

We set out below 3 documents:

1. A press report of a judge's criticism of the distribution of a pamphlet to juries.
2. The pamphlet.

The Sydney Morning Herald, Tuesday, May 5, 1981

Judge attacks distribution of document to jurors

A judge criticised yesterday the organised handing out of a document to potential jurors in a conspiracy trial, calling it "an interference with the course of justice."

Judge Gorman told about 40 potential jurors in the District Criminal Court that the document was "mischievous."

He said any juror who felt he could not rid his mind of the contents of the document would be excused from jury duty.

Before the court was Edward James Smith, 38, labourer, of McMabones Road, North Nova.

Smith pleaded not guilty to conspiring with Marko Matric, Brian Leslie O'Callaghan, Stanley Ernest James and others, to rob, while armed with offensive weapons, employees of the Public Transport Commission of NSW of large sums of money before and on September 11, 1974, at Sydney and elsewhere in NSW.

Before the trial began, Judge Gorman said he had been informed copies of the document were circulated and handed to potential jurors outside the court gates.

"The fact that more than one person was involved in handing it out shows it was organised," he said.

Judge Gorman said some of the potential jurors may have been influenced by the document and may not now be able to judge matters independently.

"Although people have the right to express their views, the document being handed to potential



Judge Gorman

jurors coming to hear a specific trial is a mischievous document and an interference with the course of justice," he said.

No juror asked to be excused on the grounds of having been influenced by the document.

In his opening address to the jury, the Crown prosecutor, Mr J. H. Laurence, QC, alleged Smith and the three others named in the indictment agreed to rob the PTC of a pay-roll at the Eveleigh work shop near Redfern railway station.

It was alleged police observed the four travel to Redfern and go down into the railway station where they were "loading the joint."

They had then emerged from the station and got into a brown coloured Falcon car which was later stopped by police.

Police allegedly found four "offensive weapons" in the boot of the car, two of which were loaded.

The trial continues today.

WHAT IS VERBAL?

23

"Police verbal" is a corrupt practice in which police fabricate "confessions" to criminal charges. A loophole in the laws of evidence allows this practice to go on unabated.

The practice generally involves unsigned records of interview, or notes recorded in a policeman's notebook — "notebook verbal". Police recite a prepared question and answer type statement that implicates an accused person in the crime charged. The common factor in all cases of verbal is that there is no *objective* evidence that the "confession" ever occurred. The magistrate, judge or jury is asked to rely on the word of police alone.

The motivation for this corrupt practice often stems from the belief of police that people, whom they believe to be guilty, will be acquitted for lack of evidence. There are also incentives for police to secure convictions, and frame-ups of suspects are not uncommon.

For a person to repeat what another person said is generally regarded as "hearsay" and is excluded from courtroom evidence. However in the case of alleged "confessions" there is an exception to the rule — a loophole that many police, particularly detectives, exploit ruthlessly.

There have been many calls to reform the law in this regard. Virtually every inquiry into police and criminal law in Australia (the Lucas report in Queensland, the Beach report in Victoria, etc.) and the Australian Law Reform Commission, has recommended such things as the introduction of taped police interviews, or interviews in the presence of an independent person such as a lawyer. This has all been to no avail, as police pressure groups have resisted any change, claiming — probably correctly, but with a perverted sense of morality — that their conviction rates would drop if such control of their practices were imposed.

But the question for the Australian people is not conviction rates, but who should judge the guilt or otherwise of people charged with crimes — the courts and juries or the police?

Verballing is not the practice of a few "rotten apples", but has become an institution, and is widespread. As the law has not been able to properly control it, it is up to the average person to see that criminal cases are judged according to real evidence, and not phony "confessions".

"Sometimes (police officers) do verbal persistently and without conscience . . . the police force has attempted to arrogate to itself powers it has never fully possessed and must never be allowed to assume . . . many police officers have crossed the bounds and fabricated evidence against persons whom they believe to be guilty." *The Lucas Report (Qld. Inquiry into Police) April 1977*

" . . . it would be unreal to imagine that every police officer in every case is too scrupulous to succumb to the temptation to attempt to secure the conviction of a person whom he believes to be guilty by saying that he has confessed to the crime with which he is charged, when in fact he has not." *Justice Gibbs in the High Court of Australia, August 1977.*

State and Federal police were involved in concocting confessions and planting drugs to frame suspects. *Federal Royal Commission into Drugs, March 1980.*

Remember that the reports of judges tend to be conservative, and underplay the situation. Judges in court may or may not provide help to juries who have little experience with police practices.

I then said to the accused: "You need not say anything unless you wish, as anything you say may be taken down and used in evidence against you." He then said "I done it".



IF YOU SERVE ON A JURY

Detectives who give evidence in court are professionals. They have given evidence on dozens or even hundreds of occasions. Don't imagine they are beyond exploiting the weak points of the law and fabricating evidence to secure convictions.

If a person is alleged to have confessed to a crime, do not accept that allegation unless there is some real evidence — eg. signatures or tapes — beyond the word of police officers. Note also that a police officer "not involved in this investigation" is not an independent person. There is a strong 'corps de spirit' in the police force.

Disregard suggestions that a jury has to find police guilty of perjury to reject their evidence of "confessions". This is not true, and police are not on trial unless charged. Unsigned statements and unsubstantiated "admissions" are simply not good enough.

OTHER FORMS OF FABRICATED EVIDENCE

In many cases it is now apparent that police, if unable to directly 'verbal' a person because of the presence of a lawyer or some other independent person, use someone else to do the same.

For instance, where a person is in custody and the police cannot interview him/her without a lawyer being present, it is not uncommon to find it alleged that the person has made an "admission" to another person in custody who, it is often found, is him/herself awaiting a trial or sentence on some other matter. In such a situation, with or without the knowledge of the police, they are easily tempted to fabricate evidence in order to curry favour with the court when it comes to the question of their own matter. In these cases it is not uncommon to find that the arresting police are involved in both matters.

This kind of evidence extends to many witnesses giving many forms of evidence, where they may themselves have something to gain by helping convict an accused person. The most common inducement is avoiding prosecution on a criminal charge, through arrangement with the police. Alternatively, there is the offer of a lower sentence on a matter they are facing. In such cases it can be appreciated how easily witnesses are tempted to fabricate evidence in order to avoid the prospect of their being imprisoned. The police involved in a case, once it has been brought to court, are always interested to secure a conviction, and thus it is always useful to look at the possible motives of their witnesses.

BEAR IN MIND:

1. The evidence of persons who may have something to gain may well be tainted by inducements.
2. Look for evidence from a truly independent source – signatures, tapes or a person who has nothing to gain by assisting the police, and no direct interest in a conviction.
3. Police ballistic and forensic evidence should not be accepted unthinkingly unless properly scrutinised.
4. Juries are permitted to ask questions of a witness, and should do so where they are unclear of what the witness is asking the court to believe.
5. If one or more jurymen or women disagrees with the view of the others, it is his/her duty to maintain and express the doubts he/she has until and unless they are satisfied. There is no obligation to agree with the majority if a reasonable doubt exists.