, ignored requirements of evidence or common sense.

When asked if he had come to this view independently or as a result of what he had been told by his immediate subordinates, Scott was unable to recall, but said it was probably a combination of both. He had no direct knowledge that Thoy had suffered from a stress problem. He was unable to recall if he had direct knowledge of Thoy having exaggerated aspects of the investigation. As to whether Thoy had ignored the requirements of evidence, Scott based his criticism on what he had read. In relation to the outstanding lines of inquiry, as suggested in Thoy's final report, Scott told the Royal Commission that, from what he could see from the report, there was nothing to go on. He said that it was obvious there were matters that had to be dealt with, but he felt that the complainant, Argyle, should be the one providing the relevant evidence. So far as the connection between Roddan and Crimmins was concerned, Scott understood that this was still being pursued. Even though Scott agreed that some of the things that Thoy said were outstanding may have had validity, he said, "[q]uite frankly, I didn't put much value in the report".

Thoy's report was highly critical of a number of superior officers, with respect to whom he made allegations that they had improperly frustrated his inquiry. There is a significant possibility that such allegations coloured the view of those senior officers who read the report as to the reliability of anything said by Thoy about the investigation. That view may have caused those officers to devalue comments made by Thoy about outstanding lines of inquiry.

It would seem that, by the time of his presenting his report, Thoy's relationship with his superior officers was such that they had no faith in his ability or judgment. Whether or not that position was soundly based, it had the consequence that the investigation was terminated when there were matters that were deserving of being pursued.

ANALYSIS

The first investigation was characterized by conflict between the investigators and their superiors. It is evident that this conflict became, on occasions, bitter and heated. Thoy and Gwilliam felt that they were improperly hindered. They had firm views as to the need to pursue the avenues of inquiry they had identified. Their superior officers felt that the expenditure of time and resources was not adequately justified and, in the face of resistance, they endeavoured increasingly to assert control.

The conflict was badly handled and never satisfactorily resolved. Thoy was left with a settled impression that the only explanation for his superiors' conduct was that they were corrupt. Rather than deal with those allegations, WAPS largely ignored them and privately denigrated Thoy and Gwilliam. This attitude caused WAPS to depreciate or overlook the real value in pursuing the matters that Thoy had identified.

The end result was that bad management practices, compounded by personality conflicts and poor communication, frustrated this investigation. When properly and fairly analysed, it was those stated factors, and not corruption, that was to blame for the outcome of the first investigation. Whether a different result would have been achieved, given the absence at that time of Mrs Crimmins' evidence is debatable, but the possibility of a different result, at least, would have been open. Because the investigation was not satisfactorily concluded, there was a natural sense of dissatisfaction amongst those involved, including the complainant. The response to allegations of corruption or incompetence was defensive. This response only served to fuel existing concerns. The seeds of a problem that was to trouble the Police Service for years to come were planted here.

14.6 DID NOYE CORRUPTLY WRITE-OFF THE SECOND INVESTIGATION?

THE APPOINTMENT OF NOYE

In early 1992, Zanetti met with Corfield and Burton to discuss Argyle's concerns with respect to the previous police investigation into the alleged stealing of diamonds from the company. At this stage, there was no current investigation, the Thoy report having been delivered in December 1990.

Prior to the meeting, Zanetti was briefed by Dalton and Hancock. Dalton expressed the view that the Thoy investigation had not been going anywhere and that he had had to manage scarce resources and a large workload. Zanetti received the investigation file that he said was "pretty thick". He raised the possibility of a review, and suggested the name of Noye in

this regard. Hancock and Dalton expressed some reservations regarding Noye's limited fraud experience, but Zanetti sought to address this by directing that Gwilliam be made available to assist, and making arrangements for Deputy Commissioner Leslie Ayton, who was external to the CIB, to be available "to provide Noye with any guidance he may require". Zanetti said that the appointment of Ayton to this role also addressed the claims made by Corfield of possible bias in the CIB, because Ayton was external to, and independent of, the CIB.

Ayton's role with respect to Noye was ill defined. It was to assist Noye with technical evidence if he needed guidance. Ayton's evidence was that he was not taking on any day to day managerial supervisory responsibility for the investigation. He agreed that he was essentially a resource for Noye. Noye only came to see Ayton on two or three occasions.

The meeting with Corfield and Burton took place in Zanetti's office. Corfield and Burton expressed their unhappiness with the previous investigation because, they said, there were matters that had not been fully examined. Zanetti had read the report on the investigation file and sought to pre-empt the discussion by saying that he considered that it was appropriate to conduct a review of the previous investigation. Noye's name was mentioned as being the person who would be tasked with the review. Corfield said that he had suggested Thoy, but he was told that this was impossible. Whilst Zanetti has no recollection of Thoy's name being mentioned, he said that Thoy would not have been an appropriate person, as this was a review of the previous investigation and someone independent was required.

Zanetti said that he had selected Noye because he was familiar with work that had been done by him on two homicide investigations some years previously. He was also aware that Noye had successfully completed a hostage negotiator's course. He indicated that Noye's name simply came to mind at the time. There is nothing to suggest that Noye and Zanetti were particular friends, or that there was anything unusual about the manner in which Noye came to be allocated to the job.

Noye was subsequently called to Zanetti's office and told that he was to identify any areas that still needed to be resolved out of the 1990 investigation. Noye said that the words that were used were that he was to "tie up any loose ends, identify any grey areas" and to find out if there was anything else that needed to be done in the matter. Noye said that he was told to report directly to Zanetti, and that he understood that the reason for this was a perception on Corfield's part of some bias by other police officers against Argyle.

Doubts have been raised as to the suitability of Noye to conduct this review, given his limited fraud experience. Such doubts were also raised at the time, and were addressed by Zanetti. Whilst Noye may not have been the best possible choice, given his past experience, that does not lead to a conclusion that the choice was corruptly made. It may have been a poor decision, but that would be an unremarkable occurrence in the history of the Argyle investigation.

NOYE'S PRELIMINARY REPORT

On or about 20 February 1992, Noye submitted a report to Zanetti containing the results of his review of the previous investigation. In that report, he noted that "there is evidence of criminal activity by Roddan and probably Crimmins" and came to the conclusion that "there is now the probability that further inquiries will reveal sufficient evidence to charge Roddan and Crimmins with conspiracy". On the strength of this report, a new investigation led by Noye, with the assistance of Gwilliam, was ordered.

The conclusions reached by Noye in this preliminary report are inconsistent in various respects with conclusions later reached in his final investigation report. When asked to explain the inconsistencies, Noye said that the state of the investigation files left by Thoy was such that he was obliged to rely on Gwilliam with regard to what evidence was available, and that he had accepted Gwilliam at face value. He said that he subsequently came to a different view as to the existence of evidence of criminality on the part of Roddan and Crimmins and believed that Gwilliam misled him at the time of the preliminary report. If such a view about Gwilliam was formed, then it must have been prior to the completion of the final report in late 1992, and yet, in a 1993 IAU interview, Noye said "Clayton [Gwilliam] is a good man, and no one will ever take that away from me. Clayton is honest as the day is long. He's sincere". There was no suggestion whatsoever made to the IAU that Gwilliam had misled or deceived Noye in respect of the evidence that was available during the review.

Noye's preliminary report was intended to be an independent review of the previous investigation to determine whether there was any merit in pursuing further inquiries. If, as Noye asserted, he was unable to do other than rely upon the word of Gwilliam as to what evidence was available, it has to be questioned to what extent this was an independent review at all. In these circumstances it might have been expected that there would be a qualification in the report, referring to the limitations experienced in conducting the review.

There is an alternative explanation for the inconsistency. It is that Noye was corrupted sometime after the preliminary report was prepared, and that this caused him to prepare a

final report that was exculpatory of Roddan and Crimmins and to recommend that the investigation file be closed. This requires an examination of the final report, which will be dealt with later.

Interestingly, though Noye did not deny the marked difference between his two reports, and sought to explain it, this difference seems not to have been noticed or raised as a concern by those to whom the reports were directed. Whilst the reports served different purposes, the contrasting manner in which Noye expressed himself should at least have required an explanation. Some might view this as being indicative of complicity by those higher in the police hierarchy but, unfortunately, it is at least equally explicable as being the result of poor supervision and bad management practices.

NOYE'S MEETINGS WITH RODDAN

Noye said that shortly after he was appointed to lead the second investigation, he received a telephone call from Roddan. Noye said that he had conducted no external investigations at that stage, but that Roddan had told him that he had heard that Noye had been given the matter. On the other hand, Roddan said that he did not know that Noye had been appointed, but had telephoned WAPS seeking Thoy and, due to the similarity of the names, he had fortuitously been put through to Noye.

Roddan expressed a wish to meet with Noye, though he said he would not come to police headquarters for that purpose. Accordingly, Noye agreed to meet with Roddan in a café. Roddan said that he did not want either Thoy or Gwilliam to be in attendance. Noye and Roddan met soon after. There was no one else present and Noye did not seek to tape record the meeting. Thereafter, Noye concedes that he met with Roddan on six or seven occasions at cafés or restaurants.

When questioned as to the prudence of meeting alone with a man whom he knew to be the principal suspect, Noye said he did not see any risk that Roddan might later misrepresent what was said or might make admissions that could not be corroborated. According to Noye, the first meeting commenced at 1.30 pm and continued to 4.30 pm, during which time he and Roddan ate some food together. During an interview with the IAU in February 1993, Noye expressed the view that, having listened at length to Roddan on this first occasion, he formed the view that Roddan was "paranoid". In evidence to the Royal Commission, he initially denied ever having had such a view. However, he accepted, when confronted with the transcript of the IAU interview, that he had said this. If this was Noye's view, then it appears inconsistent with his willingness to continue meeting Roddan and to rely on what Roddan said in preparing his final report.

Corfield said that, shortly after Noye had been appointed to the second investigation, they had a conversation at the offices of Argyle, in which Noye told him that he had had lunch with Roddan, that it had gone until 7.00 pm and that they had consumed two bottles of port. Corfield claimed that Noye had said "I know what you think, but he's got a tale to tell, you know, and I don't think he's a bad sort of bloke". Noye accepted that he had told Corfield of a meeting, but denied that he said it went for a period of hours or that port was drunk. He also denied that he said the words attributed to him by Corfield.

Noye also said that, at the first meeting, Roddan made a general complaint about corrupt police, though no details were provided at that stage. Following this, an arrangement was made for Roddan to meet with Ayton. According to Noye, Ayton took a tape recorder with him. Roddan made broad complaints about the conduct of the previous investigation, and the circumstances in which diamonds had been seized from him by Thoy and Gwilliam. Noye said that he knew that Ayton's tape recorder worked because he can recall Ayton "played back the tail-end of it" in his presence. Ayton denied that this occurred or that it was even possible with the design of recorder he was then using. Little seems to turn on this other than a possible impact on the credibility of Noye.

Though Noye said in evidence that Roddan provided him with no particulars of any allegations regarding corruption, this was not consistent with the answers he gave at the IAU interview in 1993. At that time, Noye said that what had transpired between himself and Roddan was as follows "… he said 'Look, there are some very senior blokes and you know I've been you know, told that I do the right thing and they'll do the right thing with the diamonds. Okay?' So at that point I said 'Are you upfront about this?' 'Oh well, you know what you coppers are like. You know you're all fucking bent'". If this is true, it is an allegation of corrupt dealings between Roddan and high ranking police, a matter that both Noye and Roddan have since denied. If it is not true, there is no obvious reason why Noye would have sought to assert it.

The fact that Noye was meeting with Roddan was brought to the attention of Zanetti by Corfield and by a journalist, Mr Martin Saxon. Zanetti recalls Corfield telling him early in 1992 that he thought it rather strange that Noye would be having coffee in a restaurant with one of the suspects involved in the investigation. Following this, Zanetti arranged for Noye to come and see him and, at the meeting, Noye agreed that he had had coffee with Roddan but that his purpose was only to win Roddan's confidence. Zanetti told Noye that, whilst it was his investigation, he should be careful how he went about things. Noye accepted that this was said by Zanetti, but nevertheless he went on meeting with Roddan on his own at cafés.

Shortly after that meeting, Zanetti had a telephone conversation with Saxon, who at that time had written an article in the *Sunday Times* concerning the alleged theft of diamonds from Argyle. Saxon said that Noye had been seen meeting in a restaurant with a person who was a suspect in the investigation. Zanetti did not again raise the matter with Noye, as they had recently discussed it, and it seemed to Zanetti to be a reference to the same incident described by Corfield.

In October 1993, a series of articles on the matter appeared in the *Sunday Times* and, as a consequence, Zanetti and Saxon discussed the matter again. On this occasion, Saxon said that he had reminded Zanetti of their earlier conversation, and that Zanetti had told him that Noye had merely been trying to win the confidence of Roddan. Saxon asked whether Zanetti had been happy with Noye's explanation, and said that his reply had been that though he was a little worried because it was early on, the explanation had satisfied him. Saxon said that he then asked whether Zanetti had raised with Noye the allegation that Roddan had paid for lunch. Zanetti responded that he could not remember. Zanetti's evidence was that he did not think there was any mention of a lunch, nor did he recollect any payment being mentioned.

Noye said that he produced notes of the conversations that he had with Roddan, and these were produced at Royal Commission hearings. The notes do not purport to be an account of exactly what was said. Indeed, they appear to have been far from comprehensive and are impossible to interpret without the assistance of the person who made them. The notes are far less in terms of quality and thoroughness than would be expected of a prudent and honest police officer who was meeting with the principal suspect. The fact, circumstances and number of these meetings had the potential to be seen as compromising the investigation. This must have been something readily apparent to Noye. Accordingly, if the meetings were entirely innocent, as Noye suggested, it is difficult to understand why he left himself so exposed by failing to keep adequate notes.

Notwithstanding the warning from Zanetti to be cautious, Noye went on meeting with Roddan in the same circumstances as before. He said that he obtained little of value from these meetings and developed the view that Roddan was unreliable. To the extent that Noye said that he was endeavouring to win Roddan's confidence, this does not appear to have been achieved, even on Noye's own view of the meetings. In the circumstances, there appears to have been no clearly legitimate explanation of why Noye continued to meet with Roddan.

A suggestion was advanced at Royal Commission hearings that nothing sinister could be drawn from the fact of the meetings, because Thoy had once met Roddan in similar

circumstances. The comparison might be justified had Noye only met Roddan on a single occasion. It is the continuation of the meetings, despite warnings to use care, and what is said to have transpired at some of them, that gives cause to question Noye's conduct.

THE PASSING OF INFORMATION TO RODDAN

At a subsequent meeting, Noye provided Roddan with photocopies of the scientific tests that had been carried out initially by Argyle, and later at the request of the police. Noye said that these copies were provided "by arrangement" and that he raised the issue with Ayton, who directed him to give Roddan "whatever he wants". Ayton denied ever having given any such order or instruction. Noye suggested that Roddan was entitled to look at the documents as part of the civil interpleader discovery process. The documents in question related to tests carried out for the purposes of the police investigation and it is difficult to understand why they were provided to Roddan, particularly when they had the capacity to alert Roddan to the nature of the evidence against him, which he might then seek to counter. To rely upon the fact that they were also relevant to the interpleader proceedings seems disingenuous. If there were discovery obligations at this time, then they only concerned the contesting parties - Argyle and Roddan - and not the active police investigation file. Furthermore, in the 1993 IAU interview, Noye denied categorically ever having given Roddan any documents.

Mrs Crimmins gave evidence that she was present on an occasion when Noye provided Roddan with a large bundle of documents, and said that now Roddan had "everything", except Devenish's statement, and that would cost more. This meeting was said to have taken place in a café. Noye and Roddan both denied that such a bundle of documents was handed over.

There was also an allegation that an AFP information report had been located at Roddan's home, and that this report had been received by Noye. The document was located during the execution of a search warrant by Gwilliam in 1993 and was shown at the time to another officer, Detective Constable Paul Schubert. Clearly, this was a document that should never have found its way into the possession of Roddan. At the preliminary hearing, Gwilliam gave evidence regarding the receipt of documents such as these at meetings with the Australian Federal Police ("AFP"). Whilst the evidence that he gave in this regard was ambiguous, Gwilliam accepted that his belief was that the report had been handed over to Noye in his presence at a meeting in April 1992. It is evident from the document that this cannot be correct, as it was not created until June of that year. It was with respect to this matter that Gwilliam was ultimately charged with perjury. Gwilliam accepted, as he had to, that his belief that the document was handed to Noye in April had been wrong. He sought

to explain his belief by suggesting that there must have been another document, of a similar type, that was handed over at the April meeting. An examination of the AFP files has failed to identify any document that meets the description given by Gwilliam. However, the AFP does not entirely discount the possibility of there having been such a document.

The evidence regarding the AFP information report is important for two reasons. First, whether deliberately or inadvertently, Gwilliam gave evidence in relation to it that was incorrect and apt to mislead. This must properly be taken into account when considering his credibility, at least in regard to this issue. Secondly, the finding of the document at Roddan's home does not rely upon Gwilliam's evidence alone, and its significance should not be entirely obscured by the incorrect evidence as to the AFP meeting. Granted that Schubert was not present at the moment the document was found by Gwilliam, he was the property officer, and it was shown to him at the premises and during the execution of the search. The only possible innocent explanation, and one advanced by Roddan, is that Gwilliam "planted" the document, but that is an explanation entirely unsupported by any evidence. Furthermore, as Gwilliam pointed out, the significance of the information contained in the information report was not appreciated at the time it was found. Accordingly, it is not a document that would have been an obvious candidate for a "plant".

Noye does concede to having seen a document of this type before, but he said that the copy he saw differed, in that it had a sticker placed on it. That evidence appears to take the matter no further. If it is accepted that a document of this type was found in Roddan's possession, then the question remains how he had obtained it. Noye had the opportunity to obtain and deliver the document, but, standing alone, the evidence is inconclusive. It should, however, be taken into account in considering all of the relevant circumstances.

Whatever may be said about the AFP information report, and the bundle of documents described by Mrs Crimmins, Noye can provide no credible explanation for his willingness to hand over the documents that related to the scientific testing. His claims that he handed the documents over as part of a legitimate discovery process are not supported by Ayton. Noye's explanation makes no sense. Even if he was honestly confused as to whether he had an obligation to reveal this material to Roddan, it cannot be accepted that he failed to appreciate the adverse effect this could have upon the investigation he was conducting. His apparent willingness to render Roddan assistance in this regard lends support to the conclusion that Noye may have passed the other information on to Roddan.

RODDAN'S KNOWLEDGE OF NOYE'S REPORT

Mrs Crimmins told the Royal Commission that she was present when a manila folder was passed from Noye to Roddan. It was some three centimetres thick and, as it was handed over, Noye told Roddan that "everything was there", except for Charles Devenish's statement. Mrs Crimmins observed that it contained loose papers. Later on the same day, after Mrs Crimmins had witnessed the handing over of the manila folder, she saw two thick blue folders in Roddan's car. Roddan told her "that was the complete inquiry". She could not see what was in the folders and did not know whether in fact they contained inquiry materials.

Karpin told the Royal Commission that, on 24 September 1992, he had a telephone call from Roddan, who told him that the chief investigator on the case, who at that time was Noye, was in his office. This surprised and concerned Karpin. Corfield, who was also present in Karpin's office, told the Royal Commission that he made notes of the conversation. These notes record Roddan as saying to Karpin "Noye's done this 400 page report. It leaves me smelling like a rose and says your people have told the police a pack of lies".

Corfield telephoned Ayton to express his concern at the call, indicating that Roddan appeared to have a copy of Noye's report. Ayton advised that he had not yet seen it. Corfield then faxed to Ayton the notes made in respect of the telephone conversation between Roddan and Karpin.

Roddan denied the conversation and told the Royal Commission that he was not aware of Noye's final report until the preliminary hearing, or perhaps in one of the hearings prior to that. He said he "had no idea of police procedures or what Mr Noye was or wasn't doing". That explanation is also clearly wrong.

If Roddan did say to Karpin what has been reported, then it accords with the evidence of Mrs Crimmins. The characterization of the report by Roddan could be viewed as accurate and accordingly supports the conclusion that he had seen, or at least was told about the report.

It is also important to take into account in this context the evidence regarding Newton being warned by Roddan of impending visits by Noye, and of Roddan's apparent knowledge of the final report, both of which are referred to above in more detail. This evidence supports an inference that Noye was providing Roddan with information at their meetings.

CONDUCT OF THE NOYE INVESTIGATION

At an early stage, Noye met with Thoy to discuss the evidence. Thoy can recall two such conversations, one in which Noye expressed a negative view about the prospects of a conspiracy case, and one in which there was a comment as to the returning of diamonds to Roddan. In respect of this latter conversation, Thoy claimed that Noye said words to the following effect:

> He mentioned that Roddan had paid $25,000 to get his diamonds back and I sort of said, "Well what do you mean?" And he said "Yeah well, that's what he said" and I just said "Well, did you tell anybody" and he said "No. You know what sort of liar Roddan is and there's nothing in it.

Whilst Noye accepted that he had expressed reservations about a conspiracy charge, he denied that he had said anything to Thoy in regard to a payment by Roddan for the return of diamonds. Interestingly, however, the alleged conversation does accord closely with that which Noye himself recounted in his 1993 IAU interview.

When asked about his view as to whether Roddan had ever lied to him, Noye initially said that he did not believe that Roddan had ever deliberately tried to deceive him. However, in the 1993 IAU interview he said that Roddan was a liar who told the truth when it suited him. Noye sought to explain this by saying that that was a view that he had held at one time. He also conceded that Roddan had said to him that he had told a different lie to a number of people on the same subject because this, he said, would enable him to know who had been talking when that lie had come back to him. This caused Noye to doubt the truth of the information given to him by the witnesses as it fitted in with what Roddan had said he had told those witnesses and that it was untrue. It did not occur to Noye that this might represent a double bluff technique. Noye was not alive, he said, to the possibility that Roddan was seeking to discredit potential witnesses before Noye had spoken to them.

Notwithstanding what Noye had said on previous occasions about Roddan, he continued to rely on him. Though he denied such reliance on Roddan, Noye conceded that many of the statements made in his final report were based upon what he had been told by Roddan. Surprisingly, he was prepared to rely upon what Roddan told him, even though Roddan refused to provide him with a statement.

By June of 1992, Noye had come to the view that there was insufficient evidence against Roddan, or indeed against anyone, and he had then proceeded to write his final report. He reached this conclusion despite the fact that investigations in some respects had been perfunctory or had simply been dismissed or passed to others without result. In particular,

no statement had been obtained from Shore, Crimmins had not been interviewed, and no attempt had been made to speak to the Swiss diamond merchant whom Roddan claimed had supplied the diamonds to him. Gardner had been dismissed from consideration and Devenish was simply disbelieved. The conduct of this investigation by Noye appears, at the very least, to have been highly unorthodox.

EVIDENCE OF MRS CRIMMINS REGARDING MEETINGS

Mrs Crimmins described being present on a number of occasions when Roddan and Noye met. On one of these occasions she recalled that there was a discussion as to creating a pretext for Gwilliam to visit her so that she could sight him as, it was said, he was not a person whom she should trust. She said that, on other occasions, there was specific reference to Noye having an expectation of receiving $200,000 for writing off the investigation. Noye, she said, was present on these occasions and there was also mention of his receiving a "couple of good stones". She said that Noye referred to retiring early and living a life of luxury. Noye and Roddan denied that anything of the sort was said.

Mrs Crimmins also said that the statement taken from her by Noye was described as being required to "fill the hole in the file". Noye told her that it was necessary to provide some explanation for the past association between her husband and Roddan, and in particular why, as Shore had said, there had been more recent meetings between them. The statement, according to Mrs Crimmins was almost entirely the work of Noye. He later provided several copies of the statement to her, including one that was said to be for Roddan.

This, of course, is direct evidence against Noye and needs to receive careful consideration. The weight to be accorded to this evidence is dependent upon the credibility of Mrs Crimmins, and this will be considered in the next section. There is no evidence that Noye ever received any money from Roddan. Of course, to be fair to Mrs Crimmins, she did not say that Noye received money, but rather that it was an expectation. Her own experience of dealing with Roddan, she said, was of a series of broken promises with regard to the payment of money. Even if Mrs Crimmins were to be accepted as a credible witness, there remained a conflict with the evidence of Roddan and Noye. Ultimately, whether her evidence in this regard can be believed or not, depends upon a consideration of all of the other circumstances in regard to the relationship between Roddan and Noye.

THE ALLEGED INSURANCE FRAUD

Mrs Crimmins said that, in August 1992, she returned home to find her house had been broken into and a camera and photographs had been taken. She said that the photographs were of Roddan in her home and of a diamond ring that he had given her. She spoke to Roddan, and he arranged for Noye to attend. She said that Noye assisted her in making an insurance claim, and suggested that she claim many other items in addition to those which had in fact been stolen. She said that she agreed to give Noye $1,000 from the proceeds and Noye said he would use the money to visit her ex-husband, who was then residing in Victoria. This allegation was denied by Noye, and it is essentially a case of one person's evidence against the other. However, it should be noted that Mrs Crimmins had nothing to gain by making this specific allegation and, indeed, she had much to lose. She was charged and convicted of the fraud, and had to repurchase her falsely claimed stolen jewellery from the insurance company.

Clearly, Mrs Crimmins is a witness who should be approached with a degree of caution. She was a party to the conspiracy to steal diamonds, and she has been convicted for her role in that regard. On her own account, she had good reason to feel animosity towards Roddan. Having confessed to her own criminality, she decided to co-operate with the authorities and, whilst not escaping a conviction, she did receive a substantially reduced sentence. There is a real risk that a person in such a position may seek to strengthen their position by exaggerating, or even manufacturing, evidence that they anticipated would be seen as having value to the authorities.

On the other hand, Mrs Crimmins has given evidence several times, including an appearance before the Royal Commission. Despite extensive, if not laboured, cross-examination, she has maintained remarkable consistency. Whilst her manner may be described as being flamboyant on occasions, she has not been exposed as a fantast. If her evidence had been manufactured with a view to falsely implicating others, it is surprising that there is not far more of it that is of a direct nature. Apart from the fact that she associates Noye with Roddan, there is no obvious rancour on her part in respect of Noye. If her evidence stood entirely alone, it might be more difficult to accept it as truthful. However, in important respects, it accords with the evidence of others, such as her husband, a "former police officer" previously referred to, Thoy, Corfield, Burton and Gwilliam and with Noye's own conduct.

WHAT RODDAN SAID TO A FORMER WAPS OFFICER ABOUT NOYE

A former WAPS officer, previously referred to, said he attended at Roddan's home on occasions. He said that he had a few conversations with Roddan. In those conversations, the name "Jeff Noye" was mentioned from time to time, in the context of Noye working with Roddan. The former officer believed that this was not in the context of police work, and he based this on a conversation he had with Roddan. But he could not recall it word for word. He said the conversation was "… along the lines, basically, that Jeffrey Noye was working for him to do his bidding, which was mainly to do with unlawful acts and information from the police". The former officer could not be certain as to what the exact conversations were about, but said that, from his conversations with Roddan, and the time he spent at Roddan's home, he was under the impression that Noye was his man in the police force.

The former officer confirmed in evidence a previous conversation he had with Roddan, when Roddan said something to the effect that, "Noye was being looked after pretty well in relation to the diamonds".

The point might well be made that, assuming these statements were made by Roddan, they are of the same character as those relating to other police officers, and, thus, not necessarily true. The important distinction is that, in the case of Noye, there is other significant evidence to suggest that his conduct was corrupt in relation to Roddan. Accordingly, whilst this evidence may not have great weight standing alone, it is consistent with, for example, the evidence of Mrs Crimmins.

NOYE'S ALLEGED NEGATIVE ATTITUDE TOWARDS WITNESSES

Noye interviewed Gardner at a bar in company with Gwilliam. Burton was also present at the time and it was his impression that Noye was aggressive in his manner. Burton was, however, some distance away for most of the discussions between Gardner and Noye and said he relied upon observations of the tone, manner and gestures used. Given that Burton was not a party to the conversation, it is difficult to ascribe much weight to this evidence. Noye himself said that he was persistent with Gardner in seeking to have him commit himself to co-operate with the police, and that there may have been a "stressful moment". Clearly, however, Noye had formed a negative view of Gardner and later took down a complaint by Roddan against Gardner. Gardner feared that Roddan was able to manipulate police against him, and this made him reluctant to speak with Noye. Surprisingly, this explanation appears never to have occurred to Noye, his conclusion being that Gardner could not be relied upon because he appeared reluctant to talk to him.

Noye formed a similarly negative attitude towards Shore, though he had met her only once. He accepted that, on the basis of a brief affidavit taken from her for the interpleader proceedings, there were obvious lines of questioning that needed to be pursued. He sought to explain that no statement was taken from her because he had left this to Gwilliam. Nevertheless, he was willing, in the final report, to condemn Shore as an unreliable witness, a "woman scorned", who "coloured her evidence", notwithstanding that he had not made any real effort to determine what she could say or whether it was capable of corroboration.

Noye did not interview Charles Devenish, largely, it seems because Devenish would agree only to talk to Gwilliam. As to Crimmins, Noye said that though he made some preliminary contact, he did not interview him first, because Crimmins was in Victoria and secondly, because he saw little point in doing so.

Corfield said that his own impression was that Noye had a negative attitude to the investigation and that this was reflected in comments made to him by others. Corfield said that Noye had to have the process of cleaning the diamonds explained to him repeatedly and he felt this also showed some negativity on Noye's part. This attitude towards the evidence appears to contrast markedly with a conversation in which, Corfield says, Noye said of Roddan, "He's in it up to fucking here", indicating his eyebrows, "but we can't prove it". Alternatively, such a comment might indicate that Noye's "negativity" was not because he held a view that Roddan should not be charged, for whatever reason, but that the evidence simply was not sufficient.

Whether or not Noye exhibited an inappropriately negative attitude to the witnesses, rather than merely adopting a healthy scepticism, will be considered in the next section. It is not always easy to tell the difference between the two stances. In order to conclude that Noye's attitude was inappropriate, it would be necessary to be satisfied that his views regarding witnesses could not have been honestly held by a person in his position.

NOYE'S DISCIPLINARY PROCEEDINGS

In April 1992, disciplinary proceedings were commenced against Noye in relation to the release of confidential information from the police computer. The AFP had been handed some 282 print-outs of computer information. Noye later conceded that he had been obtaining information from the computer at the request of a female acquaintance, who was conducting a business involving the re-uniting of adopted children with their birth parents. On one occasion, he had used the log-on code of another officer without that officer's knowledge.

A decision was made to roll the identified unauthorized releases of information into a single disciplinary charge that came before Commissioner Brian Bull on 4 August 1992. Dalton was present at the time, apparently on the basis that he was the commanding officer of the area in which Noye was then working. Dalton has no recollection of the proceedings or of participating in them in any way. Noye pleaded guilty and was fined the sum of $200. That represented the maximum monetary penalty available for the single charge that was preferred.

The apparent leniency of this disposition has raised a question as to whether Noye was being corruptly protected at this time because he was acting at the behest of others on the investigation into Argyle. However, it should be observed that the lenient treatment of Noye was consistent with the then prevailing attitude in relation to such behaviour by police officers. Commissioner Bull, in his evidence, said that he took the view that a fine was appropriate, because there was no suggestion that Noye had obtained any financial benefit for himself. Although Commissioner Bull accepts that he would perhaps have preferred a higher penalty in the circumstances, there seems to be nothing to suggest that the penalty imposed was influenced by any desire to protect Noye.

The other relevant feature of this incident is that it brought clearly to Noye's attention that this behaviour was improper. No special precautions were taken in respect of him, and he was not the subject of any increased supervision. Notwithstanding this disciplinary matter, he later behaved in a similar fashion by releasing information from the police computer to Roddan regarding the owner of a firearm to which further reference will be made.

FINAL REPORT

As noted earlier, Noye's final report is in marked contrast to his preliminary report. However, it has also been asserted that the final report is seriously inaccurate and misrepresents the available evidence in a way that would not appear to be consistent with an honest misunderstanding of the position.

In relation to the analysis of the relevant diamonds in order to determine their provenance, Noye refers in his final report to two scientific reports. The first report was in Noye's possession from the outset of his investigation and was dated 18 December 1989. A later report was dated 5 July 1992, and was requested by Noye himself. Noye's remark that the "analysis is basically the same", is in contrast with the inconsistency between the two reports and that the author "contradicted to some extent his own findings" in the earlier report. By stating that the reports were the same, Noye effectively concealed the fact that the earlier report, based in part on the better evidence of diamonds that were subsequently

lost, had been firmer in its view of the identification of the diamonds as being from Argyle. The significance of the earlier test results could not have been overlooked by Noye. Whilst it is true that those earlier tests could not be reproduced, because the samples were no longer available, they were strongly indicative that diamonds found at Newton's premises were of Argyle origin. In answer to a question from Counsel Assisting as to why he did not note the difference in the test results in his report, rather than falsely saying they were the same, Noye said, "it's my opinion and that's how I read it".

Later in the report, Noye assessed the "potential" of Shore as a witness. He accepted that he had Shore's interpleader affidavit at the time, and other information had been provided by Gwilliam. Noye asserted that the sum total of what he believed Shore could offer by way of evidence was that Roddan had been in possession of hydrofluoric acid. He said that during their interview at Whitford's Shopping Centre, she had denied being able to give evidence that Roddan had been boiling diamonds in acid. She had not told him she had seen Roddan in possession of diamonds with red dirt in the cracks. Noye said that, if they had been aware of additional information of value, then a statement would have been taken. Noye said that he "left in [Gwilliam's] hands", any issues to be followed up from Shore's affidavit. It was his view that, "if Ms Shore wanted to say more in assistance of the … case then she would have done so".

Although Noye claimed that he did not believe Roddan, he has quoted him in the final report in a context where it forms a response to a position proposed by another witness. Roddan is also quoted as a source of information, and his version has been preferred over other witnesses, such as when Noye "quizzed Mr Roddan … very strongly and Mr Roddan denied … very strongly", that he was in a sexual relationship with Mrs Crimmins. He also relied upon information from Roddan to suggest that Shore was a witness who could not be believed. The impression given by the report is that every piece of evidence from which any inference adverse to Roddan could be drawn has been put to Roddan informally. Roddan is described as having been "interrogated" on some points, though there is no record of an interrogation as such. Of course, if Roddan had been informed of the evidence as the investigation proceeded, he would have received a significant advantage that would have enabled him to counter evidence and construct defences. As an investigative approach to the principal suspect, this approach lacks common sense. It is difficult to believe that Noye, a detective senior sergeant of many years experience, could have been so thoroughly naïve.

Noye did not accurately refer to Gardner's statement in the body of his report. That statement records Roddan asking whether Gardner "knew anyone on the inside at Argyle who could get 'rough' for him, 'under the counter'", which is relevant to the allegation that there was some connection between Crimmins and Roddan. He did not refer to this in his

report, because he "didn't give Gardner any credit at the end of the day". Noye has similarly excluded from his report the statement by Gardner that he saw Roddan with a burn on his face, which he explained as an injury sustained while cleaning diamonds with hydrochloric acid. He said, "Roddan had a burn caused by hydrofluoric acid on his face". Roddan denied this. Gardner had stated that Roddan lent him some hydrofluoric acid at a later time, when he wanted to clean some gold nuggets. The fact that Noye even misrepresents the type of acid referred to by Gardner is indicative of the accuracy of this summary. Noye sought to justify his negative view of Gardner's evidence on the basis that his statement was unsigned. However, the report presents itself as being a fair summary of that statement, signed or not, which it patently is not.

In the final report summary of Charles Devenish's allegations, Noye has not included a large amount of relevant information that is contained in Devenish's statement. Amongst the evidence not referred to were accounts by Devenish of conversations in which Roddan had spoken about getting around the Argyle mine security and of later showing diamonds that Roddan represented had been stolen from the mine by "a mate". Noye makes the comment that "there is a lot of detail and information, but very little in Devenish's statement that can be construed as evidence". His explanation for his failure to refer to the highly cogent conversations between Devenish and Roddan is that he may have overlooked the significance of this evidence, because he was overworked.

At page 132 of his final report, Noye claimed:

> I can categorically state that I am confident that at no future time, will any evidence be disclosed that will provably show that the diamonds claimed by Jucara Pty Ltd [Roddan's company] were illicitly removed from the control of the complainant or that there is any valid evidence of the existence of an organised consortium of mine staff and others engaged in the theft of diamonds.

It is readily apparent that Noye's report falls far short of being a fair and accurate summary of the available evidence. Whilst most of the evidence upon which it was based was annexed to the report and could thus have been checked by a reader, the report's length and complexity made this unlikely. Indeed, it would seem that all of those who read the report relied upon Noye's summaries, as he must have intended that they would. His explanations for the inaccuracies are implausible. He had formed a view of the evidence and the witnesses involved, and that view influenced the way in which he had presented the evidence. Of course, it is to be expected that an investigator would form such views. However, this report was not merely presented as the concluded opinions of Noye, but as an accurate, unbiased summary of the evidence with an accompanying commentary and recommendations. In that regard it was misleading. The question that remains is, was it deliberately so? Whether or not Noye set out deliberately to achieve the objective of

exculpating Roddan, that was the result. It is hard to imagine that he could be as naïve or foolish as his explanations would suggest. The remaining explanation is that he was, in fact, seeking improperly to achieve the objective described.

THE VISIT TO BARRY CRIMMINS IN VICTORIA

Following the completion of his final report, Noye travelled to Victoria and there met Crimmins. This was not something that he advised anyone in WAPS that he intended doing. Furthermore, it was not something to which he adverted in his final report, notwithstanding that he said in evidence that it was something that he "truly felt … should be done". Nor did he tell anyone after the event that he had met with Crimmins. Noye had no plausible explanation for this conduct, and it leaves him exposed to a more serious interpretation. Such an interpretation is supported by the evidence of Crimmins and Mrs Crimmins.

Crimmins said that he was advised by Noye of his impending visit and he (Crimmins) became concerned. He rang his ex-wife to "find out if she knew what was going on … I wanted to get in touch with her … for her to get in touch with Roddan to ring me, because I believed Roddan would have known what was going on". Roddan returned his call and Crimmins said that he was not:

> … able to recall the exact conversation, but one of the phrases he used quite often was that he had someone tucked up in his back pocket and he said "Not to worry about it. He just wants to come over and make sure". He said he was just going to keep his mouth shut.

Crimmins recalled that Roddan had said that the person in his back pocket was Noye and that the investigation was basically finished. At the preliminary hearing, Crimmins also said that Roddan had told him he was paying for Noye to come over. He cannot recall that now. Roddan denied that he telephoned Crimmins in Victoria, in relation to an impending visit from Noye.

Mrs Crimmins gave evidence that she had benefited from the insurance claim, and consequently received cash and a cheque from a jeweller. She met with Noye and gave him $1,000 to enable him to fly to Melbourne to visit Crimmins. She told the Commission that she "slipped it into his … top pocket". Noye told Mrs Crimmins that the money was for his airfare and that "[h]e was going over to see Barry to just reinforce the fact that the inquiry had been … completed and written off".

A matter of weeks, later Noye travelled to Victoria, though not, it seems, by air, and met with Crimmins at a hotel in Shepparton. Despite Roddan's previous assurances, Crimmins

said he was uneasy about meeting with Noye, and was not prepared to meet him in a one-on-one situation. Crimmins therefore met Noye in the presence of a number of friends. His evidence was that "[he] was never interviewed as such in relation to [Argyle]" and Noye made him feel "at ease in as much as his information was that there was nothing he could hang his hat on to proceed with charges against anyone in relation to the inquiry". Crimmins thought that Noye's investigation style was unusual, in that Noye did not ask any specific question about Argyle, or his role there, and he did not seek any information. According to Crimmins, Noye said that Roddan had told him he had to buy dinner for Crimmins. Crimmins is not certain whether Noye did pay, but said that "it was all very sociable".

Later that night, Noye returned with Crimmins back to his home. Crimmins had suggested that Noye could stay the night, and he had accepted. Crimmins viewed this in a positive light because if he had been going to heavily investigate Crimmins as such he would not presume he would have put himself in that position. That evening, after the other flatmates had gone to bed, Noye and Crimmins had a cup of coffee. Crimmins cannot now recall the exact conversation but his evidence was that:

> … [t]here was mention made of there being a lot of money spent in relation to the inquiry. Which way that went I don't know, whether he was talking about the government had spent money or the police force had spent money or money had been passed around. He didn't expand on it; indicated that the matter would be cleared up to everyone's benefit and that I could probably apply to get my job back at Argyle.

An earlier statement of Crimmins records his recollection at the time that Noye said "a lot of money had been spent to make sure no one gets charged over this case". Crimmins explained that this was his view when the statement was made, but cross-examination at the preliminary hearing had caused him to doubt that recollection.

Crimmins did not see Noye the next morning, but as a result of the talk about the job at Argyle he wrote a letter to Mr Bates, who was then the general manager of Argyle, in that regard. There is some confusion about the date marked at the head of this letter, and Crimmins was unable to assist, other than to say, "[i]t was no big deal. It was just a typographical thing". He is certain the letter was written the morning after Noye left.

Mrs Crimmins said that after Noye had returned from Victoria she had some discussion with him and "[h]e said he'd spoken to Barry. Everything was sweet, everything was in order, and he'd actually spoken to Barry to be reinstated with Argyle, to put in an application … to be reinstated because they had absolutely nothing on him". Mrs Crimmins said that she later confirmed this with Crimmins, but he did not recall any such conversation.

Noye said that he accepted Crimmins' invitation to stay at his home to "have a yarn" because they had not had the opportunity to talk privately until then. There was no later discussion about Argyle, however, other than Crimmins' query whether he might get his job back "now that it's over", to which Noye replied "[w]ell, I don't know, but there's no harm in asking". Noye did indicate that his investigation had not revealed any evidence that Crimmins had committed an offence, but not that the conclusion of the investigation had been improperly influenced. Noye told the Royal Commission that he may have said something to the effect that the amount of money that had been spent on "this thing" was an absolute disgrace, and that it had got nobody anywhere.

Even if Noye's explanation for his visit and his account of what occurred were to be accepted, his behaviour seems remarkably imprudent. On his own version, no inquiries seem to have been advanced by making this visit. All that appears to have been achieved was to provide Crimmins with a measure of comfort about the outcome of the investigation. It is difficult to resist the conclusion that Noye was motivated by a desire to be assured that Crimmins was unlikely to speak against Roddan. His conduct is more consistent with his pursuing the interests of Roddan than those of WAPS.

THE GNOWANGERUP FIREARMS

In early 1993, Noye was working at the Morley CIB and received a telephone call from Roddan regarding some stolen firearms that had come into his possession. Noye said that he had the impression that Roddan was claiming to be working undercover for other police officers in purchasing suspected stolen firearms from the streets. Roddan wanted to know if the firearms in his possession were recorded on the police computer as having been stolen. Noye was unable to explain why, if he believed Roddan was working for other police officers, it was necessary for this information to be supplied by him.

In any event, Noye interrogated the police computer and confirmed that the guns had been stolen. Roddan indicated that he was looking to recover the money he had expended in purchasing the firearms. Noye said that he then provided the name of the "true owner" of the firearms, a man living in Gnowangerup. Noye said that his reason for doing this was to determine whether Roddan had any involvement in the original theft of the firearms. He said that he was seeking only to determine whether Roddan knew the owner. However, when interviewed by the IAU about this matter, Noye admitted that he had told Roddan the town in which the owner lived, and his occupation. He also conceded in that interview that he had telephoned the owner and discussed the possibility of Roddan being paid for the return of the firearms.

Noye said that he suspected that he was being set up by the IAU, and that he told Roddan to hand the firearms in to a police station. Noye did not, however, report this approach to anyone in the IAU. He said he did speak to an officer at the Albany CIB when Roddan told him that he was going to travel to Gnowangerup rather than hand in the firearms immediately. When asked in the IAU interview why he did not report the matter to them, he said that he did not dare to, as he feared they would take it the wrong way.

Roddan did in fact travel to Gnowangerup, where he met with the owner of the firearms and, by agreement, returned the stolen firearms and received $700. As it happened, he had reason to travel to Gnowangerup in any case, as his ex-wife was married to one of the police officers in the town and he was taking their son to visit his mother. Two of the police officers gave statements regarding Roddan's visit. In particular, one officer stated that Roddan said that he had received the information as to the identity of the owner of the firearms from Noye. Roddan disputes that this was said. Noye asserted in his evidence that the statements of these two officers were false, and had been obtained from them by use of intimidation by an IAU officer, Robbins. When pressed to substantiate his claim, Noye was only able to point to a date which, he said, was wrong. Both the officer mentioned previously, and the IAU officer, Robbins, were called to give evidence, and denied that there had been any intimidation whatsoever in respect of the statement. It is clear, however, that Noye harboured considerable animosity towards Robbins, who had been responsible for charging him with conspiracy to pervert the course of justice, and this had at least influenced his view of the evidence that Robbins gathered against him.

There is strong evidence that Noye provided information to Roddan from the police computer that enabled Roddan to locate the true owner of the firearms. This occurred at a time when Noye was not involved in any investigation involving Roddan and he had no obvious reason to be speaking to him, particularly in regard to matters that Noye believed were being handled by other officers. It also occurred less than 12 months after Noye was disciplined for the release of confidential information from the police computer. In these circumstances, Noye's actions seem unlikely to be explained as mere imprudence, rather they strongly suggest that Noye and Roddan had formed a close and friendly relationship.

THE CREDIBILITY OF NOYE

Various telephone conversations were played to the Royal Commission of Noye engaged in discussions with another former police officer and the officer's wife. These record Noye advising the couple on how to circumvent police investigations, subvert witnesses, destroy potential evidence, and make numerous strategic counter complaints against police officers

to cause maximum disruption and irritation. Noye was then a serving police officer, and the couple were the parents of a suspected accessory in a major investigation.

The calls revealed Noye saying he had used public telephones and phone cards as a way of avoiding scrutiny. They also record Noye, possibly referring to Roddan and himself, in the context of "we've got it together enough now to do a bit of damage". Noye told the Royal Commission he was "making a joke" when he spoke of interview techniques in the following way: "[y]ou'd flog the truth out of them and you'd go to court on a truthful basis but then once they cut out floggings and verbals, it took all the fun out of it".

Noye told the Royal Commission that he and Roddan now have "common enemies" and speak to each other three or four times a week, and "might meet a couple of times a week". Noye denied that he and Roddan had discussed the details of the Royal Commission evidence. He said that they discussed it "only in so far as what's on the transcript".

The product of an LD, installed to capture Roddan's meetings with Noye, revealed that there was in fact discussion about Royal Commission evidence. There was a discussion designed to assist in the recollection of events. Noye protested to the Royal Commission that there was "nothing sinister" in that. A conversation was played in a public hearing, in which Noye encouraged Roddan to "turn feral" at the Royal Commission. The subject of such distractions was continued with the suggestion to "just drive them slowly bananas down there". Noye dismissed as a joke, a conversation which suggested Noye had made documents disappear from the investigation file and that was why "they" could not find them. Noye accepted that he had some of Ayton's diaries through discovery, and he did want to "do a number on" Ayton because he held him responsible for various actions. In relation to his saying "if I'd opened my gob I could have got half the CIB locked up", Noye explained he was "big noting" himself and that he did not have evidence which could achieve this. Another conversation demonstrated Noye's lack of concern that someone in the Police Service had told Roddan he was being watched by surveillance cameras. Noye called the relevant employee a "good girl".

The covertly recorded telephone and LD conversations exposed Noye as a cynical manipulator. Whilst he came before the Royal Commission as a witness seeking to assert that he had been the victim of scandalous falsehoods regarding his character, his behaviour on the tapes revealed him to be a person more than capable of doing that of which he had been accused. The tapes evidenced a contempt on the part of Noye for the Police Service and, indeed, for the Royal Commission. His attempts to explain away his captured words were unimpressive.

ANALYSIS

It is not possible to reconcile the evidence regarding Noye's conduct of the second Argyle investigation with what would be expected of an honest, experienced and competent detective. What is apparent is that Noye became steadily more friendly with Roddan as the investigation progressed. Certainly, by the time of his final report, Noye showed none of the dispassionate objectivity which is the measure of an honest investigator. At the very least, Noye formed an inappropriate relationship with Roddan that compromised the investigation. That relationship continued and, evidently, persists to this day. On one view Noye's bias towards Roddan caused him to act imprudently or foolishly, for example, in providing Roddan with the diamond test results. However, given the extent of Noye's conduct it would be overly generous to allow foolishness to be the accepted explanation. Noye was an experienced senior detective and he was warned to be careful in his dealings with Roddan.

14.7 WAS THE THIRD INVESTIGATION LIMITED OR PREMATURELY ORDERED TO COMPLETE?

ORDERS TO LIMIT THE INVESTIGATION

Gwilliam said that the limitations placed on the third Argyle investigation team were that the investigating officers were "ordered to investigate Lindsay Roddan, the Crimmins and the diamonds, and that any other matters that we came across, or other offences disclosed in our investigation, I was to submit a report on and that a decision would be made in the future". Gwilliam admitted that they were allowed some "flexibility" in investigating a particular rape offence, an assault and a fraud matter. However, they were not to investigate any drug offences. Gwilliam recalls that either by the time of the FBIS investigation or the AFP investigation, he had been ordered not to have any more to do with the Argyle investigation.

Detective Senior Constable Mark Holland was assigned to the CIB Argyle investigation team with Gwilliam in late July 1993. He was not aware that the team had a limited focus in their investigations until Christmas 1993. Holland and Sergeant William Mansas interviewed an individual, believed to be a partner of Crimmins. They were approached by Inspector Peter Lavender, as Gwilliam was not at work, and were told that they were only to conduct inquiries directly related to the theft of the diamonds by Roddan, Crimmins and Mrs Crimmins. Holland stated that they were not permitted to pursue any inquiries outside this prescribed charter.

Holland stated that this limitation applied even to avenues of investigation regarding the theft of diamonds from Argyle by possible associates of Crimmins. He said that they were directed by Lavender not to expand the Argyle investigation further than the involvement of Roddan and Crimmins in the stealing of diamonds from the Argyle mine site. The team received information to suggest that a senior employee of Argyle had an involvement with Crimmins at the mine site, however, they were directed not to investigate him at all.

Holland did not know if the additional avenues for inquiry identified during their investigation were referred on to other investigative units in WAPS. He understood that, at the end of the investigation, any outstanding or additional matters would be forwarded to appropriate investigation teams. Holland did not challenge any orders to limit inquiries, as he believed that it was not his place to do so. However, he and Mansas did express their views that they believed that there were relevant avenues of inquiry, which had arisen, but which they were not permitted to pursue.

Resources were initially poor, but they improved slightly when the team moved to premises at Canning Vale provided by Argyle. Although there were still only four officers on the investigation team, the premises offered more space, they were assigned an additional car from Argyle and there were office personnel to answer telephones.

Holland recalled Lavender refusing to authorize overtime for Holland and Mansas after conducting some inquiries in Mandurah and Busselton. Lavender asserted that they had not had the overtime authorized before they travelled. The officers were told that they should have stayed overnight. When asked whether the refusal of overtime could have been based on safety considerations, Holland said that, as there were two drivers, he did not believe that safety was an issue. Following this, Holland and Mansas were restricted to conducting inquiries in the metropolitan area.

Holland did not believe that certain types of inquiry avenues should have been limited, given that the investigation was being funded by Argyle. He did not believe that his perceptions had been influenced by his knowledge of the issues experienced by the previous investigations.

Mansas was assigned to the 1993 Argyle investigation team, under the direction of Gwilliam. Mansas was initially appointed for a period of two to three weeks to assist with document collation. However, he remained on the Argyle investigation team until approximately the end of 1994. Mansas was instructed that the parameters of their operational inquiries were to investigate the theft of the diamonds from the Argyle mine site. Any inquiries that arose during the course of their investigation that fell outside the

parameters, including alleged corruption issues, were to be referred to the appropriate unit or discarded.

Mansas believed that the investigation was limited, due to the insufficient resources to adequately conduct it. The officers on the Argyle investigation team had requested that they have access to the WAPS mainframe in order to assist them with their inquiries, as well as to keep abreast of daily WAPS investigations. While Argyle had supplied the computers used by the investigators, WAPS could not furnish them with access to the mainframe, as there was a shortfall in monetary resources of $900. Mansas said that the investigators offered to put the money in themselves to get connected up to the mainframe. However, their supervisor, Lavender, dismissed this proposal.

Mansas also stated that they relied too much on civilian staff employed by Argyle, as WAPS officers assigned to the investigation were limited. The investigators had to rely heavily on the civilians provided by Argyle to assist with inquiries and the collection of information. This involved granting access by the civilian employees assisting the investigators to extremely sensitive operational material, including issues involving internal investigation matters.

Mansas stated that Lavender restricted access to overtime, travel and surveillance that were deemed necessary by the investigators to complete their inquiries. The pressure was on the investigators, however, to maintain the focus on their part of the Argyle investigation. Mansas conceded that the limiting and denial of resources may have been justified on a time management basis, in order to complete the investigation in the allocated timeframe.

Lavender was first assigned as the OIC of the Argyle investigation in 1993, to investigate the theft of diamonds from the Argyle mine site. The investigation team, however, was to be strictly limited to investigating the stealing of diamonds from Argyle. Following a briefing from Gwilliam on the previous Argyle investigations, it became apparent to Lavender that the resources allocated to the current investigation were inadequate. As a result, Lavender requested that extra assistance be sought from Argyle, as he could not envisage that this would in any way compromise the investigation. Lavender prepared a memorandum highlighting the lack of basic resources and accommodation.

Although Lavender was the OIC of the task force, he was not involved in the day to day investigations. He received regular briefings from Gwilliam on the progress of the investigation. During these briefings, Gwilliam would advise Lavender on other allegations that had arisen during the course of their investigations. However, Lavender instructed him not to investigate any allegations beyond their charter. Corruption allegations were to be

referred to Robbins in the IAU and other specific criminal allegations were to be referred to the respective specialist squads. Lavender said that Gwilliam disagreed with him on several occasions regarding the referral of these additional allegations to other investigation teams, as Gwilliam believed that the Argyle investigation task force should pursue them.

Lavender maintained that he did not make any attempt to limit resources or manpower for the Argyle investigation task force. He does not recall refusing overtime for the officers. He vaguely recalled a request for a computer, but, at that time, computers were not readily available. He recalled that a request was made for additional staff to process documents and he believed that this request was fulfilled. If resources were limited, it would have been due to budgetary constraints.

Lavender made the final decision to terminate the investigation when charges were laid, as the task that they had undertaken had been completed. Gwilliam disagreed with Lavender, and produced a file of incident reports containing evidence he believed would support the continuation of the investigation. Lavender perused these documents and decided the contents of the files were not sufficient to have them continue their inquiries. Lavender referred these matters to the IAU for further attention. However, he is not aware of what further action was taken.

Lavender said that he had to advise Gwilliam on many occasions to confine his investigations to the stealing of diamonds from the Argyle mine site, as Gwilliam had a tendency to "stray from the path" of the investigative parameters of the task force. Lavender denied ever attempting to limit or hinder investigations into corrupt or criminal behaviour.

Robbins, who was in charge of the IAU investigation, stated in evidence that he did not have any orders to limit or curtail his investigations. He said that he had total freedom to investigate wherever he chose. Robbins stated that he would pursue allegations against the senior members of the Police Service, if required.

Robbins said that, while they were receiving a number of complaints from sources external to the investigation about Roddan's connection with senior officers, it was the same information being repeated by Roddan to a number of different people. There was no exclusively independent evidence supporting the claims that Roddan was linked to senior officers.

Some of the allegations which the task force was not permitted to investigate related to suspected involvement in drug dealing. Although the Royal Commission led evidence at the

conclusion of this segment of hearings showing that Roddan is a drug dealer and that there is WAPS intelligence dating back a number of years to this effect, there is no evidence to show that in 1993 the direction not to investigate drug offences was corruptly given in order to protect Roddan.

No witness seriously maintained that the decisions made to limit the focus of the third Argyle investigation were corrupt. There can be no realistic dispute that the decisions of those such as Lavender were readily justifiable as management decisions, designed to achieve a specific objective within a reasonable time frame. Whilst there might be real concern that adherence to this objective left some lines of inquiry unaddressed, this was not due to any corrupt or improper intentions on the part of senior officers. Those officers, perhaps understandably in the light of the fate of previous investigations, appear to have been anxious to ensure that the third investigation remained contained and tightly managed.

FBIS – HOW AND WHY REPORT WAS COMMISSIONED

FBIS is a private investigation firm that initially approached Argyle, offering their investigative services. The firm had observed the prominent media attention regarding the investigative difficulties experienced by WAPS, with particular regard to the appearance of Thoy on the *Four Corners* programme alleging corruption of senior members during the first Argyle investigation.

Mr Kel Glare of FBIS liaised with Burton and Mr Gordon Gilchrist, chief executive officer at Argyle Diamonds, regarding the commissioning of FBIS to review the police investigations. Falconer, the Commissioner of Police at the time of the FBIS investigation, did not have any involvement in retaining the services of FBIS on behalf of Argyle. Glare had a previous professional association with Falconer, when Glare was the Chief Commissioner of Police in Victoria and Falconer was an Assistant Commissioner in the Victoria Police Service. Glare approached Falconer requesting access to all police operational material relevant to the previous Argyle investigations in order to undertake a comprehensive review. Glare advised Falconer that it would be in the interests of WAPS and of Argyle if police material relevant to the Argyle investigation were to be released for review. This action was undertaken with the initial approval from Gilchrist, as Argyle would be funding the FBIS investigation. Glare stated that " … it was obviously in the interests of the West Australian Police to find out as much as they could as to why that investigation had been abortive". Falconer had sought advice from "the Anti-Corruption Commission, the Ombudsman, the DPP, the Minister for Police, and a senior adviser at the Premier's office". Falconer proposed to give FBIS full access to police material relating to the Argyle investigations unless someone objected

strenuously. No one did. Falconer saw the Argyle investigations as a "millstone" for WAPS and it was necessary to provide FBIS with access to all material in order to ensure that the investigation was comprehensive. Falconer saw the benefit for WAPS in FBIS conducting a review of the Argyle investigations in order to:

> Find out whether the matter had to be reinvestigated. Find out whether there was any corruption. Find out whether it was scurrilous accusations or unfounded, and hopefully, make sure that people had a high regard for the capabilities and the integrity of the whole organisation which was part of the change process we were trying to tackle.

It was agreed that FBIS would provide two separate final reports, one for Argyle and the second for WAPS. Each would contain a review of confidential material relevant only to either WAPS or Argyle. FBIS was granted access to all relevant WAPS files, including the IAU files. However, WAPS did not have any influence over the direction of the FBIS review. In particular, Falconer did not indicate to FBIS that Ayton, by that time a Deputy Commissioner, should be a particular focus of their investigation.

FBIS ultimately produced a general report that went to both Argyle and WAPS, as well as separate confidential reports relevant to each of the respective organizations. The confidential report that was produced to WAPS related to the professional conduct of Ayton. The report concluded that there were specific actions, either unprofessionally undertaken, or neglected by Ayton. FBIS alleged that Ayton had inadequately reviewed Noye's final report, failed to act on known deficiencies in the Noye report and failed to sufficiently brief the Commissioner of Police on relevant Argyle matters.

The third allegation related to a chronology that was prepared for Falconer, outlining the progress and outcomes of the Argyle investigation. Although Ayton did not prepare this chronology, he had presented it to the Commissioner of Police, and according to FBIS, thereby assumed the responsibility to ensure that it was accurate and complete. However, there were very relevant matters that were not included in the chronology, including the fact that Ayton had an advisory role in relation to Noye, and also that Ayton had advised Argyle in a letter that Noye's investigation had concluded and that there was insufficient evidence to lay charges for the theft of Argyle diamonds. FBIS was of the view that these omissions were misleading. Glare now accepts that Ayton did not personally prepare this chronology, but believed that it was his responsibility to ensure its accuracy. Ayton, however, was not interviewed during the course of the FBIS review. Glare dismissed the assertion that the recommendations made by FBIS regarding deficiencies in the WAPS Argyle investigations, and subsequently the investigation into these allegations by the WAPOLINV task force, were attempts to scapegoat WAPS members who were alleging corruption.

Ayton's response was to reject the criticism and to suggest that it was contrived in order to get rid of him. He said that he had fully briefed Falconer on the Argyle investigations in a briefing paper which Falconer had never read. Ayton said the criticisms regarding the chronology overlooked that its purpose was limited to providing a context for claims made by Thoy on the *Four Corners* programme. It was never intended that it would be a comprehensive summary of the investigations, thus suggestions that there were omissions in the chronology were misconceived. As regards the alleged failure to review Noye's report, Ayton said that he assigned this task to his staff officer, whom he relied upon.

As a result of this dispute, Ayton resigned from his position as Deputy Commissioner. Ultimately it was not possible to resolve the dispute between Ayton and Falconer. In any event, it is not suggested that either Falconer or Ayton was in any way corrupt in respect of his involvement with the Argyle investigations.

The genesis of the FBIS report has been widely misunderstood and misrepresented. Falconer did not instigate the report, and certainly he did not do so in order to punish or silence those making allegations of corruption. He took advantage of the opportunity to obtain the product of a review being undertaken at Argyle's expense by experienced and independent former police officers. He correctly perceived that allegations surrounding past investigations had to be confronted and dealt with. It is only regrettable that this had not been done by others earlier.

The FBIS report was not the result of an investigation, but a review. It made recommendations for further investigation and identified management deficiencies. In order to reach a final conclusion a more widespread and detailed investigation was required.

WAPOLINV – HOW AND WHY INVESTIGATION WAS COMMISSIONED

Following receipt of the FBIS report, Falconer approached the AFP to establish a joint task force to investigate the matters that had been identified by FBIS. AFP input ensured that the investigation would be independent. Agreement was reached and the task force was created. It then proceeded on what was an extensive and thorough investigation. The task force was named the WAPOLINV team.

The team produced a report which contained recommendations regarding alleged unprofessional conduct by a number of officers involved in the three investigations and the IAU investigation. The report also identified management and procedural failures, many of which have been referred to previously.

The WAPOLINV report was tabled in Parliament, however the responses submitted by WAPS members, in relation to any findings made against them were not tabled. Falconer conceded that members were led to believe that their responses would be tabled simultaneously with the WAPOLINV report, however, it was ultimately decided as a consequence of legal advice that this should not occur. This resulted in a sense of grievance on the part of those affected, many of whom felt that the findings against them were misconceived. The recommendations included many against those who had made allegations of corruption, and left them feeling that this was but a continuation of the victimization to which they felt they had already been subjected.

SUBSEQUENT COUNSELLINGS – WERE THEY WELL-FOUNDED AND, IF NO, WERE THEY AN ATTEMPT TO VICTIMIZE WHISTLEBLOWERS?

The WAPOLINV recommendations were used as a basis to formally counsel a number of officers. Whether correctly or not, this was seen by those officers as a punishment. Falconer expressed his interpretation on the issue of counselling and its repercussions, saying:

> [w]hat counselling is about, administrative action to tell people that they did not do this as well as it ought to be done, or as correctly as it should be, what they did wrong and, in order to get it right the next time, this is what you should do. They don't last for life. They can be expunged after five years, and I've got to say I'm staggered at the suggestion by people before this Commission that their personal and professional lives were absolutely left in tatters because they were counselled.

Following the release of the WAPOLINV report, Falconer discussed the most appropriate course of action to manage the recommended counselling issues with the Assistant Commissioner of Professional Standards, Jack Mackaay. The relevant personnel received in advance excerpts of the matters for which they were to be counselled. Each person received notification of his counselling issues in writing and was invited to respond to these issues. All officers submitted a response to their respective counselling issues. Previously, the WAPS counselling procedure simply entailed summoning the particular officer, advising him or her of the issues for which they were being counselled and then having them immediately sign an acknowledgement form recognizing that they had been counselled. Falconer further added that, as a result of the counselling procedures undertaken following the WAPOLINV report, it became standard operating procedure to invite counselled members to respond to the issues.

Falconer added that, if an officer provided a response to counselling issues, then this response would be placed on his or her personnel file for posterity. In some cases unrelated to the WAPOLINV investigation, counselling issues were overturned following a response from a counselled officer.

Falconer described as "totally incorrect" the suggestions by counselled officers that their responses to the counselling issues were futile and not seriously considered. In Mackaay's evidence, he stated that WAPS provided the responses to the AFP and requested to be provided with all documentation either supporting or refuting the content of the officers' responses. All available information was then analysed and further recommendations made.

Falconer denied that he had issued a policy or direction that future consideration to overturn implemented counselling should not be undertaken, as it would have cast doubt on the AFP investigation. Falconer dismissed as "ludicrous" the implication that the FBIS review and the AFP investigation into the Argyle investigations, and subsequent counselling issues that ensued, were a means to silence or discredit WAPS members who were making allegations of corruption.

A number of the recommendations made in the WAPOLINV report that led to the formal counselling of officers were subsequently found to be incorrect. Some officers sought to challenge the findings against them and the Ombudsman recommended that several formal counsellings be rescinded. Other officers felt that dispute was futile, and simply got on with their careers. The officers felt that the process was unfair and that inadequate consideration was given to their responses. Recommendations which affected Gwilliam, Holland, Mansas, Schubert, Robbins and Syme were considered by the Royal Commission, and it was noted that some had been set aside and others were based on an inaccurate perception of then current WAPS practice and procedure. However, the WAPOLINV report also made criticisms of management and procedure that were well founded.

The WAPOLINV investigation was an important and valuable exercise. Whilst some of the conclusions in respect of individuals are doubtful, the important work done in investigating long-standing allegations of corruption should not be underestimated. Falconer's view that the history of the Argyle investigations was a "millstone" and that there was a need for a firm and clear conclusion, was entirely appropriate. Regrettably, for reasons beyond Falconer's control, the WAPOLINV report did not bring the matter to an undisputed end.

WERE THE ALLEGATIONS OF SEXUAL ASSAULT BY MRS CRIMMINS PROPERLY INVESTIGATED?

On 16 July 1993, as a result of Mrs Crimmins' involvement in the Argyle investigations and allegations of corruption, she was placed on witness protection at a safe location. The Witness Protection Unit ("WPU") within WAPS provided for at least one officer to be in attendance 24 hours a day.

Mrs Crimmins alleged that, in the early hours of Tuesday 20 July 1993, whilst under this protection, she was sexually assaulted by an officer from the WPU. Shortly afterwards, she reported the matter to her doctor. On 1 September 1994, Mrs Crimmins and her solicitor attended at the office of Ayton. Mrs Crimmins stated it was on this date that she told Ayton about the actions of the witness protection officer on 20 July 1993.

Ayton said that, in September 1994, Mrs Crimmins came to his office with her lawyer. It was his understanding that she wanted to talk about something unrelated to witness protection. During this conversation, he said she mentioned that one of the WPU officers had, some 13 months previously, "propositioned her". When asked if an investigation into her allegation had commenced, Ayton stated that it was not an allegation of sexual assault. The behaviour of the officer concerned, he said, was unacceptable and he handed the matter to Detective Inspector Robert Hersey, the OIC of the WPU. To Ayton's knowledge Hersey inquired into whether or not it had occurred.

In a report dated 5 January 1995, Hersey acknowledged that, in June 1993, he received a telephone call from Gwilliam, who advised him that Mrs Crimmins had commented to him about an alleged incident relating to other members of the WPU regarding personal relationships. Hersey suggested that Gwilliam was not overly concerned about the comments made.

A few days after receiving this information, and whilst Mrs Crimmins was at the WPU regarding another matter, Hersey spoke with her about the comments Gwilliam had made. Hersey said he discussed the alleged conduct of the witness protection officer with her, and she told Hersey that the witness protection officer had attempted to jump into bed with her and that she saw a part of his body she could describe in detail which could not be sighted unless he was undressed. Hersey stated that he told Mrs Crimmins that he would not tolerate this behaviour from a member of his staff and if she had evidence to support her allegation she should make an official complaint. He offered to assist her with this. Hersey stated that Mrs Crimmins declined the offer and refused to make any further comment or give a statement. Hersey said he did nothing further about the allegation because he had insufficient information to proceed.

In December 1993, Mrs Crimmins met with and told Thoy about the alleged sexual assault. This meeting was unplanned and occurred on an occasion when Mrs Crimmins was taken to the IAU office and saw Thoy, who was then working in an adjacent office of the Inspectorate. On 6 December 1994, Thoy obtained a statement from Mrs Crimmins in which her allegation of sexual assault was detailed. Thoy was challenged by a superior officer in regard to his meeting with Mrs Crimmins and ordered him to have no further contact with

her. Thoy said that he considered it his duty as a police officer to take action on the complaint, particularly since no other police officer had up to then taken a statement from Mrs Crimmins.

On 9 December 1994, Thoy was directed by Ayton to cease inquiries. Mrs Crimmins and Thoy were later seen together, and Thoy was charged under *Regulation 603* of the *Police Regulations 1979*. WAPOLINV recommended that the charge should not be continued and stated "WAPOL reaction to the complaint by Mrs Crimmins was unsatisfactory and unprofessional. It is clear that Mrs Crimmins was not treated as a witness of truth in this regard and that there was a general reluctance to investigate her complaint".

In a letter dated 26 June 1997, the Ombudsman addressed a complaint made as to the handling of the sexual assault complaint by Mrs Crimmins to WAPS. The Ombudsman formed the view that there was insufficient evidence on which he might reach a conclusion that Ayton had not properly responded to the matter. As to Hersey's decision not to act on the matter when first advised in June 1994, the Ombudsman was inclined to the view that this decision did not adversely affect the eventual outcome of the investigation.

If, as Mrs Crimmins asserts, she complained about an assault as early as September 1994, there was an unjustifiable delay in investigating the matter and taking a statement. Even if Ayton and Hersey were of the view that the complaint was more in the nature of inappropriate behaviour than an assault, it would be expected that a prompt and thorough investigation would be initiated. Such behaviour could undermine a protected witness's confidence and might indicate a serious breach of discipline. To leave a complaint unaddressed might be interpreted by the complainant as disbelief or a lack of concern for her welfare. To discipline Thoy for taking a statement was wrong-headed in the circumstances. Again, however, this appears to be a case of bad management rather than evidence of corruption.

14.8 CONCLUSION

The evidence does not establish the existence of a corrupt conspiracy on the part of senior officers to protect Roddan or to frustrate the investigations. No findings against any police officers, other than Noye, can be sustained on the evidence.

In respect of Noye, the evidence suggests that he formed an improper relationship with Roddan and that this resulted in the second Argyle investigation being compromised. To some extent the failure of the second investigation was also a failure of management as Noye was inadequately supervised.

The inappropriate conduct of Noye has served to reinforce perceptions of an existing broader network of corruption in respect of this matter. The truth is that poor communication, inadequate management and dysfunctional personal relations within WAPS have characterized the history of all three Argyle investigations.

The first investigation was marred by the inability of the investigators and their supervisors to agree. The investigators assumed that the disagreements were due to their superiors wishing to terminate the investigations improperly. There was an evident failure to communicate and understand the objectives on each side. Clearly, there developed a concern to assert authority. This concern was manifested in increased briefings, limitations on lines of inquiry and on resources. In respect of some such decisions the desire to assert authority prevailed over the interests of the investigation.

The management and supervision failures in the first investigation were not addressed, rather an attempt was made to sweep them aside by transferring the investigators concerned. This only served to reinforce the view that these officers were treated unfairly, because they had spoken out about what they perceived to be corrupt conduct on the part of their superiors. The problems created by such perceptions naturally recurred in later investigations. It is difficult to understand how senior management within WAPS can have so thoroughly failed to appreciate that by not addressing the allegations made in the first investigation those allegations would fester and spread.

In stark contrast to the first investigation, Noye was permitted to pursue his course with very limited supervision and with the apparent complete confidence of his superiors. Given that there were early indications of what at least appeared to be an unorthodox approach in his meetings with Roddan, the lack of concern by senior management is disturbing. That Noye could conduct himself in the manner that he did without being particularly noticed, let alone questioned, indicates a continuing management failure. It is entirely understandable that anyone observing this and comparing it to the first investigation would suspect that senior officers must have been complicit with Noye. Thus the inadequate management was very largely to blame for the continuation and growth of suspicions of widespread, high level corruption.

By the time of the third Argyle investigation, the suspicions had, understandably, become entrenched. Senior management appeared to learn little from the errors of history, and repeated them. The concerns were to maintain authority by imposing limits on the investigation. Those limits may have been operationally justified, however, given the history of this matter they were apt to be misunderstood. Management adhered doggedly to the line of their predecessors. There was an apparent continued refusal to give any credence to

claims of past corruption. The disciplining of officers involved in the investigations following the WAPOLINV report only served to reinforce the existing belief that those who complained of corruption would be punished.

There were widespread, continued and serious management failures in respect of the Argyle matter. A police service has to be acutely sensitive to suspicions of corrupt conduct, and be seen to be so. That failure, in this instance, has fed suspicions of corruption, not only within WAPS, but within Argyle and the broader community. It has been a significant failure because it has put at risk public confidence in WAPS.

It is an unacceptable practice to ignore allegations or evidence of corruption. As far as possible, such matters must be quickly and transparently dealt with. WAPS must be alert to circumstances that can expose it to allegations of corruption. There are some indications of a continuing failure to properly appreciate the importance of risk management. Absent some reasonable alternative explanation, this is likely to raise a suspicion that Roddan continues to be protected. This is particularly so, given the long history and prominent exposure given to similar such allegations. Yet WAPS appears not to have anticipated this risk or done anything to prevent it. Even if WAPS comfortably felt that there was no basis for past allegations that Roddan was protected, it is to be expected that it would seek to ensure that no such allegations could be made in future by ensuring that any reports of illegal conduct by Roddan were rigorously pursued, yet that was not the case.

There are lessons to be learnt from the history of the Argyle investigations. Some of those lessons are still to be fully understood and absorbed. The persistence of corruption allegations and the negative consequences of these on the public perception of WAPS are, very significantly, the result of management failures. A great deal of the trauma that has been experienced over almost 13 years might have been avoided if allegations of corruption had been investigated and resolved at an early stage. This serves to emphasize the importance of dedicated efficient and independent institutions to investigate such conduct.

CHAPTER 15

Q1 AND Q2

15.1 INTRODUCTION

This segment of the Royal Commission's inquiries is concerned with whether there has been any corrupt or criminal conduct on the part of three senior police officers, Deputy Commissioner BJ Brennan, District Superintendent DJ Caporn, and Detective Inspector KC Looby, in connection with the investigation of a complaint against Q2 made by Q1 to the Child Abuse Unit ("CAU") of the Western Australia Police Service ("WAPS"). The code names Q1 and Q2 have been provided in order to preserve the anonymity of the complainant and of the alleged offender, having regard to the fact that it is not the function of the Royal Commission to embark upon an inquiry as to whether or not any of the alleged offences were committed by Q2.

Q1 made her complaint to the CAU on 7 May 1998, alleging that, as a child, she had been sexually abused by Q2. No charges were laid against him, and on 28 March 2002, Q1 wrote to the Royal Commission. In that letter, she expressed her concern regarding a delay in Q2 being interviewed with respect to her complaint, and to her not having been treated in the manner in which she considered other citizens would have been treated. She also questioned whether Q2 had received some prior warning regarding his pending interview by officers of the CAU. Had he been warned, Q1 sought to know who had given him the warning. She indicated that her concerns were "solely with the handling of the allegation by the Senior Police" and what she considered to be the unusual treatment of her case. She said that she had found the initial urgency of the police officers investigating her complaint and their subsequent attempts to persuade her to drop her complaint, to be both intriguing and somewhat suspicious.

The Commission had previously received a letter, dated 22 March 2002, from four police officers who, at the relevant time, had been attached to the CAU. Those officers were Detective Constable C Italiano, Detective Sergeant JM Connoley, Senior Sergeant ML Miller and Detective Sergeant WE Mansas. In their letter, they claimed that experienced investigating officers had been assigned to the inquiry into Q2's conduct with respect to Q1, and they expressed the opinion that there was sufficient evidence to establish a *prima facie* case against Q2. The four officers claimed that procedural irregularities and actual interference in the inquiry had occurred both before, and after, Q2 had been interviewed by the interviewing team on 17 November 1998. On this basis, they contended that the inquiry had been obstructed, and that the course of justice had been defeated by not allowing the

team to charge Q2. They claimed that two other prosecutions launched by the CAU had been successful, notwithstanding that there had been less corroborative evidence in those cases than in this case, and that they had "the same time frames of disclosure by the complainants". There was in the present matter, however, no corroborative evidence to support Q1's evidence and the facts in the two prosecutions referred to were significantly different.

15.2 Q1'S COMPLAINT TO THE CAU

Detective Sergeant RM Ingham, who was then the Operations Manager at the CAU, received the telephone call from Q1, in which she complained that, between 1966 and 1972, when she was aged between 11 and 17 years, Q2 had committed a number of sexual offences against her. Subsequently, it was claimed that the offending commenced in 1968. She informed Ingham that, in 1997 (sic), Q2 had approached her mother and that he had confessed to having committed the alleged offences. This is a claim that is later considered in more detail.

The CAU's Offence Information Report form, which was completed by Ingham, provided for four orders of priority in relation to complaints of child abuse, the first being for immediate action, the second requiring attention by a date to be fixed, and the third providing for "Attention as appropriate", whilst the fourth priority was simply described as "Historical complaint".

Ingham had initially regarded Q1's complaint as being historical, and he marked the Report form accordingly. He advised Q1 that hers was an historical complaint because she was now an adult, and many years had passed since the alleged offences had been committed. Q1 said she was told by Ingham that she was "safe now", a statement with which she agreed, and that it might be up to two years before her complaint could be investigated. There was, he said, a considerable backlog of cases to be dealt with by the CAU, and allegations of abuse, which were currently occurring, were always given precedence. Ingham did not recall this part of the conversation, although he acknowledged that it was possible that he had made this comment, because it was the normal procedure for historical matters to be treated in this manner when the alleged victim was no longer in danger.

Ingham was aware that Q2 had a high profile within the community. He considered that, if the police were to drag their feet, and if, in consequence, someone were to go to the media about the complaint, it would have "more significance". He agreed that he was concerned to head off potential criticism of WAPS, and for this reason he consulted Mansas, who was then the acting Senior Sergeant and officer in charge of the CAU. He also consulted Acting

Detective Superintendent BK Hawker, who was then the Acting Detective Superintendent in charge of the area. Both Mansas and Hawker advised Ingham to have a statement taken from Q1 as soon as possible. Following this advice, Ingham allocated Q1's complaint to Italiano, with a request that she should contact Q1 in order to make an appointment for the taking of a statement from her. Italiano arranged an appointment for Q1 just one week ahead.

The rationale for giving priority to high profile persons was not entirely clear, although Ingham did say that, if such a person were to be arrested, it would be featured in the media for days, and the news would be spread outside the State. He regarded the practice of giving priority to high profile persons as a means of heading off potential criticism of WAPS. Although the police evidence was that no distinction was drawn between high profile persons and others, it appeared to be the general view that, so far as high profile persons were concerned, the evidence against them should be such as to ensure a conviction. On the face of it, this appears to be a higher test than is to be found in the guidelines published by the DPP. It gives the appearance of being directed towards the protection of WAPS, rather than towards ensuring that all accused should be treated alike.

15.3 THE OFFICERS IN THE CAU MAKING THE CLAIMS

Italiano graduated from the Police Academy in January 1994. She was appointed to the CAU in April 1997 with the rank of constable. She was given an induction course for one week to introduce her to her new role, which was to interview complainants and to settle the terms of their statements. Italiano indicated that the interviewers in the Unit developed a rapport with complainants, with the result that, in the majority of cases, they retained the complainants' files and did not pass them on to the detectives serving in the Unit. She said that, in eight or nine cases out of ten, the interviewers became case officers, and that this was broadly what had occurred in relation to Q2's case. This was a practice that was later to be abandoned. Italiano was promoted to Detective Constable in November 1998.

Connoley was a Detective Senior Constable at the relevant time. She was promoted to Detective Sergeant in November 2001. Her evidence was that each of the six interviewing officers attached to the CAU had a heavy case load, which was undoubtedly the situation. When Detective F MacKinnon, who had been mentoring and supervising Italiano in accordance with the practice of the CAU, was given what was described as a big job in Rockingham, she said that this took him out of the office of the CAU for long periods. Connoley, on what appears to have been a quite informal basis, said that she had taken over MacKinnon's role with Italiano. As she explained it, she "sort of slid into supervising" Italiano, and assisted her in the preparation of Q1's statement by making herself available

to provide advice to Italiano as to what should be included in statements. Connoley said it was then assumed, "as things worked out" at the CAU, that she, with Italiano, would conduct the anticipated interview of Q2. This did not transpire.

Detective Senior Sergeant Miller was the Officer in Charge of the CAU for the greater part of the investigations involving Q2. He had been assigned temporarily to a homicide investigation in Rockingham at the time when Q1 made her initial complaint to the CAU. The evidence was that, unfortunately, Miller had a health problem that affected his memory during the events the subject of this Chapter. As already indicated, Mansas was the Acting Officer in Charge of the CAU when the complaint was made against Q2.

15.4 THE BACKGROUND

Q1 was born in 1955. Q2 was born in 1943. In mid 1968, according to Q1's statement, Q2, with his wife and baby son, moved into a house opposite Q1's family home. Q1 would then have been some two months short of her 13th birthday. The two families became close friends, and their friendship continued after Q2 and his family had moved into another house outside the district some 18 months later. A number of offences were alleged by Q1 to have been committed by Q2 during the period he was living opposite Q2's home, and it was alleged that the offending continued for a substantial period thereafter.

It is unnecessary, for the present purposes, to refer to Q1's allegations in detail, other than to her claim that, in August 1971, following an argument regarding his conduct, Q2 had struck her across the face. This caused her lip to bleed. When she arrived home, she said that her mother had asked her what had happened to her face. She told her mother that she had fallen over. She made no attempt at that time to complain to her mother concerning Q2's behaviour.

The evidence of Q1's mother was that, on 13 March 1995, Q2 had confessed to her concerning his alleged sexual abuse of Q1. A note of the discussion, which is said to have constituted the confession, was made by Q1's mother immediately after it had taken place.

The evidence of Q2 was that, on an occasion when he was at a function, he had been approached by a man, who was not known to him, but who had told him that Q1 was having problems. In particular, he made mention of a divorce. Q2 claimed that he had not seen Q1 for some years, and he contemplated that, if he should be in her area, he would re-establish his contact with her. Some time later, he called at the home of Q1's mother. He walked to the back of the house where, he said, he was "just absolutely abused" by Q1's mother, who was yelling and screaming. He said he assumed that her abuse was the result

of an affair, which he claimed to have had with Q1 during her first marriage. Subsequently, when Q1 had been told what Q2 had said, she strongly denied that she had ever had an affair with him.

As soon as Q2 had left the house, Q1's mother made a note of what had taken place. To preserve the anonymity of the participants in the note of the discussion, "M" refers to Q1's mother and "B" to Q1's brother. The note, so modified, reads as follows:

> Q2 entered, greeted me and went to shake hands. This I declined.
>
> M You are not welcome here Q2 and I think you know why, B knows all about it and he is disgusted – Q2 looked shocked.
>
> Q2 I know, I know but what can I do to help.
>
> M A little late for that Q2, the damage is done. You've ruined Q1's life, her marriage and I'd like you to leave, you hurt this family enough. Apart from the divorce and learning about you was just too much.
>
> Q2 Could I see Q1, could you tell me where she is (I think he felt you could go for him or tell him what you thought of him?)
>
> M The only way you could help Q1 is to pay the hundreds and hundreds of dollars she has paid her counselling over years. What worries me is this could happen again with the work you're doing.
>
> Q2 Believe me, it will never happen again.
>
> M When I see you on TV I could throw-up. To think this was happening when I had a sick husband, who is still ill, we all used to laugh and have fun Q2 we thought you were our friend.
>
> Q2 I know how you must feel, M.
>
> M You are lucky you haven't been contacted before by a lawyer, this is something you will have to live with.
>
> Q2 I would like to help. What can I do to help?
>
> M Just leave Q2, Q1 is very respected, successful and beautiful woman.
>
> Q2 I know.
>
> M She goes with a wonderful Dr, who knows all. They will marry. I may not even tell Q1 I saw you.
>
> Q2 Pleading, please! What can I do to help.
>
> M Just leave us alone, you have done enough. Please leave – I think you had better leave.

> M noted that during the meeting she had said, "You have read a great deal lately about this in the papers", to which Q2 had replied "Yes".

Italiano interviewed Q1's mother on 17 August 1998. The statement then obtained from her was not capable of corroborating Q1's statement of evidence, because it did not sufficiently indicate what it was that Q2 was admitting. It was quite ambiguous. Nor was there any reference to child abuse during this confrontation. Moreover, it was consistent with the consensual affair that Q2 claimed had existed between them during Q1's first marriage, but which Q1 strongly denied.

A later statement obtained from Q1's sister, dated 17 August 1999, was not capable of corroborating Q1's proposed evidence. Nor did the statement of Q1's brother, dated 1 September 1999, disclose any facts that might have served to corroborate Q1's proposed evidence.

15.5 EVENTS PRIOR TO THE INTERVIEW OF Q2

In June 1998, Acting Superintendent DJ Caporn had been placed in charge of the Personal Crime Division. That Division covered four units, namely, the CAU, the Sexual Assault Squad, the Homicide Squad and the Missing Persons' Investigation Unit. At this time, there were some major issues concerning the CAU, and one of Caporn's principal tasks was to make an analysis of the position and to implement reforms in that Unit.

Acting Detective Inspector FK Brandham assumed the management of both the Sexual Assault Unit and the CAU. He took up these positions early in September 1998. He recommended that there be put in place a formal independent review of the CAU to assist in identifying the causes of some of the issues that had arisen. One of the particular problems he identified was a major backlog of 300 investigations. Clearly, the CAU was inadequately resourced at this time.

Caporn required the officers in charge of the four units for which he was responsible to report issues to him, including any investigations of significance. He indicated that some 15 matters a month were reported to him on this basis.

Miller returned to duty in the CAU and he was briefed with respect to the inquiries that had been made in relation to Q1's allegations. He then made a decision, as a matter of courtesy, to advise Brennan concerning the allegations made against Q2. He requested Italiano to prepare a memorandum for him, having regard to what he described as Brennan's close and public association with Q2. At the time, Italiano did not agree with this action being

taken by Miller. However, she subsequently acknowledged in her evidence that the briefing of Brennan was "fair enough". She came to this conclusion on the basis that it would allow Brennan, as she expressed it, simply to have a low-key relationship that would be more discreet.

In her memorandum dated 18 August 1998, Italiano advised Miller that she had interviewed Q1 and that a statement had been obtained in which Q1 had said that Q2's abuse had occurred from the age of 13 years to 34 years of age. This is to be compared with Q1's initial complaint to the CAU, in which she referred to the abuse having occurred when she was aged between 11 and 17 years. The memorandum went on to state that Q1 had kept diaries from 1969 up to the date of the memorandum, and that those diaries supported the allegations which Q1 had made against Q2.

Caporn had requested that he should be provided with a briefing note on the Q2 inquiry. He initially reported to Brennan that it appeared that, on the basis of the advice that he had been given, there was sufficient evidence to arrest Q2, but he indicated that he himself was going to conduct a review of Q2's file. He gave evidence that Brennan had said to him words to the effect that he should "leave no stone unturned in finding evidence to support the allegation".

Caporn had a direct reporting relationship with Brennan. He did not consider that Brennan had formed an association with Q2 to any great depth. The general briefing that Caporn gave Brennan, he said, would have been no more than five to ten minutes in length and would have touched on a number of issues, of which the Q2 investigation was one. Essentially, all that Caporn was telling Brennan was that this was an investigation that had been commenced.

Brandham discussed the investigation of Q2 with Caporn on 21 October 1998. He told Caporn that everything was going to plan, and that an arrest might be made. Brandham sounded out Caporn on a number of issues and, in particular, the issue of whether Q2 should be arrested or summoned. There was also a suggestion from Brandham that there be a media conference after Q2 had been arrested. Caporn was absolutely opposed to having such a conference, taking the view that the matter should be handled in the normal manner that would be followed for any other arrest of a similar nature.

On 23 October 1998, there was a case meeting at which Brandham, Miller and Italiano were present. The purpose of the meeting was to plan the interviewing of Q2. Brandham favoured proceeding by way of summons, whereas Miller and Italiano had put forward a case in favour of proceeding by way of an arrest, essentially for the reason that bail

conditions could then be imposed upon Q2. Miller and Italiano took the view that, at the interview, Q2 should be arrested, regardless of what he said, unless he came up with something that they would obviously need to consider further. It was then agreed that Q2 should be arrested. It was further decided by the three who were present that Ingham should assist Italiano with the interviewing of Q2. They also determined that the interview should be conducted on 2 November 1998. There was no suggestion that Connoley might participate in the interview.

In a memorandum dated 26 October 1998, Italiano indicated to Miller that Q2 would be charged with "approximately 12 to 14 offences" on 2 November 1998. It is apparent that no decision had been made as to the precise charges to be laid against Q1.

After having been allocated the case, Ingham began reviewing Q1's statement to determine what charges were appropriate. Most of the allegations were of indecent dealing committed between 1969 and 1972. However, on checking the CAU's records, he was unable to determine whether or not the indecent dealing charges were statute barred.

On 28 October 1998, Italiano was summoned to Miller's office, where she was told that Caporn wanted to review the evidence in support of the complaint. A copy of the file was sent to Caporn on 2 November 1988, which was, in fact, the day on which the interviewing of Q2 had initially been planned to take place. According to Brandham, there was some resistance amongst the officers of the CAU regarding the review being undertaken by Caporn.

On 29 or 30 October 1988, two or three days prior to the date of the intended interview, Ingham contacted Vicker, a senior prosecutor at the office of the Director of Public Prosecutions ("DPP"), to ascertain whether the contemplated indecent dealing charges were statute barred. It does not appear that, by this time, the proposed offences with which it was contemplated Q2 would be charged had been adequately considered, let alone determined.

Ingham ran Q2's "scenario" past Vicker, without the benefit of Q1's file. She told him that it would be inappropriate to charge certain events, but that charges should be preferred in relation to others. Later in the day, Ingham returned to the office of the DPP, where Vicker confirmed that the suggested indecent dealing charges were statute barred. Ingham told her about Q1's diary, which, he said, corroborated her account of the various incidents, although he admitted that he had not read the diary.

On 10 November 1998, Brandham, Miller, Italiano and Acting Inspector GJ Wibberley were called to a meeting in Caporn's office, where Caporn advised them that he had completed his review of the file. He said that he had spoken to Vicker in the DPP's office. He described her as being widely acknowledged as a leading counsel in relation to offences of child abuse. This was generally recognized by the profession. It was certainly the general view held by those at the CAU. Caporn also expressed the view that Q1's diaries would be damning evidence against her. It appears that neither Italiano nor Miller had read Q1's diaries other than cursorily.

At the end of the meeting, Caporn announced that, after his interview, irrespective of whether he confessed or not, Q2 was to be released and that Caporn would reassess the evidence after the interview. Italiano regarded this statement, at the time, as amounting to a direction that, whether Q2 confessed or not, he was to be released and that was to be the end of the matter, with the consequence that he would never be charged. She conceded in her evidence to the Royal Commission, however, that Caporn had not said that Q2 was never to be charged, and she agreed that such a direction from him would have been outrageous. She accepted that there was nothing suspicious in Caporn's taking an interest in the file. Miller agreed that it was not uncommon for officers to take time out after an interview to consider the evidence, before making a decision about the laying of charges. He recognized that, in aged cases, there is a need to have a very careful look at the brief to ensure that it discloses a good case. Caporn made the statement that, irrespective of whether Q2 confessed or not, he was to be released, but that must be read with his proposal to reassess the evidence. He was certainly not proposing to abandon the charging of Q2 if the evidence warranted it.

Miller and Italiano consulted Vicker on the day following their meeting with Caporn. Their purpose in doing so was said to be to ascertain from Vicker directly what she had told Caporn in relation to the Q2 file. The advice given to them by her was that the offences allegedly committed when Q1 was over the age of 16 years should not be proceeded with, as there was not enough evidence to charge Q2 with them. Vicker further advised them that, if Q2 should "cough" at his interview, the alleged offences when Q1 was under 16 should be proceeded with. She confirmed that any indecent dealing offences that might have been committed were statute barred.

Miller and Italiano also consulted the then DPP, Mr John McKechnie QC, who advised them that it was the policy of the DPP that offences said to have been committed more than 20 years previously should not be charged, in the absence of any corroboration or other supporting evidence. Miller conceded that he was aware of this policy.

15.6 THE INTERVIEWING OF Q2

On the morning of 17 November 1998, at 5.45 am, Brandham, Miller, Ingham and Italiano arrived at the office of the CAU. From there, Ingham and Italiano drove to Q2's home, arriving shortly before 6.30 am. Q2 came to the door. The officers explained to him that they were from the CAU and indicated that they wished him to accompany them to the CAU for questioning. Q1, without hesitating, agreed to go with them to the CAU. Ingham and Italiano were then invited into Q2's house while he went inside to get dressed. Q2's wife, code-named Q7, joined the officers. Italiano gave her business card to Q7.

The evidence of Ingham and Italiano before the Royal Commission was that Q2 told them that he had been expecting a visit by the police, and that he had surmised that it concerned Q1. Q2 admitted that he had surmised that the visit related to Q1, but he denied having told the police at his house that he was expecting a visit from them. His recollection was that he had told the police about Q1 in the police car on the way to the CAU and said that he had told them that he had never before been abused in the manner in which he had been by Q1's mother. He maintained that he assumed that the abuse from Q1's mother related to the affair which he said he had with Q1 during her first marriage. He denied having done anything criminal.

In a later interview with officers of the Anti-Corruption Commission ("ACC"), Q7, Q2's wife, recollected that Q2 had asked the officers whether the allegations against him related to Q1. She denied that Q2 had told her that he was expecting the police to arrive at any time. Q7 went on to say that she had asked Q2 whether he would like her to telephone their solicitor, Michael McPhee. Q2 had told her not to worry, and he left the house with the two police officers. Italiano said that Q2 had gone off quite willingly, having made no attempt to telephone McPhee. Q7 told the ACC investigators that after Q2 had left with the two police officers, she had become more and more upset and she had herself telephoned McPhee to seek his advice.

McPhee had acted as Q2's solicitor over many years. Q7 told him what had happened. McPhee telephoned Police Communications and later the CAU. The telephone at the CAU did not answer initially, and McPhee left a message on an answering machine. The message was retrieved by Miller a short time later and he returned McPhee's telephone call. McPhee requested that the interview of Q2 not proceed further, until he had attended at the CAU, a request that was granted by Miller without hesitation.

After speaking to McPhee, Miller went to the interview room. At that time, the interview had not proceeded beyond a preliminary stage. Italiano ceased asking questions of Q2, while

Ingham left the room in order to speak to Miller. Miller told Ingham to terminate the interview pending McPhee's arrival and he did so. Italiano's evidence was that she would have preferred to continue with the interview and to make McPhee wait, since Q2 had come to the CAU voluntarily and was happy, at the commencement of the interview, to proceed with it.

Mr McPhee's recollection when he arrived at the CAU was that he had to wait for some time before seeing Q2. He did, however, have a private conversation with Q2, after which the interview was resumed, purely for the purpose of having Q2 formally decline to proceed with the interview.

15.7 THE EVENTS AFTER THE INTERVIEW

After Q2 had declined to answer any further questions, McPhee drove him back to his home. Either on the way home in the car, or on their arrival at Q2's home, McPhee gave Q2 the telephone number for his office. That number was written in Q2's diary on the page for 16 November 1998. In fact, the business and home telephone numbers for McPhee, although they did not include the prefix 9, appeared in the handwritten list of telephone numbers in the front of Q2's diary. It is also noted that Brennan's name appeared in this list, the telephone number being that for Police Headquarters. There was no other telephone number for Brennan.

Shortly after Q2 and McPhee had left the premises of the CAU, Miller, Ingham and Italiano met for a debriefing. Miller's note of the debriefing reads as follows:

> 9am met with Cris Italiano and Mark Ingham. Discussed options. Clear that we could and should not proceed with any prosecution at this stage. What we now need to do is to identify those charges that we can proceed with that have a reasonable prospect of prosecution and conviction and put them up to the DPP. Prepare report in writing to DPP to ensure that we maximize our options.

At the request of Miller, on the day after the unsuccessful interview of Q2, Italiano went to Q1's home, where she discussed the current position with her and with her second husband. Q1 asked Italiano about the options available to her if she were to take her allegations further. Italiano explained to her the respective roles of the Parliamentary Commissioner for Administrative Investigations ("Ombudsman"), the Internal Investigation Unit ("IIU") and the ACC. Shortly afterwards, Q1 made a complaint to the ACC. She subsequently wrote to the Commissioner of Police with her complaint.

At this time, Italiano was shortly to commence duties as a detective at Perth City Detectives, where she would be carrying a heavy caseload. Miller instructed Ingham that he

should assist Italiano in further evaluating the evidence, identifying the alleged offences that could be corroborated and addressing those matters that could be put to the DPP for assessment and advice as to whether they should proceed. There is no indication that Miller was acting other than on his own initiative in this regard.

On 26 November 1998, Italiano reported to Miller that there was sufficient evidence to charge Q2 with two counts of rape and three counts of indecent assault. The absence of consent to the act was an element of each offence. She asked that the file be sent to the DPP. On the following day, Miller returned the file to Italiano with the following comment:

> Whilst I have copies of all the information what I need from you is the documentation that clearly supports prosecution. In other words I need you to report on which documents support these charges, time, dates, statement corroboration etc.
>
> Otherwise we are sending the brief to the DPP basically asking them to identify the information/evidence that supports your assertion.

On 28 November 1998, Italiano travelled to New Zealand on her annual leave. On the same day, Mansas discussed the file with Detective Senior Constable Vicky Hawes, who was taking over the previous role of Italiano. In the final week of Italiano's leave, she was contacted by Brandham and requested by him to provide a written report to Caporn on the inquiry. On her return from leave, on or about 6 January 1998, Italiano briefed Hawes and, on 8 January 1999, she completed her report to Caporn. From that time, Hawes had the carriage of the matter.

It is to be observed that Italiano, in her report, referred to Q2 as having appeared to be surprised that the police had called on him and that he mentioned that he had a fair idea who had made the complaint and he named the complainant. Italiano did not say that Q2 had told them that he had expected the police nor, as previously indicated, does it appear in Italiano's running sheet.

In a memorandum from Ingham to Brandham, dated 11 December 1998, less than one month after the interview, Ingham wrote that he did not believe that Q2 had been expecting the police or that he had been forewarned about "these matters". The journals of Ingham and Italiano contained no note as to any conversations that had taken place in Q2's house.

In his evidence to the Royal Commission, Ingham said that he was asked whether Q2 had made any observation with respect to the police arriving at Q2's house. He said he had been asked about this by "other people" about a year before and that he could not

remember it at that time. However, as they continued the interview, he said he remembered that Q2 had said something to the effect that he had expected the police. There was no reference by Italiano to Q2 having said so in the running sheet she compiled. Ingham's evidence in this respect is unsatisfactory. His statement in the memorandum of 11 December 1998, which was much closer to the interview, is to be preferred.

Hawes continued with further inquiries and eventually the file was sent to the DPP's office, where it was reviewed in detail by Vicker. On 27 October 1999, Vicker sent a memorandum to the DPP, who was then Mr RW Cock QC, in which she carefully analysed the available evidence and reached the conclusion that, in the absence of any additional evidence, there would be no reasonable prospect of convictions in this matter without some acknowledgment from Q2, which she did not believe would be forthcoming. This advice was accepted by the DPP, who wrote to Caporn on 1 November 1999, advising that he accepted the advice provided to him by Vicker and indicating that he did not believe it would be appropriate in the circumstance for Caporn to lay complaints. He added that if Caporn should wish to discuss any of the aspects of the case in detail with Vicker, he was sure she would be prepared to explain them. Moreover, he wrote, if Q1 wished to have that opportunity, he had no objection to her speaking directly with either himself or Vicker. Arrangements were subsequently made for her to see Vicker.

15.8 THE LAW

Section 183 of *The Criminal Code*, in its original form, was concerned only with unlawful dealings with "a boy" under the age of 14 years. The section was amended in 1972 to extend to "a child" under the age of 14 years. By that time, however, Q1 had already attained the age of 14 years. The section was repealed in 1989.

Section 185 of *The Criminal Code*, before its repeal in 1989, provided that any person who has carnal knowledge of a girl under the age of 13 years is guilty of a crime. There is no indication in Q1's statement alleging that Q2 had carnal knowledge of her before she had attained the age of 13 years.

Section 187(1) of *The Criminal Code*, before its repeal in 1992, provided that any person who has, or attempts to have, unlawful carnal knowledge of a girl under the age of 16 years, is guilty of a crime. A prosecution for the offence of having unlawful carnal knowledge under this section, however, had to be begun within six months, and for an attempt, within three months, after the offence had been committed.

Section 189(1) of *The Criminal Code*, before its repeal in 1992, relevantly provided that any person who unlawfully and indecently deals with a girl who is under the age of 16 years is guilty of a crime. Subsection (6), however, provided that, if the girl is over the age of 13 years, a prosecution must be commenced within three months after the offence has been committed.

Absence of consent was not a necessary element of the offences created by ss. 183, 185, 187 and 189 of *The Criminal Code*. Proceedings against Q2 for any offence under either s187 or s189 have long since become statute barred.

Section 325 of *The Criminal Code*, prior to its replacement in 1992, provided a definition of the former offence of rape. The offence of unlawful and indecent assault of a woman or girl was dealt with in s328. This section was also replaced in 1992, the year in which substantial and long overdue amendments were made to the law relating to sexual offences. In particular, a broader meaning was given to the expression "consent". It now means a consent freely and voluntarily given and, without in any way affecting the meaning attributable to those words, it is stated that a consent is not freely given if it is obtained by force, threat, intimidation, deceit, or any fraudulent means. Where an act would be an offence if done without the consent of a person, a failure by that person to offer physical resistance does not of itself constitute consent to the act. The law to be applied, however, is that which was applicable at the time of the commission of the alleged offences. See *R v Melville* [2003] WASCA 124.

Section 36BE of the *Evidence Act 1906* provided as follows:

> (1) On the trial of a person for a sexual assault offence or an offence under Chapter XXII of *The Criminal Code* –
>
> > (a) the judge is not required by any rule of law or practice to give in relation to any offence of which the person is liable to be convicted on the charge for the offence a warning to the jury to the effect that it is unsafe to convict the person on the uncorroborated evidence of the person upon whom the offence is alleged to have been committed; and
> >
> > (b) the judge shall not give a warning to the jury of the kind described in paragraph (a) unless satisfied that such a warning is justified in the circumstances.
>
> (2) Nothing in subsection (1) affects the operation of any law that provides that a person cannot be convicted of an offence upon the uncorroborated testimony of one witness or upon the evidence of a child whose evidence is admitted under section 101.

On 19 March 1994, when she was aged 38, Q1 had told her mother about the offences allegedly committed against her by Q2 over the years. There is no evidence of any previous complaint having been made by her to any person. On 26 March 1994, Q1 had informed her brother about Q2's alleged offences. It is apparent that, Q1, on her evidence, did not make a complaint as to Q2's behaviour as speedily as could reasonably have been expected. The making of a recent complaint may only go to the credibility of the complainant.

It appears that diaries had been kept by Q1 over a long period. They made many references to Q2, to his visiting Q1's home and to her visiting his home, but they do not expressly or impliedly refer to any sexual misconduct on his part. Nor do they refer to Q1 and Q2 having had an "affair". What is claimed by her is that Q1 made certain marks in her diaries to indicate that particular sexual misconduct on the part of Q2 had taken place. For example, an exclamation mark in her diary was said by Q1 to indicate that a particular type of offence had been committed by Q2. Only Q1 would have been able to decipher the suggested code. Furthermore, a number of the entries in the diaries refer favourably to Q2.

In *Longman v The Queen* (1989) 168 CLR 79, at 86 *et seq* Brennan, Dawson and Toohey JJ held that par (a) of section 36BE(1) of the *Evidence Act* 1906 dispensed only with the requirement for a trial judge to warn a jury of the general danger of acting on the uncorroborated evidence of alleged victims of sexual offences as a class, and that it did not affect the requirement of the general law to give a warning, whenever necessary, to avoid a perceptible risk of miscarriage of justice arising from the circumstances of the case, citing *Bromley v The Queen* (1986) 161 CLR at 319, 323-325 and *Carr v The Queen* (1988) 165 CLR 314 at 330. See, in particular, the reasons of their Honours at 87-88, 90 and 91.

Section 36BE has since been repealed, being replaced by s. 50 of the *Evidence Act* in 1988. Section 50 was amended in 1992, when it was applied to all indictable offences. These changes have had no impact upon the principles established by Longman's case. Accordingly, if charges against Q2 were to proceed to trial, it is apparent that a corroboration warning by the trial judge would be required.

In order to constitute corroboration, the evidence must implicate the accused in a material particular. There is in this case no corroborative evidence implicating Q2 in a material particular. "Corroboration" is not a technical term. It simply means "confirmation". But it must take the form of an independent and separate item of evidence implicating the person against whom the testimony is given in relation to the matter concerning which corroboration is necessary – see Cross on Evidence, Australian Edition [15165]. A diary is not capable of corroborating the evidence of its maker – see *Senat v Senat* [1965] P172.

Furthermore, it is inevitable that, if a prosecution were to be pursued against Q2, the defence would emphasize the absence of any complaint having been made by Q1 to her mother or to any other person prior to 1994, when she was 39 years of age. See generally *Crampton v The Queen* (2001) 206 CLR 161 at 181-182 and *Dyers v The Queen* (2002) 76 ALJR 1552. To constitute a recent complaint in the technical sense, it must have been made as speedily as could reasonably be expected – see *R v Osborne* [1905] 1KB 551 at 561. In any event, a recent complaint goes only to the credibility of the complainant. It cannot be corroborative of the complainant's evidence, since it does not come from a source independent of the complainant – see *Kilby v The Queen* (1973) 129 CLR 460. If on the trial of a person for a sexual offence evidence is given, or a question is asked of a witness, which tends to suggest an absence of complaint in respect of the commission of the alleged offence by the complainant, or to suggest delay by the complainant in making any such complaint, a trial judge is required to give a warning to the jury to the effect that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false, and must further inform the jury that there may be good reasons why a victim of offences such as those alleged may hesitate in making, or may refrain from making, a complaint of that offence – as to which see s. 36BD of the *Evidence Act*. Q1's failure to make a complaint to her mother until she had reached the age of 38 would no doubt be stressed by counsel for Q2 in the event of charges being brought against him.

15.9 ALLEGATIONS AGAINST POLICE OFFICERS

A number of disparate allegations were made against the three senior police officers, claiming that there had been interference in the investigation, which had stopped lines of inquiry or limited the gathering of evidence and thereby compromised the inquiry. It is necessary to deal with these allegations.

ACCESS TO ITALIANO'S NOTES

Italiano expressed considerable concern that an unidentified person had obtained access to the notes that she had made in the course of her preparing Q1's statement. She claimed that she had locked the complete file on Q1 in her filing cabinet at the end of the day, but that, when she had come into the office on the following day, she had found the notes strewn across her desk, part of which she shared with MacKinnon. Nothing was found to be missing. Although she had locked the filing cabinet, Italiano acknowledged that she had left the key to the cabinet in the unlocked top drawer in her desk.

There is no indication whatever as to who might have removed the papers from the filing cabinet. Nor was Italiano able to say when this incident took place. It is highly unlikely that any person acting improperly, having taken the notes out of the cabinet, would have left them lying on the desk. In any event, it is difficult to understand what the purpose of the person's examination of these notes would have achieved. What is abundantly clear, however, is that there is nothing whatever to associate any of the three senior police officers the subject of the complaints in this segment, with this incident.

REQUEST FROM ITALIANO TO TRAVEL TO NEW SOUTH WALES AND VICTORIA TO INTERVIEW TWO POSSIBLE WITNESSES

On 16 September 1998, Italiano sent a memorandum to Mansas, in which she requested permission to travel to Victoria and New South Wales in order to interview two possible witnesses. The first was Q1's former psychologist who then resided in New South Wales and who, Italiano believed, might have "vital information" that would assist in the successful prosecution of Q2. Italiano suggested that this may possibly be the "earlier complaint" as Q1 had consulted her psychologist on numerous occasions to discuss the alleged abuse and the lasting effect it had on her life. There was a possible second complainant, who resided in Victoria and who had been a babysitter for Q2's family.

Mansas, on the same day, wrote a memorandum to Miller, recommending that the psychologist should be interviewed by Italiano. The request was rejected on financial grounds, the CAU's budget being said to be virtually exhausted. It was suggested by Miller, however, that Italiano should contact the psychologist by telephone. Italiano did telephone the psychologist, only to be advised that she had destroyed Q1's file when she left Perth in the early 1990s. There was, in any event, no possibility that the psychologist could have given evidence of a recent complaint. It was clearly not "recent".

Italiano also succeeded in contacting the suggested second complainant by telephone, but she refused to become involved in the case. She did indicate, however, that she had never seen Q2 touch Q1 and that she herself had never been troubled by him. She would therefore have been unable to provide any admissible evidence against Q2. Furthermore, it was most unlikely that the evidence of "a second complainant" would have been admissible.

There is nothing at all to suggest that the decision not to authorize Italiano's travel proposal at that time emanated from anybody other than Miller, who was one of the four police officer complainants. His approach to this matter was entirely appropriate. It was well known at the time that the resources of the CAU were limited, and there was no immediate rejection of the proposed travel interstate. However, in the circumstances, travelling to New

South Wales and to Victoria would have achieved nothing more than was achieved by telephone. There is no basis for any inference that Miller corruptly declined to authorize Italiano's travel proposal.

THE APPOINTMENT OF INGHAM

Ingham reviewed the statement of Q1 and the file generally prior to his participating in the interview with Q2. It was, and remains, his opinion that there was sufficient evidence to justify Q2 being charged. He did not, however, dissent from Caporn's view that, regardless of the outcome of the planned interview with Q2, Q2 should be released (although he was not then under arrest) and that Caporn would review all the evidence prior to the formulation of any charges against him. He did not regard as suspicious the view taken by others that there was not sufficient evidence with which to charge Q2.

Connoley was of the opinion that Ingham was unduly compliant with management directives. Her view seems to have been based essentially on the fact that his opinion differed from hers. She appears to have considered that Ingham personally had thought it appropriate immediately to arrest Q2, and that he must have deferred to an instruction from further up in the hierarchy. Nor does it show undue compliance with management to submit to a short delay in charging and arresting Q2, particularly having regard to the age of the alleged offences. Even if Brandham had substituted Ingham for Connoley, as to which there is no evidence, Ingham's evidence was that he had no knowledge of Connoley's involvement in the file and his recollection was that she had none. It should not be overlooked that, at this time, Connoley was a detective senior constable whilst Ingham was a detective sergeant. Connoley had no contact with the DPP's office in connection with Q2.

Connoley gave evidence that she had told Brandham that, regardless of Caporn's instructions, she would arrest Q2 at the end of his interview. The position taken by her, she said, resulted in Brandham's appointing Ingham in her place to interview Q2. The reality was that Connoley was not displaced by Ingham. Undoubtedly, she gave certain assistance to Italiano, but this was on an entirely informal basis. She was not present at the meeting of Brandham, Miller and Italiano on 23 October 1998 when the interviewing of Q2 was planned. Furthermore, it was decided by the three of them (Brandham, Miller and Italiano) that Ingham should assist Italiano with the interviewing of Q2. There is nothing in the evidence to support any suggestion that anyone acted unlawfully or improperly in relation to Connelly not being asked to participate in Q2's interview.

THE INSTRUCTION NOT TO ARREST/CHARGE

It is not clear precisely what words Caporn used in instructing police officers how to proceed after Q2 had been interviewed. Brandham recorded that Caporn had instructed Miller and Italiano that 'no matter what came from the interview, no action was to be taken against [Q2] until he had further reviewed the confessional material. Italiano and Miller reported that Caporn had said that 'regardless of whether [Q2] confesses or not, you are to release him and I will reassess the evidence.' Caporn could not recall the exact words he used but he agreed that his intention was that Q2 should not be arrested or charged until he, Caporn, had reassessed the evidence.

Caporn doubted that he would have used the term "release". At the time of his giving the instruction, his intention was to procure Q2 to participate voluntarily in an interview. It was not intended that he should be under arrest at the time of his interview. The use of the word "release" wrongly suggested that Q2 was not free to leave the CAU office at any time. It was clearly intended by Caporn that Q2 should not be arrested and charged until he had studied the evidence. He would then determine whether Q2 should be charged with any offence, having regard to his reassessment of the evidence.

It is quite improbable that Caporn intended that Q2 should never be charged in the event of his having made a confession. It is obviously inconsistent with Caporn's clearly expressed intention to reassess the evidence at the completion of Q2's interview. Caporn was well aware of the positions adopted by Italiano and Miller and had it been Caporn's intention to write off the case, regardless of the outcome of the interview, it would almost inevitably have resulted in a report to the IAU or to the Anti-Corruption Commission ("ACC").

Of the officers who heard the instruction, only Italiano regarded it as being improper. Brandham and Miller did not consider it to be an instruction never to charge Q2. Furthermore, the evidence indicates that it was not at all uncommon to take time after an interview to consider the evidence before making a decision about charging a suspect.

ALLOCATION OF FILE TO HAWES

Hawes was allocated the file of Q2 in December 1998. She was briefed by Italiano when the file was handed to her and Italiano pointed out that there were a couple of matters that needed still to be followed up. She was told to complete the file. Hawes finalized her investigations in about June 1999, when she submitted a report that was forwarded to the DPP.

It was suggested by Connoley that the allocation of Q2's file to Hawes was made on the understanding or instruction, that the file would be written off. Connoley considered that Hawes was likely to acquiesce. Hawes denied any such understanding or instruction and added that, had there been such an understanding or instruction, she would have reported it immediately to the IAU. There is no reason to doubt the strong view that she took in relation to the possibility of writing off the file. There is no evidence to support Connoley's claim.

Hawes completed the outstanding lines of inquiry. There is no evidence to suggest that she acted otherwise than with complete propriety. She took the file with her when she transferred to another authority.

15.10 SUGGESTED ATTEMPT TO PERSUADE Q1 THAT THERE WAS INSUFFICIENT EVIDENCE AGAINST Q2

It was suggested by Connoley that Looby and Hawes had spoken to Q1 and her husband late in 1999, after receiving the advice of the DPP, in order to persuade or to convince her that there was insufficient evidence against Q2. Connoley's view was that it did not seem right for Looby and Hawes to speak to Q1. However, Connoley appears to have overlooked the fact that the conversation with Q1 took place after the advice of the DPP that there was insufficient evidence with which to charge Q2. As Looby pointed out, he had no reason to persuade Q1 on the issue, but he anticipated that, with his experience, he would be able to answer any questions Q1 might have had. He thought, with some justification, that Q1 may have had unrealistic expectations from the time of her making her complaint.

Q1's evidence as to her meeting with Looby and Hawes did not result in her making any criticism as to what was said by them. Q1 indicated that Looby had mentioned that, "[H]e knew what he'd do but couldn't say because of his position". Looby explained in his evidence that he had in mind the possibility of a civil remedy being available to her.

Hawes subsequently arranged an appointment for Q1 to speak to Vicker. Q1's husband accompanied her.

15.11 A DELUGE OF MEMORANDA

It was suggested in evidence that one way in which the investigation of Q1's complaint was interfered with was by a deluge of memoranda. Miller referred to it as "death by memo". Certainly the case generated many memoranda, 37 of which are in evidence. There were not, however, many memoranda generated by or at Caporn's direction in connection with

the investigation of Q1's complaint about Q2, Brennan was responsible for none of the memoranda. The bulk of the memoranda were generated as a result of Q1's complaint against the police.

Of the 37 memoranda in evidence, only 12 related to the investigation of Q2 and, of those, only one was generated by the four officers, whose submission to the Royal Commission had led to the hearing. The single exception was sent by Brandham to Caporn and, accordingly, did not burden those investigating Q2.

Every memorandum from 8 December 1998 to 4 February 1999 was generated in response to the letter from Q1 to the Commissioner of Police, dated 1 December 1998. They followed after Q2 had declined to participate in the interview, as he was entitled to do. After 4 February 1999, there were nine memoranda spread over ten months, one of which appears to have been generated at Caporn's request.

The investigation by Italiano and others was not impeded, deliberately or otherwise, by memoranda from other officers.

FAILURE TO CHARGE Q2

As already indicated, Vicker gave further advice to the DPP on 27 October 1999, following the receipt of the brief prepared by Hawes. After a careful analysis of the facts, she expressed her belief that, on the existing evidence, no charges should be laid. Her opinion was confirmed by the DPP.

It was suggested by Connoley in her evidence that it was, or should be, the responsibility of the investigating officer, or the interviewing officer, to decide whether to charge and whether to arrest a suspect. That view cannot be sustained. The Investigative Practices Review (1998) at 124 provides:

> Appropriate supervision by competent officers will improve the quality of investigations and brief presentations by ensuring that proper planning and monitoring is undertaken throughout the investigative process. Supervisors need to assess and monitor the ongoing management of investigations. This will provide them with a mechanism to evaluate the performance of the investigator and support continuous improvement. It will also provide them with knowledge of the investigation – placing them in a better position on which to base their decision about whether a charge should be preferred.

At 126 the Review provides:

> All prosecuting briefs must be perused and checked by a supervisor at the originating area. The face sheet and/or complaint form should be modified to show that this has occurred and that the supervisor checking the brief or facts relating to the charge is satisfied that sufficient evidence exists to support the charge.

In this case, successive DPPs and Vicker had reached the same conclusion as Caporn.

In the hearing, it was suggested that a discretion to charge resided in officers, notwithstanding the advice of the DPP. But in this case, the advice of the senior officers was against proceeding and it must be appreciated that the DPP's office had previously indicated that, on the existing evidence, if charges were brought in the absence of any further evidence, a *nolle prosequi* would be entered by the DPP.

15.12 ALLEGATIONS AGAINST BRENNAN

There is no evidence to justify any finding that Brennan interfered in the investigations relating to Q2. The evidence of Q1, Italiano, Connoley, Mansas and Miller, merely established that Brennan and Q2 had an association during the period 1996 to 1998. The evidence given at the hearing was that Brennan and Q2 had met at a charity function in 1996, and in 1997, in aid of a police charity. Photographs had been taken of them and it became the subject of a caption competition in the Police Service, a copy of which was later presented to Brennan and thereafter hung in his office. Q2's work with a community development organization led him to seek police assistance in remote and disadvantaged communities. Q2 used his acquaintance with Brennan to enlist that assistance. The arrangement was known to, and approved by, the Commissioner of Police, Commissioner Falconer. Thereafter there were several meetings between Q2 and Brennan, at least one of which was attended by Falconer.

On 24 August 1998, Brennan received a message on his mobile telephone to telephone Q2. Late that afternoon, Brennan was attending a Board meeting of the Police and Nurses Credit Society Ltd. Before the meeting commenced, Brennan spoke of his charity functions and, in that context, he was asked if it involved Q2. He replied that it did. He was said to have told the group present that the activities with Q2 were "good things".

On the following day, 25 August 1998, Q1 informed Italiano that a friend had told her that Ms AM Rial, who had been present at the meeting, had overheard a conversation between Brennan and Q2. Rial, who was a friend of a friend of Q1, and who was aware of Q1's complaint to the police concerning Q2, reported the conversation to the mutual friend, who

repeated it to Q1. Q1 conveyed the information to Italiano. As a result, Italiano wrote a memorandum to Miller regarding the matter. Miller did not forward Italiano's memo or otherwise make any of her concerns known to Brennan. This issue was then raised in the ACC.

In her interview with the ACC, it was put to Rial that, at the completion of the meeting of the Police and Nurses Credit Society Ltd, Brennan was in the lift with several other people and was invited for coffee, an invitation that he declined, saying he had to go and visit Q2 that night. Rial said that she could not recall that having taken place. Her evidence to the Royal Commission differed from her evidence to the ACC. She said that the conversation between Brennan and Q2 concerned an imminent meeting. She could not say whether the meeting was to be held that night or within a day or two. Rial said that Brennan was chatting quite freely on the telephone as they were going down in the lift. She said that it appeared to be a very social and very friendly conversation, like that of someone who was close, although she acknowledged that she could hear only one side of the conversation. The gist, she said, was that they were going to meet socially in the very near future. She had no idea to whom he was talking until, at the end of the conversation, Brennan said it was Q2.

At her prior interview with the ACC, Rial had made no mention about drinks at the coming meeting, but in her evidence to the Royal Commission she said that this was her "feeling". She also spoke of her "assumptions". She said it sounded as if "it was something that was very social, very laid back, and comfortable". Rial suggested that Brennan had been speaking to Q2 and she said that she "automatically assumed that they were meeting to catch up and have a drink or something along those lines". When asked, she said that she could not remember the exact terms and could only remember the impression she had got. She went on to say, "We tend to believe and trust in the people that we know, and if you have developed a friendship or a bond with, you know, particular people, well naturally, you know, they'll be the people that you'll want to believe and support about the other person". It is difficult to give any weight to the evidence of Rial. In her interview with the ACC she had no recollection of the telephone conversation between Q2 and Brennan. Her version before the Royal Commission was essentially speculative.

Telstra records show that Brennan made a telephone call on his mobile telephone to Q2 at 8.04 pm on the evening in question and that the call lasted a little over four minutes. He firmly denied having called at Q2's house.

Brennan's evidence was that, on the evening of 24 August 1998, he received a message to telephone Q2. He telephoned Q2 at his home. Neither Q2 nor Brennan could recall the

nature of the exchange, but Brennan suggested that it had to do with either a meeting that he had with Q2 on 21 August or with a meeting with Q2 and Commissioner Falconer scheduled for 26 August. The two meetings referred to by Brennan are recorded in his diary, which was produced to the Royal Commission. There is nothing to indicate that there was any impropriety on the part of Brennan in relation to the telephone call.

A month after the failed attempt at interviewing Q2, Q2 telephoned Brennan and proposed a meeting on 16 December 1998. Brennan agreed to meet with Q2, Q2's assistant who had previously attended meetings with him and a friend of Q2. Most of the time Brennan spent in talking to Q2's assistant, discussing business matters with her. It was put to Brennan that a meeting at this time showed a lack of sensitivity on his part. His decision to meet Q2 in the circumstances was unwise, if not foolish, notwithstanding that there is no indication that the meeting had anything to do with the investigation of Q2.

When Brennan was interviewed by Royal Commission officers, prior to his giving his evidence, he made no mention of the fact that Q2 had, within the previous couple of weeks, telephoned him on an entirely social basis. At this time, however, there were still no charges pending against Q2. He acknowledged that, in hindsight, his continued association with Q2 might have been unwise.

There is no other evidence of any social or professional contact between Brennan and Q2 during the period in question. They did not meet for lunch or coffee. They did not attend each other's home or participate in or attend sporting functions together. Call charge records obtained on the telephone services of Q2 and Brennan for the year 1998 did not reveal any call immediately prior to 17 November 1998, the only telephone call being on 24 August, to which reference has already been made.

In the written submission by the complainants in this segment, long after the time for submissions had expired, a fresh claim was brought forward regarding the relationship between Q2 and Brennan, contending that it had been established through independent investigations that Brennan was related to Q2 by marriage, it being suggested that Q2's brother had a son who had married the sister of Brennan's wife and that, "therefore Q2's nephew married Brennan's sister in law". The marriage ceremony took place in 1970 and was said to have been attended by Brennan. The Commission officers contacted Brennan who informed the investigators that it was his wife's cousin who had married a nephew of Q2. Brennan stated that he had not seen his wife's nephew for over 30 years.

Still later, a further submission from the complainants alleged that investigations had also uncovered Q2 and Brennan together at various family and social functions on numerous occasions, well before the time that Brennan had stated.

In response to the Royal Commission's request for further information regarding Brennan's alleged presence at social functions, it was provided with details of one function only, in 1990, which was a post-wedding party. The persons contacted by the Commission are referred to by their first names. The party was hosted by Michael, who had been married in 1990. There were said to have been about 100 guests.

Michael said that the party took place at his home address and that Q2 was one of the invited guests. Michael said he did not know Brennan, and did not recognize a photograph of him. He was unable to say whether Brennan was present at the party. He said he had only held one party when Q2 had been present and Q2 had not asked him if he could bring a friend to the party. Michael's niece is married to a police officer, Grant F, who was present at the party. Michael was not aware of any of his friends who knew Brennan. He could not locate any photographs or videos at his party.

Grant F recalled the party. He claimed to recall seeing both Q2 and Brennan talking together. He had the impression that they knew each other. He did not see them arrive or leave together. He only saw Brennan for about 20 seconds during the party. They were standing in a group of other people. He did not have any photographs or videos of the party.

Grant D knew Q2 but he was unable to say if he was present at the party. He knew Brennan through the Road Safety Council, but he did not meet him until the late 1990s. He was unable to say if he saw Brennan at the party.

Philip was contacted and said he was not at the party and that his former wife had not attended. He does not know Brennan. His former wife was not contacted, as she is currently overseas.

Gerard said he was probably at the party, but he does not know Brennan and he was unable to say if he was present.

Brennan, when interviewed by the Royal Commission investigators, said he had not attended the party. He is a keen sportsman and if he had attended the party with the sportsmen who were said to be present, he said he would have remembered it. He does not

know Michael personally and he has never been to his home. He said that Q2 had never invited him to a party.

Q2 said that, in the early 1990s, he was invited to numerous social functions and although he could not remember this particular function, he agreed he may well have attended it. He said he had been working with Michael at around this time. He said he has never been to party or social function and invited Brennan.

It is not proposed to pursue this issue any further. The issue in relation to Brennan is whether he corruptly interfered with a pending prosecution. It is not whether Brennan attended functions long before any action was taken against Q2.

The Royal Commission, after a full and careful investigation, has not been able to obtain any evidence of any intervention by Brennan in connection with the complaints brought by Q1 against Q2.

15.13 ALLEGATIONS AGAINST CAPORN

The evidence does not lend support to any finding of impropriety on the part of Caporn. The investigation into Q2 was not prematurely stopped by him. It continued until all avenues had been exhausted.

The file was then sent to the office of the DPP seeking the advice of Vicker. Her advice, which was given to the DPP was that the evidence was insufficient to institute proceedings. The DPP accepted the advice and conveyed his conclusion to the CAU.

On 28 October 1998, Caporn had issued an instruction to Brandham that further investigation be suspended until he, Caporn, had reviewed the file. This led to the postponement of the planned interview of Q2 for a few days. According to Brandham, the reason given was that the matter was of "high profile". Caporn's evidence was that his reasons for taking this step were, first, that Brennan had told him to ensure that the Q2 matter was "done right", secondly, that it was a fact of life that closer scrutiny by police management occurs where there is likely to be intense media interest and, thirdly, that it is a long standing habit of his to be closely involved at operational level in significant matters within his portfolio. This was confirmed by Brennan, Atherton, and Brandham respectively. Looby, who worked with Caporn, gave similar evidence as to the latter's work habits.

The evidence was that the CAU was not operating efficiently. A report begun in 1997 by Acting Detective Senior Sergeant PA Branchi revealed significant deficiencies. It was as a

result of this report that Caporn had Brandham act as Inspector, with responsibility for the CAU. Furthermore, Caporn was aware of a health problem suffered by Miller who was the Officer in Charge, this problem may well have impaired his supervisory capacity at the time. A similar view of the CAU was expressed by Looby.

Branchi noted, in particular, that there was an unacceptable level of service delivery in the CAU, which was due to the then current staffing levels and heavy workload. The Unit was clearly under resourced. He observed that Western Australia was one of the States not having a training officer in this field of investigation. There were no formal certified or accredited training courses for police officers in this State who investigated child sexual abuse. He pointed to it as being essential that there be continuity of management to ensure that the appropriate level of commitment and leadership was given to this important subject. The CAU had not had a permanent and stable officer in charge for a number of years. He reported that, in order effectively and efficiently to provide a committed and specialist approach to the investigation of child abuse in this State, a dramatic increase in the financial budget was urgently required.

A suggestion was made as to whether Caporn attempted to influence Q1 to withdraw her complaint. This issue arose out of a telephone conversation between Caporn and Q1 on 21 January 2001. It was the second of two telephone calls from Caporn. Q1's evidence was as follows:

> …Mr Caporn rang me at home but this time he was very insistent that I make a decision, that this was, you know, for me, that it was serious and again about transparency and that it needed to be dealt with, and they needed to be sure that I was satisfied and that they really needed - - he really needed me to make a decision...And, you know, that I had had over a month and, you know, that I wasn't - - he didn't say but I felt - - very.

She was then asked whether he said anything else that she could recall and she continued.

> Just that I - - they needed me to make a decision - - He needed me - - He didn't raise his voice but he was - - it was very, very different to any other contact. He was very stern and it wasn't - - it was very different from the call before when he was just checking how I was going…

She denied that Caporn had suggested that she should drop her complaint. She said that his request was for her to make a decision. She said his manner was more than impatient and brisk. She felt very, very pressured to make a decision because it needed to be finalized and transparent. There is no basis for any suggestion that Caporn was seeking to have Q1 withdraw her complaint. He was seeking a decision only, although he conceded that he might have spoken to Q1 rather too strongly.

15.14 AN ATTEMPT TO INFLUENCE ACC?

After the close of public hearings in relation to this segment, on 16 September 2002, a further allegation was made by Italiano. By a statement dated 9 October 2002, Italiano stated that she had been told by her counsel, Mr John Hammond, that he had been told by Mr PA Lines a former officer in the ACC that "Brennan and Inspector Looby had gone to the Anti-Corruption Commission to put pressure on them regarding the Q2 inquiry". Lines was further interviewed by the Royal Commission and a statement was taken from him. He denied having said to Hammond "that Deputy Commissioner Bruce Brennan and Inspector Kevin Looby went to the Anti-Corruption Commission in order to put pressure on it in relation to the Q1/Q2 matter". In the same statement, Lines denied having said to Detective Constable MA Duzevich that Brennan or Looby had corruptly approached the Anti-Corruption Commission. Duzevich denied that any statement had been made to him by Lines to that effect. If the further allegations that Lines had made these statements outside the hearings were true, his credit would be damaged, because he was clear in his earlier evidence that he had made no such statement. Since he was the only person alleged to have said that Brennan and Looby had made a corrupt approach to the Anti-Corruption Commission, the issue whether they in fact had done so, would not be advanced. Nevertheless, the decision was taken to call Lines, Duzevich and Hammond to give evidence on 9 December 2002.

In his evidence, Hammond denied that Lines had said to him anything to the effect that Brennan or Looby had tried to influence the ACC. That evidence contradicts the statement of Italiano dated 9 October 2002. Duzevich also denied that Lines had said to him anything to that effect, or that he had told Italiano, Connoley or Hammond that Lines had done so. Lines repeated his earlier evidence that he had never held or expressed the view that Brennan or Looby had tried to influence the ACC. However, Hammond gave evidence that Duzevich, and not Lines, had told him about an improper approach to the ACC. Duzevich, he claimed, had heard it from ACC sources, but he could not himself confirm or deny it. Hammond later understood from Italiano that the ACC source was Lines.

Lines, in his evidence on 9 December 2002, suggested for the first time, that he had heard the rumour that Brennan and Looby had tried to influence the ACC during a meeting he had with other police officers. Although he was not sure, he thought it was said by an officer from the Police Academy, but it was repeated only as a "police-wide rumour".

Having regard to the evidence of each of Brennan and Looby that no approach had been made by him to the ACC, the evidence of Wilson that no ACC officer or document supported the allegation and the uncontested denial by Lines, who was the alleged source of the

complaint, of knowledge of any relevant facts in the matter, the claim that there was any attempt to influence the ACC must be rejected. This does not explain how Italiano and Connoley came to hold the view that they did.

Brennan and Looby each denied that he had approached the ACC, or any of its officers, seeking to have its investigation into Q1's complaint terminated or to influence its outcome. Mr T O'Connor QC, the Chairman of the ACC, wrote to the Royal Commission responding to Italiano's evidence that she "learnt that Mr Looby and Mr Brennan attended the ACC and put pressure on the ACC to drop the complaint". Mr O'Connor described this evidence as being "absolutely false".

The ACC conducted two investigations. The first investigation was into allegations of interference by senior police in the investigation by the CAU. The Chairman indicated that, in the course of this inquiry, the Director of Anti-Corruption Commission investigations, Mr Charlwood, interviewed Brennan in company with a senior investigator. This was the only occasion on which the matter was discussed with Brennan. He was not accompanied by Looby. The Chairman went on to say that, at no stage, did Brennan or Looby ever put pressure on the Commission to drop the investigation. Had there been any such pressure, as one would have expected, the Commission would have taken appropriate action against them. At the very least, it would have recommended that the Commissioner of Police consider disciplinary action for serious improper conduct. The ACC found that there was no evidence to support the allegations.

At the request of this Commission, Mr SP Wilson, the ACC's principal investigator, reviewed the documents and records of the ACC to ascertain whether any representations had been made to the Commission by any of Brennan, Looby or Caporn regarding Q1's allegations. Wilson explained the ACC"s practice with respect to its record. It was quite clear that it was extremely thorough.

Wilson reviewed all of the hard copy and electronic record in relation to the two relevant files. The only record he could find of any contact between the Commission and Brennan was an interview that Brennan participated in at the ACC on 20 April 1999. Mr Wilson reviewed the interview transcript, but found no record of any representations being made by Caporn. He checked with one of the investigators who conducted the interview and he had no recall of any such representations being made by Caporn at either side of that interview. He could find no record of Looby ever having been part of the inquiry, being contacted or making any contact with the ACC and no one associated with the case had any recall of Looby being involved. Wilson had the executive secretaries check the electronic diaries of the Chief Executive Officer and the Chairman and Commission members for the

period that the files were opened, and they found no recorded meetings with Brennan, Caporn or Looby in respect of the matter.

Wilson confirmed that, had there been an approach by a senior officer suggesting that the ACC should cease its investigation of the matter, the attitude of the Commission is that it would have placed an allegation of serious improper conduct in relation to such a representation. No such file was ever raised.

15.15 CONCLUSION

The complaint relating to Looby is entirely without substance. It appears merely to have been the product of speculative gossip. It is very clear that Looby made no attempt to influence the ACC in this matter.

So far as Caporn is concerned, his conduct was appropriate. There were staffing problems at the CAU at the time, and it was seriously under resourced. There was no reason, following advice from the DPP's office, why he should not review the laying of charges against a suspect. There is no basis for any suggestion that Caporn intended to release Q2, whether he confessed or not, without subsequently reviewing the position.

There is no evidence that Brennan interfered with the investigative process except for his brief advice to Caporn to "leave no stone unturned in finding evidence to support the allegation". There was evidence of what might be considered unwise contact with Q2 when charges were in contemplation. But there is nothing to suggest that Brennan discussed the contemplated charges with Q2. The circumstances surrounding Q2 willingly going with the police officers for an interview and the manner in which McPhee was engaged support the view that Q2 received no advice from Brennan.

PART IV
MATTERS REVIEWED

CHAPTER 16

EUCLA

16.1 INTRODUCTION

The Royal Commission received a substantial submission on behalf of former members of the Western Australia Police Service ("WAPS") who had been convicted on counts of conspiring to pervert the course of justice and of perjury, arising out of events at Eucla between 9 and 12 May 1989. This has become widely known as the Eucla Affair. The submission, in part, outlines and analyses relevant information from the commencement of an investigation at Eucla on 9 May 1989 until the Court of Criminal Appeal dismissed the Eucla officers' appeals against their convictions on 27 February 1995. It calls for a further investigation into numerous matters concerning the Eucla Affair. However, the two fundamental matters of concern are the conduct of the investigation undertaken by Inspectors William John Chilvers and Ivan Morris Robson of the Internal Investigations Branch ("IIB") and the alleged contradictions in the evidence of the principal Crown witness, former Constable Paula Kaye Johnson. Subsequent to the convictions, concerns were also expressed as to the conduct of other Government agencies that have been requested to investigate the complaints, including the manner in which the respective agencies responded.

The Royal Commission has undertaken a careful review of the matters referred to in the Eucla submission and of the supporting documentation. Upon completion of this review, it was determined that it was not necessary to conduct a hearing to examine witnesses, given the comprehensive statements and affidavits given by the relevant witnesses to investigating agencies and the exhaustive examination of their evidence before a judge and jury in the District Court of Western Australia and subsequently the hearing before the Court of Criminal Appeal. Given the voluminous nature of the investigations, only the salient aspects of the evidence of the Eucla Affair will be canvassed in this Report.

16.2 BACKGROUND – THE FACTUAL CONTEXT

The Eucla Police Station is situated on the Eyre Highway, approximately 1500 kilometres from Perth by road. Eucla is 12 kilometres from the Western Australian–South Australian border. Accordingly, Eucla operates on Central Western Time ("CWT"), being 45 minutes ahead of Western Standard Time ("WST"). Esperance, which operates on Western Standard Time, is approximately 850 kilometres from Eucla by road, travelling along the Parmango Road route.

In early May 1989, Eucla, with a population of approximately 30, consisted of a roadhouse motel, approximately eight houses, a Silver Chain nursing post, an Agriculture Protection Board office and the police station. At that time, the officer in charge of the Eucla Police Station was Sergeant Hjalmar George Johansen, assisted by Senior Constable Mark Stephen Thompson, and Constables Stephen James Brennan and Barry John Lee. Another officer, Constable Rick James Goodfield, was attached to the Eucla Police Station, but he was on leave during the relevant period, and therefore assisted the duty officers to only a limited extent. The Eucla Police Station was under the general control of the regional office at Kalgoorlie, with the Criminal Investigation Branch ("CIB") office in Esperance supervising major incidents at Eucla. The officer in charge of the CIB in Esperance in May 1989 was Detective Sergeant Raymond Charles Fairclough.

On Tuesday 9 May 1989, Brennan and Lee were on road patrol on the Eyre Highway near Mundrabilla, about 70 kilometres west of Eucla. At about 3.40 pm a white Valiant panel van was stopped by the police officers. Robert Rutland McCoull was driving the panel van with a passenger, Marc Hamilton Winterburn. Brennan and Lee found that the registration of the panel van had expired, and that a false windscreen label had been affixed. During a search of the vehicle Winterburn said, "I'll show you where it is", and then proceeded to produce three small plastic bags from under a mattress in the rear of the van. The bags contained 160 grams of cannabis. Winterburn, when asked about its ownership said: "It's mine and it's for my personal use". Inside the back of the van an empty backpack was lying on the floor.

After arresting Winterburn for possession of cannabis, Brennan and Lee placed him in the police car to return to Eucla. McCoull was asked by the police officers to follow in the panel van. Subsequently, Brennan and Lee were diverted to another matter, and they requested McCoull to continue through to Eucla. At 6.00 pm, Lee and Brennan arrived at Eucla, only to discover that McCoull was not there. Johansen and Thompson commenced a search for the panel van. At approximately 11.00 pm the van was located by the officers in dense scrub behind the Amber Road House in Eucla. The officers noted that a metal panel in the rear of the van had been unscrewed from inside the van and they located a screwdriver in the back of the van. Johansen and Thompson smelt a strong odour of cannabis.

Winterburn was detained in the cells at the Eucla Police Station. On Wednesday 10 May, at 9.30 am, Thompson allegedly had a conversation with Winterburn in the police cells, during which Winterburn stated:

> Honestly, Mark, we're in more trouble than meets the eye. There is about 12 kilos of cannabis in quantity that is involved.

That Winterburn made this admission was disputed by him on his subsequent trial. However, Thompson returned to the place where the van had been found and searched the area. He found a red "esky" in which there were clothes, kitchen scales and plastic bags. However, no further drugs were located at that time.

On the morning of Wednesday 10 May 1989, McCoull was apprehended on a bus near Norseman, approximately 554 kilometres from Perth. He was brought back to Eucla, returning by 2.30 pm on that day. Notwithstanding that both men were now in custody, no formal complaint was sworn against Winterburn or McCoull until Friday 12 May 1989. The lawfulness of the detention was an issue in the subsequent trial of Winterburn and McCoull. However, their detention had no direct bearing on the trial of the Eucla officers.

The Crown case in the trial of Winterburn and McCoull was that, at 4.30 pm, Brennan, Thompson, and Lee had revisited the place where the van had been found. The officers, with the assistance of McCoull, searched the area and found the backpack that had previously been seen by them in the panel van. At the trial Brennan, Thompson, and Lee gave evidence that the backpack had been found by Thompson with the assistance, and in the presence of, McCoull. The backpack was now found to contain over nine kilograms of cannabis. McCoull denied having been present and having assisted in locating the cannabis. This factual dispute became a central issue in the subsequent investigations and criminal trials. Brennan, Lee and Thompson were subsequently indicted, but not convicted, in relation to their evidence concerning their finding of the cannabis with the assistance of McCoull.

At 8.00 pm on 10 May 1989, Constable Talbot called at the home of Constable Johnson in Esperance. Talbot informed Johnson that the next morning she was to travel to Eucla with Sergeant Fairclough. Johnson was told by Talbot to be at the Esperance station at 7.00 am the next day. Johnson had recently graduated as a police cadet on 9 December 1988 and Esperance had been her first substantial posting when she was transferred to that town on 27 March 1989.

On Thursday 11 May 1989, Fairclough and Johnson travelled from Esperance to Eucla to investigate the possession of cannabis by Winterburn and McCoull. They drove by way of Fisherman's Road to Parmango Road at Condingup and continued along Parmango Road to the Eyre Highway at Balladonia and then through to Eucla. Fairclough and Johnson travelled in one car, in convoy with Ms Linda Mary McDowell and Mr John Alan Davies who travelled in their own car from Esperance to Madura. Madura is situated approximately 194 kilometres west of Eucla on the Eyre Highway. From Madura to Eucla, Fairclough and Johnson travelled on their own. Their time of departure from Esperance, and their time of

arrival in Eucla, and the nature of the investigations undertaken by them upon their arrival were disputed.

Fairclough stated at his trial that he had arrived in Eucla at approximately 4.00 pm during the daylight and that upon his arrival, he had conducted interviews with two prisoners, being Stuart Raymond Marshall and Boyd Peter Cummings. Both Marshall and Cummings had been arrested for stealing petrol on 9 May 1989 and they were in custody awaiting sentencing at the Eucla Court on 11 May 1989. Marshall and Cummings denied that Fairclough had interviewed them on 11 May 1989.

Fairclough also maintained that he had conducted interviews with Winterburn and McCoull, commencing with Winterburn's interview at approximately 5.00 pm, with the assistance of Lee, and the subsequent interview of McCoull at 5.15 pm, with the assistance of Brennan. At the subsequent trial of the Eucla officers, the Crown case was that Fairclough and Johnson had not arrived in Eucla until 6.50 pm (WST) and that no interviews with Winterburn, McCoull, Marshall or Cummings had been conducted by Fairclough on 11 May 1989. This factual dispute became the second central issue in the subsequent investigations and criminal trials. Fairclough, Brennan, and Lee were subsequently indicted and later convicted in relation to their evidence, before a judge of the District Court regarding the interviews allegedly conducted on 11 May 1989. It is necessary to outline and consider this evidence.

16.3 THE WINTERBURN AND MCCOULL INDICTMENT

On 30 January 1990, Winterburn and McCoull were indicted on the single count that, on 9 May 1989, at Eucla, they had in their possession a quantity of cannabis with intent to sell or supply it to another, contrary to s. 6 of the *Misuse of Drugs Act 1981*. The police brief of evidence included statements from Lee, Brennan, Fairclough and Thompson, and from two other officers proving the continuity of the transportation of the cannabis for analysis. Upon receiving the brief of evidence, both Winterburn and McCoull entered a plea of not guilty. Objection was taken to the admissibility of the alleged oral admissions made by Winterburn and McCoull, and to their respective alleged records of interview, conducted by Fairclough, with Brennan and Lee, on 11 May 1989. The Director of Public Prosecutions ("DPP") informed Fairclough on 19 January 1990 that the admissions were to be challenged by Winterburn and McCoull. A jury was sworn prior to the conducting of a *voir dire*. Between 30 January and 1 February 1990, the *voir dire* was conducted by Clarke DCJ to determine whether the confessional evidence was given voluntarily, or whether it was illegally or unfairly obtained, so as to be excluded from evidence.

The testimony given by the Eucla officers on the *voir dire* with respect to the two central issues, being the evidence of Thompson, Brennan and Lee, as to whether McCoull showed the officers the location of the cannabis, and the evidence of Fairclough, Brennan and Lee that records of interview were conducted with Winterburn and McCoull on 11 May 1989, led to their being indicted for perjury and perverting the course of justice. It is necessary now to outline the relevant aspects of the Eucla officers' testimony at the trial of Winterburn and McCoull.

Each of the Eucla officers provided written statements for the Winterburn and McCoull brief of evidence. The entire Thompson statement in the brief of evidence consisted of the following:

> I am a Senior Constable stationed at Eucla Police Station.
>
> On May 15, 1989 I had a conversation with Detective Fairclough at the Norseman Police Station. He then handed me a Hessian bag containing a large amount of cannabis. I was aware that the cannabis had been seized from Marc Hamilton Winterburn and Robert Rutland McCoull, the defendants present in court.
>
> I conveyed the bag of cannabis to Kalgoorlie Police Station handed it to Sergeant Wilson who signed the receipt.

During the *voir dire,* Thompson gave evidence that, on 10 May 1989, whilst passing the cells at the Eucla Police Station, in answer to an inquiry relating to the panels in the van, Winterburn said:

> Honestly, Mark we're in more trouble than meets the eye. There's about 12 kilos of cannabis in quantity that is concerned.

Thompson also gave evidence that he was present when McCoull showed Brennan and Lee the location of the cannabis east of the roadhouse. That alleged statement did not appear in the signed statement of Thompson prepared for the Crown brief of evidence prior to trial. However, Clarke DCJ did not exclude the evidence.

Lee gave the following evidence with respect to McCoull's assisting in the locating of the cannabis:

> Did you take McCoull to where the car was located?---Yes. We went over to the site where the car had been located.
>
> Where was that?---That was in the bush behind the Amber Hotel adjacent---
>
> How far from Eucla police station?---It is approximately 500 metres, 600 metres distance.

> Did he show you something?---Yes, he then showed us where he thought he had hidden the cannabis. As he had done it at night all the bushes looked the same, so we just searched through bushes until such time as we located the---
>
> Did he at least locate you – point you to an area?---Yes he gave us the area in the bushes where he thought he had left it.
> And that is where you found it?---That is the general area where we found [plastic bags appearing to contain cannabis leaf material inside a blue and mauvey coloured haversack].

Thompson gave the following evidence with respect to McCoull's assisting in the locating of the cannabis:

> Apart from re-attending the site where the vehicle was found on the Wednesday morning, did you at any other time go back to the site?---Later on in the afternoon on Tuesday, late morning, we did-when the officers brought back McCoull.
>
> What happened then?---The officers had a conversation or interview with McCoull. They spoke to him and after that I assisted them in searching the area where the cannabis was alleged to have been.
>
> Who went to the area?---We all-Constable Brennan, Constable Lee and myself and the defendant McCoull.
>
> And that area was searched?---The area was searched.
>
> And was anything found there?---A knapsack containing a large quantity of cannabis was finally located, well hidden in a bush, just east of the road-house.

Brennan gave the following evidence with respect to McCoull's assisting in the locating of the cannabis:

> What were the exact words of that conversation?---Constable Lee said, "Where is the cannabis that was hidden in the panel van panels?" The answer was, "I hid it in the bush".
>
> The next question?---Can you show us where it is? He said, "yes".
>
> What happened then?---We went over to the rear of the Amber Roadhouse.
>
> Who went to the rear of the road-house?…Mr McCoull, myself, First Class Constable Lee and Senior Constable Thompson.
> …
> Was there a conversation there between Constable Lee and Mr McCoull?---Yes. Mr McCoull showed us where he thought he had put it.

Fairclough gave evidence consistent with his statement. His evidence was that he had departed from Esperance "very, very early" and arrived at Eucla some time after 1.30 pm. Upon his arrival Fairclough stated that he conducted an interview with two other persons

under arrest, being Marshall and Cummings. The interviews with Winterburn and McCoull were conducted between 5.00 pm and 5.30 pm. On 31 January 1990 Fairclough gave the following evidence with respect to the interviews conducted with Winterburn and McCoull on 11 May 1989:

> Who did you interview first?---Mark Hamilton Winterburn.
>
> Do you know approximately what time that was?---Around about 5.00 pm.
>
> 5.00pm on the Thursday the 11th?---The 11th , yes.
>
> Was anyone else present during that conversation?---Yes, Constable Lee from the Eucla police station was with me.
>
> …
>
> Did you then have a conversation with the accused man Mr McCoull?…I did, yes.
>
> Was anyone else in company with you at that time?---Constable Brennan of the Eucla police station was with me at the time.

Brennan and Lee gave evidence consistent with their statements with respect to the interviews with McCoull and Winterburn. Both Brennan and Lee corroborated the evidence of Fairclough as to the conducting of interviews with McCoull and Winterburn on 11 May 1989, and confirmed that McCoull had shown both of them the location of the drugs near the roadhouse. Brennan gave the following evidence with respect to the interview conducted by Fairclough with McCoull on 11 May 1989:

> Did Detective Fairclough arrive at the Eucla police station?---Yes he did.
>
> When was that?---On the 11th.
>
> The 11th being a Thursday?---A Thursday, yes.
>
> Do you remember what time?---Well, early afternoon.
>
> Had Detective Fairclough arrived before you departed?---Yes he had.
>
> Did he speak with Mr McCoull that afternoon?…Yes, he did.
>
> Were you present?---Yes, I was.
>
> Do you recall the exact words of that conversation?---Not the exact words, no.
>
> Were there notes made of that conversation?---Yes, there was.
>
> By whom were they made?---By Detective Sergeant Fairclough.

> Did you later read those notes to ascertain if they were correct?---Yes, I did.
>
> Were they correct?---Yes, they were.

Lee gave the following evidence with respect to the interview conducted by Fairclough with McCoull on 11 May 1989:

> Did the Detective speak with Mr Winterburn?---Yes. He spoke with Mr Winterburn in my presence.
>
> When Detective Fairclough spoke with Mr Winterburn was there a notation made of what was said?---Yes. Detective Sergeant Fairclough was making notes of what he was asking.
>
> Did you later read those notes to ascertain if they were accurate?---To the best of my recollection, yes, they were.

Fairclough gave evidence with respect to interviewing Cummings and Marshall on 11 May 1989. Whilst Fairclough did not refer to the interviews in his statement, that is understandable, given that the statement was prepared solely for the prosecution of Winterburn and McCoull. The evidence of Fairclough was as follows:

> Who did you speak to first?---There were a number of people at the police station. I had another matter to deal with first.
>
> Was that Marshall and Cummings?---Yes.
>
> You spoke to them?---Yes.
>
> Before going to speak to the accused?---Yes.
> …
>
> As a result of your interview with Marshall and Cummings, they were charged?---Yes.
>
> After they had spoken to you?---Yes.
>
> Are you sure about that?---Yes.
>
> You can remember that, can you?---That they were charged after I had spoken to them, yes.
>
> They hadn't been to court and dealt with prior to you speaking to them?---No. I know the occurrence book says, but that's not correct, the way it happened.

After three days of hearing evidence on the *voir dire,* Clarke DCJ reserved his decision. On 20 February 1990, his Honour determined that any admission by either Winterburn or McCoull, oral or written, subsequent to McCoull's returning to Eucla from Norseman on

10 May 1989 should be excluded. Clarke DCJ also excluded the evidence suggesting that McCoull showed the officers the location of the cannabis on 10 May 1989. The basis of the exclusion was that the evidence had been obtained by improper means by the police and therefore it was not voluntary. The observations made by Clarke DCJ with respect to the evidence of the Eucla officers represent the only findings of fact as to the veracity of the Eucla officers. Accordingly, the observations of the trial judge are significant for the assistance they provide as to the reliability of the evidence of those officers.

With respect to Fairclough, the trial judge observed that "his denials of the essential criticisms levelled at him – the non–existence of the Thursday evening interview with Winterburn; the absence of inducements to sign the record of interview – were inscrutable but in my view not persuasive". With respect to Thompson and Lee, the learned trial judge observed that: "My impression of Brennan and Lee as witnesses was not good. Lee seemed positively uncomfortable, if not unhappy, at various stages of his evidence in cross-examination, when dealing with some of the improbabilities I have instanced and which were put to him. Senior Constable Thompson was quite cavalier about his flouting of the *Bail Act*. He is, I would gather from his performance in the witness-box, a seasoned taker of the oath."

Clarke DCJ expressed his concern with respect to the investigation and ordered that the transcript and relevant documents be forwarded to the Attorney General and the Commissioner of Police.

16.4 THE WINTERBURN AND MCCOULL TRIAL

The trial commenced before Clarke DCJ and a jury on 18 April 1990. The Eucla officers gave evidence, but given the rulings by Clarke DCJ, neither the Fairclough "interviews", nor the other alleged admissions made by Winterburn and McCoull, formed part of the Crown case. Brennan and Lee gave evidence that the cannabis had been found in the presence of McCoull but no reference was made to McCoull's admitting possession and showing the location of the cannabis. Fairclough gave truncated evidence, but affirmed that he had arrived at Eucla on the afternoon of 11 May 1989. The Crown led evidence from Johansen, and three other witnesses proving continuity in the process of analyzing the drug. Neither Winterburn nor McCoull elected to give evidence on his own behalf.

On 20 April 1990 the jury convicted Winterburn and acquitted McCoull. Clarke DCJ sentenced Winterburn to 12 months' imprisonment.

16.5 THE CLARKE DCJ REPORT TO THE ATTORNEY GENERAL

On 30 April 1990, Clarke DCJ forwarded a report dated 28 February 1990 to the DPP, the Commissioner of Police and the Attorney General, expressing his concerns with respect to the conduct of the officers. Clarke DCJ particularized four matters, being:

- the provisions of the *Bail Act 1982* had not been complied with;
- a police officer was called to give evidence of a vital verbal admission which had not been included in his deposition;
- on the balance of probabilities, the accused had been induced to incriminate themselves by unacceptable means; and
- an exhibit, a panel van, had been sold and the purchase price had been paid to one of the accused (Winterburn) with money provided by the officer in charge of the police station, Sgt Johansen.

It is not necessary for the Royal Commission to consider the issue of the alleged breaches of the *Bail Act,* or the circumstances with respect to the sale of the panel van. The evidence given by Johansen and Thompson on the *voir dire* regarding the sale of the panel van led to separate charges of perjury. Given that both Johansen and Thompson were acquitted on those charges, and that the issue has no bearing on the other matters, it is not necessary to consider the facts surrounding the sale of the panel van.

16.6 THE CHILVERS AND ROBSON INVESTIGATION

On 9 May 1990, the Commissioner of Police, Mr Brian Bull, referred the report forwarded by Clarke DCJ to the Internal Investigations Branch ("IIB"). Inspector Chilvers and Inspector Robson were the officers designated to undertake the investigation. The Chilvers and Robson investigation was conducted from 18 May to 28 November 1990.

During the period of the investigation, Chilvers and Robson conducted taped records of interview with witnesses and obtained signed statements. Whilst the Royal Commission considered all statements and transcripts of the interviews conducted, it is only necessary to outline those that were subsequently relied upon as constituting fresh evidence in Winterburn's appeal against his conviction. The investigators obtained a statement made by Frank Grinevicius, a petrol station attendant, on 1 November 1990, deposing that, at Eucla, on 10 May 1989, a large bag containing cannabis was found by Brennan. At that time, neither McCoull nor Thompson was present. Grinevicius stated that on 9 May 1989 he had observed McCoull near the generator shed at the rear of the petrol station where he was employed, and that he informed the police of that fact. A statement of David Charles

Norfolk, made on 13 July 1990 that, in May 1989, whilst a prisoner at Eucla Police Station, he and other prisoners undertook a search for cannabis at the request of police officers and such a search had been completed after McCoull had been returned to his cell. The statement of Robert James Gillard, made on 10 July 1990, deposed that in May 1989, at Eucla Police Station, McCoull was taken by the police to locate cannabis. Subsequently, McCoull was returned to his cell and police officers asked prisoners, including Gillard, whether they were interested in assisting the police to locate a bag of cannabis. A search was then conducted. Marion Sarah Hill, in her statement, dated 30 October 1990, recalled that on 10 May 1989, whilst a prisoner at Eucla Police Station, she assisted in the search for cannabis at the behest of the officers. Hill confirmed that she did not recall seeing McCoull go out looking for cannabis with the police officers. Hill said that Fairclough had arrived at the Eucla Police Station at 8.40 pm on 11 May 1989. Constable Johnson, who had travelled with Fairclough, in a statement dated 13 November 1990, confirmed that she and Fairclough arrived at Eucla at approximately 7.30 pm, CWT, on 11 May 1989. Johnson confirmed that she had not seen any prisoner being interviewed on 11 May 1989 at Eucla.

16.7 ALLEGATIONS OF IMPROPER CONDUCT BY CHILVERS AND ROBSON

During November 1990, Mr John Quigley, a solicitor acting on behalf of the Police Union, commenced a process of obtaining statutory declarations for the purpose of establishing a complaint concerning the conduct of Chilvers and Robson with respect to the manner in which they had interviewed the civilian witnesses. Statutory declarations were obtained by Quigley from Derek Negus, Hill, Linda McDowell, John Davies and Noelene Crawley.

On Sunday 24 November 1990, Quigley met with Commissioner Bull at the Commissioner's private residence and presented a complaint and the statutory declarations in support of that complaint. On 27 November 1990, Chilvers and Robson were instructed by Assistant Commissioner Zanetti that they were to cease their inquiry into the Eucla Affair. The reason for that instruction was to allow an investigation with respect to the complaint.

16.8 THE THICKBROOM AND GREAY INVESTIGATION

On 27 November 1990, a meeting was held between Bull, Chief Superintendent Lippe, Chief Superintendent Pilkington and Detective Superintendent Greay. At that meeting, it was decided that an inquiry should be conducted by Greay to determine whether or not there was substance in the complaints of the witnesses interviewed by Chilvers and Robson. Assistant Commissioner Thickbroom was appointed to assist Greay.

Thickbroom and Greay conducted interviews with Negus, Hill, Crawley, Davies, McDowall, Grinevicius and Constable Johnson. Grinevicius informed Thickbroom and Greay that he had no complaints as to the manner in which the interviews were conducted by Chilvers and Robson. Thickbroom and Greay recorded Hill as stating that, during the second interview, conducted on 12 July 1990, Chilvers was overpowering and telling her the answers that Chilvers expected. Hill was interviewed by Chilvers with respect to another investigation on 30 October 1990. Hill informed Greay and Thickbroom that, at the conclusion of the interview with Chilvers, further questions were to be put with respect to the Eucla matter and "that if she did not change her answers she could be roped in with the rest of them and be charged with conspiracy to pervert the course of justice". Hill maintained that her subsequent statement, dated 30 October 1990, was typed by Chilvers and signed under pressure.

Thickbroom and Greay recorded that Davies and McDowall stated that Chilvers was trying to suggest that the arrival times at the destinations were later than they recalled. Davies and McDowall also complained that Chilvers had told them that anyone found lying would be charged with perjury. Crawley complained to Thickbroom and Greay concerning the "aggression and pressuring during the interview with Chilvers".

In December 1990, Thickbroom and Greay interviewed Johnson at the Perth Traffic Office. Johnson was not a witness who had complained concerning the conduct of Chilvers and Robson. Thickbroom and Greay record that Johnson, on being questioned about her statement signed by her on 13 November 1990, stated that "I typed the statement as Robson dictated it to me. It was 7.30 pm and I had had enough. I signed it because I wanted to get home". At the subsequent trial of the Eucla officers, Johnson accepted that she had said this to Thickbroom and Greay, but she maintained that what she had told Chilvers and Robson was the truth.

Greay made the following observation in the report with respect to Johnson:

> Has obviously suffered stress as a result of involvement in the inquiry, and perusal of documents relating to her involvement indicate she had been heavily led as to times and incidents. As previously stated she adopted the statement taken from her so she could go home.

However, Johnson subsequently signed a handwritten statement confirming that she had no complaints of any nature about the way the interviews were conducted by Chilvers and Robson. Johnson has never deviated from that statement.

Thickbroom and Greay did not interview Robson and Chilvers with respect to the manner and circumstances of obtaining the statements. On 17 December 1990, Thickbroom and Greay presented a written report to Assistant Commissioner Zanetti. That report made observations with respect to the demeanour of the witnesses interviewed, and recited the nature of complaints of the deponents, but it made no real assessment of the investigation, and what effect, if any, the statements of the deponents had on the investigation. The report made no recommendations. Accordingly, there was no outcome, just delay.

16.9 THE WINTERBURN APPEAL TO THE COURT OF CRIMINAL APPEAL OF WESTERN AUSTRALIA

The Crown disclosed to Winterburn further relevant material that had been obtained by Chilvers and Robson during their investigation. An application was made by Winterburn for an extension of time within which to appeal against his conviction. The Crown did not oppose his application. At the hearing of the appeal, the Court of Criminal Appeal received fresh evidence, being the statements obtained by Chilvers and Robson referred to above.

By a letter dated 25 July 1991, the DPP asked the Commissioner of Police to determine whether there was any further evidence that the Crown might rely upon on the hearing of the appeal. Affidavits were prepared to support the Crown. Affidavits from the Eucla officers were obtained. Johansen, in his affidavit, stated that Fairclough and Johnson had arrived in Eucla on 11 May 1989 between 3.30 pm and 4.00 pm. Johanson stated that, only after Fairclough's arrival did he depart from Eucla with Brennan. Thompson, in his affidavit accepted that, whilst his evidence in respect of location and the locating of the cannabis on the *voir dire* was his recollection at the time of giving that evidence, those inquiries now led him to change his evidence. Thompson stated that McCoull, whilst present during the search for the cannabis, had been unable to locate the drugs; that Brennan had a conversation with Grinevicius whilst he remained with McCoull and Lee; that Brennan continued the search and then located the haversack containing the drugs. Thompson confirmed that Fairclough arrived in Eucla on 11 May at about 4.30 pm and that Brennan was present during short interviews with either McCoull or Winterburn.

Lee, in his affidavit, corroborated the affidavit of Thompson with respect to the circumstances of finding the cannabis. Lee stated that Fairclough, prior to his arrival, had called in by radio and requested that Cummings and Marshall be detained. Lee recalled that Fairclough and Johnson had arrived in the afternoon, in daylight. Further, Lee said that he briefed Fairclough prior to his assisting him in undertaking the record of interview on 11 May 1989. Brennan, in his affidavit, corroborated the evidence of Thompson and Lee with

respect to the finding of the cannabis. Brennan said that Fairclough and Johnson had arrived at about 4.00 pm and that he was present when Fairclough interviewed McCoull.

Fairclough, in his affidavit, deposed that he had arrived at Eucla at 4.00 pm and had interviewed Cummings and Marshall, that he had interviewed Winterburn in the presence of Lee at 5.00 pm and that, shortly after this, he had interviewed McCoull in the presence of Brennan. Fairclough deposed that his evidence given on the *voir dire* that he had departed from Esperance at 5.00 am and arrived in Eucla at 1.30 pm was a mistake. Johnson, in her affidavit said that she had arrived with Fairclough between 7.05 pm and 7.35 pm. Hill, in her affidavit, denied the contents of the statement provided to Chilvers, and said that Fairclough arrived in Eucla some time between 4.00 pm and 5.00 pm, and that Johansen and Brennan left Eucla approximately one hour after the arrival of Fairclough.

On 7 April 1992, the Court of Criminal Appeal quashed the conviction of Winterburn, and declined to order a re-trial. Given that the Court of Criminal Appeal did not hear the evidence of the Eucla officers, the Court determined that it was unable to make any judgment on the disputed facts. However, the Court of Criminal Appeal accepted that the evidence of Johnson did cast doubt on the testimony of the Eucla officers given in the District Court that Fairclough had arrived in Eucla during the afternoon of 11 May 1989, and that interviews were conducted with Winterburn and McCoull.

Subsequent to the judgment of the Court of Criminal Appeal, Inspector William Frederick Rowtcliff was appointed to continue and complete the investigation, with the assistance of Inspector Robson. Rowtcliff reviewed the investigation undertaken to date, and he interviewed Brennan, Lee, Thompson and Fairclough. In an undated report presented to the Commander (Crime Operations) in about June 1992, Rowtcliff recommended that the Eucla officers be indicted for offences of perjury and conspiring to pervert the course of justice arising out of the evidence each gave before Clarke DCJ.

16.10 THE TRIAL OF JOHANSEN AND THOMPSON – DISPOSAL OF THE VAN

Johansen and Thompson were indicted on separate counts of giving false evidence at the trial of Winterburn and McCoull, and in their respective affidavits before the Court of Criminal Appeal in relation to the disposal of the panel van driven by Winterburn and McCoull. A trial before Sadleir DCJ and a jury commenced on 1 August 1994. At the conclusion of the Crown case, Sadleir DCJ held that there was no case to answer, and Johansen and Thompson were then acquitted.

16.11 THE TRIAL OF THE EUCLA OFFICERS BEFORE SADLEIR DCJ AND A JURY

The trial of Fairclough, Lee, Brennan and Thompson before Sadleir DCJ and a jury commenced on 11 August 1994 and lasted four weeks. The Crown initially indicted the four officers along with Johansen with respect to alleged false statements made in the affidavits deposed to by the officers for the Winterburn appeal. Prior to the empanelling of the jury, the trial judge ruled that the statements in the affidavit, whilst relevant, were not practically relevant, and therefore severed the respective counts from the indictment. For Johansen, that determination was to end any further prosecution of him arising out of the Eucla Affair. For the remaining four officers, the joint indictment comprised eight counts, which alleged that they had conspired to pervert the course of justice and had variously given false evidence in the proceedings against Winterburn and McCoull about the finding of the cannabis and their interviews.

At trial, both Winterburn and McCoull gave evidence that they were not interviewed by Fairclough (and Brennan and Lee respectively) on 11 May 1989. McCoull denied informing the officers as to the location of the drugs. Marshall and Cummings both confirmed that Fairclough did not interview either of them on 11 May 1989.

Cummings produced a photograph taken at Eucla prior to appearing in the Eucla Court House on 11 May 1989. Michael Phillip Candy, an astronomer with the Perth Observatory, gave evidence that the photograph was taken at 2.00 pm on 11 May 1989. Cummings and Marshall recalled departing from Eucla immediately after their short court appearance. Andrew Manning, a prisoner at Eucla, also recalled Cummings and Marshall departing at about mid-afternoon, "just after lunch", and that Fairclough had arrived between 7.30 pm and 8.00 pm. In cross-examination, Manning agreed that Fairclough may have arrived at "sixish", but he maintained that Cummings and Marshall had departed prior to Fairclough's arrival. A court document was produced, noting that Cummings and Marshall had appeared in court at Eucla on 11 May 1989 at 2.00 pm.

The principal Crown witness was Johnson, who confirmed that she commenced duty on 11 May 1989 at 7.00 am. Prior to departing from Esperance, Fairclough and Johnson undertook a number of tasks. A fuel docket confirmed that Johnson refuelled at Esperance at 7.29 am. Johnson gave evidence that approximately 20 minutes later, she left with Fairclough, travelling to the Hospitality Inn in Esperance to join Davies, who was travelling in his car with McDowall. Approximately 20 minutes later, Fairclough and Johnson departed, with stops at a butcher's shop in Esperance and at the local veterinary clinic. The journey to Eucla was undertaken in convoy, with Fairclough driving from Esperance to Coningup and

then to the Parmango Road turnoff. At that location, Johnson recalled taking a coffee break and waiting for Davies and McDowall to arrive. Re-commencing the journey along the Balladonia track, Johnson estimated that their average speed was 80 kilometres per hour for the 200 kilometre distance. At Caiguna, Johnson took over the driving, and recalled roadworks having caused a delay of some 20 minutes. Upon arriving at Madura, at 4.00 pm, Davies and McDowall unloaded their luggage from the police vehicle. Johnson and Fairclough then continued their journey, arriving at Eucla when it was dark.

Johnson gave evidence that, upon their arrival, she was introduced to Thompson and Lee and watched the GWN weather broadcast that commenced at 6.50 pm (WST). Johnson recalled Thompson receiving a call from Johansen and Brennan, who were involved with a chemical spill near Forrest. Johnson confirmed that she did not observe any interviews with Marshall and Cummings or with Winterburn and McCoull on 11 May 1989. Johnson recalled interviews being conducted with Winterburn and McCoull on the next day. Significantly, Johnson also recalled that Fairclough raised the Eucla investigation with her in April 1990 and then again in October 1990. On the second occasion, Fairclough told Johnson that he had given evidence that he had left Esperance at 5.00 am and that Johnson was to corroborate that evidence if asked. She agreed to do so. This evidence was consistent with a written statement dated 23 September 1992 made by Johnson for the Crown brief.

Subsequently, Fairclough asked Johnson to find the Occurrence Book entry for 11 May 1989. She noted that the entry was in another's handwriting and stated that their departure from Esperance had been at 7.00 am. Johnson checked the travel allowance forms, which noted that both Fairclough and Johnson had departed from Esperance at 7.00, am. Johnson recalled Fairclough having instructed her to say that they had departed from Esperance at 7.00 am and that they had driven at a fast speed. Johnson agreed to do so. Further, Johnson confirmed that Fairclough had discussed the photographs taken by her at Eucla. Upon observing the photographs in October 1990, Fairclough raised the possibility that the photographs could be used to prove that he had arrived at Eucla in daylight on 11 May 1989. Fairclough demanded the negatives of the photographs. When Johnson informed Fairclough that the negatives could not be found, he went to her premises and demanded the opportunity to search those premises. Johnson refused Fairclough entry. This evidence is consistent with the written statement made by Johnson on 23 September 1992.

The cross-examination of Johnson took three days. Johnson maintained that she and Fairclough had arrived in Eucla after dark. Johnson accepted that she had initially told Chilvers and Robson that she did not know whether it was light or dark upon their arrival to "still keep something open for them to be able to have an escape". Johnson affirmed that neither Chilvers nor Robson had intimidated her. Johnson explained that any failure to

mention a specific knowledge of timings and events in the initial interview was due to her unwillingness to assist. Johnson was cross-examined at length as to the times and minute detail of the journey, including the colour of the cars, the colour of Davies' dog and whether the roadworks were a fabrication. It is not necessary to detail each fact explored in cross-examination. Essentially, the cross-examination sought to establish the possibility of Johnson and Fairclough having arrived at Eucla by 4.00 pm and to challenge Johnson's credit.

At the close of the Crown case, Sadleir DCJ determined that Thompson did not have a case to answer, given that the evidence relied upon by the Crown to support the allegation that Thompson had committed perjury in relation to McCoull's locating the cannabis, was not sufficient at law.

Fairclough, Brennan and Lee gave evidence on their own behalf, consistent with the affidavits each prepared for the Winterburn appeal to the Court of Criminal Appeal. Certain aspects of their testimony should be noted. Lee recalled that Cummings and Marshall were detained until Fairclough confirmed that they should be released. Lee identified his handwriting amending the release time of Cummings and Marshall from 3.00 pm to 4.00 pm. Lee referred to a trip undertaken by him and the other Eucla officers that was completed within seven hours, with stops at the roadhouses en route. Brennan gave evidence that he had departed from Eucla to travel to Forrest on 11 May 1989 between 5.30 pm and 6.00 pm and not between 6.00 pm and 7.00 pm as he stated in his affidavit prepared for the Court of Criminal Appeal.

Fairclough addressed the contradictions with his other statements. He accepted that, before Clarke DCJ, he had stated that the journey from Esperance to Eucla was undertaken in nine hours, but that he had, at that time, failed to recall that the short cut via Parmango Road was taken. Furthermore, Fairclough stated that his previous evidence before Clarke DCJ, that he left Esperance "very very early" and arrived at Eucla between 1.00 pm and 1.30 pm was an honest mistake and that he had arrived shortly before 4.00 pm. Fairclough accepted that he had deposed in his affidavit prepared for the Court of Criminal Appeal that he had left Esperance at 5.00 am, but that the investigator, Detective Senior Sergeant Hooft, suggested that time.

Fairclough maintained that he spoke to Cummings and Marshall "in the sergeant's office for a period of probably 2 minutes". The reason given by Fairclough for interviewing persons already dealt with by the court was to justify Eucla's remaining under the immediate control of the Esperance, and not the Kalgoorlie, WAPS office. The questioning of Cummings and Marshall involved no more than asking whether they had committed any other offences.

Fairclough denied meeting with Johnson and suggesting an earlier time of departure from Esperance on 11 May 1989. Fairclough recalled it was Johnson who brought the photographs to his attention, and that he had requested the negatives because at an earlier stage he believed that the sequence of the photographs would prove that he had arrived during daylight. It was accepted that the photographs could provide no such assistance.

Evidence was led on behalf of the accused addressing the journey from Esperance to Eucla. It was common ground that Fisherman's Road and the beginning of Parmango Road was bitumised. There were contradictions between the evidence of Fairclough and McDowell on the one hand as against Johnson in relation to the quality of the road surface and the speed of the vehicle. There were also contradictions between Fairclough, McDowell and Johnson with respect to the number of stops on the journey. The Royal Commission has closely considered all transcript from the trial. The following provides an outline of some of the contradictions in the evidence that confronted the jury at the trial.

McDowall testified that the stop at the intersection of Parmango and Fisherman's Roads was for a short time to give her dog a break. Johnson stated that the stop was a refreshment break that lasted 10 minutes. Fairclough disagreed with both accounts, stating that there was no break in the journey. Johnson also testified that she and Fairclough stopped along the Paramango Road for 10 minutes to allow Davies and McDowall to catch up. Fairclough denied that this had occurred and McDowall recalled that, at all times, she did follow behind, but kept her distance due to the dust.

McDowall corroborated Fairclough's evidence that, whilst travelling along the Eyre Highway, the average speed was 140 kilometres per hour. Johnson maintained that the police car travelled at approximately 125 kilometres per hour along the Eyre Highway. Johnson recalled a stop at Caiguna for 20 minutes, but that she did not see Davies and McDowall at that time. McDowall gave evidence that corroborated Fairclough's testimony that they were at Caiguna at the same time, and that the stop was for no more than five minutes. A further issue was whether there were roadworks between Caiguna and Madura. Once again, McDowall corroborated Fairclough's evidence that there were no delays due to roadworks between Caiguna and Madura, which contradicted Johnson's testimony that travel was delayed for 20 minutes between the two locations, due to the carrying out of roadworks. Christopher Raykos, an engineer with the Main Roads Department, testified that the only roadworks in progress were between Madura and Mundrabilla. That portion, whilst different from the area of the Eyre Highway designated by Johnson as being repaired on 11 May 1989, is still west of Eucla.

Paul Lebas, a general hand at the Hospitality Inn, Madura, recalled Fairclough being at Madura at approximately 2.30 pm and said that he departed shortly thereafter. Johnson contradicted this evidence, stating that she and Fairclough arrived at Madura at 4.00 pm, and that the refreshment stop took 20 minutes.

The jury retired at approximately 12.30 pm on 7 September 1994, and returned with their verdict on the morning of 9 September 1994. The jury convicted on the counts relating to the alleged interviews with the prisoners at Eucla.

The trial required the jury to assess the witnesses called on behalf of the Crown and those called on behalf of the accused officers to determine their credibility. Given the conflicting evidence, the jury were required to undertake the task of resolving the questions of fact. The jury were satisfied beyond reasonable doubt that Fairclough, Brennan and Lee were guilty of the offences on the indictment that they found to have been established. They were fully entitled to arrive at those verdicts.

It must be borne in mind that, prior to the trial commencing, the relevant issues had been considered in a number of discrete investigations conducted by various persons acting independently of each other. The only exceptional aspect of the Eucla trial was the degree to which the relevant issues had been ventilated prior to trial. The Crown witnesses had been required to prepare written statements and affidavits, and had been subjected to scrutiny both prior to, and in the course of the trial. In addition, the accused persons had given evidence before the District Court and had sworn affidavits for the Winterburn appeal to the Court of Criminal Appeal.

The trial Judge, in his sentencing remarks, made the following observations with respect to the investigation and prosecution:

> In all this there is reassurance to be gained in that the Internal Investigation Branch, represented by Superintendent Chilvers and Inspector Robson, conducted a rigorous and unrelenting investigation into your conduct. It is also encouraging the Police Department acted promptly to appoint very senior personnel to review that investigation when complaints were made that it had been conducted in a manner which was too inflexible and demanding.
>
> Finally, and at the other end of the extreme of seniority in the police force, Constable Paula Johnson showed great strength of character and a brave devotion to the truth in standing by her allegations of impropriety over a long and difficult time for her, which concluded in the ordeal of a long and exacting cross-examination.

16.12 POLICE APPEALS TO THE COURT OF CRIMINAL APPEAL

Fairclough, Brennan and Lee appealed against their respective convictions to the Court of Criminal Appeal. The appeal grounds did not include a ground that the verdict was unsafe or unsatisfactory or that there had been a miscarriage of justice by reason of the perjury of Constable Johnson. That was understandable, there being ample evidence upon which a properly instructed jury could convict the Eucla officers. Nor should it be overlooked that the three police officers were represented at the trial by two leading Queen's Counsel and a senior junior, making it highly unlikely that any arguable ground of appeal was missed. One of the Queen's Counsel, and the senior junior, appeared for the officers on the appeal.
The Court of Criminal Appeal heard, as the sole ground of appeal, the decision of the trial Judge not to discharge the jury, in circumstances where a member of the public had communicated with a member of the jury. The Court of Criminal Appeal dismissed the appeal on 27 February 1995.

16.13 AFP INQUIRY

On 14 November 1995, Commissioner Falconer ordered a comprehensive review of the Eucla Affair to be undertaken by the IAU. Commander Andy Wells and Detective Sergeant Killmier of the Australian Federal Police were retained to conduct the review ("the AFP Review") pursuant to the following terms of reference:

- The adequacy of investigations by Superintendent Chilvers and Inspector Robson;
- Whether internal or external interference prevented an appropriate conclusion to this investigation;
- The adequacy of investigations by Assistant Commissioner Thickbroom and Detective Superintendent Greay;
- The appropriateness of the outcome of this investigation;
- The appropriateness of recommendations for the criminal prosecution of any or all police officers at Eucla emanating from the respective investigations by any officer(s);
- The appropriateness of recommendations for disciplinary action against any or all police officers at Eucla emanating from the respective investigations;
- The possibility that any person called to give evidence at the trial of the police officers committed perjury;
- Comments on the legal opinion by Mr G Miller QC referring to alleged perjury committed by Constable Paula Johnson;

- A necessity for further investigations and the areas these investigations should address; and
- Any outstanding disciplinary or criminal matters that should be addressed.

The AFP Review had access to all material relating to the Eucla Affair held by the WAPS and the DPP, and in addition it had the benefit of two submissions prepared by Fairclough and Thompson's wife, Mrs Linda Thompson. All the material was made available and reviewed. Killmier listened to the numerous tape recordings of the interviews conducted by Chilvers, Robson and Rowtcliff. Internal investigation files regarding the personnel involved were considered by the AFP investigators.
The AFP Review:

- Was a thorough review of all aspects of the Eucla Affair, resulting in a detailed report of some 350 pages, which was presented to Commissioner Falconer on 9 February 1996;
- Carefully analyzed the Chilvers and Robson investigation, relying upon all the material, including all the files, the running sheets, transcripts, exhibits, and tape recordings of interviews with witnesses;
- Determined that Chilvers and Robson conducted an adequate investigation into a matter that had a very high degree of difficulty;
- Observed that the "inquiries appear to have been made, generally, to a depth and breadth appropriate for such an investigation". Furthermore, there was no evidence to substantiate allegations that Chilvers or Robson had manipulated witnesses or other evidence;
- Determined that there was no necessity for further investigations and that there were no outstanding disciplinary or criminal matters that should be addressed;
- Observed that the material referred to by Fairclough and Mrs Thompson consisted entirely of material available to defence counsel at the trial of the Eucla officers, and that the inferences drawn from the material by the two authors do not "provide any grounding or argument for further review, judicial or otherwise on the questions of guilt or innocence";
- Concluded that it was unable to identify any new material not available at the time of the trial that would have been material to the considerations of the jury; and
- Considered that there was one issue that had not previously been aired in the proceedings, being the preparedness of the police for the questions raised on the *voir dire*. The material referred to by Fairclough and Mrs Thompson included the submission that the officers did not know until

the morning of the voir dire that they were to give evidence. The AFP Review made the following determination with respect to this issue:

> Mr Fairclough having testified he had almost literally no warning he was to give evidence, said, under cross examination, that he was in possession of a subpoena received a month or so before the trial. There is also evidence from the file of the Director of Public Prosecutions that on 19 January 1990, nine days before trial, Fairclough was put on notice about both the trial and the allegations, with Lee and Brennan also advised on 23 January. Indeed on 28 January 1990 Brennan took a statement from the nurse who tended Winterburn. The only reasonable inference to be drawn for the taking [sic] that statement was to ward off allegations of mistreatment.

In other respects, the AFP Review considered that all relevant matters were properly before the jury. The question concerning the veracity of the evidence of Johnson was viewed as a matter that could only be addressed by the jury. In this regard, the AFP Review noted that Johnson was extensively cross-examined, and that the jury had the benefit of all other witnesses who were also subject to examination. The AFP Review dismissed any suggestion that either Johnson or any other Crown witnesses committed perjury. The AFP Review noted that it had access to more material than either the trial Judge or the DPP and upon a consideration of that material it determined that there was no perjury identified.

16.14 THE EUCLA SUBMISSION

The central concern raised by the Eucla Submission is that the evidence gathered by Chilvers and Robson was obtained through threats and inducements, and that the principal Crown witness, Johnson, gave perjured testimony at the trial before Sadleir DCJ and a jury. The allegation of perjury against Johnson is based upon contradictory evidence given by other witnesses and possible prior inconsistent statements by the witness herself. With respect to Johnson, a further issue is raised by the Eucla Submission, that being alleged health problems that were not known at the time of the trial.

THE CHILVERS AND ROBSON INVESTIGATION

In considering the concerns relating to the manner in which the investigation was conducted by Chilvers and Robson, the Royal Commission has considered the statutory declarations obtained by Quigley. The Commission is in agreement with the AFP Review that "little of substance, in real terms, appears to have been actually alleged within those affidavits". The AFP Review analyzed the cassette tapes to determine the manner of questioning. The Royal Commission had the benefit of the full transcripts of the interviews

conducted by Chilvers and Robson, where available, or alternatively, the statements made pursuant to the interviews. Regarding the affidavits, the Royal Commission agrees with the AFP Review that Negus, Crawley, Davies and McDowall were tested by Chilvers during the interview, but not improperly, so as to affect the propriety of the investigation.

Hill, in her affidavit, complained of unrelenting pressure with the result that she agreed with "Chilver's incorrect propositions". The AFP Review undertook a study of all cassette tape recordings to determine the perceived emotions and behaviour of all participants. The AFP Review determined that the interview with Hill was unexceptional as compared with the other interviews conducted by Chilvers. The study of the cassette recordings of the interviews, including Hill, led the AFP Review to determine that it "found no cases where it could reasonably be suggested individuals were browbeaten into saying things that were not entirely true".

That Hill deposed that she was under pressure, of itself, does not establish that Chilvers and Robson engaged in unfair investigative techniques. The AFP Review had "no difficulty in concluding that the behaviour attributed to Chilvers was, at the very least, exaggerated and, in any event, irrelevant to the final outcome". Hill, and the other deponents, did not give evidence on behalf of the Crown at the trial of the Eucla officers. The only Crown witness cross-examined as to alleged improper actions by Chilvers was Johnson and she affirmed that her testimony was the truth and not the result of any improper actions by Chilvers or Robson. Significantly, the manner in which Chilvers and Robson conducted the investigation was fully ventilated before the jury. Chilvers and Robson were examined with respect to the investigation, and Thickbroom gave evidence and produced the Greay/Thickbroom Report for the jury to consider.

THE TESTIMONY OF JOHNSON

The significance of the Johnson testimony at the trial related to the time that Fairclough and Johnson had arrived at the Eucla Police Station and the activities undertaken that evening. The late arrival rules out the possibility that the alleged records of interviews conducted with Winterburn and McCoull and with Cummings and Marshall did take place. The evidence of Johnson serves to corroborate the evidence of Winterburn and McCoull that the interviews, said to have been conducted by Fairclough, Brennan and Lee, did not take place. Accordingly, a significant part of the Eucla Submission is directed to analyzing the evidence with respect to the departure of Fairclough and Johnson from Esperance, and the journey to Eucla.

The principal issues with respect to the journey were the actual time of departure, the speed of the car, given the road surface, and the number and time of the delays en route, being principally refreshment breaks and road maintenance stops. The recollections of the events upon arrival are also considered significant, as they bear directly upon the time of that arrival.

The events in dispute prior to the arrival at Eucla are whether there were roadworks being conducted and other breaks during the journey from Esperance to Eucla. There is no dispute that, prior to departing from Esperance, fuel was obtained by Johnson, the veterinary surgeon was visited, the butcher was visited and assistance was given to Davies and McDowall to pack their luggage. The dispute lies in the time taken to undertaken each task and hence the time of departure. On the Crown case, Fairclough and Johnson departed from the veterinary surgery some time between 8.30 am and 9.00 am. Various witnesses gave evidence with respect to the time of the collection of Davies' dog. Davies recalled departing at between 8.00 am and 8.30 am, whilst persons employed at the veterinary surgery differed in their recollections. Given the passage of time, such conflict in recollections is to be expected. In any event, the effect of the evidence is that the departure from Esperance was some time between 8.00 am and 9.00 am.

The route of the journey from Esperance to Eucla undertaken by Fairclough and Johnson is not in dispute. The evidence of Davies and Fairclough contradicted Johnson's evidence with respect to departure time, speed of travel, the number and nature of the refreshment breaks and the arrival time at Eucla. However, if Johnson's evidence regarding the speed of travel and the nature and time of the delays en route was accepted by the jury, then an arrival time of approximately 6.50 pm was open on that evidence. Given the number and materiality of the prior inconsistent statements made by Fairclough with respect to departure and arrival times, that a jury would prefer the evidence of Johnson is understandable. The Eucla Submission, in dissecting the evidence of Johnson, indicated inconsistencies between Johnson's evidence at the trial and her previous statements, interview, and depositions. The Royal Commission's assessment is that the inconsistencies indicated are not material.

In any event, the previous statements were fully disclosed prior to trial and counsel for the defence rigorously cross-examined Johnson at the trial with respect to any inconsistencies. The jury accepted her evidence.

It must be borne in mind that the ultimate question for the jury was whether, as a matter of objective fact, the interviews with Cummings, Marshall, Winterburn and McCoull were conducted on 11 May 1989. Each of them consistently denied that any such interviews were

conducted. Their evidence corroborated Johnson's testimony that she was not aware of any such interviews being conducted on 11 May 1989.

A great deal of time and effort was obviously put into the compilation of the Eucla Submission, which occupies a number of volumes of documentation. All relevant material has been dissected in minute detail. Much of it is of little moment, but the significant issues have been identified and canvassed above. The submission included a request that the Royal Commission use its powers to gather medical records, including details of any psychiatric treatment, relating to Johnson, and to examine her in a hearing to explore issues of a highly sensitive nature. The Royal Commission has declined to do so. As explained, there is no evidence to show that her mental health was relevant to the evidence she gave at the trial. None of the issues raised call the conviction into question and, indeed, the analysis tends to make it appear more certain that the officers acted corruptly. There were undoubtedly variations and inconsistencies in the evidence, which are to be expected when persons are asked for their recall years after the event. However, the fact was that each of the four persons said to have been interviewed that afternoon separately denied it, and they were supported by the version of the day's events given by Johnson, who was supported by documentation, which ultimately caused Fairclough to have to change his story.

The jury had the advantage of seeing and hearing each of the witnesses. Johnson herself was rigorously cross-examined at inordinate length. The jury was fully entitled to reach the conclusion that, beyond reasonable doubt, the evidence of Johnson and that of Cummings, Marshall, Winterburn and McCoull should be accepted, and the evidence of the accused rejected.

HEALTH OF JOHNSON

The Eucla Submission raises one matter that was not the subject of investigation prior to the trial before Sadleir DCJ and a jury. An allegation is raised that Johnson had mental health problems during the relevant period and that the nature of her health problems affected her capacity to give reliable evidence at the Eucla trials. The evidence provided to the Commission on behalf of the Eucla officers in support of that submission is from persons who dealt with Johnson post 1994. Those persons made allegations concerning the conduct of Johnson. The persons upon whom reliance is now placed to substantiate the claim are known to have had acrimonious relationships with Johnson in the mid 1990s. The alleged conduct by Johnson referred to in the Eucla Submission in support of the claim that Johnson has health problems, all occurred after the Eucla trial. There is no evidence to support the proposition that Johnson had any mental health problems during the relevant

period. Indeed, upon considering the health records of Johnson maintained by WAPS it seems that Johnson was in very good health in every respect.

On 21 October 1997, a Medical Board convened by WAPS determined that Johnson was unfit to continue as a police officer. She retired from WAPS on 11 June 1998. The medical condition that resulted in Johnson's resignation from WAPS was considered by the relevant medical practitioners as being directly caused by the great difficulties that arose for Johnson due to her assisting the investigation, and acting as a Crown witness at the trial of the Eucla officers.

Accordingly, the submission that extraneous mental health problems affected the recollections of Johnson and the veracity of her subsequent testimony is without any foundation. Rather, the health difficulties of Johnson were a direct result of the stress arising from her involvement as a Crown witness. Prior to the Eucla Affair, Johnson was in good health. Subsequently, she experienced sustained harassment, ostracism, threats and discrimination from persons within her workplace at WAPS, commencing with the investigation of the Eucla Affair, and continuing until she retired from WAPS. For Johnson, agreeing to assist the investigation conducted by Chilvers and Robson, and acting as a Crown witness, meant the commencement of a period of continual isolation in the workplace.

Johnson was a young and inexperienced officer at the time of the events, and at the time of the trial. She was subjected to extraordinary personal attacks, because her evidence was in conflict with the officers on trial. This seems to be a not uncommon reaction of police charged with corruption who retaliate by mounting aggressive personal attacks on any police officer giving evidence against them. Johnson was traumatized by the experience and by the treatment she received at the hands of her colleagues. She is another sad example of an officer paying a great personal price for co-operating in the prosecution of corrupt officers. Her career had hardly begun when, through no fault of her own, she found herself enmeshed in an unsavoury situation, which not only eventually brought her career to an end, but also left her permanently harmed as a result. To compound the situation by subjecting her to further investigations and pressure is unacceptable.

CHAPTER 17

RED EMPEROR

17.1 INTRODUCTION

Operation Red Emperor commenced as a discrete operation conducted by a taskforce comprising members of the Western Australia Police Service ("WAPS") on 10 March 1997. The operation was given a 12-month period to conduct its investigations, but it was made subject to periodic reviews. On 15 September 1997, a comprehensive review of Operation Red Emperor was conducted. This resulted in the operation being terminated on 5 November 1997.

In 2001, the Anti-Corruption Commission ("ACC") considered some of the issues, but the reasons for the cessation of Red Emperor have not previously been publicly examined or explained. There has been public speculation that Operation Red Emperor was close to fulfilling its mission statement, that is, preferring charges against the principal persons allegedly involved in organized crime in Western Australia at the time the operation was ordered to cease all investigations. Accordingly, the Royal Commission decided that the circumstances that led to the cessation of Operation Red Emperor and the status of the investigations prior to the cessation of the operation needed to be the subject of further review. The Royal Commission has comprehensively examined the procedures adopted by the persons who conducted reviews of Operation Red Emperor prior to cessation in order to determine whether the ongoing investigations were properly analyzed by the persons conducting the reviews, and whether subsequent to the decision to terminate the operation the ongoing investigations were properly managed and resourced to ensure that the investigations were completed satisfactorily and that objectives were not compromised.

A review of Operation Red Emperor involved a consideration of two broad issues, being whether the operation ended prematurely due to improper interference by senior management, which required an analysis of the reasons for the cessation of the operation, and whether the investigative officers engaged in any unlawful activity during the operation.

Reviewing Operation Red Emperor to determine if there were improper or unlawful actions by investigating officers was difficult, given the large number of sub-operations, the duration of the investigations and, most importantly, the manner in which the investigations were conducted. Only limited running sheets or other operational logs were kept by investigators. Any reconstruction of an operational chronology for Operation Red Emperor would be extremely time consuming and incomplete, due to the lack of properly maintained

operational documents. Therefore, the Royal Commission determined that it was not able to review particular decisions and the strategies adopted during the myriad of sub-operations and investigations in order to reach conclusions as to whether officers, if any, were engaged in corrupt or criminal conduct.

17.2 DEFINING OPERATION RED EMPEROR – SUB-OPERATIONS AND HISTORY

Operation Red Emperor, whilst commencing on 10 March 1997, was a successor to previous operations that had similar primary targets, and involved a continuity of investigators, in particular, Acting Senior Sergeant Peter R Coombs, who acted as the officer in charge. The Australian Federal Police ("AFP") and WAPS conducted a joint operation, named Castille/Hydrogen, in 1994 and 1995 and the National Crime Authority ("NCA") conducted Operations Harpy and Border during the years 1994 to 1996. In February 1996, the NCA operations were discontinued due to the perceived protracted nature of the operations and the lack of substantive evidence against the principal target. The management at the NCA was also concerned that the operations were being conducted without any proper operational management and without specified operational deadlines. This concern is of some relevance, given that the lack of operational management and operational deadlines became significant issues having regard to the manner in which Operation Red Emperor was conducted.

The WAPS investigators attached to the NCA returned to WAPS, where a joint taskforce with the NCA was formed to continue the Operations Harpy and Border investigations. The involvement of the NCA in that joint task force was limited to the provision of a senior analyst and computer equipment. In February 1996, the NCA withdrew from the joint operation due to resource limitations. Operations Harpy and Border were then expanded and became known by WAPS as Operation Red Emperor.

The Major Investigation Plan was prepared by Coombs. It was approved by Assistant Commissioner Mott on 17 January 1997. Operation Red Emperor had a specified time frame of 12 months, commencing from 10 March 1997. The Major Investigation Plan described the object of Operation Red Emperor as being to infiltrate a major organized crime group through the use of under cover officers and an informant in order to conduct controlled purchases of illicit drugs from the group.

Operation Red Emperor proceeded to expand the investigation of matters arising under Operations Harpy and Border. The Organized Crime Squad conducted Operation Red Emperor with its officer in charge, Coombs, and the Squad's investigators, assuming

investigating and management roles in the operation. The officers maintained their previous roles, and relevant ongoing investigations were subsumed under Operation Red Emperor.

An immediate difficulty with Operation Red Emperor is in determining the various sub-operations that were encompassed under its umbrella. For example, an investigation that incidentally touched upon an associate of the principal targets was liable to be conducted by the investigators attached to Operation Red Emperor and accordingly to be brought under its broad umbrella. A proliferation of sub-operations followed.

At the date of its cessation, Operation Red Emperor consisted, at least, of the following sub-operations:

- Sub-operation Angler;
- Sub-operation Bass;
- Sub-operation Bluegill;
- Sub-operation Coral;
- Sub-operation Dawson;
- Sub-operation Footballer;
- Sub-operation Garfish;
- Sub-operation Greystroke;
- Sub-operation King George;
- Sub-operation Piranha;
- Sub-operation Poison Pen;
- Sub-operation Selflock;
- Sub-operation Sweetlip;
- Sub-operation Trevally; and
- Sub-operation Blackfin.

The sub-operations involved discrete investigations of specific targets. Each sub-operation had a designated case officer, who conducted and directed the investigation under the auspices of senior officers. The degree of fragmentation of Operation Red Emperor, and the resulting independence of case officers conducting the sub-operations was a significant factor bearing on the decision to terminate Operation Red Emperor.

17.3 REVIEWS OF RED EMPEROR – MANAGEMENT AND CLOSURE

WAPS REVIEW

On 8 September 1997, the Operations Committee, through Acting Superintendent KJ Gregson, determined that it was necessary to undertake a full independent review of Operation Red Emperor. Gregson noted that, given that the primary target was absent from the jurisdiction for the following three weeks, and the failure to obtain approval for a sub operation named Garfish, it was an appropriate time for a full independent review of the entire operation.

The WAPS review was undertaken by Acting Assistant Commissioner Graeme Lienert (Crime Operations, WAPS), Detective Superintendent Ian Thomas (Victoria Police) and Inspector Graeme Castlehow (Policy, Planning and Evaluation, WAPS) and was conducted between 15 September and 3 October 1997. The terms of reference for the WAPS review were:

> The overarching framework for the review was to examine the purpose, achievements and projected outcomes of the operation, and thereby to assess:
>
> - Where we have come from;
> - Where we are currently at; and
> - Where we are heading.
>
> Arising out of concerns raised by the Commissioner of Police, the review was also seen as an opportunity to:
>
> - Determine whether protocols had been observed for overseas inquiries;
> - Determine the activities and effectiveness of the undercover operative; and
> - Determine the evidentiary value of information to date.
>
> Specifically, the review was required to determine the viability of the continuance, the need for a shift in direction or next steps, and in particular, to do the following:
>
> - Examine the strategic direction and primary focus of the operation;
> - Examine the efficiency and effectiveness of management practices and structure of the Operation;
> - Examine investigative practices and management of information;
> - Review resource allocation, utilization and cost/benefits;
> - Identify areas which affect intra-agency relationships, personnel and welfare;
> - Examine the scope and effectiveness of external partnerships formed or that could be formed with relevant agencies; and
> - Conduct all other enquiries the panel may consider appropriate and necessary in the interests of a full and thorough review.

The review team conducted a thorough examination of management and operations and adopted a methodology that was intended to ensure that all facets of Operation Red Emperor were considered. The review team adopted the Management of Serious Crime methodology, which involved the following steps:

- An examination of the documentation relating to the background and main lines of inquiry;
- A visit to the areas where the majority of the inquiries were concentrated;
- A visit to the operational office to gain an overview of suitability of facilities;
- An examination of the investigation files to ensure that the documentation accorded with WAPOL policy;
- An examination of computer databases to ensure they were being used to maximum effect;
- Interviews with key management personnel to inform them of the role and purpose of the review and to gain their views on the operation;
- Face to face discussions with all available investigation team members;
- Meeting and discussions with relevant intra and inter agency representatives; and
- An examination and review of specific intelligence and evidence collected through the investigation.

In addition to holding general discussions with the detective investigators of the Organized Crime Squad who were attached to Operation Red Emperor, interviews were conducted with senior persons heading the relevant WAPS sections and external agencies.

PERSON	**POSITION HELD AT RELEVANT TIME**
Mr John McKechnie QC	Director of Public Prosecutions
Mr Michael Cashman	Regional Director, NCA.
Deputy Commissioner Brennan	State Commander, WAPS.
Assistant Commissioner MacKaay	Professional Standards, WAPS
Acting Assistant Commissioner Ibbotson	Southern Region, WAPS
Acting Commander Lane	State Crime Squads, WAPS
Acting Superintendent Gere	Drug & Organized Crime, WAPS
Acting Superintendent Gregson	Bureau of Criminal Investigation ("BCI"), WAPS
Inspector Lavender	Divisional Officer, WAPS
Acting Senior Sergeant Coombs	Organized Crime Squad, WAPS

PERSON	POSITION HELD AT RELEVANT TIME
Senior Constable Manners	Organized Crime Squad, WAPS (Senior Investigator, Operation Red Emperor)
Undercover Controller	Undercover Unit, WAPS
Undercover Operative	Undercover Operative attached to WAPS

RECOMMENDATIONS OF THE REVIEW – MANAGEMENT

The review noted that there existed significant problems in the key areas of management of the investigation, information management, interagency relationships, informant management and exposure of an undercover officer to the registered informant.

The review criticized the management of the operation, identifying the following:

> Management and leadership practices were found to be in need of improvement. To counter this, the review team recommends that if the taskforce is to continue, all positions in the investigative and management team be fully resourced with appropriate ranks and levels of supervision.
>
> The review team found that there had been a tendency to over emphasize the need for security and confidentiality. At times, this led to a breakdown in communication in line and command.
>
> Further, one of the key investigators for Red Emperor, Acting Detective Senior Sergeant Coombs, a capable and strong willed officer, was allowed too much latitude for an operation of this nature which because of its high risk nature requires stringent management controls. This has been evidenced by shortfalls such as breaches of protocol, inadequate operational focus, and the circumstances in which informants have been developed and managed.

The review considered that the operation had not obtained any direct evidence linking the principal target with drug possession or distribution and that, whilst there was strong intelligence to suggest that he had made considerable wealth from the distribution of drugs, the intelligence reports had not been substantiated with evidence. The informant failed during a period of two and half years to obtain admissible evidence against the principal target.

However, notwithstanding this finding, the WAPS review considered that a continued police operation held the prospect for success, including arrests of the key people involved. In making this determination, the WAPS review identified two areas of investigation that were continuing with some prospect for success, being sub operations Greystroke and Dawson. Sub-operation Greystroke involved an investigation of the principal target and known associates with respect to allegations of deprivation of liberty, threats to influence, and

assault occasioning bodily harm. Sub-operation Dawson involved a line of inquiry with respect to the trafficking of methylamphetamine.

The WAPS review concluded that the available options were an immediate cessation of Operation Red Emperor, the continuation of the task force until the set completion date of March 1998, or the continuation of the investigations for a further three-month period, with a revised completion date of 15 January 1998. The WAPS review recommended that Operation Red Emperor should continue for a further three months, but be subject to tight management and financial control. The WAPS review made 23 recommendations with respect to the future conduct of Operation Red Emperor. In particular, the WAPS review recommended the immediate removal of Coombs as the officer in charge of Operation Red Emperor.

BRENNAN CONSIDERS REVIEW

On 14 October 1997, Deputy Commissioner Brennan considered the WAPS review and the recommendations. Brennan noted that management difficulties had been experienced and that the operation had been allowed to drift in focus. Brennan's primary concern was that Operation Red Emperor had failed to obtain evidence against the primary target.

Brennan noted that the operation had been effective in the apprehension of several members of the target group but that, notwithstanding the surveillance and infiltration of the group by an under cover operative, there was no evidence obtained incriminating the primary target with the supply of drugs. Brennan made the following observation with respect to the operation:

> At this stage of Red Emperor I do not see any monumental advances being made in regard to [the principal target] in the macro sense. There are no positive indicators arising in the near future which would cause me to recommend a furtherance or a continuance of the operation. There is no evidence of large scale importation or distribution of drugs nor is there any evidence of money laundering activities. No doubt it goes on but the "how" and the "where" is no more than educated speculation at this time.

On 5 November 1997, Brennan ordered the cessation of Operation Red Emperor and requested a written report on the debriefing process to be conducted with the deficiencies in management and supervision identified. In particular, Brennan required the report to address the expenditure, human resources usage, level of supervision and "tangible outcomes" of the operation. Detective Sergeant Gary Budge, an officer attached to the Organized Crime Squad, prepared the subsequent report dated 10 February 1998.

Brennan, in ordering the immediate cessation of the operation, required that all actions pending against any person were to be finalized as soon as possible. Budge prepared a preliminary memorandum, dated 9 November 1997, noting that Operation Red Emperor had evolved into a number of sub-operations with the management of the sub-operations being conducted by different case officers. The memorandum considered the status of the sub-operations and made recommendations with respect to the future conduct of the operations.

What may be distilled from the memorandum is that, at the date of termination, the only sub-operation that had a real prospect that charges of serious drug offences may be preferred against persons was sub-operation Blackfin. Sub-operation Greystroke held some prospect for the preferring of charges alleging deprivation of liberty and assault against the principal target. Sub-operations Blackfin and Greystroke did not demand extensive further investigation. Rather, all that was necessary was that the sub-operations should be managed properly in the interim period until the cessation of Operation Red Emperor. A management plan was instituted by WAPS for the closure of Operation Red Emperor.

The Operational Orders for the Closure of Operation Red Emperor, dated 3 November 1997, were prepared by Coombs ("Closure Report"). The object of the Closure Report was to "comprehensively finalize all outstanding sub–operations, administrative matters relating to Operation Red Emperor and attend to the future safety issues/welfare of all registered informants". The Closure Report analyzed the sub-operations that were operative and made recommendations as to the finalizing of investigations, preparation of charges and other matters including, but not limited to, the recommending of indemnities to persons. The Closure Report identified that the only sub-operations that required further resources for completion were sub-operations Bass, Blackfin, Coral, Garfish, Greystroke, and Trevally. However, all those sub-operations were at the stage of the necessary briefing papers being sent to the DPP and preparing the arrest phase. The report noted that briefing notes and a matrix of evidence for each sub-operation were to be forwarded to the DPP for approval prior to the arrest of targets. The finalization of the sub-operations was to be conducted by the individual case officers.

17.4 BUDGE REPORT – REVIEW OF OPERATION AND MANAGEMENT

The Budge report addressed the managerial aspects of the operation and, specifically, the nature and the extent of supervision, budget allocation and adequacy of staff levels. Debriefing sessions were conducted with managerial staff attached to Operation Red Emperor on 9 January 1998, and a session with operational staff was conducted on 16 January 1998. The Budge report recorded that the debriefing sessions concluded that

Operation Red Emperor was appropriately funded, but that there was insufficient staffing, due to officers being required to assist other operations.

However, the ability of the reviews to undertake a comprehensive appraisal was limited by the manner in which Operation Red Emperor was conducted. The Budge report made the following observation:

> It was identified that no operational running sheet was maintained by the task force. The failure to implement this basic investigative procedure directly affected the ability of any person or body being able to properly review the management and direction of the task force with any clarity.

The failure to maintain proper records of the investigations conducted constituted a major impediment to the Royal Commission undertaking a review of Operation Red Emperor.

A key managerial problem with Operation Red Emperor was identified as being the formation of two separate committees, the Management and the Operational Committees, which did not meet on a regular basis, leaving decisions to be made by different persons on a reactive and sporadic basis. Further, the persons referred to on the Major Investigation Plan as holding decision making positions on one of the two management committees did not retain the positions. The result was described by the Budge report as follows:

> This instability gave a perception, to the task force operational members, that the senior management did not fully grasp the concept of the planned long term infiltration of an organized criminal group. The task force operational members' perception gave rise to a belief that the operation was result driven, thus creating a need for more peripheral investigations to be undertaken. The greater the caseload, the more difficult it became to remain focused and manage the operation towards achieving its goals.

The Budge report recognized that the sub-operations commenced under the Operation Red Emperor umbrella were only remotely linked to the task force's identified targets. A finding of the Budge report was that peripheral investigations involving new targets should have been delegated to other squads. The effect of the splintering of the operation was accentuated by the failure to properly inform all managers of the sub-operations of intelligence gathered in other sub-operations. Whilst there was a recognition that confidentiality was important to ensure the protection of the undercover operatives, investigators expressed the view, during the debriefing sessions, that there was a failure to provide vital information that was relevant to the particular sub-operation.

A further difficulty with the structure of management was that there was no formal organizational structure with respect to the staffing of the administrative support. In

addition, the detective senior sergeant, as the officer in charge of Operation Red Emperor, maintained other roles including acting as head of the Organized Crime Squad. The Budge report noted that, during the debriefing sessions, it was considered that for an officer in charge to undertake other roles made for a situation that was untenable.

17.5 CONCLUSION-THE DECISION TO END OPERATION RED EMPEROR

Operation Red Emperor was ordered to cease all investigations for cogent reasons. The operation had been conducting a comprehensive investigation for an extended period, and whilst achieving some success, it had not obtained evidence to support an arrest of the principal target. Further, the operation was not being managed in a coordinated manner consistent with best policing methodology. Operation Red Emperor had burgeoned into a multiplicity of sub-operations being governed by specific case officers. The WAPS review and the Budge report clearly demonstrated why the particular management structures accentuated the splintering of Operation Red Emperor.

There is one aspect of the manner in which Operation Red Emperor was ended, which led to disquiet among the officers within the various sub-operations. This in turn has led to speculation as to the possible reasons for the cessation of Operation Red Emperor. It would seem that the officers were not informed as to the reasons for the cessation of the operation. The debriefing sessions that were held with the investigators were primarily a conduit for the obtaining of information for the senior members of WAPS to comprehend the scope and nature of Operation Red Emperor, and to be able to properly make a decision as to its future and its subsequent termination. However, the debriefing sessions did little to inform the investigating officers as to the reasons behind the cessation of the operation.

At no stage, as far as the Royal Commission has been able to establish, were the reasoning and conclusions of the WAPS review conveyed to the investigators conducting the sub-operations. In particular, Coombs noted in the Operational Orders for the Closure Report of Operation Red Emperor that it was prepared without knowing the information contained in the WAPS review and without knowing the reasoning behind the decision to terminate. The evidence also suggests that Coombs, as the officer in charge, was not at any stage informed as to the reasons for the cessation of the operation.

Such a communication of information, even if the contents of the WAPS review were tempered for reasons of confidentiality, may have dissipated any disquiet held by the officers with respect to the cessation of Operation Red Emperor. The failure to brief Coombs and other officers certainly seems to have contributed to public disquiet surrounding the circumstances of the cessation.

The decision to cease Operation Red Emperor seems appropriate, given the manner in which the investigation was being conducted and given that the inquiries, notwithstanding the resources allocated, had not achieved the principal goals of the operation. The procedures adopted for the termination provided that there were to be proper reviews of ongoing investigations. The officers involved with the cessation ensured that all current investigations were analyzed and finalized so that any charges were considered and, if necessary, preferred against the targets.

17.6 CONCLUSION

The foregoing summary is a distillation of a huge volume of documentation that has been generated by the various inquiries into the conduct of Operation Red Emperor. It has been considered by the Royal Commission.

Other issues arose, and have been investigated by the inquiries, but they have not been referred to in this Report as they are remote from the central cause of public comment, namely, whether the operation was stopped as a result of improper interventions by senior management. There is no evidence that such was the case, and there is clear evidence of ample justification for the decision. The target had been under investigation for several years and had been absorbing substantial police resources over that period, with minimal results. Views may differ on the wisdom of the decision, but it is apparent that it was made with due process and for valid reasons.

CHAPTER 18

SALVATORE SCAFFIDI

18.1 INTRODUCTION

On 5 May 1993, police officers attached to the Drug Squad of the Western Australia Police Service ("WAPS") executed a search warrant at an address in Bickley, being the property of Salvatore and Franca Anna Scaffidi. During their search, the police recorded that money amounting to $755,000 and 214.7 kilograms of cannabis had been found secreted on the property.

On 20 May 1993, Scaffidi made a complaint to the Parliamentary Commissioner for Administrative Investigations ("Ombudsman"), alleging that he had secreted $1,008,000 on his property. Of that amount, Scaffidi claimed that the police had stolen the sum of $253,000, which had not been recorded as having been seized. Subsequently, Scaffidi varied the amounts involved, claiming that he had secreted $1,086,000 on his property and that the police must have stolen $331,000 and not the lesser sum. In addition, Mrs Scaffidi claimed that the sum of $10,800 that she had secreted under the drawers of two cabinets in the master bedroom of their house had also been stolen by the police.

The Internal Investigations Unit ("IIU") conducted an investigation into the Scaffidis' claim, but on 14 September 1993, the IIU reported to the Scaffidis that their allegation had not been substantiated. The Ombudsman, at the request of the Scaffidis, then conducted his own investigation into the matter. Although the Ombudsman was critical of the IIU's investigation, in a comprehensive report, delivered on 24 August 1995, he found that there was no evidence to corroborate the assertions of Scaffidi that, in May 1993, he had money in excess of $755,000 secreted on his premises.

Until he passed away, Scaffidi was adamant that money had been stolen from his property. From time to time since his death, the matter has been raised publicly as one that remains unresolved. The matter is significant by reason of the substantial sum of money allegedly stolen by the police. In recent years there have been a number of allegations of money being stolen by police from drug dealers, but not approaching the magnitude of the amount alleged by Scaffidi to have been taken.

On 6 October 1994, Scaffidi died of mesothelioma. Having regard to the fact that Scaffidi was the primary and most significant witness with respect to the allegations, his death has meant that it has not been possible for the Royal Commission usefully to conduct a public

examination of his claims. However, the Royal Commission has carefully reviewed the investigations conducted by the IIU and by the Ombudsman, and the decisions made with respect to the conduct of the police officers.

18.2 RELEVANT FACTS

The subsequent investigations established reasonably clearly the circumstances of the initial police action. Scaffidi, who owned a wholesale fruit and vegetable business, lived with his wife on their five-acre orchard in Bickley. On the property, there were two houses, the modern Scaffidi residence, and an old rental property that was leased to a person not related to the Scaffidis. At 8.15 am on 5 May 1993, Detective Sergeant Gary John Budge, Detective First Class Constables Wendy Anne Dawes and Alan Morton, and Detective Senior Constable Tom Peter Clay, who were attached to the Drug Squad, arrived at the property to execute a search warrant. Subsequently, two Australian Customs Services officers, with sniffer dogs, joined the Drug Squad officers. At that time, Mrs Scaffidi, who was ill, was at her home alone.

During the search, a carton in the garage area of the principal home was found to contain high-grade cannabis "heads", and in the adjacent packing shed, 49 fruit box cartons containing high-grade cannabis heads were found. Accordingly, additional police officers attached to the Drug Squad and the Proceeds of Crime Unit attended at the property. The officers who conducted searches of the two houses recorded that nothing of interest was found within the actual residences. This was later disputed by Mrs Scaffidi, who alleged that she had stored a brassiere box containing $10,000 and a stocking packet containing $800 under the drawers of two cabinets in the master bedroom. She claimed that the money had been taken by the police.

At approximately 11.05 am, Detective Senior Constable Stephen Mark Leed and Detective Senior Constable Anthony Vaughan Vidovich intercepted Scaffidi while he was driving in nearby Patterson Road. Scaffidi was taken to his property and shown the cannabis. The cannabis was found to weigh 214.7 kilograms. At 11.40 am, Scaffidi was taken by Budge to the Criminal Investigations Branch ("CIB") Headquarters. The search of the premises continued in the absence of Scaffidi. Mrs Scaffidi remained at the premises until 12.40 pm, when she also was taken to CIB headquarters. She had not participated in the search as an independent observer, either because she was unwilling to do so or by reason of her illness.

The Scaffidi daughters, Rosetta and Laura, arrived at the property at approximately 1.15 pm. They remained at the property for about 10 minutes, but they did not observe the search that was being conducted.

At approximately 1.30 pm, Detective Sergeant George Edmund Loverock located a 10 litre plastic container buried in the yard at the rear of the Scaffidis' residence. It held a substantial amount of money. A search of the grounds, using metal probes, followed, resulting in the finding of an "esky" and a 20 litre plastic container, both of which contained money. At the time of finding the three containers, there were present at the property at least four officers, being two detective sergeants and two detective senior constables. At approximately 2.00 pm, Loverock, who had found the 10 litre container, telephoned CIB headquarters and requested that Acting Detective Inspector Stanley Joseph Clifton attend at the search and that Scaffidi be returned to the property. Travelling time between CIB headquarters in Perth and the Scaffidi property was approximately 45 minutes.

At 3.00 pm, Clifton, together with Detective Sergeant Brian Robert Cunningham, arrived at the property and conducted a further search. At approximately 3.15 pm, a fourth container was found in the rear yard, being an orange coloured 20 litre container, which also contained money. At approximately 3.30 pm, Budge and Clay, who initially had taken Scaffidi from the property at 11.40 am, arrived back at the property with Scaffidi. Clifton showed Scaffidi the money that had been found in the four containers, but the money was not counted in Scaffidi's presence. Clifton conducted a brief interview with Scaffidi at the property, but their conversation was not recorded. During that interview Scaffidi, in answer to a question concerning his knowledge of the amount of money found, gave two estimates that ranged between $200,000 to $300,000 and between $300,000 to $400,000. No receipt was given to Scaffidi for the money, notwithstanding that it had been seized by the officers. Approximately 30 minutes after arriving back at his property, Scaffidi was returned to the Drug Squad offices by Budge.

After the departure of Scaffidi, the police officers at the property continued to search the garden beds, whilst the forensic officers, who arrived at 4.45 pm, took photographs of the property and of the containers. The containers had been moved from where they had been found. During the search, no independent person was present. At 5.00 pm the money was taken by Clifton and Cunningham to CIB headquarters in four hessian bags that had been brought to the property to assist in seizing the cannabis. The last of the officers had departed from the Scaffidi property by 5.30 pm.

At approximately 6.00 pm, shortly after the arrival of Detective Senior Sergeants Charles Perejmibida and Colin Clifford Soni and First Class Constable David John Edwards, in the company of a constable, the counting of the money was undertaken at the Drug Squad offices. Neither Scaffidi nor his wife was invited to observe the count of the seized money, nor was the process filmed. The count, which, according to the police officers, continued until 8.45 pm, determined that the amount of money seized at the property was $755,000.

At the conclusion of the count, the money was put back into the hessian bags. Whether the final packing of the cash was undertaken in Perejmibida's office is uncertain. Dawes had a recollection of observing cash, not in plastic bags, on Cunningham's desk during the night. It was described by her as "a mound of money" loose on his desk. Cunningham denied having any money in his office that was not properly secured in plastic bags. He maintained that once the money had been placed in plastic bags, it was never taken out of those bags.

The first taped record of interview conducted with Scaffidi by Budge and Clay commenced at 5.00 pm, and was concluded by approximately 5.25 pm. At 9.30 pm a second record of interview with Scaffidi was undertaken by Loverock and Budge. It was taped and was completed by approximately 9.50 pm. Officers from the Proceeds of Crime Unit conducted a third record of interview with Scaffidi between 10.38 pm and 11.37 pm. It was also taped. Mrs Scaffidi was detained at CIB headquarters until 10.30 pm, at which time she was collected by her daughters and taken home. Scaffidi was processed at the East Perth Lockup at 1.00 am the next morning, and was held in custody awaiting bail until the following afternoon. Both Scaffidi and Mrs Scaffidi were charged with offences contrary to the *Misuse of Drugs Act 1981*.

On 20 May 1993, Scaffidi attended the office of the Ombudsman with his solicitor and complained about the conduct of the police officers. He made the following specific allegations:

- That officers stole approximately $331,000 from four containers of money that had been buried at the premises;
- That officers stole $10,800 that had been secreted beneath a cabinet in the master bedroom, Mrs Scaffidi alleging that the police stole $800 that was secreted in a stocking packet underneath the bottom drawer of the three drawer bedside cabinet in the master bedroom, and $10,000 that was secreted in a brassiere box (sic); and
- That CIB officers deliberately damaged a shelf in the walk-in robe in the master bedroom, and left the daughters' room in a state of disarray.

In accordance with s. 14 of the *Parliamentary Commissioner Act 1971*, the Commissioner of Police was given the opportunity of conducting his own investigation before the Ombudsman took up the matter. The complaints became the subject of an IIU investigation. The Ombudsman did not, at that time, embark upon his own investigation. When Scaffidi was advised in September 1993 by WAPS that the IIU had determined that his allegations were without substance, he requested that the Ombudsman investigate the matter. The Ombudsman proceeded to do so.

On 6 October 1993, police officers executed another search warrant at the Scaffidi property and during that search a further sum of $93,000 was seized. The charges against Scaffidi were later withdrawn, due to his terminal illness.

18.3 IIU INVESTIGATION

The IIU inquiry had been conducted by Superintendent Derek Francis Farrell, whose investigation included, in part, conducting interviews with the police officers, examining banking records of specific officers, and arranging for the brassiere packet alleged to have contained $10,000 to be forensically examined. A number of interviews were conducted with Scaffidi, Mrs Scaffidi and their two daughters, Laura and Rosetta, from whom statements were obtained.

The IIU report concluded that there was insufficient evidence to support the Scaffidis' allegations and on 14 September 1993 they were informed, in writing, that the IIU had determined that their allegations had not been substantiated.

18.4 THE OMBUDSMAN'S INVESTIGATION

On 5 November 1993, the Scaffidis, not being satisfied with the outcome of the IIU's investigation, instructed their solicitor to request that the Ombudsman conduct an investigation into the matter. The Ombudsman interviewed 25 officers and received the reports of all officers who had supplied them to the IIU. He also took evidence from Scaffidi, Mrs Scaffidi and their two daughters. He conducted two records of interview with Scaffidi and Mrs Scaffidi on 25 November 1993 and 21 September 1994 respectively.

The Ombudsman considered the manner in which the investigation had been conducted by the IIU and found that the investigation had not been adequate. In particular, the Ombudsman found that the superintendent, in conducting the records of interviews did no more than put allegations to the officers and then ask for their reports. The records of interview were not taped, and only brief notes were taken of some of those interviews. The Ombudsman concluded that the notes were inadequate, having regard to the seriousness of the complaint, and that in all the circumstances the interviews should have been recorded on tape. The procedure adopted by the IIA was one that was frequently encountered by the Royal Commission. It was a procedure that would never have been adopted in relation to a layperson under investigation.

The Ombudsman considered that inconsistencies in the answers provided by the police officers should have been the subject of further investigation, but they were not. In

addition, the Ombudsman expressed his concern that there was no in-depth analysis of all the available evidence, and that there was no thorough consideration of the manner in which the search was conducted and the money seized. The result was that the Ombudsman decided to undertake a more comprehensive investigation than would have been necessary if the IIU had completed its inquiry in a satisfactory manner.

18.5 THE ALLEGATION REGARDING $331,000

With respect to the allegation made by Scaffidi that $331,000 had been stolen from the containers secreted in his rear yard, the Ombudsman found that it could not be sustained.

In making this determination, the Ombudsman noted that Scaffidi was only able to estimate the amounts of money in each container. During his interviews, Scaffidi admitted that the vast majority of the money secreted on his property was from the sale of cannabis and had been buried by him and by Mrs Scaffidi at different times. Scaffidi gave estimates of the amount of money held in each container. Those estimates amounted to $1,060,000, being some $26,000 less than the combined amounts of the money recorded as being seized by the police ($755,000) and alleged to have been stolen ($331,000). The Ombudsman noted that, whilst the discrepancy may appear significant, it only amounted to two and half bundles of money from a total of 109 bundles. Scaffidi conceded that his figure was only an approximation.

Given the nefarious activities undertaken by Scaffidi, no formal accounts recording the amounts of money received by him, and secreted on the property, were maintained. However, the Proceeds of Crime officers had seized two documents, which Scaffidi stated were notes made by his wife, relying upon information provided by Scaffidi, and which recorded the amount of cannabis and money he had on his property. A document that was headed "Sales", listed two columns of figures, totalling 566 and 1,860,000 respectively. They were said by Scaffidi to be calculations of the monies held from cannabis sales. The sales document has a third column, headed "DEL", which Scaffidi claimed recorded the amount of cannabis that was delivered, and the date of each delivery. The final entry in the column, which totalled 1163, and was dated 26 April, being eight days prior to the execution of the search warrant, was said by Scaffidi in his record of interview to be the amount of cannabis received by him, weighed in imperial pounds. A fourth column noted stock as comprising 455 and 15, being references to a total of 470 pounds. If this figure is converted into metric measurement, the amount of stock recorded as being held was 213.63 kilograms. The fact that the police located 214.7 kilograms on the property is a measure of the authenticity and accuracy of the records.

A second document, which is headed by two dates, being 16 April and 26 April, has a notation "Money O/hand 1093 800", and is followed by subtractions, with a final figure of "1054 300". Mrs Scaffidi, in her record of interview, confirmed that the entries were based upon information provided by Scaffidi. She understood the term "Money O/hand" to denote monies held by Scaffidi on the property as at the date of the last entry, being 26 April 1993.

Both Scaffidi and Mrs Scaffidi maintained that each of the four containers held the money and that each container was full. The Ombudsman did undertake an exercise to determine whether the four containers could physically hold the amount of money claimed by Scaffidi. On 7 September 1994, officers from the Ombudsman's office conducted an exercise at the Reserve Bank, using banknotes in the same ratios as the monies seized. This experiment determined that the containers had the capacity to hold the amounts alleged by Scaffidi.

The Ombudsman noted that, whilst the officers, in denying the Scaffidis' allegations, placed some reliance on the failure of Scaffidi to raise the alleged amount secreted at the first opportunity. That was when he was questioned by Clifton on the property and subsequently during the taped records of interview. It was put to the Ombudsman by Scaffidi that he initially believed the officers had failed to locate all the secreted monies. Accordingly, Scaffidi did not wish to alert the police, which would have resulted in their undertaking a further search to locate the additional $331,000 that Scaffidi said had been secreted on the property. Scaffidi also stated that he wished to avoid saying too much in the formal record of interview with respect to the source of the money. The Ombudsman noted that, at the time of the second formal record of interview, Scaffidi had been in custody for some ten and a half hours.

The Ombudsman questioned Scaffidi regarding the further sum of $93,000 that was found secreted on his property during the second search, conducted on 6 October 1993. Scaffidi denied that the sum of $93,000 formed part of the money that he alleged had been stolen in May 1993 and said that this money formed part of a separate loan he had received from an associate. The Ombudsman concluded that, while the possibility that the money located in October 1993 formed part of the amount allegedly stolen in May 1993 cannot be dismissed, there was no evidence to establish that proposition.

The Ombudsman concluded that there existed no evidence to corroborate the assertions of Scaffidi that, in May 1993, he had money in excess of $755,000 secreted at the property. All the officers denied the allegations and there were no witnesses and no other evidence that served to support the allegations. The Ombudsman noted that, whilst the two documents may have supported the proposition that an amount of $1,086,000 may have been available

to Scaffidi prior to 5 May 1993, there was no evidence that such an amount of money was secreted in the four containers on the actual day of the search warrant being executed.

18.6 THE ALLEGATION REGARDING $10,800

In conducting the inquiry into the allegation by Mrs Scaffidi that an amount of $10,000 had been stolen from underneath the bottom drawer of a four-drawer cabinet in the master bedroom, the Ombudsman also conducted interviews with the two Scaffidi daughters. Both daughters maintained that their mother had told them, on an occasion some 18 months to five years prior to 5 May 1993, that money their mother had saved from the market was kept in her bedroom cabinet. Rosetta recalled her mother saying that the amount of money secreted was "a fair bit", which Rosetta understood to mean between $10,000 and $15,000, whilst Laura believed that the amount was roughly $10,000. Laura said that Mrs Scaffidi had mentioned the secreted money on numerous occasions. Neither of the daughters, however, had seen the money that Mrs Scaffidi alleged had been secreted in the main residence.

The only evidence with respect to the allegation that $800 was secreted in a stocking packet underneath the bottom drawer of a three drawer bedside cabinet in the master bedroom was given by Mrs Scaffidi. This allegation was not corroborated by any other person.

The Ombudsman received evidence from Leed, who had conducted the first thorough search of the main bedroom. Leed recalled undertaking the search in the main bedroom and removing the drawers from the cabinet, but he confirmed that there were no items under the drawers and he did not recall seeing a brassiere box or a stocking packet in the room. The main bedroom was subsequently searched by Proceeds of Crime officers, for the purpose of locating business records, all of whom gave evidence to the Ombudsman denying that they had removed the drawers from the cabinet.

In regard to the allegation that $10,800 had been stolen from the main bedroom, the Ombudsman concluded:

> Leaving aside the evidence of the daughters, there is no independent evidence to support Mrs Scaffidi's account that she had hidden the sum of $10,800 in the master bedroom. In the circumstances, I cannot conclude that Mrs Scaffidi had the money hidden in the cabinets of the master bedroom. In addition, the officers categorically denied seeing the brassiere box or stocking packet or taking any money.

18.7 THE OMBUDSMAN'S ANALYSIS OF THE NATURE OF THE INVESTIGATION

The Ombudsman, as part of his inquiry, investigated all aspects of the search of the property and of the manner in which the money was seized. The Ombudsman was critical of the manner in which the search of the premises had been conducted, and in particular he noted the limited extent to which officers observed Routine Order 19-2.11 that provided:

> Members undertaking a search of premises should be accompanied by the owner or occupier whenever possible. Where reasonable inquiries fail to locate the owner or occupier, every endeavour is to be made to have an independent observer present during the search. This procedure is necessary to avoid allegations of impropriety.

Scaffidi was taken from the property by 11.40 am on the day of the search and Mrs Scaffidi, who was ill and did not observe the search, was taken to CIB headquarters at 12.40 pm. While the search of the residence may have been completed during the period when Mrs Scaffidi was present on the property, it is clear that officers remained on the premises after her departure, undertaking other tasks, including searching the grounds. During the period after the departure of Mrs Scaffidi, no independent person was present at the property, notwithstanding that the execution of the search warrant was continuing. Budge, who conveyed Scaffidi from the property to CIB headquarters at 11.40 am, when asked by the Ombudsman as to why it was necessary to take Scaffidi to CIB headquarters said:

> I'm certainly aware of the need to process people quickly and we are quite frequently criticised in courts of law these days for detaining people for long periods of time before official interviews and for detaining people for long periods of time before lodgement at lockups and I was certainly aware of that and I wanted to get that sorted out at the earliest possible time so I made a decision to remove him from the premises and take him to the office and hopefully to conduct a full and frank video recorded interview with him.

The explanation was quite inadequate, given that the first taped record of interview with Scaffidi did not take place until 5.00 pm, and that Scaffidi was not formally processed at the East Perth Lockup until 1.00 am next morning and was eventually bailed on the following afternoon. Budge was ignoring the requirements of Routine Order 19-2.11

The Ombudsman found that the action of the officers in dealing with the discovery and seizure of the monies was inadequate and unprofessional. The procedure for the seizure of

money was detailed in the then applicable Standing Operation Procedures for the Drug Squad that provided:

> Seizure of Money
> Where practicable
> 1. Count the money in the presence of suspect/owner, and
> 2. By a Commissioned Officer, NCO or Officer in Charge of Operation.
> 3. Issue interim receipt for amount of money if counted or for 'quantity' of money if not counted.
> 4. Place money in sealed drug bag and enter bag number on interim receipt.

The Ombudsman was critical of the failure of the police to properly ensure the preservation of the money and containers in situ on the property prior to being photographed and examined forensically. On the contrary, Clifton instructed the officers to remove all the containers from the ground and to search the contents in order that he would be able to ascertain the contents and be in a position to put matters to Scaffidi upon his return, which did not take place until the following afternoon. Clifton was aware that a request had been made for forensic officers to attend to assist in the removal of the containers.

The Ombudsman noted that, upon the return of Scaffidi, Clifton questioned him with respect to the amount of money in each container, but he did not undertake any count of the money, or even attempt to make an assessment of the amount of money that was uncovered. The officers did not issue an interim receipt to the Scaffidis, notwithstanding that Scaffidi had eventually been returned to the property. The Ombudsman estimated that the actual bundles of money could easily have been counted in the absence of undertaking a full count of all notes, and that an interim receipt should have been issued to Scaffidi noting the number of bundles.

Clifton, in answer to the Ombudsman's inquiry on this aspect, confirmed that there was no impediment to the counting of the money on the premises in the presence of Scaffidi and issuing a receipt at that time.

A count of the money was undertaken at CIB headquarters. Scaffidi was excluded from the count, although there was no reason why he should have been so excluded. In evidence before the Ombudsman, Clifton stated that he believed that Scaffidi was being interviewed while the count was being undertaken; but as the Ombudsman observed, the documentary evidence is to the contrary. Mrs Scaffidi, after being taken from her home at 12.40 pm, remained at CIB headquarters until approximately 10.30 pm. Mrs Scaffidi was briefly interviewed but that interview was completed prior to the money arriving at CIB headquarters and accordingly there was no reason why Mrs Scaffidi should have been excluded from the counting of the money. The Ombudsman received a submission from

counsel for the Commissioner of Police stating that, given that Scaffidi was the person claiming ownership, and that the Drug Squad Standard Operating Procedure referred to the "suspect/owner", it would have been inappropriate for Mrs Scaffidi to have been present during the count. The Ombudsman formed the view that, in all the circumstances, Mrs Scaffidi would have been an appropriate person to observe the count. That conclusion is undoubtedly correct.

In response to the Ombudsman's report, the Drug Squad introduced Standard Operating Procedures to encompass all aspects of the execution of search warrants.
The new Drug Squad Standard Operating Procedures provide, in part:

- During the search of a premise officers must ensure that the occupier or an independent person be present, unless exceptional circumstances prevent the action. Previously, officers were to have the occupier present "where practicable";
- Drugs and monies found during an execution of a search warrant must be photographed in situ;
- In all instances where any property is seized, interim receipts must be provided to the occupier even in circumstances where there is no arrest. In addition any monies seized are to be counted at the premises in the presence of the occupier unless exceptional circumstances prevent the action; and
- Seized monies must be placed in an approved sealed receptacle.

The Standard Operating Procedures that were introduced do no more than reflect what should be regarded as necessary and appropriate investigative procedures.

18.8 CONSIDERATION OF MATTER – CONCLUSION

The Ombudsman's inquiry resulted in a very thorough examination of the allegations by Scaffidi. His investigation resulted in a comprehensive analysis of the specific allegations, and in addition considered the procedures adopted by the officers during the search of the property. The Ombudsman's Report considered contradictions in the evidence of the respective officers, and required them to explain the reasons why certain procedures were not followed during the execution of the search warrant. Whilst the Ombudsman had the benefit of the previous investigation conducted by the IIU, he brought a critical mind to the manner in which that investigation had been conducted and hence ensured that the initial findings were properly considered and not adopted without receiving evidence from all witnesses.

The search of the premises, and the seizure of the money, were conducted in a manner that falls well short of what is to be expected of experienced officers, and left open the opportunity for allegations of impropriety to be made against them. The failure to ensure that Scaffidi was present on the property during the entire search was not justified, given that there was no compelling reason for Scaffidi to be taken to CIB headquarters. Mrs Scaffidi remained on the property during the search of their residence but her illness, and hence her unwillingness to oversee the search of the property, was known to the officers. The officers, by taking Mrs Scaffidi from the property by 12.40 pm caused there to be no independent person in attendance on the property during the search of the grounds, a situation which continued until late afternoon.

The officers did request that Scaffidi be returned to the property after the finding of the money but there was no attempt made to count the money, or the number of bundles of money, in his presence or to issue an interim receipt. After Clifton had conducted a cursory interview with Scaffidi, he was returned to CIB headquarters, although officers remained on the property and continued searching it.

Whilst the manner in which the search and seizure were conducted was inadequate, it is accepted that there was insufficient evidence to prove the allegations made by Scaffidi and his wife. Proving that the officers stole $331,000 rested solely upon the assertion of Scaffidi. Although the documents that were seized by the police support the contention that, prior to the raid, Scaffidi may have had access to $1,086,000, this does not in itself prove that there was this amount in the containers on the day of the raid. There exist no other witnesses or any other evidence to support the allegation. Scaffidi was unable accurately to determine the amount of money that was secreted in the containers, and his estimates as to the amount varied as between Clifton, who initially questioned Scaffidi, and the Ombudsman, although the circumstances in which Scaffidi made his complaint give it some credibility. When interviewed, he had admitted his involvement in trading in cannabis. He admitted that the money was the proceeds of cannabis dealing, the money allegedly missing was never likely to be returned to him, and he had nothing to gain by making the complaint. When interviewed by investigators from the office of the Ombudsman, he said

> To be quite honest I was not going to talk about the missing money on my behalf or the money that I had buried in my back yard for what was missing, I didn't give a damn. I didn't really care, they could have take the lot…I didn't care to be quite honest with you. I got shitty or lost my temper when I found on conversation with my wife after she had been through her own things that she had money, some of her own money put away and that money disappeared, that's when I lost…they didn't take enough from me they have to clean you up.

It is apparent that Scaffidi accepted the reality that his money would be taken, but he was upset by the alleged disappearance of the money belonging to his wife.

Having regard to the death of Scaffidi, there is little to be gained by the Royal Commission investigating this matter further. In any case, Scaffidi appears to have provided the Ombudsman with all the available evidence, including his own testimony. The Ombudsman interviewed the relevant police officers, and any inconsistencies in their evidence were properly tested at the time. Notwithstanding some concerns about the manner in which the officers had conducted the search of the Scaffidis' property and dealt with the money which they had seized, after a full review of the matter, the Royal Commission determined that the findings of the Ombudsman were appropriate, and decided not to conduct a further investigation into the matter.

CHAPTER 19

TERENCE JOHN MALLER

19.1 INTRODUCTION

Terence John Maller was a candidate for election to the Council of the City of Perth in 1999. During the campaign, Dr Peter Nattrass, the Lord Mayor of Perth, made public statements concerning the criminal record of Maller. Whilst Maller had already confirmed, during a previous electoral campaign in 1997, that he had a criminal record, the nature of Nattrass' statements caused Maller to believe that Nattrass had obtained a copy of the Western Australia Police Service ("WAPS") record of his criminal history.

An investigation was commenced by the Internal Investigations Unit ("IIU") of WAPS, which identified the possible involvement of Deputy Commissioner Bruce Brennan in the matter. In the circumstances, the Commissioner of Police referred a complaint concerning Brennan to the Anti-Corruption Commission ("ACC") for investigation. This investigation resulted in the Commissioner of Police formally counselling Brennan and causing an Unfavourable Report to be placed on his personal file for a breach of Regulation 607(1)(a) of the *Police Force Regulations 1979*, which imposes an obligation of secrecy on police officers.

Maller complained to the Royal Commission about the investigation and he has generated ongoing media interest in his complaint. The Royal Commission decided to review the matter. The investigations conducted by the IIU and the ACC, and the determinations made by the respective bodies, were the subject of this review. The manner in which the investigations were conducted, and the nature of the disciplinary action taken against Brennan, were considered. The actions of Nattrass were also considered, in order properly to review the actions of any WAPS officer. However, the appropriateness of Nattrass' actions falls outside the Royal Commission's Terms of Reference.

19.2 BACKGROUND

Maller first declared himself as a candidate for election to the Council of the City of Perth for a by-election in late 1997. During the campaign, rumours were spread that Maller had a criminal history. On 23 November 1997, he issued a media statement admitting that he had a criminal record, with his most recent term of imprisonment having been in 1981. At that time, Maller denied that he had committed any offences against the person. Various newspapers reported the nature of the campaign against Maller, which led to his withdrawal as a candidate for the by-election.

Maller again declared himself as a candidate for election as a Councillor for the City of Perth in early 1999. At a Council meeting held on 23 February 1999, Maller placed a question on notice before Nattrass, asking which candidates for the forthcoming election Nattrass would be endorsing. Nattrass in reply stated that he would not support a candidate who had a significant criminal record. During the Council meeting, Judy McEvoy, a City of Perth Councillor, handed a note to Liz Tickner, a journalist at *The West Australian*, which stated that Maller had committed numerous offences over a long period, and that his most recent term of imprisonment was in 1994.

Subsequently, Maller gave an interview to Tickner, who prepared a newspaper article on him that appeared in *The West Australian* on 25 February 1999. The article included a photograph of Maller holding a copy of his criminal record, and noted that Maller had been imprisoned on five occasions.

On 25 February 1999, Nattrass and Maller were separately interviewed in a radio broadcast. During his interview, Nattrass confirmed that he had a copy of Maller's criminal record and said that it "just appeared" on his desk. He inferred that he had specific knowledge of the details of the criminal record of Maller, and said that he would not be supporting any candidate with "a significant criminal record".

19.3 DISQUALIFICATION FOR MEMBERSHIP OF A COUNCIL BECAUSE OF CONVICTIONS

Section 2.22 of the *Local Government Act 1995* provides that a person is disqualified for membership of a council if the person has been convicted of a crime and is in prison serving a sentence for that crime or has been convicted in the preceding five years of a serious local government offence. A "serious local government offence" is defined to mean an offence against the Act or the former provisions for which an offender could be sentenced to imprisonment for a term of, or exceeding the period prescribed for the purposes of the section, or could be sentenced to pay a fine of or exceeding the amount prescribed for the purposes of the section. The prior convictions of Maller did not disqualify him for membership of the Council pursuant to s. 2.22 of the *Local Government Act*.

19.4 COMPLAINT TO THE IIU

On 25 February 1999, Maller complained to the IIU that his criminal record had been accessed by a member of WAPS and that the details of his record had been provided to Nattrass. Maller believed that the use of the description "significant" by Nattrass to describe

his criminal record indicated that the details of his criminal history had been disclosed. The IIU investigation was undertaken by Senior Sergeant Saleeba.

The "Commissioner's Orders and Procedures" at the relevant time provided that access by all users to the police computer system was limited to that information which has a direct relationship to their work and associated work functions. When an officer signed into the police computer, the officer was required to acknowledge the following warning that appeared on the screen:

> The information from the system now available to you is confidential and must not be disclosed to unauthorized persons under any circumstances, nor are you authorized to access such information for personal reasons.
>
> Unauthorized access or use of this system and of the information contained within may result in criminal charges and/or disciplinary actions.
>
> Penalties for these offences are severe and may include loss of employment.

Regulation 607 of the *Police Force Regulations* provides:

> (1) A member or cadet shall not –
>
> (a) give any person any information relating to the Force or other information that has been furnished to him or obtained by him in the course of his duty as a member or cadet; or
> (b) disclose the contents of any official papers or documents that have been supplied to him in the course of his duties as a member or cadet or otherwise,
>
> except in the course of his duty as a member or cadet.

Although the IIU had commenced the investigation, the Assistant Commissioner (Professional Standards) referred the investigation to the ACC when it was determined that Brennan would be a subject of the investigation. As a result, having regard to the inquiry about to be undertaken by the ACC, the IIU did not continue its investigation.

19.5 ACC INVESTIGATION

On 5 March 1999, the ACC received a report from the Commissioner of Police, pursuant to s. 14 of the *Anti-Corruption Commission Act 1988,* that Brennan, on or about 26 October 1998, had improperly accessed the criminal record of Maller on the WAPS computer and then released details of Maller's criminal history to Nattrass. The ACC conducted a comprehensive investigation, interviewing all persons within WAPS who had accessed the criminal record of Maller between 10 August 1998 and 27 February 1999. In addition, the

ACC identified four telephone calls made from extensions at Police Headquarters to the telephone number used by Nattrass. Inquiries to determine the makers of the telephone calls were also undertaken. It is to be observed that the investigation by the ACC revealed a number of the same deficiencies that have caused the Royal Commission to examine more closely issues associated with the unauthorized access to, and the disclosure of information from, WAPS databases.

Between 10 August 1998 and 27 February 1999, the criminal record of Maller was accessed on seven occasions by officers or persons employed at WAPS. An officer attached to the Public Sector Investigation Unit was interviewed on 24 March 1999 regarding his access to the criminal record of Maller. The officer confirmed that he had accessed Maller's criminal record on 19 October 1998 after a female member of the public complained that Maller was a candidate for public office and had a criminal record. The officer stated that he did not divulge any details of the criminal record, but that he did inform the member of the public that Maller had no problems.

A public servant within WAPS was interviewed on 25 March 1999 regarding her access to Maller's criminal record on 21 September 1998. At the relevant time, the public servant was undertaking data entries duties at the Bureau of Criminal Intelligence. Whilst the public servant confirmed that she would regularly access criminal records of persons mentioned in information reports, she had no recollection of accessing the criminal history of Maller.

A constable was interviewed on 25 March 1999 regarding his accessing Maller's criminal record on 10 September 1998, whilst attached to the City Police Inquiry Team. He confirmed that he had gone to Maller's home address in September to investigate a complaint received from Maller concerning a theft. Whilst not recalling the accessing of Maller's criminal record, the constable stated that, as a matter of course, he would have checked the record of Maller, given that he was a complainant.

A data entry operator at the Offender Information Bureau was interviewed on 25 March 1999 regarding access to Maller's criminal record on 13 August 1998. She noted that she ordinarily made 50 criminal history accesses each day pursuant to requests from departments within WAPS, and said that she had no recollection of accessing Maller's criminal record. Documents requesting the criminal history of a person are only retained for a week prior to destruction.

A senior constable was interviewed on 26 March 1999 as to his access to Maller's criminal record on 21 January 1999 whilst an acting sergeant in the Information Adjudication Section. He produced the Information Adjudication Book that noted that he was required to

consider a matter involving a person named Brian Maller. He did not recall accessing the criminal history of any other person named Maller, and offered his inquiry into Brian Maller as the only explanation for his accessing the criminal record of Terence Maller.

The only telephone call made to Nattrass' office from a telephone extension of WAPS, other than from Brennan's office, was made by a female senior constable on 5 October 1998. During an interview conducted on 29 March 1999, she confirmed that, at the time, she was attached to the Events Section of WAPS. Whilst not recalling the telephone call, she stated that she may have telephoned the Lord Mayor's office to discuss a public event. She confirmed that, in undertaking her duties at the Events Section, she would telephone the offices of the Perth City Council on a daily basis.

Interviews were also conducted by the ACC with two journalists and Councillor McEvoy. Noel Dyson, a journalist at *Business News*, during an interview with the ACC, confirmed that he had conducted an interview with Nattrass, with the assistance of the managing editor of *Business News*, on 16 February 1999. Dyson recalled that, at the meeting, Nattrass discussed the fact that Maller had a criminal record and that he had obtained the information from a senior police officer. He also recalled Nattrass stating that Maller had a serious record, with convictions for fraud and theft, and that Nattrass had mentioned the figure seven or nine. Dyson was unable to recall whether the figure related to terms of imprisonment or number of convictions.

On 1 April 1999, McEvoy, during an interview with the ACC investigator, confirmed that she was the author of the note provided to Tickner on 23 February 1999. McEvoy stated that she had not seen a copy of the criminal record of Maller, nor had she observed Nattrass in possession of any such document. According to McEvoy, her knowledge regarding the criminal history of Maller was obtained from Nattrass prior to the Council meeting on 23 February 1999.

Tickner, in an interview conducted on 24 March 1999, confirmed that the note received from McEvoy recorded that Maller had committed numerous offences over a long period, his last sentence having been in 1994, and that Maller had been sentenced to prison on numerous occasions for offences that were not petty in nature. Tickner recalled a conversation with Nattrass that followed her article in *The West Australian* on 25 February 1999. During that conversation, Nattrass, whilst denying that he had a copy of the criminal record of Maller, expressed the view that Maller had been imprisoned on seven occasions. Following that conversation, Tickner, in the presence of Maller, examined his criminal record and observed that Maller had been imprisoned on seven occasions.

On 6 April 1999, Nattrass was interviewed by an ACC investigator. Nattrass maintained that he had never possessed the criminal record of Maller, nor had he viewed any such document. Nattrass stated that an unknown person had left a copy of a newspaper article from *The West Australian* on Nattrass' desk in his consulting room. The newspaper article included a photograph of Maller holding a copy of his criminal record. Attached to the article was a post-it note which stated, "This man has been in jail 7 to 9 times – the last in 94". Nattrass maintained that he had obtained his information with respect to the convictions of Maller from that document and from other newspaper reports.

Nattrass denied that he received any information concerning the convictions of Maller from any police officer, and further denied having made a request for such information from any police officer.

On 20 April 1999, Acting Inspector Newman was interviewed by an ACC investigator. Newman was Brennan's staff officer in late 1998. Newman stated that, on 26 October 1998, he was present in Brennan's office when Brennan received a telephone call from Nattrass. Subsequently, Brennan asked Newman whether he was aware of the background of Maller. Newman was instructed by Brennan to access Maller's criminal record on two occasions, and on the second occasion he printed out and provided a copy of the criminal record to Brennan. Acting upon Brennan's further instructions, Newman telephoned Nattrass and put the call through to Brennan. In Newman's presence, Brennan told Nattrass that Maller was known to the police, that he had a chequered past and would not, in his opinion, be suitable for Council. Newman stated that, other than to Brennan, he did not provide a copy of the criminal record of Maller to any person.

On 20 April 1999, Brennan was interviewed by an ACC investigator. Brennan confirmed that his daybook recorded that Nattrass had contacted him on 26 October 1998, requesting information, including the criminal record of a man named Maller whom Brennan was told was a candidate for the Council elections. Nattrass expressed the view to Brennan that Maller had a criminal record and was considered by him to be unsuitable for election. Brennan recalled informing Nattrass that he would instruct a member of his staff to determine whether Maller had a criminal record. Brennan then instructed Newman to make the inquiries and to obtain a copy of the criminal record of Maller.

Brennan confirmed that he subsequently telephoned Nattrass and informed him that Maller was known to the police, that Maller had a somewhat chequered past and that he was not a suitable person for Council. Brennan recalled that Nattrass asked how a copy of the criminal record of Maller could be obtained, but was told by Brennan that police were not able to divulge such information. Brennan maintained that he never provided Nattrass with any

further information concerning Maller, and that he had not provided Nattrass with a copy of Maller's criminal record. Brennan stated that he retained the criminal record printout that Newman had provided. Brennan provided the ACC investigator with his daybook and the criminal record printout obtained by Newman.

On 14 May 1999, Nattrass was further interviewed by an ACC investigator to provide him with the opportunity to address the account of Brennan. Nattrass stated that he had no recollection of contacting Brennan concerning Maller's criminal record. Nattrass did not deny that the conversation had taken place if Brennan had maintained a record of the matter. However, Nattrass maintained that neither Brennan, nor any other police officer, provided a copy of Maller's criminal record to him.

On 20 May 1999, the ACC accepted that the complaint was an allegation within the provisions of s. 13(1)(c) of the *Anti-Corruption Commission Act* and made the following determination:

> the complainant, Mr Terence Maller/the Commissioner of Police has not presented any evidence to the Commission, nor was any evidence discovered during the assessment, which is capable of substantiating the allegation made by him against Deputy Commissioner Bruce Brennan, that he released details of Maller's criminal record.

The ACC referred the matter to the Commissioner of Police for his consideration and to determine whether any action should be taken against Brennan.

19.6 UNFAVOURABLE REPORT

On 18 June 1999, the eve of his retirement as the Commissioner of Police, Robert Falconer formally counselled Brennan and placed an Unfavourable Report on Brennan's personal file for a breach of Regulation 607(1)(a) of the *Police Force Regulations* by disclosing information, obtained in the course of his duties, to another person. Falconer noted that Brennan had telephoned Nattrass and "although not disclosing the criminal entries or the existence of the criminal history, advised Dr Nattrass that Mr Maller was known to police and had a bit of a chequered past, and, would not be suitable for Council".

Falconer noted that the comments were inappropriate and should not have been made, given that the comments "confirmed Nattrass' suspicions regarding Maller's criminal history". Brennan has never accepted that criticism.

19.7 DECISION OF DIRECTOR OF PUBLIC PROSECUTIONS

By a letter dated 2 September 1999, Maller requested the Director of Public Prosecutions ("DPP") to consider whether an offence had been committed by any person contrary to s. 81 of *The Criminal Code*.

Section 81(1) of *The Criminal Code* provides that any person who, being employed in the Public Service, publishes or communicates any fact which comes to his knowledge by virtue of his office and which it is his duty to keep secret, or any document which comes to his possession by virtue of his office and which it is his duty to keep secret, except to some person to whom he is bound to publish or communicate it, is guilty of a misdemeanour, and is liable to imprisonment for two years. Section 1 of *The Criminal Code* defines the term "person employed in the Public Service" to include police officers.

On 3 September 1999, the DPP informed Maller that, given that no evidence had been made available, the DPP was not in a position to determine whether a prima facie case existed. However, the DPP did consider the question whether the matter raised issues of sufficient concern that required investigation. The DPP determined that the matter did not require further investigation, expressing the view that the extent to which police officers have a "duty to keep secret" the contents of citizens' criminal records is not entirely clear. The DPP also noted that, whether Regulation 607 of the *Police Force Regulations* creates a duty to keep secret a fact or document for the purposes of s. 81 of *The Criminal Code,* has not been resolved as a question of law. The DPP referred to *Pense v Hemy* [1973] WAR 40 in which the Court held that the duty imposed by Regulation 607 was not a duty of the kind referred to in s. 81 of the Code, in that it was not a duty "by virtue of his office", but a duty or responsibility imposed by the regulation. The DPP observed that the correctness of that decision has been doubted from time to time.

In addition, the DPP referred to public interest factors that would bear upon any decision to institute a prosecution. The DPP noted that Maller, in his letter of 2 September 1999, referred to the ACC not instituting a prosecution pursuant to s. 81 of the Code, given that the alleged offender had been the subject of disciplinary action within the Police Service. The DPP noted that he favoured the decision not to institute a prosecution, given that the matter had been dealt with pursuant to alternative disciplinary procedures.

19.8 FURTHER IIU INVESTIGATION

On 2 August 1999, Maller made a further complaint to the IIU that he believed Brennan was the officer who had divulged his criminal record, and that the information could have been

passed to McEvoy. Maller asked ten questions that related to the disclosure, with his primary interest being the number of times his criminal record was accessed between 8 August 1998 and 25 February 1999. He also sought to know the identity of the person who had divulged his criminal record, and to whom it had been divulged.

The IIU investigator, Saleeba, noted that the new complaint was a further agitation of the initial complaint made by Maller. Saleeba determined that Maller's criminal record had not been accessed for improper purposes between 8 August 1998 and 25 February 1999. In making that determination, the IIU interviewed two other persons who were not considered in the ACC Report. First, a constable, who was attached to the Central Police, was recorded as having accessed Maller's criminal record on 25 February 1999. When interviewed, the constable was unable to recall his reasons for the recording of Maller's name as having been accessed on the computer. The IIU investigator noted that the date of access was the same date that the issue of Maller's criminal record was discussed in the radio interview of Nattrass and Maller. Secondly, an inspector from the IIU accessed Maller's criminal history on 7 May 1999. He recalled that he was investigating a complaint from a person named Brian Maller. The officer, having previously charged Terence Maller in 1976, considered that he may have adopted the name Brian Maller. Accordingly, he accessed all panels on the WAPS computer relating to Maller, including his criminal record.

Acting Inspector Brown of the IIU informed Maller, by letter dated 29 December 1999, that his personal details had been accessed between 8 January 1998 and 25 February 1999, but for apparently legitimate purposes. Brown noted that there was no evidence of the unauthorized access of Maller's details, and no evidence that information from WAPS had been provided to unauthorized persons, either inside or outside the Police Service. The IIU did not conduct an investigation in relation to Brennan, and the letter from the IIU made no reference to that aspect of Maller's complaint.

19.9 REVIEW OF MATTER – CONCLUSION

The investigations of Maller's complaint were conducted by the IIU and the ACC in a thorough manner. The IIU, through the Commissioner of Police, acted properly in referring the complaint to the ACC upon determining that a senior commissioned officer was a subject of the complaint. The ACC investigated all persons at WAPS who were recorded as having accessed the criminal record of Maller. In addition, persons who were recorded as telephoning the office of Nattrass, using a telephone extension of WAPS, were subject to the investigation.

The only person who accessed the criminal history of Maller, and was also recorded as telephoning Nattrass, was Brennan. The other persons who accessed the criminal record of Maller were interviewed and provided explanations, and given the statements of Brennan and Newman, their explanations excluded their actions as being a possible source of information to Nattrass.

Whilst there are inconsistencies in the various versions of events, it is not possible to determine whether a copy of the criminal record of Maller was provided to Nattrass by Brennan or any other police officer. Brennan accepted that he had caused a copy of the record of Maller to be made, and that he subsequently telephoned Nattrass. He also accepted that he was responding to a request from Nattrass as to whether Maller had a criminal record, and the details of the record. Brennan denied making a copy of that record available to Nattrass, notwithstanding a request from Nattrass to provide the record, but he accepted that he had made observations about the chequered past of Maller. The recollections of Brennan are corroborated by Newman, who was present with Brennan during his telephone conversation with Nattrass.

Nattrass denied obtaining a copy of the criminal record of Maller from Brennan or from any other person. Furthermore, Nattrass maintained that he had no independent recollection of having a conversation with Brennan with respect to the criminal history of Maller. Rather, Nattrass maintained that any reference he made to knowing the record of Maller was based upon the newspaper article left on his desk with a note stating that Maller had been in gaol seven to nine times, with the most recent term of imprisonment being in 1994. In addition, Nattrass relied upon the media reports, which commenced in 1997, and the article of Tickner, which included a photograph of Maller holding his criminal record. Dyson's allegation that Nattrass had confirmed during a meeting that he had obtained information with respect to the criminal record of Maller from a senior police officer was denied by Nattrass.

Whilst Nattrass denied to the ACC investigator that he had received a copy of the record of Maller, uncertainty remains. In the interview of Nattrass by Harvey Deegan on Radio 6PR on 25 February 1999, Nattrass was asked how he came to know of the record, to which he replied, "it appeared on my desk". Nattrass made no reference during the interview to details being written on a post-it note on the newspaper photograph left on his desk. An inference is open that Nattrass was referring to the actual record, although Deegan did not ask specifically whether an actual copy of the criminal record of Maller had been disclosed to Nattrass. Accordingly, in all the circumstances, the statements of Nattrass during the Deegan interview do not clearly establish that Nattrass actually had possession of the criminal record of Maller, as opposed to some handwritten details of it.

In addition, McEvoy at the Council meeting held on 23 February 1999, relying upon information from Nattrass, informed Tickner that the last gaol sentence was in 1994. That conviction was not made public until it was noted in a newspaper article in *The West Australian* on 25 February 1999. Furthermore, it did not involve a gaol sentence, but a fine, which might indicate that Nattrass did not have Maller's criminal record. Maller contended that the words used indicated that Nattrass and McEvoy had some knowledge of the circumstances of the 1994 conviction, and in particular that it involved his arrest and lodgment at the East Perth Lockup. However, even if this assumption is correct, which is far from clear, it does not follow that such details must have come from a police officer. Nattrass has maintained that the source of the information was the anonymous post-it note that was left on his desk. That explanation does leave some very significant issues unanswered, such as who was the author, and from where did the author obtain the information about the conviction of Maller in 1994. However, given the evidence available, it is not possible to determine the circumstances in which Nattrass obtained the information.

The determination by the ACC that Brennan did not release details of Maller's criminal record is inconclusive. Brennan admitted to the ACC that he had accessed Maller's criminal record, and that he had informed Nattrass that Maller was known to the police and had a chequered past. Those words directly, or at least implicitly, confirmed that Maller had a criminal record. Whilst there is no evidence to support the proposition that Brennan informed Nattrass of the specific details of the criminal record, he did confirm the existence of convictions by the necessary implication of his statements. The ACC noted that the information that Brennan provided to Nattrass formed part of the public record, due to Maller's own statements. That does not detract from the fact that an officer, Newman, on Brennan's instructions, confirmed the existence of the record by accessing the computer, and that Brennan thereafter informed a member of the public that such a record existed.

The ACC formed the view that the accessing of the information on the police computer by Brennan was a matter that "would not realistically fall within the jurisdiction of the Act". Further, the ACC reasoned that whilst it could be argued that Brennan's access was not strictly associated with his operational duties, it was arguable that, given that the Lord Mayor of Perth had informed Brennan that a candidate for a public office had a criminal record it "would appear to be a matter of customary practice for Brennan to have checked to establish whether that information was correct". Given the provisions of s. 2.22 of the *Local Government Act*, Nattrass had a legitimate basis upon which to seek the assistance of Brennan in order to determine the eligibility of Maller to stand for the Council. Similarly, Brennan had a legitimate basis for supplying information pursuant to that request. It would have been self-evident that Maller was not disqualified under the first limb of s. 2.22, because he was clearly not in prison serving a sentence; but clarification may have been

desirable to establish whether he fell within the second limb, although it is limited to a conviction in the preceding five years for a serious local Government offence. Neither Nattrass nor Brennan, when interviewed concerning his views about the terms of s. 2.22, was asked specifically, but it seems that, in a general sense, the section provided the background to the request and to the supply of information.

The Royal Commission has determined that appropriate avenues of inquiry were pursued by the previous investigations, and that no useful purpose would be served by a further investigation by the Royal Commission.

To the extent that the actions of Brennan have been established, appropriate action was taken at the time. The counselling of Brennan by the Commissioner of Police and the Unfavourable Report being placed on Brennan's personal file stating that Brennan had breached Regulation 607(1)(a) of the *Police Force Regulations*, was an available disposition of the matter. The existence of the criminal history of Maller was known to the public, due to its disclosure by Maller himself in 1997. It is not possible to determine that Brennan provided the specific details of the criminal history of Maller to Nattrass. The issue that may be determined is that Brennan did cause the criminal record of Maller to be accessed and that Brennan confirmed with Nattrass, by inferences to be drawn from his statements, that Maller had a criminal record.

In fact, it is not beyond doubt that Brennan was in breach of Regulation 607(1)(a). That provision prohibits a member of the police service from giving any person any information that has been furnished to him or obtained by him in the course of his duty as a member, "except in the course of his duty as a member". In view of the legitimacy of the interest of Nattrass as the Lord Mayor of Perth in the eligibility of Maller to stand for membership of the Council, and the appropriateness of Brennan supplying information in response to such a request, it is arguable that Brennan was acting in the course of his duty and did not breach Regulation 607(1)(a). In these circumstances, the counselling and the placement of the Unfavourable Report on Brennan's personal file may have been unfair to him. In any event, no further action seems warranted.

The provisions of s. 2.22 of the *Local Government Act* are curious. Honesty and integrity would seem to be an essential qualification for a member of a council, particularly in view of the fact that councillors have the capacity to influence decisions that often significantly affect the livelihood and property of members of the community. The disqualification of persons who are then in gaol or who have contravened certain provisions of the *Local Government Act* in the last five years, seems to do little to ensure that members of council have the appropriate good character required for such a decision.

CHAPTER 20

CAPORN/DELORES CHADWICK

20.1 INTRODUCTION

On 22 October 1998, a motor vehicle parked outside a hairdressing salon in Maylands was suddenly reversed through the front window of the salon. Delores Dawn Chadwick, who had been sitting in the salon, died as a result of injuries sustained by her in the accident. The driver of the vehicle, Roy Lance Caporn, aged 73 years, was not injured. He was never charged with any offence.

Police from the Maylands Police Station were the first to attend the scene of the accident, and the investigation was later taken over by officers attached to the Crash Investigation Section, Mirrabooka Police Complex. The officer in charge of the investigation was Senior Constable Trevor Howard.

A newspaper report on the day after the accident suggested that the investigators, apparently before the completion of their investigation, had advised that no charges would be laid against Mr Caporn.

The circumstances of the death of Mrs Chadwick were the subject of a Coronial Inquest, in the course of which there arose the possibility of an inappropriate communication having been made by Superintendent David Caporn of the Western Australia Police Service ("WAPS") to the investigators. He was the son of Mr Roy Caporn, the driver of the vehicle. The issue attracted considerable media interest.

The investigation into the accident was reviewed by WAPS and no adverse finding was made concerning Superintendent Caporn. The Coroner's Inquest was conducted into the death of Mrs Chadwick. The Coroner returned an opening finding.

Mr Chadwick, the widower of Mrs Chadwick, then wrote to the Royal Commission requesting a further investigation. The circumstances of the original investigation, the subsequent review by WAPS and the Coroner's finding were considered by the Royal Commission. For the following reasons, it was decided that this matter should not be the subject of a full investigation by the Commission.

20.2 THE CORONER'S INQUEST

The Coroner's Inquest was conducted on 22 and 23 February 2000, and the Coroner published his findings on 25 February 2000. The Coroner found:

> On 22 October 1998, Mr Caporn accelerated his motor vehicle quickly in reverse directly through a front window of the Eighth Avenue Coiffure shop, Shop 1, Village Shopping Centre, Eighth Avenue, Maylands. The vehicle struck the deceased as it went through the shop as a result of which she suffered severe injuries which led to her death. The death resulted from Mr Caporn's inability to exercise adequate control over his motor vehicle. No charges have been laid in relation to the death and in these circumstances I make an Open Finding as to how the death arose.

The Coroner noted that there were a number of unfortunate aspects to the police investigation into the circumstances of the death of Mrs Chadwick. The officer who first attended the scene of the accident spoke to Mr Caporn and obtained from him a signed handwritten statement. The officer, who the Coroner observed, "was a relatively junior officer with very little relevant experience", failed to caution Mr Caporn. However, when a constable from the Crash Investigation Section attended the scene and spoke to Mr Caporn, he did give a caution and suggested to Mr Caporn that he could proceed on the basis that the original statement had been with a caution or, alternatively, that another caution would be administered and a further statement obtained. Mr Caporn was content to proceed on the basis of the original statement.

When Senior Constable Howard gave evidence to the Coroner, he said that on the morning following the accident, he was contacted by "Mr Caporn's son, who is in fact also a serving police officer". Superintendent Caporn advised the Senior Constable that he had referred his father to a solicitor to seek legal advice prior to his being interviewed further by the police, and his father had been advised not to make a further statement. Mr Caporn gave evidence at the inquest and answered all the questions asked of him concerning the circumstances of the accident. In the course of his evidence he stated that his son was a police superintendent. At the conclusion of the evidence on 23 February 2000, the Coroner indicated his concern about the appearance of a senior officer of police contacting the investigators. In his findings, he referred to the issue in the following terms:

> Mr Caporn had a right to remain silent and it was proper for him to seek legal advice at that time. It is, however, a matter of concern that Superintendent Caporn contacted the officer in charge of the investigation by telephone at all. While the contact was apparently innocent, there has been no suggestion that Superintendent Caporn interfered in any way with the investigation, and Superintendent Caporn was speaking as a concerned son and not as a police officer when he spoke with Senior Constable Howard.

> The fact that there was a contact by a Commissioned Officer related to a person who could be the subject of charges with the investigating officer was not appropriate. It is easy to see how the family of the deceased would have concerns on learning about the contact, particularly when subsequently no charges were laid.
>
> I note that the Western Australian Police Service has a document titled "Ethical Guidelines" which deals in general terms with subjects such as conflict of interest. It may be that a similar document could deal with conflict of interest situations in more detail to assist officers in the position of Superintendent Caporn and Senior Constable Howard.

The Coroner went on to conclude that the cause of the accident was Mr Caporn's inability to properly control his motor vehicle as a result of his physical and mental deterioration, apparently brought about by the ageing process. He proceeded to make recommendations concerning tests specifically aimed at identifying problems experienced by elderly drivers whose ability to drive is gradually deteriorating. He also went on to criticize the layout of the shopping centre and the absence of safety bollards in front of the shops.

Following the inquest, complaints were made to the Commissioner of Police and an internal review of the investigation was conducted. The suggestion of possible interference by Superintendent Caporn was considered, and the report of the review concluded:

> There is no evidence to suggest the contact by Superintendent Caporn with Senior Constable Howard in any way influenced the outcome of this case and the matter need no (sic) be pursued further.

The report was critical of various aspects of the investigation, stating that "some deficiencies have been identified in the initial action of the attending police and the method of interviewing witnesses by the Major Crash Section". It also recommended caution to members of the police service when dealing with the media, noting that some remarks made by police officers to journalists were claimed to have been distorted in the media reports that followed. The report also advised that, although some opinion had suggested that a charge of careless driving may have been appropriate, the decision not to charge was open to the officer concerned on the basis that the evidence was "not overwhelming enough to criticize the officer's decision not to charge".

20.3 WHETHER THE ROYAL COMMISSION SHOULD MAKE A FULL EXAMINATION OF THE CIRCUMSTANCES

After an examination of the documents available, it was decided that the matter would not be the subject of an investigation by the Royal Commission. The inquiry by the Coroner was a thorough investigation, during which the involvement of Superintendent Caporn was

raised and canvassed. The Chadwick family was legally represented and had the opportunity to explore the issue. The matter was then further investigated during the internal review conducted by WAPS. No additional information was obtained as a result of that review in relation to the issue of the involvement of Superintendent Caporn. It is most unlikely that a further investigation by the Royal Commission would produce any additional relevant evidence. The conclusions and comments of the Coroner were entirely appropriate. Furthermore, the internal review appears to have been thorough, and the outcome warranted. The Coroner was, however, justified in stating that the contact by Superintendent Caporn with Senior Constable Howard, at a time when his father could be the subject of charges, was not appropriate. Having been given legal advice, it was for Mr Caporn's solicitor to contact the investigators. Nevertheless, there is no evidence that Superintendent Caporn acted improperly in any endeavour to influence the outcome of the investigation. The decision not to lay charges against Mr Caporn was open on the evidence. There is no evidence that the decision not to charge was affected by considerations in favour of Superintendent Caporn, or was otherwise improperly reached.

CHAPTER 21

THE MICKELBERGS

There has been a long standing controversy concerning the convictions in 1983 of three brothers, Peter, Raymond and Brian Mickelberg, for offences associated with the theft of a substantial quantity of gold from the Perth Mint in 1982. It has been alleged on a number of occasions that the police involved in the investigation of the offences falsified the evidence that led to their convictions. There have been a number of appeals by Raymond and Peter Mickleberg since they were convicted. In the initial appeals in 1983, Brian Mickelberg, who is now deceased, was successful, and his convictions were quashed on the ground that there was insufficient evidence that he was a party to the conspiracy charged. Up to this time, appeals by Raymond and Peter Mickelberg have been unsuccessful, and they have now long since served their terms of imprisonment.

Any corrupt or criminal conduct associated with the original investigation in 1982 falls outside the Terms of Reference of the Royal Commission, which require a report on corrupt or criminal conduct by any Western Australian police officer since 1 January 1985. However, various police officers involved in the investigation, against whom allegations of misconduct have been made, have given evidence on oath since 1 January 1985, and any of that evidence that was false could amount to criminal conduct falling within the Terms of Reference of the Royal Commission.

The officer in charge of the investigation into the theft of gold from the Perth Mint was Donald Hancock, who was then a Detective Sergeant, but who later became the Superintendent in charge of the Criminal Investigation Branch ("CIB"). He is now deceased. He was accompanied on a number of significant occasions in the course of his investigation by Anthony Lewandowski, who was then a Detective Sergeant. Many of the allegations were directed towards the conduct and evidence of these two officers.

In 1985, Avon Lovell wrote a book, "The Mickelberg Stitch". It had a very limited circulation, as the police officers named in the book obtained an injunction restricting its distribution. In the book, and subsequently, Lovell has made a number of allegations concerning the conduct of Hancock and Lewandowski. Some of these allegations were raised in the course of the Micklebergs' unsuccessful appeals.

On 5 June 2002, Lewandowski swore an affidavit in which he admitted that evidence had been fabricated by Hancock and himself in order to secure the convictions of the Mickelberg

brothers. On the same day, the affidavit was given to the Director of Public Prosecutions ("DPP") on the basis that it would not be used against Lewandowski. It subsequently transpired that, shortly afterwards, Lewandowski left for Thailand, where he was interviewed by Australian journalists.

In the meantime, on 7 June 2002, a copy of Lewandowski's affidavit had been given to the Royal Commission. If the allegations in the affidavit were found to be true, they disclosed criminal conduct by Hancock and Lewandowski in giving false evidence in proceedings subsequent to 1 January 1985, and the matters came within the Commission's Terms of Reference.

It was apparent from the media broadcasts of the interviews with Lewandowski in Thailand that Avon Lovell was acting as an intermediary on his behalf. Attempts were made through discussions with Lovell to establish contact with Lewandowski, but without success. Lovell was then served with a summons to appear before the Royal Commission on 15 July 2002. He failed to appear on that day. He did, however, present himself before the Royal Commission on 17 July 2002, but he refused to be sworn or to make an affirmation or to answer questions, and he then walked out of the hearing room. In these circumstances, proceedings were instituted against Lovell on three counts of contempt, in respect of which he appeared before the Supreme Court. He was held to be in contempt, and he was fined $30,000.

On 19 July 2002, officers of the Royal Commission travelled to Thailand in an attempt to interview Lewandowski and to arrange for his return to Perth in order that he might give evidence before the Royal Commission. The attempt was unsuccessful.

On 23 July 2002, the Attorney General referred the allegations regarding the conduct of Hancock and Lewandowski to the Court of Criminal Appeal. As the matter was then before that Court, the Royal Commission decided that the DPP should have the carriage of the matter, and that, unless requested, no further action would be taken by the Commission to pursue the matter. No such request has been made.

Lewandowski later returned to Australia of his own accord. In consultation with the DPP, Lewandowski was served with a summons and on 30 August 2002 he gave evidence at a private hearing of the Royal Commission. Any relevant information was disseminated to the office of the DPP.

On 27 September 2002, Lewandowski gave evidence before the Court of Criminal Appeal, having been granted a certificate of immunity from prosecution by the Court. Officers of the

Anti-Corruption Commission ("ACC") arrested Lewandowski on 2 October 2002 on charges of perjury, but these charges were subsequently dismissed. At the time of this Report the appeal by the Mickelbergs in the Court of Criminal Appeal has been heard and judgment has been reserved by the Court.

The Royal Commission was informed of allegations that Hancock had accumulated significant wealth, with the inference being that he had done so as a result of unlawful conduct on his part. The information indicated that, when he died, he had a safe that contained information that would confirm his illegal earnings. These issues were investigated by the Royal Commission. The safe was located in the office of a solicitor, and an examination of its contents revealed no evidence of unlawful conduct on Hancock's part. Further financial investigations also failed to reveal that any assets accumulated by Hancock were the proceeds of criminal activity.

In the circumstances, it would be inappropriate for the Royal Commission to intrude into the matters being dealt with by the Court of Criminal Appeal. Furthermore, there is no evidence to support any additional inquiry into the allegation of illegal assets having been accumulated by Hancock.

PART V
COMPLAINTS

CHAPTER 22

COMPLAINTS, STATISTICS AND ANALYSIS

22.1 INTRODUCTION

An initial task undertaken by the Royal Commission was the establishment of its Complaints Assessment Unit ("the Unit") to receive and assess complaints about the corrupt or criminal conduct of police officers.

The assessment of complaints has been a significant feature of the Royal Commission's work. It has involved background research into each complaint in order to ensure that there was informed decision making regarding the progress of the matters.

It was apparent from the outset that the Royal Commission would not be able to investigate all the complaints it received. Whilst the Terms of Reference required the Royal Commission to investigate corrupt or criminal conduct by any Western Australian police officer since 1 January 1985, it was never possible to pursue every allegation. Nor was it intended that it should do so. Preference was given to investigating matters that appeared to have the greatest strategic significance. A protocol was established for the assessment of complaints, which were considered according to criteria that determined whether or not the matter would be further investigated.

22.2 ASSESSMENT OF COMPLAINTS

Allegations were received from complainants in person, in writing, by email or by telephone. Each matter received was assessed to determine the appropriate course of action. Preliminary appraisal of each complaint involved a consideration of:

- Whether it involved former or serving Western Australian police officers;
- Whether it contained a serious allegation of misconduct by Western Australian police officers;
- Whether the complaint related to conduct since 1 January 1985; and
- Whether the Royal Commission ought to investigate the allegations.

Serious police misconduct was considered to include:

- Perjury, perverting the course of justice and related offences;
- Indictable offences attracting a minimum of five years imprisonment;

- Soliciting or accepting bribes;
- Improper interference in a police investigation;
- Involvement in the manufacture, cultivation or supply of prohibited drugs; and
- Such other matters or conduct as the Royal Commission may determine.

Each complaint was evaluated according to these criteria, and consideration was given to the nature, currency and relative seriousness of the activity, and whether there would be a strategic outcome for the Royal Commission in the light of its Terms of Reference.

It was also relevant to consider whether, with respect to complaints that had previously been the subject of investigation by other agencies, any investigation by the Royal Commission, using the additional powers available to it, would have been useful in terms of adding to the understanding of the facts. In many instances it was clear that the complaint had been fully investigated, and no useful purpose would have been served by any further investigation by the Royal Commission.

Although the Royal Commission was well resourced, it had a limited life, not only because a date had been set by which its Report was to be submitted, but also because it was in the greater interests of the community that the temporary institution of the Royal Commission should be replaced without delay by a new permanent agency. That time limit provided an additional consideration for care in the allocation of the resources of the Royal Commission and, for these reasons, the Royal Commission needed to be selective about the complaints to be investigated. It is to be noted that the date for presentation of the Final Report was subsequently twice extended, having regard to a delay in the legislation establishing the Corruption and Crime Commission ("CCC"). The date for presentation of the Final Report ultimately became 30 January 2004.

In some cases, the assessment of a complaint might require further inquiries before a decision could be made as to whether a full investigation was warranted. In this regard, the Unit worked closely with Royal Commission investigators. Preliminary inquiries involved:

- Conducting research on the numerous databases that were available to the Royal Commission;
- Making discreet or overt inquiries of other agencies; and
- Obtaining further information from the complainant, either in person or in writing.

Once these preliminary inquiries had been completed, the matter was re-assessed and a final decision was made.

If the Royal Commission decided not to investigate a complaint, it was then either referred to another agency or no further action was taken, and the complainant was advised accordingly. Where appropriate, the consent of the complainant was obtained before referral action was taken.

22.3 NUMBER OF COMPLAINTS AND ALLEGATIONS AGAINST WESTERN AUSTRALIAN POLICE OFFICERS

Since January 2002, the Unit received 417 inquiries, of which 231 were written submissions alleging misconduct on the part of Western Australian police officers.

Figure 1: Rate of Inquiries/Complaints Received

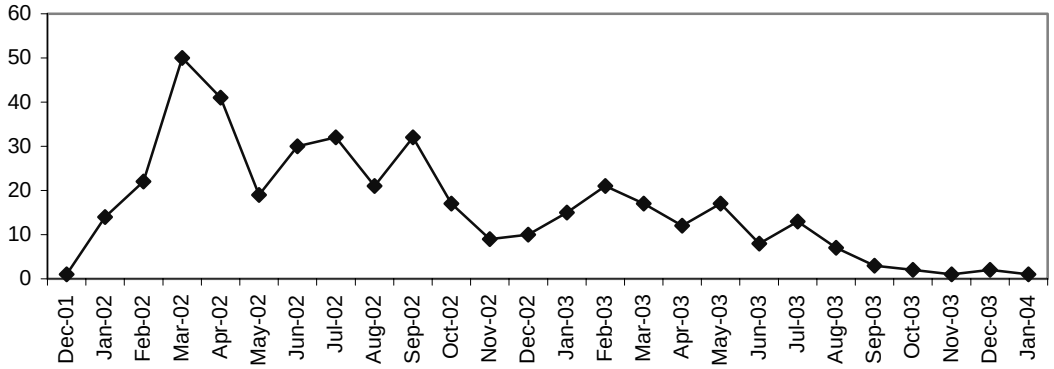

Figure 1 shows the trend in the total number of inquiries/complaints received by the Royal Commission. The graph shows a surge in inquiries/complaints after the announcement of the Royal Commission, and the placing of newspaper advertisements. A sharp decline occurred from September 2002.

22.4 TYPES OF ALLEGATIONS

Allegations fell into the following categories:

- Arrest and detention issues (e.g. searches of persons, improper detention);
- Assault (e.g. common assault, serious assault, excessive force or improper use of weapons);

- Attitude and demeanour (e.g. discourtesy, rudeness, abruptness or similar acts of incivility);
- Improper conduct (e.g. harassment, misuse of powers);
- Information (e.g. unlawful disclosure of confidential information or inaccurate records);
- Internal investigations of complaints (e.g. failure to investigate properly or failure to record complaint);
- Investigations and prosecutions (e.g. forced confessions, fabrication of evidence or failure to prosecute);
- Management issues (e.g. administration, internal police procedures, favouritism);
- Significant criminal conduct (e.g. theft or fraud); and
- Traffic issues (e.g. issue of wrongful infringement notices, traffic accident investigations or traffic policy).

Figure 2: Types of Misconduct Allegations Reported to the Royal Commission

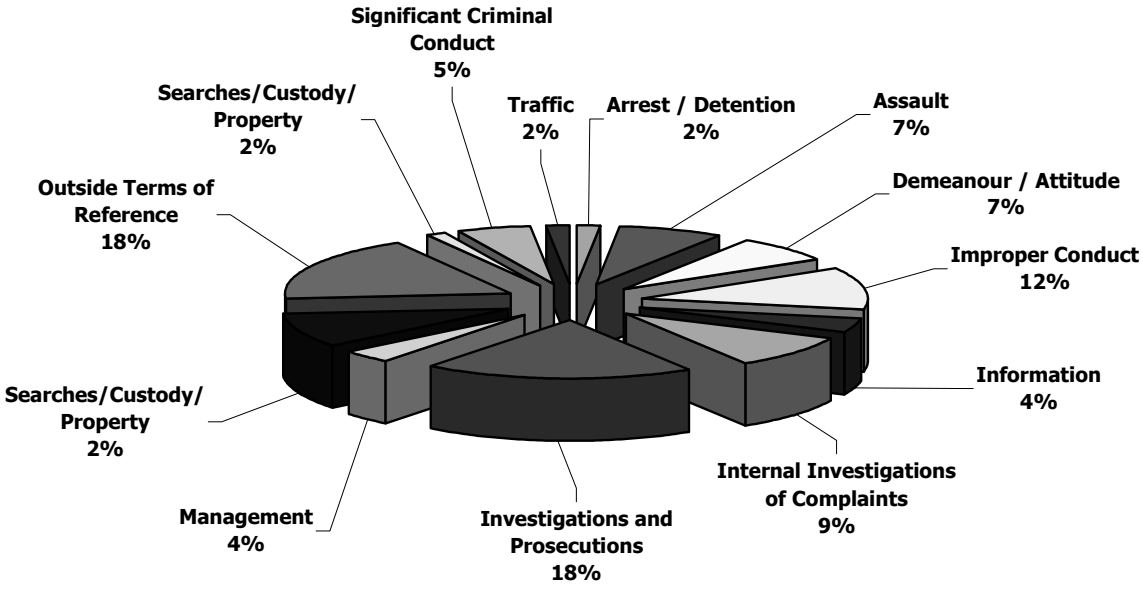

Figure 2 shows the types of misconduct allegations reported to the Royal Commission against all Western Australia Police Service ("WAPS") officers for the period January 2002 to January 2004. The most common category, accounting for over 20 per cent of all allegations, was that of "Investigations and Prosecutions". This category mainly comprised allegations of the fabrication of evidence.

Another large category of allegations included "Improper Conduct" (12 per cent) and "Internal Investigations of Complaints" (9 per cent), which related mainly to allegations of

the failure by WAPS officers to investigate matters properly. Overall, 18 per cent of misconduct allegations fell outside the Royal Commission's Terms of Reference.

During the reporting period, the Royal Commission initiated nine investigations arising out of complaints received and completed two, one of which was referred to WAPS. These investigations varied in scope, from the investigation of a single complaint against a particular officer, to broader allegations.

The remaining complaints had, in most cases, already been investigated by another agency or other agencies, and it was considered that there was insufficient justification for a further investigation by the Royal Commission.

The conclusion was reached that many of the complaints alleging serious misconduct by WAPS officers had been properly investigated by the Internal Affairs Unit ("IAU") or other oversight agencies. However, it is apparent that many of the complainants were still aggrieved, and dissatisfied with the investigation processes of WAPS. Unfortunately, it was not within the capacity of the Royal Commission to provide the outcome that they sought, due to insufficient evidence of corrupt or criminal conduct by police officers to warrant a Royal Commission investigation.

These remarks are not a criticizm of the agencies to which the complaints had previously been made. It is clear that there are some complainants who would remain dissatisfied by any negative outcome of an investigation into their complaint, regardless of the thoroughness of the inquiry. Sometimes, their dissatisfaction was due to poor communication, leading to the impression that the investigation had been carried out inappropriately or ineffectively.

It was noted that aggrieved complainants, whose cases had previously been investigated by WAPS, stated that their views of the police had changed for the worse. Furthermore, the general concern amongst these complainants was that the investigation of police by police would always produce a biased outcome.

22.5 PROFILE OF COMPLAINANTS

A feature of the complaints process was that the majority of complainants had previously taken their allegations to other agencies, and many had complained to more than one agency. These agencies included the IAU, the Parliamentary Commissioner for Administrative Investigations ("the Ombudsman"), the Anti-Corruption Commission ("ACC") and the Minister for Police. Their correspondence tended to accumulate substantial volumes

of material with the passage of their journey through the complaints process and they consumed resources. Fairness dictated that their complaints had to be examined on the same bases as the others, although it was not possible to satisfy all complainants.

Paterson (2002) believes that the motivations for complaining are varied and may include the need for an explanation as to what has occurred, a desire to seek rehabilitation and compensation for injury and suffering, an altruistic desire to prevent re-occurrences or to ensure that someone is held responsible and is disciplined. The reasons for persistent complaining have been considered by Professor Paul Mullen of the Department of Psychological Medicine at Monash University and of the Victorian Institute for Forensic Mental Health, who found that (Mullen, 2003: 1):

> Complaints and claims usually begin with an experience of loss or injury and the pursuit of some kind of restitution, recompense or apology. All complainants begin with the assumption that they have cause and that those to whom they complain are in a position to meet those claims.

Mullen's (2003) typology of complaints describes the normal complainant, the difficult complainant, and the complainant with a mental illness. The normal complainant is seen as a person who is aggrieved for some reason and, whilst seeking redress, is amenable to negotiation and arbitration. In comparison, the difficult complainant is typified as seeking full satisfaction of their "just entitlements", not being amenable to negotiation, often adopting a victim stance, but, despite being demanding and occasionally threatening, their demands remain capable of resolution, albeit continuing to complain of injustice. The complainant with a mental illness is characterized as often having bizarre claims that derive totally or in part from their illness, with the substance of the complaint frequently changing, and thereby making it difficult to resolve. The illness is referred to in the mental health literature as "querulous" or "litigious" paranoia.

22.6 QUERULOUS COMPLAINANTS

Freckelton (1988: 120) described the querulous complainant in the following manner:

> The psychiatric condition responsible for the phenomenon of vexatious complainant lodging may be described as querulous paranoid. One of the typical symptoms is a fierce determination to succeed against all odds. Institutional barriers and technicalities that would normally be effective barriers become subsumed in the paranoid's mind into conspiracies, hatched to prevent the complainant from establishing his or her right. Righting the imagined wrong becomes a cause, a moral crusade, into which all manner of people can be drawn if they are not watchful. Generally some form of wrong has initially been perpetrated, whose redress becomes an obsession which evolves into a full-time occupation.

It is important to note that the manner in which an initial complaint is treated can be responsible for its development from a minor matter into something major and enormously time consuming, or, as Mullen (2003) puts it, complaint handling agencies often succeed in "growing a querulent".

The Royal Commission received complaints that fit within each of the three typologies described by Mullen (2003), with some that could rightly be characterized as querulous complaints. This should not be seen as pejorative, as the lack of an appropriate response in the first instance has led those complainants to try multiple avenues of redress. In this respect, the Royal Commission has sought to give due consideration to each complaint it received, and is appreciative of all those who have taken the time to assist the Royal Commission in this way.

22.7 VEXATIOUS COMPLAINANTS

The Royal Commission also received a number of complaints that might properly be described as vexatious, that is, complaints that were dubious or groundless in nature, and which had been made to other agencies of review. Several complaints were received from former police officers who had been dismissed from WAPS or who had left under clouded circumstances that would fit this description.

The law has long recognized the problem of vexatious litigants and has adopted processes to ensure that the operations of the court are not unduly affected. The Hon Mr Justice O'Connor in the High Court in 1908 stated the principle, quoted by Freckelton, 1988: 133:

> Prima facie every litigant has a right to have matters of law as well as of fact decided according to ordinary rules of procedure, which give him full time and opportunity for the presentation of his case to the ordinary tribunals and the inherent jurisdiction of the court to protect its process from abuse by depriving a litigant of these rights and summarily disposing of an action as frivolous and vexatious will never be exercised unless the plaintiff's claim is so obviously untenable that it cannot possibly succeed.

There are a few lessons to be learned from the experience of dealing with the last two categories of complainants. If time and resources permit, a sympathetic ear assists with appropriate explanations of the issues involved. Otherwise, the complainants have to be treated firmly but fairly, or they will continue to look for new agencies to which they may complain.

These issues are not without significance. Complainants of this type tend to be vociferous, and often find a ready audience with the media who are not always discerning about their

sources and who tend to embrace those who criticize government institutions. The complainants also tend to band together in perceived adversity and become even more critical. This can have a destabilizing effect by eroding public confidence in essential government instrumentalities. That is not to say that there are not genuine cases in which the complainant has not been treated fairly, and the task of the Unit has been to identify the genuine cases and to provide such assistance as was available.

It is important, therefore, that throughout the entire complaints process, in WAPS and its oversight agency, every effort be made to provide complainants with a sense of satisfaction that their complaints have been properly addressed.