

BACKGROUND TO THE DISMISSAL OF PHILIP ARANTZ FROM THE N.S.W. POLICE FORCE

Philip Arantz

In July, 1969, I was one of six Detective Sergeants interviewed by a committee comprising Assistant Commissioner Newman, Superintendent Fergusson, Chief of the C.I.B., Sergeant McDonald, O.I.C. of the Police Research Branch, and Mr Kenneth Frost, a computer trained Inspector from the Treasury Department, on loan to the Police Research Branch. The purpose of the interview was to select an experienced Detective to be transferred to the Research Branch with a view to assisting a systems team in the establishment of a computer system in the Criminal Investigation Branch.

About October, 1969, I learned that I was the one selected, but would not be transferred until December. I spent the intervening time studying printed material dealing with the use of computers by various overseas Police Forces, and I also attended an introductory course to computer at the Treasury.

In December, 1969, I underwent a ten day concentrated course in "organisation and method" procedures conducted by the Methods Division of the Public Service Board, and then took up duty at the Police Research Branch. The other members of the team of which I became a member were:

- Kenneth Frost - team leader
- Raymond McWhinney - computer expert,
on loan from Treasury
- Sgt. Joyce - trained in computer
programming
- Sgt. Watt - trained in "O & M"
procedures

I was the only Detective on the Research Branch and the only member of the team with any experience or training in the field of criminal investigation.

Several weeks then elapsed whilst we waited for Frost to demonstrate his leadership. Finally, having read all the available literature on the subject in the Branch, I became impatient with the delay. It seemed to me that the team had the responsibility to determine priorities for computer application in the C.I.B. records area and recommend accordingly to the Administration. There had certainly been no clearly defined guidelines or priorities laid

down by the Administration and Frost did not express any positive ideas or plans.

I identified my role in the team as being an advisor on the subject matter and a representative of working Detectives in the field. As I had been working at the C.I.B. for the previous six or more years, mainly on murder investigations, I considered it vital, if I wanted to be really effective as a representative, that I bring myself up to date with the current situation in the field. The initial reports of crime are handled by Detectives in the Divisional or country stations, and then reported to the central records area at the C.I.B. I knew that when I transferred to the C.I.B. in 1963, crime had been increasing rather rapidly in volume over the previous few years and I assumed that the trend had undoubtedly continued.

I suggested to the team that we visit each Detective's Station in the Metropolitan Police District, interviewing Detectives and ascertaining their workload, their needs and their problems. This, to me anyway, seemed a logical way for us to approach our task. I could not see any point in establishing a computer system in any C.I.B. records field if the choice of field was going to be made by systems people without any discussion with the Police who were going to contribute to and use the system, and without any regard to their needs. Frost, McWhinney and Watt agreed to my proposal. Joyce opposed it. He had spent most of his Police service in the Fingerprint Section and had already made up his mind that the records in that section should be the first to be applied to computer technology.

However, despite Joyce's objections, the project was undertaken and we visited all Metropolitan and some country Stations, interviewing Detectives. When completed, the priorities, to McWhinney and me at least, appeared to be clear-cut.

As a Detective, I had always been of the opinion, that the records contained in the Modus Operandi Section

were of more potential value to the investigating Policeman than any other area in the C.I.B. It was here that he stood more chance of establishing the author of a crime. A variety of indices are kept in this Section.

Where, when and how crimes are committed; types of crime; people who commit specific types of crime; where those people live or may be found, who they associate with, what type of vehicle they own or use; owners of stolen property. Unfortunately, however, because of the system operating then in the reporting of crime to the Modus Operandi Section, this potential was not being realised, as only about a quarter or a fifth of crime information known to the Police in the State was being reported to the Section.

For example, Collaroy, with a staff of 12-13 Detectives, in 1969, reported officially to the M.O. Section something like 518 crimes, but had approximately an additional three and a half thousand crimes kept as a local record. Therefore, if they applied for additional men, or an additional car, their needs would be evaluated on a workload of the 500 odd crimes and an official clear-up rate of 40% or so, and not the real volume of 4,000, certainly minimising their chances of being able to provide a better service to the crime victims in their area, or doing anything really constructive in the important but neglected field of crime prevention. As well as this deficiency at a local level, the chances of Police in another area clearing up some of the officially undisclosed crimes was extremely low, as no record of these crimes existed in the Modus Operandi Section.

Another example, Parramatta - something like 149 crimes were disclosed officially for the month of January, 1970 and when I examined the records a month or so later, only one of those January crimes had been cleared up. Yet, officially, the Modus Operandi records showed that Parramatta had a clear-up rate of 45% for the month of January. This was achieved by reporting a small volume of uncleared crime (invariably the more serious ones against the person or larceny if the stolen property was identifiable by a serial number) and the total volume of arrests for criminal offences, irrespective of how minor or petty the offence. This was the essence and the purpose of the "Paddy's" system, as it was known; to

reduce the volume simply by not officially disclosing all the unsolved crimes and inflate the clear-up rate by reporting officially every offence that was solved.

Apart from the overall sheer dishonesty of this system, which presented such a false and misleading picture to the Government and the public, of police effectiveness, one of the most glaring deficiencies arising out of the system was the failure of the Modus Operandi Section to be able to identify stolen property, simply because in such a large proportion of cases particulars of stolen property were not reported to that Section. Practically every Detective has had the experience of arresting a known thief and finding quantities of property, obviously stolen, in his possession. Undoubtedly the owners have reported the thefts to Police, but when the matters have not been reported by those Police to t

M.O. Section, the arresting Police have not been able to trace the owner; and the offender, instead of facing the more serious charges of larceny or breaking, entering and stealing, has escaped with the lesser charge of "good in custody suspected of having been stolen".

On the basis of these findings, it seems that the concept of total reporting of crime throughout the State to the Modus Operandi Section established a firm priority for computer application. It seemed a logical enough assumption that before we could begin to devise and develop computer technology as an aid to the prevention and detection of crime it was vital that we firstly use this technology to help in identifying the extent, nature and concentration of crime in New South Wales. This has never been done before. Additionally, and ironically, it was believed that the enormous increase in volumes of reports to that Section arising out of such a system of total reporting would create a real need for the acquisition of a Police computer, as such volumes could not be expected to be handled manually with any degree of efficiency.

At this point, Frost finally asserted his authority of leadership by ruling against the concept. In his opinion too many problems would have to be overcome by doing away with the "Paddy's" system and instituting a total and accurate crime reporting system throughout the State, and he did not believe that it was our

responsibility to overcome that particular problem. He considered it to be the responsibility of the administration. He was therefore of the opinion that we would concentrate on a computer application to the Fingerprint Section, namely criminal records. I disagreed with him. The criminal records in that section already provided a good, fairly quick, manual service to investigating Police. I could not see, and McWhinney agreed, that cutting a few seconds off inquiry time from that service could compare with the enormous benefits to be derived from a computer system operating in the Modus Operandi Section, providing information on crime and criminals just not previously available at all.

I appealed to McDonald, O.I.C. of the Research Branch. He obviously did not comprehend and told me to put in a long report detailing the deficiencies of the existing system and recommending the changes. I pointed out that I was not prepared to describe such a dishonest system on paper as it could lead to the downfall of the administration, that it had to be done on a verbal basis directly with the Commissioner. He cut me off and sided with Frost and Joyce. McDonald also had served most of his service in the Fingerprint Section and believed that that was the best place to start with a computer.

In a sense of frustration I then appealed to Jack Kendrigan, the systems consultant to the Commissioner on loan from the Methods Division of the Public Service Board. He listened and evinced great interest. I took him to some metropolitan Stations and showed him the records, pointing out the deficiencies of the "Paddy's" system, explaining the mechanics of it to him, and emphasising the advantages that would flow from a total reporting crime system. He was shocked and concerned at the dishonesty of the existing system and enlisted the support and interest of Keith Parkinson, secretary of the Police Department. Parkinson also viewed the records at Manly and Collaroy Stations.

About that time Superintendent Lendrum took over as Chief of the C.I.B. I used to attend the monthly meeting of Senior Detective Sergeants at the C.I.B. and heard Mr Lendrum exhorting the men to report more crime. I approached him one day and explained my findings and

opinions to him. He said he would mention it to the Commissioner. Within one day or so of that Kendrigan was called to the Commissioner's office and they discussed the matter. At first, Allan denied the existence of a "Paddy's" system and took umbrage at any suggestion that his Police Force was deficient in any way. Finally, after Kendrigan convinced him that he was offering help and not criticism, Allan gave him permission to conduct a pilot study in crime reporting in three metropolitan divisions and one country district. He certainly wanted to acquire a computer, but he stressed the fact that the study was only to be exploratory and the official reporting procedures and official crime statistics were not to be interfered with at that stage.

We selected No. 3 Division - Darlinghurst because of the large and varied volume of crime there, particularly crimes of violence; No. 10 Division - Waverley - because it was recognised in Police circles as having the largest volume of crime in any Sydney Division and the lowest clear-up rate and had been receiving some political and newspaper mention because of it; No. 14 Division - Manly - because of a fairly high crime rate and also because both the Premier and the Commissioner lived there which, we thought, might induce greater interest from them; and the South Coast District - Wollongong - because it was the smallest of the Country Districts, had a fairly high crime rate, a large population, the head Station reasonably close to Sydney, and I knew from past personal experience that the Paddy's system was not as bad there as elsewhere, and it could possibly become a control area for comparison purposes.

A good deal of preparation was necessary to conduct the Pilot Study. A new type of form was designed and printed - the Police Incident Report (P.I.R.). This was to take the place of all forms at that time in use in the reporting of crime, as well as the old Crime Book, in which crimes were entered in long-hand. We visited each Station and addressed all Detectives on the new procedures. Although they were required to submit a P.I.R. to us at the Research Branch for every crime coming to their knowledge within their area, they were to continue to report officially to the M.O. Section only those selected crimes which they would have reported under the old system. We found the Detectives extremely

co-operative. They favoured the new system, especially the new, simplified method of reporting, which did away with the old, tedious, time-consuming system they had always used. We also supplied them with dictating equipment and Mr Parkinson arranged for them to be assisted by female typists.

The system ran as an experiment for two months. Initially, we processed the forms manually, but by the time the experiment was well under way, McWhinney had written programmes to allow processing by the Treasury computer. We were therefore able to compare the statistical print-out from the computer with the figures we had compiled manually to ensure accuracy. We obtained from the Modus Operandi Section the official crime returns from the subject areas for the same period and then prepared comparison charts showing the official crimes figures for each area (which form the basis of the crime figures contained in the Annual Report of the Police Department) and the actual crime figures arrived at on a total reporting basis. The results, as far as I was personally concerned as a Detective, were extremely alarming, and even more so to the other members of the team, which then comprised Kendrigan, McWhinney, Watt and myself. (Frost and Joyce were not involved).

No.3 Div. (Darlinghurst) June/July 1970

Official figures:

309 crimes 23 cleared 39% clear-up rate

Computer figures:

802 crimes 137 " 17% "

No.19 Div. (Waverley, Paddington, Rose Bay and Bondi)

Official figures:

613 crimes 129 " 21% "

Computer figures:

1254 " 96 " 7% "

No.14 Div. (Manly and Collaroy)

Official figures:

525 " 267 " 51% "

Computer figures:

808 " 111 " 13% "

South Coast District: (Wollongong, Port Kembla, Nowra and Bega)

Official figures:

523 " 266 " 48% "

Computer figures:

740 " 238 " 32% "

TOTAL:

Official figures:

1960 " 744 " 39% "

Computer figures:

3604 " 581 " 16% "

Kendrigan took these comparison figures to the Commissioner and requested permission to extend the total reporting system State-wide. Allan expressed alarm at the situation and did not give an immediate reply. He wanted Kendrigan to ensure that if the new system was introduced on a State-wide basis that the crime statistics produced by a computer be programmed in such a way that the overall volume and clear-up rate would be consistent with the figures officially released in the past in the Annual Report of the Police Department. He made it clear that he favoured the system, favoured even more the acquisition of a computer, but was extremely wary of the problems created. His final words to Kendrigan were, "Go ahead, but be careful. Don't bring me undone".

On this basis, we received approval from Allan to extend the system State-wide and at the same time take steps for the acquisition of a computer. Kendrigan had been assuming that we could probably produce the type of statistics that Allan wanted. I had experimented in this regard, endeavouring to compile various crime types into "Indexed" crime, which would ultimately become the "selected" crime released by the Commissioner in his Annual Report. The other crimes would be segregated into "Non-Index" and "Miscellaneous" categories and not necessarily released officially. It was relatively simple to select crime types that would collectively match the figures previously released, but impossible to maintain the clear-up rate previously claimed for the State

restricted to these categories. It came quite obvious to me at that time at the Commissioner's conditions were possible to be met. Kendrigan was not sufficiently familiar with this particular analysis to be aware of this fact. I believed that if I did advise him and he told the Commissioner, it would undoubtedly cause a cessation of development, so I refrained from doing so. It was my opinion that the benefits to be derived for the Police force and the public generally far outweighed retention of the old system only because a disclosure of the true time situation could be an embarrassment to the Commissioner. I hoped, anyway, that once the new system was fully operational, the Commissioner would see the impossibility of manipulating the statistics and would have no alternative other than to release accurate statistics, thus placing the onus on the Government to decide just how efficient and effective they wanted the Police Force to be.

During that particular period, I conferred on various occasions with Parkinson and a public servant named Barry Sutton, who had the responsibility of preparing the Annual Report for 1969. I conveyed our findings and suggested that Sutton endeavour to place some qualification on the crime statistics in that Report and pave the way for the disclosures that I believed must inevitably be made in subsequent Annual Reports when the new system was fully operational.

Myself and I were authorised by the Commissioner to undertake an instructional tour of the State, visiting every Divisional and Sub-District Station, advising Police of the new reporting procedures. Some difficulty was experienced in some quarters in inducing the men to report every crime when we had a written guarantee from the Commissioner that they could do so with safety to themselves. It must be appreciated that a sudden revelation of the true crime position and clear-up rate in their respective areas could be taken as a prima facie admission on their part that they had been deliberately manipulating figures in the past so as to give an entirely false picture as to the full extent of crime and their effect in dealing with it. I conveyed this problem to Kendrigan and appealed to him many times to endeavour to influence the Commissioner to issue a circular giving his authority to the changeover in system. Kendrigan asked me to assist a public servant named Ian Roe, attached to the Research Branch,

to prepare a suitable circular. We did so and the Circular was presented to the Commissioner by Kendrigan and Parkinson for approval and signature. I was finally told by Kendrigan about December, 1970, that the Commissioner was not prepared to issue a Circular at that stage. No reason was given. By the time I received that information, the instructional tour had been completed, and almost total reporting achieved. Without the Commissioner's backing, it had not been easy; without personal contact and persuasion it would have been impossible. I believe that two factors influenced the Police; an awareness that they would never justify the additional men or equipment necessary to provide an efficient service to the community unless they disclosed their full work-load, and a belief that if they all acted in unison there would be some safety in numbers.

Each Police area adopted the new system as each visit was made and the new forms supplied. However, as it was then the latter part of 1970, and it was not intended that the new system become officially operative until the 1st January, 1971, the old system of only reporting some crimes on the Weekly/Monthly Crime returns to the Modus Operandi Section had to be run in parallel until the end of the year. This was in accordance with the Commissioner's direction that the annual crime statistics for 1970 not be noticeably different from the official figures for 1969 and preceding years.

Whilst I was engaged on this particular aspect, Kendrigan and others in the Branch were occupied in the steps necessary for the acquisition of a computer. McWhinney had returned to the Treasury. Kendrigan showed me the application which left the Branch to go to the Commissioner and later, showed me a photostat copy of the Commissioner's signed submission to the Premier. This was virtually a replica of Kendrigan's report and, among other things, referred to the findings of the Pilot Study and the resultant increase in volume expected to come from the State-wide total reporting system. According to Kendrigan, it was this aspect that justified the expenditure. The Premier approved the acquisition and finally, after tenders were called for and evaluated, a Univac 9400 computer was decided upon.

The new system became operative, State-wide, on 1st January, 1971 without any signed authority from the Commissioner of Police.

I worked in the computer operations room at the M.O. Section for several months at the beginning of 1971, assisting in the implementation of the system. I was surprised to discover that the new system and the computer were not welcomed by the Police in charge of that Section. The responsibility of education of Police had been conferred on me and I was primarily concerned with checking input to the computer and rectifying errors but because of the reluctance of the Police within the Section to become involved, I became increasingly responsible for implementation of the system and supervision of the staff.

The first statistical print-out was about April, 1971, and proved to be consistent with our expectations. It was quite obvious, particularly in Sydney, that there was just too much crime and not enough Detectives to deal with it. Their lack of effect, particularly in regard to crimes involving property, was proved conclusively by the dismal clear-up rate.

I became even more concerned at that stage that the Annual Report for 1971 being prepared by Barry Sutton for the Commissioner contained crime statistics and clear-up rates derived from the old system and dramatically inconsistent with the true figures coming from the computer. I conferred frequently with Sutton on this aspect and also with Kendrigan and Parkinson. I believed that it was necessary for the Commissioner to qualify the crime figures, making it clear that they were not accurate, having been derived from an old, unsatisfactory manual system of reporting, thus paving the way for, and providing, some credibility for the explanation that would have to later accompany the release of the accurate computer figures for 1971. Whilst I was aware that the situation posed a difficult problem for the Commissioner, I knew that it was inescapable and had to be met. I knew that I had a better understanding of the problem than any other member of the Force because no other member had the same degree of knowledge and as I knew that the Commissioner was not to blame for the "Paddy's" system anyway, I felt it my responsibility to endeavour to assist him.

It was impossible for me to approach him directly, so I dealt with Sutton and Parkinson. It was my opinion that

Allan had no alternative other than to tell the truth and I was confident that if he did, he would be applauded for his honesty and humility. I submitted various drafts to Sutton for him to submit to Allan for inclusion in the 1970 Annual Report, but all I could subsequently ascertain from Sutton and Parkinson was that Allan was reluctant to adopt the suggestion of a truthful revelation. The only conclusion I could draw was that he either didn't fully comprehend the situation or, if he did, he believed that the computer figures could be juggled, to provide him with figures consistent with the past, or he intended postponing release of the true figures until after his retirement in June, 1974.

I was genuinely alarmed by this realization and in an endeavour to try and force the issue, I contacted Jim Downes, of the "Four Corners" documentary team at Channel 2, A.B.C. television station. I told him of the situation and asked him for help. I had had previous personal contact with Downes when he interviewed me in a "Four Corners" documentary he prepared on Australian Police Forces and I had a great deal of respect for his integrity. He contacted Allan and obtained permission to prepare a documentary on the Police Computer. Allan directed that I assist Downes in the preparation of the film. I was later present, with Kendrigan and Parkinson, at an interview between Downes and Allan, which was recorded on tape and film. Allan deliberately evaded Downes' questions regarding the apparent increase in crime and decrease in the clear-up rate. He denied that there was a "Paddy's" system as described by Downes and suggested that the additional volume comprised bogus reports of crime.

In subsequent discussion with Downes prior to the broadcast, he told me that he intended making a disclosure of the situation but would do so in such a way as to minimise any blame being attached to Allan and edit Allan's recorded statements in such a way that he could still not only extricate himself from criticism but do so in such a way that it would be to his own credit and advantage.

About this stage Kendrigan confided in me that he had lost faith in Allan and believed that he was not genuinely concerned with any further development of computer systems. It was his belief that Allan was satisfied in being the first Australian Police Commissioner to acquire a computer, but had no intention of dealing with the problems that accompanied it. He said that he was therefore wasting his time with the Police Department and intended to gradually withdraw to the Public Service Board. This alarmed and upset me for I knew that Kendrigan's talents could not be matched by anyone in the Police Departments' employ and his expertise was vital to future development.

I approached Parkinson and told him of Kendrigan's attitude and intention. He also was concerned and asked me if I could offer any solution. I told him that I anticipated adverse newspaper publicity to follow the "Four Corners" programme and suggested that he warn the Commissioner of this. I also suggested that it was an appropriate time for the Research Branch to commence an experiment in No. 10 Division with a view to developing the computerised "grid" system as well as a resource allocation formula. I thought that if adverse publicity did ensue, it would be advantageous to Allan to be able to say he had used the computer to identify the extent and nature of crime in the State and was continuing to use that technology in experiments designed to improve Policing techniques in reducing and solving crime. At the same time I believed that if the Commissioner approved such a project it would cause the retention of Kendrigan's services, re-activating his interest and his confidence in Allan.

Within a day or so, Kendrigan came to the Research Branch and told us he had been asked by Allan to undertake an experiment in No. 10 Division on the grid system and resource allocation.

The "Four Corners" programme was broadcast on Saturday, 1st May, 1971, and the adverse newspaper publicity started on Tuesday, 4th May, following which the Premier called on Allan for a report. In this report, Allan again evaded the issue and did his best to camouflage the true position. He stated that many of the offences which had inflated the volume were

of a petty nature and referred to breaking and entering offences where the value of property stolen was less than \$100. Among other things, he also referred to an extremely high clear-up rate respecting stolen motor vehicles as a claim to Police efficiency, but neglected to say that stolen motor vehicles were not included in the crime statistics anyway and that the clear-up rate he quoted referred to the recovery of stolen and abandoned vehicles and not to the arrests of the offenders who stole them. Apparently however, whilst his report incited further criticism from the news media, it seemed to satisfy the Premier and the turbulence gradually subsided.

The No. 10 project was commenced on 2.7.71 after preparations involving most of May and June. The objective was to experiment with staffing, equipment and the grid system, in an endeavour to improve patrolling, response and investigation with a view to achieving a maximum result with a minimum outlay of resources thus creating an effective formula which could be developed and adapted for State-wide application.

Before commencing, the monthly overall crime rate was in excess of 700 and the clear-up rate 10%. An analysis of crime types disclosed that approximately 78% of this comprised larceny affecting dwelling houses and motor vehicles (excluding thefts of motor vehicles). It was considered that there was every reason to believe that by coding into the computer the fairly precise location and time of these types of offences the computer could be programmed to produce a map showing concentration and patterns so that men could be effectively deployed on preventative patrols.

Other men were to be employed on response work, attending as quickly as possible to calls for Police assistance, and the third group of men employed in follow-up and investigation procedures.

The figures remained constant during July and August. We were not unduly concerned at this for it was realised that a time period had to be allowed for stabilisation before accurate evaluation could be made and it was apparent as well that the field experiment was not being properly conducted, due to some extent to inadequate management capabilities

within the Division, but mainly due to the lack of support in the experimentation by the Commissioner and lack of authority vested in the Research group.

About the end of August, Kendrigan was directed to report progress to the Commissioner. When advised of the situation, Allan expressed anger and directed Detective Supt. Lendrum to transfer several senior Detective Sergeants from the Division. Kendrigan protested, explaining that this would wreck the project and suggested that another Detective Sergeant be selected and trained to take over the management or alternatively, that we take advantage of what he had learned already in No. 10 Division and apply this knowledge to a continuation of the project in another Division. Allan rejected Kendrigan's advice and directed Mr. Lendrum to transfer the men. He said that he would select replacements.

The next monthly meeting of Divisional Detective Sergeants at the C.I.B. took place only a few days later and at this meeting, Mr. Lendrum announced that several Detective Sergeants were to be transferred from No. 10 Division because they had not "measured up".

Following this meeting, Kendrigan saw Lendrum who told him that he had made representations to the Commissioner on behalf of the men and the Commissioner had countermanded his order. The men were to remain in the Division.

Kendrigan then saw Allan again, but he denied having changed his mind and said that the men would be transferred.

We waited a week or so to see what eventuated, but nothing did. Kendrigan and the other members of the group were convinced that the project was destroyed and we could not expect to continue it in No. 10 and achieve any worthwhile results because of what had happened. Obviously, the men would blame the Research group for causing their embarrassment.

I then confronted the men at Waverley, finally convinced them that the members of the Research Group were not to blame and obtained their assurance that they would continue to co-operate in the project.

I commenced seven weeks annual and deferred leave on order from McDonald about the end of September, 1971. By that time, the Divisional crime rate had dropped by approximately 100 and

the clear-up rate had increased to 20%. It was apparent by then that the experiment would have to be expanded to take in the duties of all Police in No. 11 Division and not just the Detective staff, where we had been concentrating. It was also decided to devise systems and programmes to computerise the Stolen Motor Vehicle Index and Communications, the latter system to allow an assessment and analysis of the total workload of Police in the Division.

Kendrigan subsequently telephoned me whilst I was on leave and told me that Allan had verbally authorised him to expand the experiment to take in the whole of No. 10 Division, but to delay it until Allan had selected an officer to take over the field management of the project. When selected, this officer was to be trained for the role by the Research group.

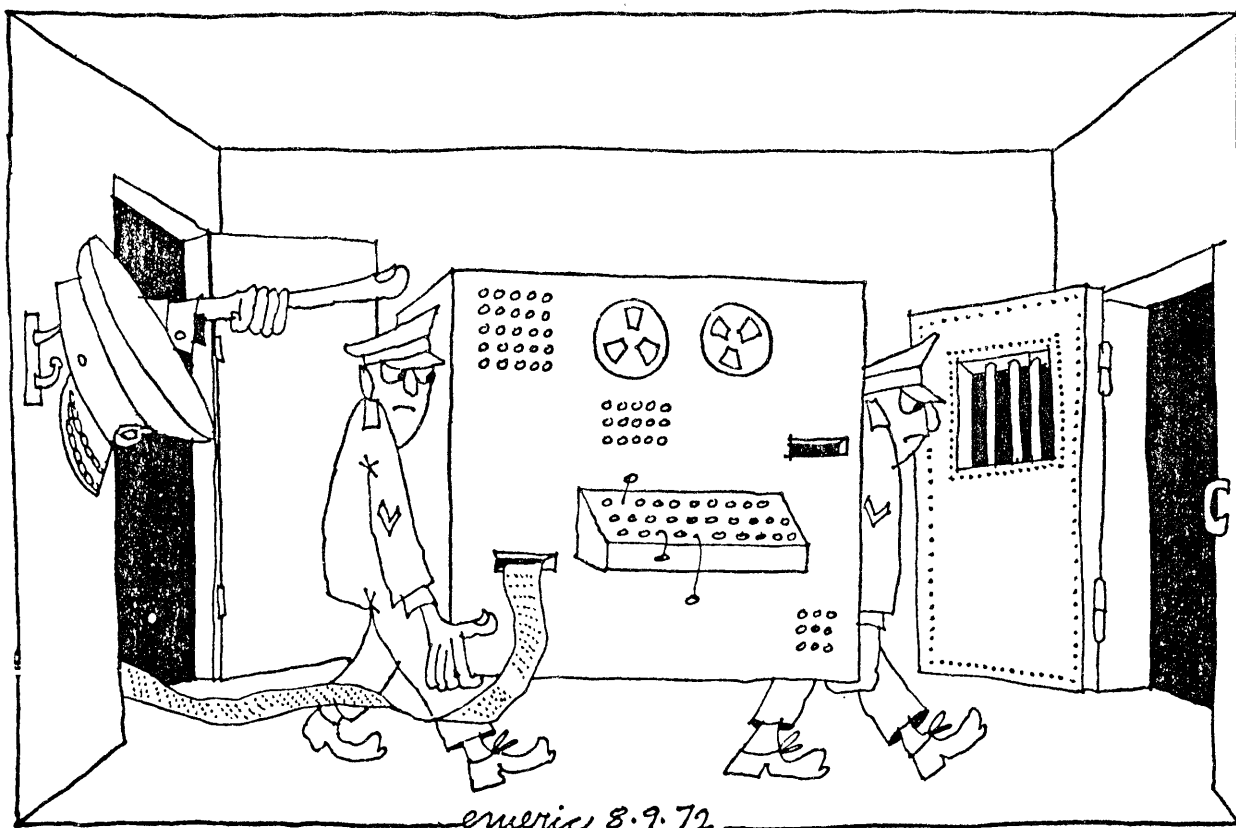
After I had been on leave for some weeks, I heard over the radio and read in the newspapers that the 1970 Annual Report had been tabled in Parliament. I did not hear or read of any suggestions that the crime figures in the report were inaccurate and needed to be treated with reservation. I was very disturbed at this for it meant, to me anyway, that Allan had no intention of releasing the true figures and therefore, the assurances which I had given Police throughout the State would not be honoured. I decided that it was my responsibility to get the true figures to the Government and the public, but I had no definite plan as to how to go about it. It was whilst I was in that state of mind that Basil Sweeney, a Police Roundsman employed by the Sydney Morning Herald, telephoned me and asked me if I was prepared to tell him what the crime figures and clear-up rate for 1971 would be like in comparison to the 1970 figures.

I decided then to give Sweeney the full facts. I knew that the revelation, if published, would be an embarrassment to Allan and that he would react violently and I would probably be sacked because of it. There did not appear to be any alternative, however. If I had refused to discuss the matter with Sweeney I would have been loyal personally to Allan, but disloyal to the members of the Police Force and the objectives of the Force itself. I was mindful of the Section of the Police Regulation Act dealing with the unauthorised release of

confidential information and the proviso in that Section that indicated that such could be released if in the interests of the Service. The true crime statistics were being treated as confidential by the Commissioner, but they should not have been. He had the responsibility, as Commissioner of Police, to report to Parliament in his Annual Report the extent of crime in the State and the effect of the Force in dealing with it. For his own personal protection and because he lacked the courage to face the truth we had put conclusively before him, he continued to place statistics regarding crime and Police effectiveness before Parliament which he knew to be completely false and misleading. I believed that as the only other Policeman aware of the situation I had a responsibility to do what the Commissioner failed to do and bring this alarming information to the Public so that the Government could be forced to take whatever action was necessary to overcome such a serious problem. I had no doubt that the Premier was fully aware of the true situation, but, like the Commissioner, was determined to suppress it because a revelation would reflect on him as well as Minister for Police. I considered that the objectives to be achieved were far more important than any individual involved and I included myself in the same category as Askin and Allan. If I had not done so I would have failed in my duty and dishonoured the oath I took when I became a member of the Police

Force..."to serve without fear or favour, malice or ill will....to see and cause peace to be kept and preserved....do all in my power to prevent offences....to the best of my skill and knowledge, according to the law".

I gave Sweeney the facts available to me at that time based on my condensation of the computer print-out covering the period 1.1.71 to 30.9.71. Arrangements were then made for him to visit my home within a day or so for further and more detailed discussion. On this occasion, I conveyed the whole of the circumstances to Sweeney and showed him various documents as verification. He spent several hours at my home and our conversation related not only to the crime statistics, but the Police Force generally. I had known and respected Sweeney for many years but he impressed me even further that afternoon with the extent of his knowledge of the ills and deficiencies of the existing Police system in New South Wales, and also of his good intentions. I was satisfied that whilst he was fully aware as a journalist of the news value of the revelation, his personal motives were constructive and on a par with my own. We agreed to wait until I returned to work and had access to the print-out to the end of October as it would be closer to a full year for comparison purposes with the 1970 figures.



COMPLAINTS AGAINST POLICE (N.S.W.)

Richard Phillipps

Methods for dealing with complaints against police differ from State to State around Australia. In all jurisdictions the Ombudsman (sometimes referred to as the Parliamentary Commissioner for Administrative Investigations) can investigate matters of administration relating to police, although it may not in some instances investigate actions of police in their capacity as members.

In NSW the machinery by which the Ombudsman deals with complaints against police has received a great deal of publicity. Perhaps in response to adverse criticism of the complaints procedure - the most trenchant of which emanated from the office of the Ombudsman itself¹ - the NSW Government recently introduced a package of legislation² which to some extent alters the procedure. However, this, too, has been adversely criticised, and it is doubtful whether the changes are any more than cosmetic. It is proposed in this paper to look briefly at the situation before the recent legislative changes, and then at the effect of the changes in order to assess the situation as it now stands.

Complaints procedures before the recent amendments:

Under the Ombudsman Act 1974 the Ombudsman has wide powers to investigate conduct of public authorities. However, Schedule 1 of the Act, in combination with section 12, excludes from the Act the conduct of a member of the Police Force when 'acting as a constable'. Although there is clearly some debate as to the meaning of this phrase, the practical effect was that very few investigations were carried out under this Act. The major vehicle for complaints against police was the Police Regulations (Allegations of Misconduct) Act, 1978.

The Scheme of the Act

It should be noted that the scheme of the Police Regulations (Allegations of Misconduct) Act, 1978 will be outlined in summary form only. Based on the recommendations of the Australian Law Reform Commission,³ it provided for the

investigation of complaints against police by a special unit of the police force - the Internal Affairs Branch (IAB). It provided for a Police Tribunal to hear disciplinary charges. The Act dealt with (alleged) action or inaction of a police officer that could not be dealt with under s. 12 of the Ombudsman Act - i.e. that does not relate to a 'matter of administration'. The Ombudsman not only acted as a conduit for these complaints, but reviewed the investigations once completed. The role of the Ombudsman vis-a-vis the IAB was judicially characterised as 'essentially supervisory'.⁴ It is submitted that this is an overly optimistic assessment. Under the Act, complaints (which have to be written) could be dealt with either by investigation and/or (in certain cases) conciliation.

Conciliation

The rate of conciliations has undergone a steady annual increase.⁵ The Ombudsman has indicated fear that the police might be pressuring complainants to conciliate and thus avoid an investigation, and some evidence of this practice exists.⁶ Although in many cases an explanation and/or apology may be a sufficient remedy, to pose conciliation as an alternative to investigation, rather than as an essential part of the process, is an error. The public should always be owed a duty of civility and explanation - not just when it will help an officer 'off the hook'.

Investigation

When the Ombudsman decides that an issue should be investigated s/he notifies the Police Commissioner, who then is required to investigate it: s. 17(2). In making this decision the Ombudsman may consider whether the complaint is frivolous, etc., or whether the complainant lacks sufficient interest s. 18(1). The Police Commissioner can also initiate certain investigations ss. 16, 17.

In 1982 the Ombudsman declined 60 cases out of 1,960, plus 141 complaints concerning traffic tickets which were declined/deferred awaiting further contact with the complainant.⁷ This

raises the issue of whether it is inconsistent with the role of Ombudsman to routinely reject matters that seem undane. Arguably, it is not dramatic outrages on the part of police that harm society the most, but the daily round of petty offensiveness and neglect. It may be that these matters are those that the Ombudsman, as the guardian of the small person, should attend to.

It is routine for the Ombudsman to agree that the police investigating a complaint not be members of the IAB, and in 1982 the IAB only performed about one quarter of the actual number of investigations.

Reports

Following the investigation stage the Ombudsman may issue a report. Section 27 provides that where the Ombudsman is satisfied that the complaint is not sustained s/he shall so report to the complainant, the Commissioner, and the impugned officer. Section 28 provides that where the Ombudsman is satisfied that the complaint has been sustained s/he may make recommendations to the Commissioner, and s/he is also required to so inform the Minister - 29.

The Ombudsman, as noted above, could not conduct investigations on her/his own account. Situations commonly arose where the report the Ombudsman received had conflicting accounts from various witnesses - typically, when police evidence conflicted with that of a complainant's witnesses. In such cases, credibility would frequently be in issue, and it would often be difficult to decide which version to accept on the basis of the police report alone. The Ombudsman frequently expressed dissatisfaction with this, as did complainants who commonly criticised the 'impotence' of the Ombudsman.⁹ To counter this, the Ombudsman developed the practice of categorising such matters as 'unable to be determined'. The effect of this was that in the 1981-2 report, out of 1,277 complaints, 69 were sustained, 229 not sustained, and 340 unable to be determined. The practice of thus reporting complaints as 'unable to be determined' was challenged in Ombudsman Moroney,¹⁰ and was upheld on appeal.

Under s. 32 special reports can be made to Parliament, and can be made public. In 1982 the Ombudsman recommended that five such reports be made public, all of which were strongly critical of the

system of dealing with complaints. As noted above, s. 28 provides for the making of recommendations to the Police Commissioner. It is apparently 'common' for these reports not to be followed.¹¹ Where the Ombudsman and the Police Commissioner disagree on whether a complaint has been made out, the Police Commissioner rarely reverses his decision in the light of the Ombudsman's report.¹²

The Act also provided that there be an Internal Affairs Branch - s. 34. This Branch is modelled on the A10 Branch of the Metropolitan Police in London, and thus follows the recommendation of the ALRC.¹³ The Act further sets up a Police Tribunal to hear disciplinary charges under the Act or in relation to other conduct if the officer so elects - s. 41.

Criticisms of the System

The most salient problem is that the Ombudsman did not in fact conduct any investigation. This produces two sets of problems - the first is that the Ombudsman could not, as was noted in Moroney, purport to give an objective account of the result of an investigation with the resultant stream of 'unable to determine' cases. The second is that the lack of on-the-job external monitoring of police practices is conducive to malpractice by police both while investigating complaints¹⁴ and generally. It is also likely that the police ethos will tend to militate against flexibility and sensitivity to the complaint at hand, resulting in the use of the same procedure for many types of complaints.

The response to these problems has to be a measured one. It seems to be widely accepted¹⁵ even by some police¹⁶ that a totally internal system of investigation is unsatisfactory, basically because of the conflict of interest and the strong group loyalty felt by police.¹⁷ On the other hand, although some bodies favour a totally independent investigation system,¹⁸ it appears that this is not satisfactory for the following reasons: (a) it would create too great a strain on available resources; (b) police are able to effectively resist penetration of their formal and informal networks; (c) police will always have greater knowledge of possible malpractice than will outsiders.¹⁹

It seems, then, that a system is needed whereby police do most of the investigation themselves with an effective

external monitoring system that has the power to do its own investigation when necessary, so as to ensure that the police investigators are kept 'up to scratch' and to resolve problems of credibility, etc., when needed.

It would be necessary to formulate some institutional guidelines to guide the choice of cases to be investigated by the external agency. A useful system might include the random investigation by the external agency of a small percentage of all cases (preferably without the knowledge of the police - so that results of investigations could be more objectively compared), together with the investigation of cases that indicated a problem in police systems or that resulted in an 'unable to determine' conclusion.

A possible criticism of a system of complaints is that it has an individualised, 'rotten apple' nature, as opposed to a more structural remedy. This criticism somewhat misses the point - a complaints system is meant to, in the main, deal with individualised complaints. Structural remedies and reviews are needed as well as, not instead of, complaints procedure.

The Recent Changes

It is now possible to consider whether the recent changes have in fact cured any of the ills in the complaints scheme. Although the amending legislation contains not a few provisions, many of these are, in the traditional phrase, 'of a minor or consequential nature', and others are not relevant to the issues here addressed. The relevant changes to the procedure, then, are as follows. Anonymous complaints formally allowed - Police Regulation (Allegations of Misconduct) Amendment Act 1983, Schedule 2 (1)(e), (2)(a), and (4)(b): as the ALRC recognised,²⁰ clearly anonymous complaints should not for that reason be rejected. After all, police act on anonymous tip-offs. But the previous legislation did not in fact contain anything to exclude anonymous complaints. The amending Act's requirement that they be not only written but refer to serious misconduct is no more than petty officiousness. The Ombudsman's jurisdiction has been thus diminished.

Secondment of IAB officers to the Ombudsman - Ombudsman (Police Regulation) Amendment Act 1983, Schedule 1 (3)(c) and (9): it is unlikely that this will alter the attitudes of IAB officers. It can only be seen as a cosmetic change, which may well deter clients from attending the Ombudsman's offices.

Allowing the Ombudsman to personally investigate complaints under the Ombudsman Act under certain circumstances - Ombudsman (Police Regulation) Amendment Act 1983: the truth behind this charade becomes apparent when it is realised that only the Ombudsman or her/his Deputy (i.e. not even the Assistant Ombudsman, who normally deals with police matters) or the seconded IAB officers will be able to exercise this power - Ombudsman Act 1974, ss 8, 10; Police Regulations (Allegations of Misconduct) Amendment Act 1983, Schedule 3 (2); Ombudsman (Police Regulation) Amendment Act 1983 Schedule 1 (2), (3)(c) and (9). It can confidently be predicted that this minimal change will not set the police force on its ear.

Reversing the effect of Ombudsman v Moroney: presumably because of the extremely limited ability now given the Ombudsman to investigate complaints under the Ombudsman Act (supra), the Ombudsman can no longer indicate that s/he is unable to determine the result of an investigation: Police Regulation (Allegations of Misconduct) Amendment Act 1983, Schedule 3 (2) and (4)(b). This will, of course, result in a decrease in embarrassment for the government of New South Wales, but it can only be seen as a retrograde step in the investigation of police complain

These changes are not going to affect the status quo. Until the Ombudsman has the power and staff necessary to double-check IAB practices and to judge credibility of witnesses where necessary, there will not be an effective mechanism for dealing with police malpractice in N.S.W.

FOOTNOTES

1. In all annual reports since 1979, special reports, and, *inter alia*, a paper given by the then Assistant Ombudsman to the Faculty Seminar, University of New South Wales Faculty of Law, 2/6/82.

2. Comprising the Ombudsman (Police Regulation) Amendment Act, 1983; the Police Regulation (Allegations of Misconduct) Amendment Act, 1983; and the Police Regulation (Further Amendment) Act 1983.

3. ALRC 91 Complaints Against Police, para. 81.

4. By Street, C.J., in *Ombudsman v Moroney* NSW Ct of Appeal CA 55 rf 1982 24/5/82 3.

5. See annual reports for 1980, p 128, 1981 p 108, 1982 p 53.

6. Annual report 1982 p 53-4.

7. Annual report 1982, p. 46.

8. Report on The Effectiveness of the Ombudsman in Respect of Complaints Against Police, 11/2/82 no. 91, p. 5.

9. Ibid. p. 8.

10. Note 4 *supra*.

11. 1982 special report (note 8 *supra*) p. 6.

12. Paper given by Assistant Ombudsman, note 1 *supra*, p. 11.

13. ALRC 1; para. 71ff.

14. S44 e.g. special report 1982 *supra* note 8, p. 15ff.

15. See e.g. Hewitt, *A Fair Cop - Reforming the Complaints Against Police Procedure* NCCL London 1982 p; Goode MR, "Administrative Systems for the Resolution of Complaints Against Police: A Proposed Reform", *Adelaide LR* (1972) 55, 63.

16. See e.g. Hewitt *op. cit*, 12.

17. Goode *op. cit*, 63; Assistant Ombudsman *op. cit*, 16-17.

18. E.g. Hewitt *op. cit*, 31.

19. Assistant Ombudsman *op. cit*, 24.

20. ALRC 1 para. 101; ALRC 9 para. 82.

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