Submission

Victorian Royal Commission:

The Management of Police Informants

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March, 2019

Contents

Abbreviations

ALRC	Australian Law Reform Commission
CDPP	Commonwealth Director of Public Prosecutions
DPP	Director of Public Prosecutions
IAP	International Association of Prosecutors
IBAC	Independent Broad-based Anticorruption Commission
LPP	Legal professional privilege
OPI	Office of Police Integrity
SOCA	Serious Organised Crime Agency
SOI	School of Investigation
TOR	Terms of Reference
VGSO	Victorian Government Solicitor's Office
Witsec	Victoria Police Witness Protection Program

Synopsis

A Royal Commission was prompted by claims police had abused their duty by using evidence obtained from a lawyer to investigate serious crimes. Specifically, police were accused of breaching legal professional privilege. Paramount questions arising from these claims were: (a) should a lawyer be treated as an informer and (b), would/should the same police rules and responsibilities apply?

Six Terms of Reference were framed to determine if police exceeded their authority and, if so, what potential "knock-on effects" might there be in regard to people gaoled because of the lawyer's information. This submission does not address the latter question.

This submission cannot address all aspects of the TOR because the author has been too long out of the Force. However, it seeks to establish the milieu in which police found themselves and why the informer's information was used. Brief reference is made to the Witness Protection Program to illustrate the manner Witsec members employ to handle informers and what they (informers) think of it. Reference is also made to the Kellam Report and a review conducted by former Chief Commissioner Neil Comrie: both examined the subject topic of this Royal Commission. Policing in some countries is explored to garner ideas for methods of handling informers.

Legal professional privilege (LPP) is discussed and examples of why it can be voided are provided, including legislation for particular crimes such as sex offences. Reference is also made to the Australian Law Reform Commission's extensive examination of LPP.

A potential way forward for police investigations through qualified LPP is presented for consideration. Two attachments are provided: one to give an expanded view of the context in which the informer's information was used i.e., the gangland wars, the other to demonstrate that a need for enhanced detective training has been argued.

A brief conclusion ends the submission.

Submission to the Victorian Royal Commission

The Management of Police Informants

YOUR HONOUR,

My name is William Harlock Gladstone Robertson. I retired from Victoria Police in August 1996 at the rank of Assistant Commissioner after joining as a Junior Police Trainee on February 2, 1960.

My service comprised metropolitan and country experience as a uniformed member, the Inspectorate and Future Plans, later Research and Development Department, OIC Collingwood police station, Duty Officer at Prahran, Co-ordinator for Neighbourhood Watch and the Community Policing Squads, Staff Officer to the Chief Commissioner.

As an Assistant Commissioner I held the portfolios of Research and Development, Personnel and Training. Within those portfolios I participated across the country on national personnel selection panels, as a member of the National Police Research Unit, led a review of the Fiji Police training system, led a review of the Northern Territory Police training system, attended a six-month residential Senior Command Course at Bramshill, in the United Kingdom, and the twelve-month, part-time, Australian Industrial Mobilisation Course conducted by the Australian Department of Defence.

After leaving the Force I was engaged for two years by the Western Australian Police Service to implement the recommendations of a review of their Human Resources Directorate that two others and myself conducted, recruited by the Victorian Office of Police Integrity (OPI) to review and report upon the Victoria Police Witness Protection Program after the Hodson murders and to then remain and assist in compilation of a history of corruption in Victoria Police from 1836 – 2005. The published document was titled, *Past Patterns, Future Directions*. I was then engaged by the Victorian Assistant Commissioner (Training) to review the School of Investigation (Detective Training School) because of toxic bullying and harassment of two former members of *Ceja Task-force* placed there as respite from gruelling investigations of corrupt police. I had considerable input to the original, albeit brief, Force history, *Police in Victoria 1836 – 1980* and all three editions of Dr Robert Haldane's official history, *The People's Force*.

I am seventy-five years of age, hold a Bachelor of Arts degree (Melbourne University) and was among the first selectees to receive the Australian Police Medal when it was struck in 1986.

I am desirous of commenting on aspects of the current Royal Commission.

INTRODUCTION

At the risk of being pedantic, I express my disappointment with the wording of the Terms of Reference (TOR). Even on the information page which provides a brief account of the reason for the Royal Commission, the final paragraph concludes with the words, "how those failures may be avoided in the future." Implicit is an assumption that even before the hearing has commenced, some police members have committed undefined wrongs. Similarly, TOR 5 makes the same presumption of system failures prior to any examination. Whilst I understand that the intention behind these references was to procedural shortfall, that intention should have been expressed with greater clarity and not assume wrongdoing from the outset.

On a positive note, the introductory information expresses implicit acknowledgement of the need for, and use of informers. As with any procedure, system or practice, there is *always* opportunity for improvement and I look forward to the Royal Commission's findings and recommendations.

Terms of Reference

TOR 1

The number of, and extent to which, cases may have been affected by the conduct of 3838 as a human source.

Context

I am unable to comment on this because I was no longer in the Force at the time of the "gangland wars". I can say, however, that when assisting Dr. Robert Haldane with *The People's Force*, edition 3, I met with a group of detectives in the presence of their Assistant Commissioner, Stephen Fontana. The discussion was necessary to record and report upon events concerning the "gangland wars." That section of my draft (attached), was for Dr. Haldane to use as he saw fit. He was ill and I was his leg-man. The material in my draft provides a context for that period and, given events then cause me to say, bluntly, I find the words of the High Court judgement that police were guilty of "*reprehensible conduct*" and "*atrocious breaches of the sworn duty of every police officer*" utterly repugnant.[i]

TOR 2

The conduct of current and former members of Victoria Police in their recruitment, handling and management of 3838 as a human source.

Witness protection – human sources

I am not in a position to comment with authority on the information sought. From general knowledge, and from having reviewed the Witness Protection Program for OPI, I can say that informers, such as 3838 – Nicola Gobbo – are required to be registered, details about them are supposed to be strictly confidential, and, as I understand, confined to the handler and his/her superior officer. I learned from my review that in some cases, the lives of these informers, and family members living overseas, were definitely at risk. I interviewed one such person who had been shot here, in Victoria, and whose family in another country had been threatened.

For people in witness protection, human sources, strict rules apply. [redacted] the Victoria Police Witness Security Unit (Witsec). Police informants are [redacted] with their witness, including [redacted]. I found the Witsec personnel took their duties and responsibilities very seriously and their attention to witnesses was beyond reproach.[ii] Breaches of rules by witnesses, such as [redacted] or [redacted] had, in some cases, resulted in risk to the witness or their family and in rare cases, [redacted] There has not yet been an example of *any* person in Victorian witness protection being compromised by the "loose lips" of Witsec staff.

Nicola Gobbo refused witness protection. Apart from a perception that her behaviour is eccentric[iii], how she was managed as a human source I cannot say. However, acting as an informer for police she would rightfully have expected that her identity would be protected by them. She did not expect to be used as a witness and when police insisted, she obtained a medical certificate from her psychologist saying it would be detrimental to her health to give evidence. She was excused and the case failed.

TOR 3

The current adequacy and effectiveness of Victoria Police's processes for the recruitment, handling and management of human sources who are subject to legal obligations of confidentiality or privilege, including:

a. whether Victoria Police's practices continue to comply with the recommendations of the Kellam Report; and

b. whether the current practices of Victoria Police in relation to such sources are otherwise appropriate.

Kellam Report

(a) The Kellam Report was never released to the public.[iv] A member of the Independent Broad-based Anti-corruption Commission (IBAC), Commissioner Redlich, was reported saying recently that "IBAC's investigation by Mr Kellam found *serious mismanagement of human source information* and concluded that Victoria Police had failed to act in accordance with proper policies and procedures." Redlich was speaking in support of the Royal Commission.[v]

Apart from Mr Kellam, Victoria Police, IBAC and the Director of Public Prosecutions (DPP), the public can only guess at the meaning of the words, "*serious mismanagement of human source information*." I am aware that in 2012 former Victorian Chief Commissioner, Neil Comrie, was requested to examine human source matters by then Chief Commissioner, Ken Lay. Issues arising from the management of 3838 were part of that examination. As a consequence, Mr Comrie obtained copies of current policies and procedures from the UK's *Serious Organised Crime Agency* (*SOCA*) regarding their management of human sources. In Mr Comrie's considered opinion, *SOCA's* process was valuable and well-established and he forwarded the documentation to Mr Kellam. I am led to believe that Mr Kellam thought well of both the documentation and Mr Comrie's recommendations.

I by no means downplay the seriousness of police failing to follow procedures, after all, it was precisely that, amongst other matters, which led to the Beach Inquiry of 1975 -76. But I believe **no law was broken** in regard to the handling of human sources.

Legal professional privilege

The crux of the High Court's disdain for both Gobbo[vi] and Victoria Police lies in the perceived breach of legal professional privilege (LPP) by Gobbo towards her clients and for police using the information. It is worth remembering however,

that the sacred covenant of legal professional privilege (LPP), which emerged during the 1570s – 1580s,[vii] did not have a straightforward start. In my view, LPP is not immutable today. More will be said of this later.

Evan Whitton's informative book, *Our Corrupt Legal System* contains numerous examples of ways in which courts, lawyers, politicians and circumstances changed British justice from inception. Clearly, many of those changes were for good reason but many were not. For me, it is hard to go past Jeremy Bentham's 1827 comment about LPP: *if the client is innocent, the lawyer has no guilty secret to betray; if guilty, no injustice flows from its absence*. On this basis, privilege, says Whitton, has no legitimate purpose and should be abolished. In another early reference to privilege, Whitton refers to Justice Sir James Knight-Bruce who argued the case for secrecy in the matter of *Pearse v Pearse* (1846). In that argument Knight-Bruce is reported saying, *"The discovery and vindication and establishment of truth are main purposes certainly of the existence of Courts of Justice, [but] surely the meanness and mischief of prying into a man's confidential consultations with his legal adviser ... are too great a price to pay for truth ...Truth, like other good things may be loved unwisely, may be pursued too keenly, may cost too much."*[viii]

By the mid nineteenth century, LPP was more clearly defined, especially by Lord Brougham L.C. in the 1833 case of *Greenough v Gaskell:10.* Lord Brougham is recorded stating:

"The foundation of this rule is not difficult to discover. It is not (as has sometimes been said) on account of any particular importance which the law attributes to the business of legal professors, or any particular disposition to afford them protection, though certainly it may not be very easy to discover why a like privilege has been refused to others, and especially to medical advisers. But it is out of regard to the interests of justice, which cannot be upholden, and to the administration of justice, which cannot go on, without the aid of men skilled in jurisprudence, in the practice of the Courts, and in those matters affecting rights and obligations which form the subject of all judicial proceedings. If the privilege did not exist at all, everyone would be thrown upon his own legal resources; deprived of all professional assistance, a man would not venture to consult any skilful person, or would only dare to tell his counselor half his case."[ix]

On the logic of this opinion, the earlier one of Knight-Bruce and the finding of the Australian High Court relating to this enquiry, unless there is a change of law, or an orator as smooth as Garfield Barwick to argue the contrary,[x] this

Commission is *bound* to find that police have transgressed the dictum of legal professional privilege. *If* Kellam argued for a change of that policy, we, the public, do not know. Little wonder that many of Victoria's police are moved to protest, 'proof at the expense of truth.'

In short, given there is no information publicly available regarding either the procedures of Victoria Police at the time of the Kellam review, or afterwards, it is not possible to comment on the adequacy and effectiveness of the Force's processes for the recruitment, handling and management of human sources subject to legal obligations of confidentiality or privilege.

The common law and current legislation for LPP appears to deal with information obtained during preparation for a defence. There does not seem to be anything covering situations where counsel discovers information involving an offence and/or the planning of same. Surely, in such cases they must be dutybound, without restriction, to report such behaviour without being sanctioned.

Other places

(b) Excluding commentary on the appropriateness of using a lawyer's information to solve crime, and without knowing *current* police procedures for handling human sources, on the basis of practice in other places, it is likely that in the interests of both accountability and transparency, changes could be made.

Most protected witnesses are human sources.[xi] In my review of the witness protection program for OPI, I recommended that information about the numbers of witnesses entering the program annually, the costs of maintaining the program, the relationship between court outcomes and evidence from protected witnesses (volume of drugs seized, clandestine laboratories busted, property recovered, firearms/other weapons seized, vehicles/real estate seized and forfeited, convictions obtained etc.) should be published in the Victoria Police Annual Report. Such information would reveal nothing about witness identities or the cases in which they are involved but would inform taxpayers how their money is being spent and results of that expenditure. Although not nearly as demanding as the South African procedures mentioned below, this recommendation has not been implemented. There is, however, a possibility that the information has been transmitted to the police minister since 2017.[xii]

In South Africa the need for police informers is acknowledged and their use has a long and often unpleasant history. The need for checks and balances is well

recognised as is the need for understanding the motivation of people wanting to relay information to police.[xiii] Minaar suggests there are three types of informer in South Africa. The *voluntary informer*, one who picks up information and passes it on to police. They may, or may not receive payment for the information. The *civic duty informer* who is actually a person with an ulterior motive and delivers information for their own purpose, e.g. to avoid sentencing, elimination of competitors, fear or satisfying some emotional need. Finally, there is the *paid informer*, a person registered for that purpose and in receipt of regular payment from police for information.

Importantly, the identity of any informer recruited by a police investigator is protected by Section 202 of the Criminal Procedure Act, No. 51 of 1977 in the same way as if that person were in witness protection. The effect is that no question or any document sought to be produced in court likely to reveal the identity of an informer can be adduced. However, the Constitutional Court of South Africa has ruled that a "police docket" is accessible to the accused or their lawyer on the basis of the accused having a right to rebut evidence in court. There are several options open to the informer for remaining unidentified in spite of this ruling but they have yet to be tested.[xiv]

Informer payments are organised and formal with set, but varied sums of "information money" approved by different ranks within the police force. Payment may be in cash or to a bank account, must always be witnessed and, to ensure anonymity, can never be undertaken at a police station. Furthermore, handlers must provide a certificate every six months signed by every one of the informers he/she is managing authenticating receipt of payment. The certificates form part of the Force's internal/external auditing process required and reported to Parliament annually. Similar strict controls apply to special investigations dealing with organised crime involving undercover operatives. Special operations involving nominated organised crime syndicates or activities must be registered, resources identified (personnel, equipment, communications, transport) and time estimates provided. Funding for these projects comes from an allocated account approved by an Assistant Commissioner; again, part of South Africa's transparency regime.

Application of South Africa's informer requirements to Victoria's "gangland wars," would, I believe, have met with some difficulty. For instance, the killings spanned eight years between 1998 -2006 and were not immediately identified as related to each other. As investigations proceeded, taskforces morphed into

new ones, procedures had to be changed to handle enquiry volume, new technical skills had to be developed, spells were required for various staff and other external bodies were brought in to assist. The point being, that while transparency is necessary, there are times when it can be difficult to forecast all the resources required for a series of crimes. Accountability *is* required but policing needs a degree of inbuilt fluidity to enable quick responses to criminal blind turns in order to defuse fear and meet community expectations.

A San Francisco study revealed after interviews of eighty ex-drug dealers that they did not fear, or feel, that police investigations, the Racketeer Influenced and Corrupt Organisations (RICO) Act or activities of the United States Internal Revenue Service seriously threatened their illegal activities. But close to their top fear – arrest – was their fear of informers. Informers effectively disrupted their activities. The study concluded that "using informers to combat organised crime is of absolute vital importance and their value should not be underestimated."[xv] This study underscores the **value** of 3838 to police investigators and to the people of Victoria who endured eight years of urban terrorism.

Examination of practices in South Africa's and the United Kingdom's SOCA may well identify relevant improvements for human source management in Victoria. An common approach for both jurisdictions has been a National Informer Data Base for human source management. Apart from showing links between informers, locations of activity and types of crimes reported on, it has also revealed that some informers had a number of handlers, all of whom were paying for information. While such a data base may perform these and other functions, with computer hacking now a major concern, I have reservations about that system.[xvi]

TOR 4

The current use of human source information in the criminal justice system from human sources who are subject to legal obligations of confidentiality or privilege, subject to Section 123 of the Inquiries Act 2014, including:

a. the appropriateness of Victoria Police's practices around disclosure or non-disclosure of such human sources to prosecuting authorities; and

b. whether there are adequate safeguards in the way in which Victoria Police prosecutes summary cases, and the Office of Public Prosecutions prosecutes indictable matters on behalf of the Director of Public Prosecutions, when the investigation has involved human source material.

Can LPP be breached?

(a) Legal professional privilege, as already stated, is an ancient right embedded in common law. The Nottingham Law School[xvii] explains the practice as:

1. Confidentiality which covers not only communications but in general all information that becomes known to the lawyer in the course of his or her professional activity.

2. A duty in which confidentiality is typically sanctioned by the disciplinary bodies or bar associations – although in some countries (Finland and Belgium) infringing the duty of confidentiality can also give rise to criminal sanctions.

3. A duty of confidentiality based on ethical rules of the legal profession and not the rules of evidence. It has an effect on all situations not only in court. It is the right and obligation of the lawyer not the client. It is the lawyer who has the right to refuse to testify or answer questions on the basis of confidentiality.

On the basis of principle one above, 3838 behaved contrary to her obligation as a lawyer. But, as indicated earlier, LPP is not immutable. There are exceptions to LPP, such as when privilege has been waived, public interest, a statute removes privilege or affords a competing public interest higher priority, or when the communication is for the purpose of facilitating a crime.[xviii] Given the context in which 3838 provided police with information, i.e., the "gangland wars," a circumstance of immense public interest, it was inevitable that, ultimately, prosecutions would follow. Currently, of course, the biggest elephant on the world stage regarding broken LPP is lawyer Michael Cohen's evidence against his former boss, Donald Trump.

As can be seen from *Attachment 1,* police investigators involved the DPP to ensure their work was done comprehensively and correctly. I can only assume that, at some point, the DPP was advised *information* from 3838 was helping to build the chain of evidence leading to prosecution of principal actors in that underworld violence. Surveillance, phone taps, interviews, forensics and document checks would, in all probability, have been undertaken independently of anything provided by 3838 to acquire proof beyond reasonable doubt to enable prosecution.

In my thinking, it would be a matter of ethics, transparency and good practice to have informed the DPP early on that leads had come from 3838 implicating some of her clients. Given the statutory obligation imposed by Section 326 of the Victorian *Crimes Act*[xix] to provide information that might be of "material assistance in securing the prosecution or conviction of an offender" (who committed a serious indictable offence), there is an element of compulsion on 3838. Certainly, if 3838 were receiving a benefit from those clients, then, to avoid being prosecuted herself, she was bound to pass the information to police. If she was not receiving a benefit and simply passed on the information as a matter of good conscience, then she avoids potential penalty under the Crimes Act but falls to a breach of the common law rule regarding legal professional privilege. Neither of these choices, in my view, erase responsibility for police to inform the DPP of the origin of at least some of their intelligence. How the DPP reacts to that knowledge is for them to decide.

If there are police procedures for handling this situation, I am ignorant of them. If there are none, then I believe two objectives should be pursued. Police and the DPP should, collegiately, develop a process to facilitate such an information exchange, and secondly, a change in law should occur to deter the kind of reaction we've seen from the High Court concerning this matter. I make the point too that precedent in Australia for a breach of LPP is not unique.

George Dean

The case of George Dean, charged with administering poison with intent to murder, heard before Mr Justice Windeyer and a jury in Sydney during April 1895 was a matter of complexity involving Dean's counsel (R. D. Meagher) who subsequently elicited a confession of the act but remained silent as to his knowledge while implying the Judge had been unfair. Through his partner Crick, ignorant of Meagher's knowledge of the confession, the case was brought into Parliament. In later proceedings affecting Meagher, Chief Justice Sir Frederick Darley is reported saying, *"... it may be that Meagher was not bound to disclose Dean's confession to anyone; but there was no reason for withholding it from his partner. On the contrary, however, he deceived him and led him to make representations in Parliament in order that a Royal Commission should be appointed."*

The Royal Commission was appointed on May 7, 1895 with Meagher acting for Dean and Mr Pilcher, Q.C. acting as counsel. Before agreeing to do so, however, Pilcher sought confirmation from Meagher of Dean's innocence. Ultimately,

Dean was granted a Royal Pardon. The *Daily Telegraph* then published an article arguing that if the Commission was right in its finding, then Meagher must have been negligent in his representation of Dean.

Insulted and wanting to initiate libel action, Meagher consulted Sir Julian Salomons, leader of the New South Wales bar. Meagher informed Salomons of Dean's confession, an admission causing the latter great angst. Salomons retained the information but told "one or two of his learned friends." Subsequently, the Attorney General, Mr John Want, was asked in Parliament if rumours circulating about Dean's case were true. Reluctantly, he said that although confidential particulars had been given to him, he could not disclose them. Unexpectedly, Dean petitioned Parliament saying that "*undeserved stigma had been cast upon his character by a Minister of the Crown.*" Stung by this development, Want decided to lay the information on the table.

Salomons supplied a written statement in which he indicated the Chief Justice had opined that he (Salomons), was duty bound to make public what Meagher had told him, "*that Dean had confessed his guilt to Meagher shortly after the trial.*" Later, Salomons told the House, "*to show me what a clever man he was, he was, I am sure, telling me the truth. It never entered his mind that I would disclose it. No doubt he thought it was as inviolable as if given at the confessional to a priest. But he and all those who think they can make counsel the safe confidant of their infamies are mistaken. Law and morality in that at least coincide. No person, be he client or solicitor, can make any man, by an unsought confidence, the co-conspirator with him in felonious silence, and make him the repository of another man's infamies.*"[xx]

Salomons' final two sentences are an ideal point from which to begin thinking differently about Nicola Gobbo's interaction with police.

(b) I am unable to comment on this aspect.

TOR 5

Recommended measures that may be taken to address any system or other failures in Victoria Police's processes for the recruitment, handling and management of human sources who are subject to legal obligations of confidentiality or privilege, and in the use of such human source information in the broader criminal justice system, including how those failures may be avoided in future.

A way forward?

Using information from a lawyer who obtained it from her clients does not breach the law. If that information saves lives, it is an act that must be seen as

reasonable and taken on behalf of the community. Twenty- seven people were killed in the rampage of criminals across Melbourne. Children lost fathers, children had fathers murdered in front of them and wives lost husbands. As then Assistant Commissioner Overland said after the death of Lewis Moran, "*I think it's (the gangland killings) reached new depths of stupidity. We appreciate the gravity of the situation and we're certainly doing everything we can to bring this stupid and senseless killing to an end.*" To people who jibed that police were not doing enough he said, "*I have consistently rejected this suggestion as wrong and misguided.*"[xxi]

To accept the logic of the High Court that police engaged in "*reprehensible conduct*" and "*atrocious breaches of the sworn duty of every police officer*" can only mean that 3838's assistance should have been ignored and the killings allowed to continue, a statement I am positive would neither sit well with Sir Julian Salomons nor most of the Victorian population. Further, to focus on Salomons' point about the privacy of confessional evidence, *that* privilege is in the process of being removed around Australia as a consequence of the Royal Commission into child abuse. Confessional evidence regarding sexual abuse of children must, in Victoria and South Australia, be passed on to police because it is deemed a crime and not protected by canon law.[xxii]

Concluding that police somehow failed in their handling of 3838 implies something devious, deceitful or illegal occurred. I have seen nothing at this stage supporting that view. But, if the process of using information from lawyers to assist in solving crime is to continue, it **must** be placed on a formal, agreed and transparent footing.

In their Report 102, The Australian Law Reform Commission (ALRC)[xxiii] examined uniform evidence law and, at section 15, dealt with *Privilege: Other Privileges*. In an earlier Report, No. 26, they proposed a discretionary privilege covering confidential professional relationships dealing with communication and records "made in circumstances where one of the parties is under an obligation (legal, ethical or moral) not to disclose them." Among the relationships considered were doctor/patient, psychotherapist/patient, social worker/client and journalist/client. The ALRC noted that controversy attached to some of these categories but since the aim was to facilitate the optimal volume of evidence in court proceedings, permission to adduce that evidence should be at the discretion of the court. "*Public interest in the efficient and informed disposal of litigation in each case will be balanced against the public interest in the retention*

of confidentiality within the relationship and the needs of particular and similar relationships," the ALRC wrote. The proposal was not adopted as part of the Commonwealth *Evidence Act, 1995*.

Of interest here was the absence of any reference to an application of "discretionary privilege" for the investigation of crime.

New South Wales, under Section 126A of their *Evidence Act 1995* (NSW), prevents Courts from allowing disclosure of information exchanged in confidence during a professional relationship. There is, however, a qualified privilege granted under Section 126B, and the ALRC Report spells out the caveat thus:

> *"The evidence must be excluded if there is a likelihood that harm would be or might be caused, whether directly or indirectly, to the person who imparted the confidence and the nature and extent of that harm outweighs the desirability of having the evidence given or the documents produced."*

So, in a "code of silence" befitting the endemic culture of the underworld, when *Crime Stopper* programs yield nothing, when nobody telephones or e-mails with anonymous information, when there are few to no evidentiary clues, when rewards fall on deaf ears and there is a crime spree of violence and death sweeping the community, when fear is rising and the government is exerting pressure, information from a lawyer with a conscience would be helpful. LPP is such a blanket exclusion it *should* not, without question, be applied automatically as a device of concealment.[xxiv]

Indeed, in their submission to the ALRC, (paras. 15.22 and 15.23), the Commonwealth Director of Public Prosecutions (CDPP) in opposing any extension of LPP to other professions made their point of rebuttal firmly: "*claims for legal professional privilege* ***are currently abused in criminal investigations in Australia*** *and the extension of a confidential relationship privilege to other professional relationships would be potentially open to the same abuse.*" This view is augmented by the New South Wales DPP who opposed "*extension of the privilege to the investigatory stage as it could adversely impact on the ability of investigatory agencies to gather relevant material and identify leads for investigation.*"

Yet formal and active concealment of evidence is not limited to LPP. The exclusion of hearsay evidence, such as in the O J Simpson trial (1995), is another

mechanism used both by lawyers and judges. Simpson's wife's diaries which portrayed his behaviour before her death and her fear of murder by him were prevented from being admitted on the basis of their content being hearsay – the victim was dead. Judge ITO said in his ruling:

> *"To the man or woman on the street, the relevance and probative value of such evidence is both obvious and compelling ... it seems only just and right that a crime victim's own words be heard [but precedent] clearly held that it [the hearsay evidence] is reversible error."* [xxv]

Similar fact evidence is another victim of evidentiary concealment. According to Whitton, it is a rule of "relatively recent concoction" derived from the multiple murder of babies in Sydney. The trial judge allowed evidence that the bodies of twelve dead babies were found buried at the previous homes of their owners, John and Sarah Makin. Although the Makin's lost their appeal of conviction before the Privy Council, Whitton argues that the words of Lord Chancellor Farrer Herschell (1886 and 1892 – 95) "have been taken to mean that pattern evidence will almost never be admitted." Herschell wrote:

> *"It is undoubtedly not competent for the prosecution to adduce evidence tending to shew that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely to have committed the offence for which he is being tried."* [xxvi]

Denmark on the other hand, a practitioner of the Inquisitorial system of justice, had an interesting and unquestionably fair process when seeking evidence from phone taps during criminal investigations. I was there in 1990 as part of a Senior Command Course group examining the compatibility of European law with English law for the Home Secretary. Britain was about to join the European Common Market. When a phone tap was required police would apply to the Court. The Court appointed a lawyer to work with the police specifically to safeguard the interests of the person(s) under investigation. The suspect(s) was not told of the Court's appointment and communication between the suspect and lawyer was forbidden. When the particular aspect of investigation was complete, the Court appointed lawyer was withdrawn. If the suspect was charged and required a lawyer, it could not be the Court appointed invigilator. This monitoring role was completely independent of police who respected the position and told me it worked well for them, especially if there were allegations of malpractice arising from that component of their investigation.

So, the question now turns upon "how" do police obtain evidence from a lawyer about a client with whom the lawyer has a legal professional privilege? For instance, police would never know if information from the *Crimes Stoppers* program was provided by a lawyer, and yet, because of the way LPP is defined, the lawyer's action would breach that privilege. If, subsequently, police identified the *Crime Stoppers* caller and wanted further information resulting in co-operation by the lawyer, is that a further or continuing breach of LPP? Or merely someone attempting to avoid punishment under *Crimes Act* Sect. 326?

Nicola Gobbo, described as *"... smart, ruthless, available 24 hours a day and ethically loose, with many clients eventually seeing her as part of the gang. They could tell her things that would be off limits to other lawyers and she became the keeper of dark secrets."* [xxvii] is possibly unique as far as the bulk of lawyers are concerned. Only she can explain the rationale for her behaviour, save to say, lawyers like her yielding up confidences to police would be rare and, in this case, police took advantage in the public interest. As a consequence, the question squarely on the table is: can police, in the public interest, be granted qualified privilege to investigate crime?

Baroness Helena Kennedy, QC, noted when working to effect change to the way courts and lawyers dealt with sexual assault cases that "... *we did not take sufficient account of the fact that our legal cultures are premises on notions which are themselves excluding rather than including.*" She refers to research revealing that British judges "*who were supposed to prevent invasive, irrelevant cross examination of sexual history interpreted their discretion widely and admitted irrelevant and prejudicial questioning.*"[xxviii] A change of law fixed that problem which means that a change of law in Victoria could clarify the matter of qualified LPP being used for criminal investigation.

The Victorian Law Reform Commission in its final Report on sexual offences recommended that "... a *counselling communication must not be disclosed except with the leave of the court.*"[xxix] Before the Court rules on production of a counselling document it must be satisfied that:

- The contents of the document have substantial probative value;
- Other evidence of the contents of the document or the confidence is not available; and
- The public interest in preserving confidentiality of the communication and protecting the confider from harm is substantially outweighed by the public interest in allowing disclosure of the communication.[xxx]

As earlier mentioned, The Victorian Government Solicitor's Office (VGSO) explains that exceptions to professional privilege occur when:

- The privilege has been waived
- It is in the public interest
- A statute modifies or removes the privilege where the legislature affords a competing public interest higher priority.
- The communication is for facilitating a fraud **or crime**.

Lord Denning in *Parry-Jones v Law Society* [1969] 1 Ch 1 appears to reinforce the points of the VGSO when he says:

> *"the solicitor must obey the law, and in particular, he must comply with the rules made under the authority of statute for the conduct of the profession. If the rules require him to disclose his client's affairs, then he must do so."*

Rule 1.6(b) of the American Bar Association's *Model Rules of Professional Conduct* give attorneys permission to breach confidentiality when necessary to:

- Prevent reasonably certain death or substantial bodily harm;
- Prevent the client from committing certain types of crimes;
- Prevent, mitigate or rectify substantial injury caused by a client's crime when the client used the lawyer's services to further that crime;
- Secure legal advice about compliance with ethics rules;
- Establish a claim or defence on behalf of the lawyer;
- Comply with other law or Court order.

Rather than adhering to a fixed notion of LPP being sacrosanct, when states like Florida have made the first two points of this code mandatory and California and others have made disclosures discretionary,[xxxi] there is a *prima facie* argument for accepting the VGSO's position that LPP can be waived where it is in the public interest. If that position were to result in legislative change, then some form of yoke is required since there is no intention here to abolish the general concept of legal professional privilege.

Below is a suggested set of words that could form a basis for formal legislation within Division 2 of Part 2 of Victoria's *Evidence Act* No. 6246, 1958.

Qualified Privilege for the Purpose of Criminal Investigation[xxxii].

1. Police may seek leave for a special hearing before a Judge alone to determine the appropriateness of conducting an investigation to obtain evidence to support, confirm or rebut the commission of certain criminal offences coming to their knowledge from information that normally is regarded as protected by legal professional privilege between the person(s) suspected of committing the crime(s) and their legal counsel when:

(a) The crime or crimes are reasonably suspected of:
  (i) having resulted in death or substantial bodily injury to another person; or
  (ii) having a reasonable probability that if not prevented, death or substantial injury will occur to another person; or

(b) The crime or crimes form part of a series of crimes involving:
  (i) sexual assaults upon children, young persons or adults; or
  (ii) the crimes have extended over time or occurred in the past without there being evidence of the identity of the perpetrator other than information supplied by legal counsel and relating to the matter under investigation; or

(c) The crime or crimes are of a nature likely to result in harm or substantial injury to multiple persons within Victoria, interstate or overseas;[xxxiii] or

(d) Action taken by investigators as a result of access to the confidential or privileged information has a reasonable probability of preventing the commission of further criminal offences of the kind listed in this section or solving crimes committed in the past.

(e) A court engaged in this hearing must be satisfied before granting permission for police to investigate the matters that:
  (i) the information, oral or documentary, has substantial probative value; and
  (ii) other evidence yielding information about the identity or identities of the alleged perpetrator(s) or other parties directly or indirectly involved is not available.

(f) Use of the information in the public interest is of higher priority than allowing it to remain protected by legal professional privilege or confidentiality.

(g) Notification of an application under this section shall, without providing the identity of the informer, be provided to any counsel engaged by the alleged offender(s) or to the offender(s) if no counsel is engaged within:
  (i) seven days after an arrest, or
  (ii) seven days of the service of a subpoena.

2. Every such application shall be facilitated by the Office of Public Prosecutions and on completion of the hearing an entry shall be entered into court records and sealed to ensure confidentiality of the confider.

3. Evidence obtained from police investigations as a consequence of this application and resulting in a prosecution shall be admissible at any hearing.

4. It shall be an offence for any person to reveal the identity of a person providing confidential or legally privileged information to police under this section.

TOR 6

Any other matters necessary to satisfactorily resolve the matters set out in paragraphs 1 – 5.

Having retired from the Force almost twenty-three years ago, I am not abreast of current policies, procedures and practices. Deliberately, I have stepped away. However, as indicated, in 2004 I was invited to review the Force's Witness Protection Program and made many recommendations to the Victorian Office of Police Integrity (OPI). Not all of those recommendations appeared in the Report published by OPI in July 2005. I was also invited to review the culture and training practices of the School of Investigation (SOI – formerly known as Detective Training School) at the Police Training Academy in late 2007 because of bullying and harassment of two members sent there from *Ceja Taskforce*.

Common to both reviews were training shortfalls. In the case of Witsec, I recommended that:

- police training regimes address the matter of intimidation and its effects upon witnesses specifically and the community generally, to ensure police fully understand how intimidation can be masked by other offences and not be directly reported as intimidation;
- the Training Department conduct at least one Witsec training course annually for general members of the Force. The effect would be twofold: (i) providing police desirous of entering the Witsec unit with basic knowledge and skills before they got there and (ii) gradually spreading awareness of the witness protection program throughout the Force, especially to uniformed members who often have little to do with this field of policework;

- the Corporate Management Review Division conduct at least one, but preferably two annual audits of the full range of Witsec activities on both the administrative and practice fronts. This would ensure transparency, that standards were being maintained and, to an extent, put a hedge around the unit against unethical police wanting information to which they were not entitled.

Witnesses hold the supreme advantage of possessing knowledge and information. Sometimes, empty inducements are offered by police in an attempt to extract that knowledge thereby creating ill feeling and unnecessary tensions whilst demonstrating unprofessional and unethical conduct. I found that being aware of this, Witsec staff effected an informal training role by hammering police investigators using the program about *never* offering witnesses promises or inducements in regard to their case.

Whether these recommendations have been implemented, I do not know, however, in the context of ethical human source management, this information may be of interest to the Commission.

My review of the SOI in 2007 found several areas of training shortfall. Stake-holders reported they thought the status of SOI had slipped, that it was stuck, in need of questioning, and would benefit from full-scale content appraisal. Crime Department, the major beneficiary of detective training, advised there had been a disconnect between the two groups which had not made their professional relationship easy.[xxxiv] It is not difficult to see the link between witness protection and detective training given detectives are almost sole users of the program and need ethical skills for handling human sources.

In a briefing I delivered to Senior Command in December 2007 I reported that the culture responsible for bastardisation of the CEJA members was also responsible for holding back development of the SOI as a professional entity and that staff shortages too were problematic. I completed my review with some thoughts about SOI education and future training. I have appended those pages as *Attachment 2.*

Finally, I return to some of the South African practices mentioned supra which may, or may not be of interest.

- Depending on the number, nature of crimes involved and degree of risk to witnesses in cases where formal protection is not in place, it may be worth instituting a provision to the Evidence Act whereby evidentiary protection is provided. That is to say, the identity of the witness (informer) cannot be revealed.
- If not already done, criminal records (police dockets), could be provided to defence but without the names of previous police informants to inhibit the possibility of retribution.
- If informers are in receipt of money for their information, then, like any other government expenditure, it should be quantified, paid safely, reported upon and provide indicators of the outcomes from the practice in the same way that reports upon people in witness protection were intended.
- Authentication by informers of their payment would no doubt be burdensome to operational police, would need safeguards against fraud but because such a practice would involve taxpayer monies, the concept is not unreasonable.

All of these practices are aimed at increasing transparency but should be delayed if the end result hampers investigations.

Conclusion

At page six I said that legal professional privilege is not immutable. I believe that. Substantial work has been undertaken by the Australian Law Reform Commission on the matter and also by the Victorian Law Reform Commission. Legal cases in Australia demonstrate it can be nullified.

Whistle-blower legislation across the country, in spite of limitations, relies on individuals acting in good conscience to exercise a moral duty and report unethical conduct and wrongdoing in all levels of government, corporate organisations, general business and trade-based industry: practitioners of law are not excluded.[xxxv]

Lord Denning has said that if statutes dictate an act shall be done, lawyers should comply with it. I refute comments from people like Peter Faris QC who says *"to have a paid police informer who was a lawyer conveying a client's information*

to the police is the biggest breach you could imagine of that principle."[xxxvi] History shows this "principle" has a chequered past and neither judges nor lawyers always emerge smelling of roses.

Changed world conditions alter long held precepts constantly. Why else would there be an International Association of Prosecutors established by the United Nations to deal with transnational crime? Comprising 128 nations from of both Inquisitorial and Adversarial legislatures, former New South Wales DPP, Nicholas Cowdery, QC, a member of the IAP said in October 2008, *"I've had some discussions about moving towards some aspects of the inquisitorial system too in the context of the IAP. I'm sure these discussions are being held all over the place very often."* A perspective shared by former Victorian Attorney General, Rob Hulls, who is reported saying that *"lawyers need to abandon many of their adversarial traditions and join him in a cultural revolution based on an active, problem-solving judiciary."* A sentiment preceded by Harry Whitmore, Professor of Law at the University of Sydney who said in 1981, *"Some distinguished lawyers are indeed ashamed of the system in which they are working ... it is a process which is as likely to suppress or distort the truth as to reveal it. The technique is often a charade ... It would be quite easy to develop a better system partially based on the European 'inquisitorial' system of justice ... a judge ... should be concerned to find the truth."*[xxxvii] The mere fact the ALRC has examined the matter of LPP is confirmation of that.

I am not arguing for abolition of LPP but I am arguing for change to permit police, in the public interest, to investigate *some* of the most egregious crimes if and when lawyers provide information. I am arguing for a legislated qualified privilege to permit and support criminal investigations. Just imagine the public outrage if a lawyer gave police tangible information about the Wanda Beach murders of 1965, or the missing Beaumont children in 1966, or the abduction and disappearance of eight-year old Eloise Worledge in 1976 and Karmine Chan in 1991, or the disappearance of little William Tyrell in 2014 and police maintained a stance of non-investigation because their hands were tied due to legal professional privilege. **That** would be *"reprehensible conduct"* and *"a breach of every police officer's sworn duty"*.

I wish you well in your deliberations.

End Notes

[i] ABC News on-line, 3/12/2018 for High Court comments. The synthesis of my draft material in *Attachment 1* can be found in The People's Force, MUP, 2017, pp. 360 – 367.

[ii] An extract from *my* report to the Ombudsman contained several interviews with witnesses in protection. In response to a question: *Do you have any comments to make about the help provided to you by police who manage the Program?* they commented –

225. 'Found them very helpful. Sometimes found it frustrating because we could not do certain things. My family felt a bit stressed but understood why we needed the protection. Pretty much everything we requested, we got – we felt pretty safe.'

226. 'I know how I found them. They say to me if you need any help, ring up. Me wife was going through a hard time a few months ago and "X" come up to where we were, seen her and said, 'is there anything we can do?' He got in touch with counsellors and got her in. You can't ask for anything more.'

227. 'I tell you what. I have a different respect for police. I was a cop hater – well not a hater – but I was a big smart mouth and I won't have my kids saying the wrong thing about police ... I say to them, show some respect. One thing I want to say, one thing that amazed me and this is true, I've never been treated like a criminal or drug dealing bum. That's one thing I always say – I've never been treated like just some scumbag and, Jeez, that would be a hard thing to do. But it changes your reaction. Know what I mean? It's good because it makes me a better family man.'

228. 'I think they've done a wonderful job relocating us and, it wasn't all my way or no way. It was: what do you think about this situation? We sat down and discussed things and they made me feel comfortable. It made me feel supported. They made me feel like I had friends; sometimes I ring up crying and they help me ...they're doing a great job. They're professional but they're human ... and I like that.'

NB The numbers allocated to each protected witness were for my benefit only when compiling the review report. They mean nothing and have nothing to do with the identity of the witness or the case in which they were involved.

[iii] ABC News on-line 3/12/2018, op. cit. The High Court said of Gobbo's refusal to enter witness protection "If [the barrister] chooses to expose [themself] to consequent risk by declining to enter into the witness protection program, [they] will be bound by the consequences." Gobbo sued Victoria Police in April 2010 commenting "having had the courage and strength to agree to become a witness ... I was required to give up my home, my security, my sense of life as I know it." She alleged a breach of duty of care and gross negligence for failing to give her special protection. See: http://www.abc.net.au/lateline/content/2010/s2887621.htm *The Age* of 26/06/2010 revealed that Gobbo was seeking compensation of $20M. Subsequently, *The Herald Sun* of 26/08/2013 disclosed that Gobbo had received benefits valued at [redacted] between March and December 2009 for [redacted] a weekly allowance, parking and parking fines.

[iv] Independent Broad-based Anti-corruption Commission, *Special Report Concerning Police Oversight*, August 2015, p. 29. https://www.ibac.vic.gov.au/

[v] IBAC Media Release, 3/12/2018, https://www.ibac.vic.gov.au/media-centre

[vi] ABC News on-line, op. cit., "... by acting as an informant against her clients, the lawyer committed fundamental and appalling breaches of her obligations."

[vii] WHITTON, Evan, Our Corrupt Legal System, Book Pal, www.bookpal.com.au 2009, p. 179. See especially, AUBURN, Jonathon, Legal Professional Privilege: Theory and Law, Hart Publishing, Oxford – Portland Oregon, 2000, p. 5, where a dozen cases are mentioned that "clearly establish the privilege for counsel and probably for attorneys and solicitors" although "..."the principles from these cases make it less likely that the privilege was originally founded on some respect for the special status of the lawyer." Among the cases mentioned are: *Lee* v *Markham* (1569) Monro, 375, Tothill 48; *Breame* v *Breame* (1571) Tothill 48; *Windsor* v *Umberville* (1574) Monro 411; *Berd* v *Lovelace* (1577) Cary 62; et. al.

[viii] WHITTON Evan, op. cit., pp., 179 – 183. See: *Carter v Managing Partner Northmead Hale Davey and Others* (Australian High Court, 1995) sent to Whitton by a judge with the words, *"read this and weep"* p.182.

[ix] PIKE Richard S., *The English Law of Legal Professional Privilege: A Guide for American Attorneys*, in Loyola University International Law Review, Vol. 4, Issue 1 Fall/Winter, 2006, Article 5, p.53.

[x] *Keighery v Federal Commissioner of Taxation* (High Court, 1957) where Barwick successfully argued that "absolutely" did **not** mean absolutely and, in *Curran v Federal Commissioner of Taxation* (High Court, 1974),

where he said a profit was a loss, a phrase echoed by Justice Sir Harry Gibbs in 1981. In WHITTON, Evan, op.cit., pp. 143 -145 and 161.

[xi] The majority of witnesses in protection are there because of what they have done, seen or know from particular relationships; they have evidence to proffer. Very few are there as innocent people in fear of their lives.

[xii] *Review of the Victoria Police Witness Protection Program*, Office of Police Integrity, July 2005, p. 45, Victorian Government Printer, Melbourne.

[xiii] MINAAR, Anthony, *The Use of Informers: An Essential Tool in the Fight Against Crime?* Southern African Journal of Criminology, 24/03/2011, p. 83

[xiv] Ibid. p. 84 see: *Shabalala and Others v Attorney General, Transvaal and Another*, 1996, SA 725 CC

[xv] Ibid. p. 89 - 90. Despite cultural differences between South Africa and Australia, MINAAR references a thoughtful code of practice for informers which, on the basis of comments in End Note (ii) supra, appears to embody the ethos of Victoria's Witsec Unit, i.e.,

- It is essential for the informer to be treated in a just and humane manner.
- It is important that the police official does not make promises that cannot be fulfilled.
- Police officials must never address informers in a disrespectful or insulting manner.
- The police official must show appreciation and praise the informer for good work. He or she must show understanding for the informer's weaknesses and shortcomings (make appropriate allowances for them).
- All information provided by the informer, however negligible it may seem, must be regarded as important until the contrary is proved.

In MATHEUS, J. S. (1998). *Investigation of crime II* (OVM241 ZE) Study Unit 4. Informers. Florida: Technikon SA.

[xvi] *Sunday Age*, December 27, 2015. **"A Matter of 'like' and death."** An article about Facebook and Instagram emerging as one of the biggest threats to blowing the cover of hundreds of witnesses. *The Weekend Australian* May 14 -15, 2016, **Banking transfer system hacked,** *The Australian*, September 26, 2016, **ASX told to step up cyber defences**, *The Saturday Paper*, August 13 – 19 2016, *The Age*, December 23, 2016, **Alarm raised over data laws."** The Saturday Paper, August 13 - 19, 2016, **Census Violence**, *The Age*, September 2, 2017, **Saboteurs, foreign spies a 'real threat,'** *The Age*, April 4, 2018, **Russia blamed after hackers target Australian networks**, *The Age*, March 12, 2019, **Cyber-attacks could trigger war, says Payne.** See also: GLENNY, Misha, Dark Market: Cyberthieves, Cybercops and You, The Bodley Head, Random House, London, 2011; DAVIES, Nick, Hack Attack, Penguin, Random House, London, 2014, a penetrating account of excessive use of power, influence, money and illicit phone and computer hacking by the Murdoch press. In my Review of Witsec for OPI I pointed out that police files were being searched for private details, police were plundering data bases for information and there were police who could not be trusted to safeguard information. *Herald Sun*, October 14, 2004,

[xvii] NOLLENT, Andrea, *Recent Developments in the Law Relating to Legal and Professional Privilege,* www.ntualumni.org.uk/document.doc?id=120

[xviii] Victorian Government Solicitor, *Understanding Legal Professional Privilege,* https://www.vgso.vic.gov.au/content/understanding-legal-professional-privilege p.3.

[xix] *Crimes Act* 1958, No. 6231, Section 326 dealing with concealment of offences.

[xx] JACOBS, Philip A., Famous Australian Trials and Memories of the Law, Robertson and Mullens Ltd., Melbourne, 1943, pp. 91 – 104.

[xxi] See Attachment 1.

[xxii] ABC News on-line: South Australia, June 13, 2018; Victoria, September 6, 2018.

[xxiii] Uniform Evidence Law (ALRC Report 102) 2005, https://www.alrc.gov.au/publications/report -102

[xxiv] MARK, Robert, In the Office of Constable, William Collins Sons & Co. Ltd., London, 1978, p.57. Sir Robert, a respected Chief Constable of the London Metropolitan Police comments on the Judges Rules, devised in 1906, that while the Rules were not binding in law, they were binding in practice because "judges have the power to rule inadmissible any evidence which they think has been unfairly or improperly obtained. The Rules afford, I think, the classic example of the enormous gulf between those who enforce the law and those who administer it, between whom, incidentally, there has never so far so far as I know, been any joint consultation." Conversely, whilst it may have been the passage of time, years of police lobbying governments of both persuasions, or the impact of the Beach Inquiry, legislative impediments to professional police investigation *were* addressed collegiately in Victoria. Chaired by the Director of Public Prosecutions (Mr John Phillips, QC and later John Coldrey, QC) and colloquially known as the Police Powers Committee, members were drawn from the Bar Council, the Law Institute, the Attorney General's Department, Legal Aid and Police. Among other things, the

work of that committee resulted in powers for police to obtain body samples – blood, prints and DNA – and a framework in which the powers could be applied.

[xxv] WHITTON, Evan, op. cit., p184.

[xxvi] Ibid., p.186. In support of this view, see: *Perth Now,* June 30, 2010, *The Daily Telegraph*, February 17, 2010 and *The Age*, December 12, 2002.

[xxvii] *The Age*, March 2, 2019.

[xxviii] KENNEDY, Helena, Just Law: The changing Face of Justice – and Why It Matters to Us All, Vintage Random House, London, 2005, pp. 169 – 175.

[xxix] ALRC,(Report 102) op. cit., para. 15.62

[xxx] Ibid., para. 15.62

[xxxi] RABINER, Stephanie, in *Strategist,* May 2, 2012 https://blogs.findlaw/comstrategist/2012/05/whe-are-you-required-to-breach-confidentiality.html

[xxxii] Although the primary focus of this section is directed at police, the limiting term "police," could be removed from the section to enable joint teams of police, Customs, ASIC, Taxation or others to benefit if that were deemed appropriate.

[xxxiii] Envisaged here is massive drug importation, terrorism, contamination of community water supplies, the wrecking of State/community electricity supplies and the concomitant damage to homes, medical support services, business, public transport and traffic control, planned destruction of planes, trains, boats or buses or significant infrastructure such as bridges or freeways.

[xxxiv] Whether more relevant training, refresher training or training specifically targeting detectives whose formal class room experience has encountered a long drought would have made any difference to the practice of back-dating witness statements is unknown. The practice looks bad, may be unlawful and to the best of my knowledge, was never part of any formal police training. See: ABC News on-line, Victoria, February 5, 2019 – *Silk-Miller murders IBAC hearing told signing backdated statements was common practice.*

[xxxv] *The Guardian*, October 9, 2018, http://www.theguardian.com/.../i-had-a-moral-duty-whistleblowers-on-why-they-spoke-up

[xxxvi] ABC News on-line, December 3, 2018. It would be of interest to know whether Mr Faris held identical views when he was Chairman of the *National Crime Authority* between 1989 – 90, particularly when he commented at the 6th International Criminal Law Congress in Melbourne in 1996 that, "... the major criminal defences, in order of importance are, as follows:

1. Delay.
2. Confusion.
3. Allegations of conspiracy by the police and prosecuting authorities to conceal and tamper with the evidence, thus raising reasonable doubt.
4. Defences set out in the excellent books.

[xxxvii] WHITTON, Evan, op. cit., pp. 245 -249.

Attachment 1

Submission

Victorian Royal Commission:

The Management of Police Informants

Draft prepared for Dr Robert Haldane's third edition of *The People's Force* published by MUP, December, 2017. This is a section only from my draft dealing with the "gangland war."

W.H.Robertson

March, 2019

With scarcely time to put his feet beneath his desk, Overland found himself at the helm as the gangland killings escalated.[i] This 'warfare' had commenced in January 1998 with the shooting death of Melbourne criminal, Alphonse Gangitano, at his Templestowe home. The attrition rate between 1998 and 2002 rose to thirteen and throughout 2003, a further seven victims died. Almost all deaths occurred by gunshot. The Force response came in the form of the *Rimer Task Group,* forerunner to *Purana Taskforce.* Although establishing *Purana* was not without difficulty. Much earlier Assistant Commissioner (Crime), Trevor Thompson, had sought a taskforce approach to the earlier gangland murders but was knocked back. Approved early in 2003, *Purana* became operational in May. *Rimer* was initially staffed by ten senior Homicide Squad detectives led by Phillip Swindells but in its later form, as *Purana,* the group's structure and numbers altered significantly.[ii] Overland was the 'behind scenes general.' A former head of *Purana* would later say of Overland that 'he is a very astute leader – flexible, inclusive and level headed under pressure. It was noted that he 'provided unprecedented resources and did not meddle in the investigations but remained fully supportive when many were losing faith.'

With the death toll rising, so too was public concern. The murders of Jason Moran and Pasquale Barbaro, in front of five children in the back of their van caused that concern to escalate, or, as some said, brought 'a turning point that would finally put some of the gangland war's key players on a course for justice.'[iii] Until then, *Purana* had been dealing with an age old problem: the criminal "code of silence." But early in 2004, greater firepower was added to *Purana's* armoury – the coercive powers of the Australian Crime Commission. Not normally available to State police, these powers enabled seizure of documents and proceeds of crime, suspect interviews, answers demanded under oath and special search warrants. In short, they allowed the legal application of 'pressure' to members of the criminal fraternity.

Regrettably, the powers and partnership between Victoria Police and the Australian Crime Commission were politicised at the federal level by Justice Minister, Chris Ellison. Quite properly, Overland responded saying, "I find it a little surprising that a Commonwealth minister is commenting on operational matters that are essentially a State issue."[iv]

Yet neither politicisation nor unexpected deviations in the gangland saga ended there. By the time the killings paused in 2006, either because of police arrests or the deaths of willing "hit-men", some twenty-seven people would be slain[v]. Fall-out from the era was volatile and after the death of crime boss Lewis Moran, Overland said publicly, 'I think its reached new depths of stupidity.' He continued, 'we appreciate the gravity of the situation and we're certainly doing everything we can to bring this stupid and senseless killing to an end.' His wrath towards people who, at times, flippantly jibed that '…police don't take the investigation of these murders seriously because it's only criminal killing criminal' was unequivocal. He retorted, 'I have consistently rejected this suggestion as wrong and misguided'.

And, while these public appearances seemed to glorify the man, John Silvester of *The Age* wrote, 'while many senior police over the years have loved fronting the cameras

at crime scenes, Overland is not among them. He accepted the media attention, not to increase his profile, but to divert pressure from the investigators.'[vi]

Overland, concerned about public safety, aware that perhaps twenty children had lost fathers and grand-fathers, and knowing the *Purana* crew was stretched, argued hard for additional resources. After Moran's shooting, Premier Bracks convened an emergency meeting with police and, contrary to a government decision of only one week prior, empowered them to collect DNA samples, *without a court order*, from prisoners in custody. The then Opposition Leader, Robert Doyle, said they would seek not only more extensive DNA laws but the 'Liberals would back any boost to the investigative, scientific or administrative resources available to police.'[vii]

But there can always be blowback. Blowback: the unwanted, usually damaging effect resulting from an action or process by a group or organisation that is contrary to intention. Blowback for the Force occurred when the activities of *Purana* and *Ceja Taskforces* became entwined.

Ceja Taskforce grew from an Ethical Standards corruption investigation in 2000 –2001 after Drug Squad member Malcolm Rosenes and ex-member Stephen Paton and

were targeted and subsequently charged. Known as *Operation Hemi*, the investigation was timely because management practices at the Squad were regarded as questionable and long ignored by Force management. A common Drug Squad procedure was 'controlled delivery,' a practice where drugs intercepted by police were permitted to continue to the intended destination, sometimes intact, sometimes substituted for a harmless product. After initial interception, drugs progress is strictly monitored. The objective is to reach the high end of the operation and catch 'the big fish.'[viii]

The unit responsible for 'controlled delivery' was the Chemical Diversion Desk. The desk monitored intercepts, liaised with chemical and drug companies, law enforcement agencies and others to detect, disrupt and apprehend offenders. It also purchased precursor chemicals. Victoria's regulations for handling precursor chemicals was, compared to other states, soft. Victorian companies therefore relied on a voluntary Code of Conduct when dealing with the Drug Squad. A phone call to the Crime Department from one of these companies in December 2001 about Desk transactions led to *Operation Hemi*.

Ceja ultimately arrested six civilians and seven police officers who were part of an international [redacted] drug syndicate. And blowback came from two directions. As the work of *Ceja* became more widely known, disquiet among the public grew. The more strident commentators called for a Royal Commission into the Force while others sought a new and more powerful independent body to investigate police corruption. The pressure became intense and escalated when one of *Purana's* targets was interviewed and found to possess a list of car registration numbers belonging to *Ceja* members. Until then the Force had maintained distance between the two Taskforces resisting criticism that the work of one compromised that of the other through the common link of corruption. Overland stoutly defended the *Purana* team insisting there was no corruption among its members and later, Deputy Commissioner Peter Nancarrow informed the public that the commonality between the two Taskforces was

illicit drugs and the people who trafficked them.[ix] There was no suggestion of corruption among the investigators.

Blowback of a different kind struck the *Ceja* members. During their investigation some were mailed bullets engraved with their names, others received threatening phone calls, abuse and ostracism from police colleagues and supervisors, still others experienced high stress or burn-out. There was a feeling around the Force, particularly among detectives, that *Ceja* members were traitors and nothing more than 'filth'. Several *Ceja* members experiencing stress considered that Force Command was not helping them sufficiently. In one case, a *Ceja* member who applied for a location of choice, a special dispensation for these members, encountered appeals from ineligible members fully backed by the power of the Police Association. Less generally known was that during the period of *Ceja's* time, many members of the Ethical Standards Department, particularly in the Corruption Division, were also receiving intimidating phone calls and other forms of threat. The implicit message from this experience seemed clear: investigate misconduct in the Force at your own peril.[x]

Purana would contribute to a different and lasting way of investigating complex, serious and organised crime. It was 'off-line' and free of the day to day hurly-burly of crime investigation. The high cost of telephone monitoring was offset by using civilians for the first time. Crew members were rotated between the intelligence and affidavit cells to spread and sharpen skills to produce more comprehensive affidavits for the courts. New skills were devised from solid intelligence which began to crack 'the code of silence.' Over time to build flexibility, investigative team members were swapped with selected members from Regions. The relationship with the Office of Public Prosecutions was strengthened and deepened and heavily based on trust. A special prosecutor was assigned to the work to guide the *Taskforce* through legal traps. The courts accepted the integrity with which *Purana* tackled its task and facilitated closed hearings for informers. New and/or refreshed professional and respectful relationships were established with the AFP, the Australian Crime Commission (ACC), Customs and Corrections and subsequently, the Taxation Commissioner. All of these relationships in conjunction with the hard slog of investigators began contributing steady and constant progress. And perhaps remarkably, the unique powers of the ACC were ultimately conferred

One of the more unusual twists from this period was a Supreme Court decision by Justice Betty King. Her order prevented General Television Corporation P/L (Channel 9) from broadcasting a television portrayal of the gangland events known as *Underbelly.* Critical to the court's reasoning was that '...*Underbelly* gave an explanation of the murder and contained a mixture of factual and fictitious dialogue which would not be distinguishable to a juror.' Arguments by Channel 9 to amend the program were rejected by the court and an intended argument based on the right to freedom of expression was later abandoned by Channel 9. The case, which also canvassed the matter of "contempt," set a useful precedent for the DPP

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[i] Anderson, Paul, op.cit; and Shand, Adam, Big Shots, Penguin Group, Camberwell, 2007, see both generally; *Sunday Herald Sun,* 28 March, 2004, *The Australian,* 13 September, 2008, *Herald Sun,* 21 June, 2013.

[ii] Anderson, Paul, op.cit; p.20 noted that Billy "The Texan" Longley, a well known old-time criminal from the painters and dockers era told author Paul Anderson that this period was 'not as violent as the waterfront years . . . there were forty victims . . . substantiated by the Costigan Commission . . . but further blokes were getting thrown into rivers or getting buried in spots unknown. In this current gangland war there's been 27 victims – they've got a lot of catching up to do;' for *Rimer Task Group* and *Purana Taskforce* Silvester, John and Rule, Andrew, Underbelly 11, Floridale Productions and Sly Ink, Smithfield, 2010, pp. 186–187; for the approach of Purana and some of the difficulties encountered Overland said '. . .we had dropped the ball. We had no intelligence and we didn't know anything about most of the major players.' It was a frank admission. By October 2003 *Purana* numbered fifty five and comprised six investigative groups led by Inspector Andrew Allen. A technical cell, two intelligence teams led by Senior Sergeants and the investigative teams then began their digging. As time passed and morale flagged, Essendon football coach, Kevin Sheedy, was brought in to motivate the team. "Believe in yourselves and your team-mates and don't worry about the scoreboard. Do the planning and the results will come" he told them. It proved good advice.

[iii] Anderson, Paul, op.cit; says Overland advised that most of the killings investigated by *Purana* were 'paid, sanctioned hits . . . conducted by hitmen . . . doing their homework to maximise their advantage . . . at a time when the target is very vulnerable;' *The Australian,* 8 November 2008 for Jim Obrien's comment and references to the murders of Jason Moran and Pasquale Barbaro; *Herald Sun,* 21 June, 2013 where it is reported that Senior Sergeant Roland Legge, a member of the on-call crew that night, says intelligence was received within hours that the man responsible for the shootings was known as *The Runner*, a man with a long criminal history and record of prison escapes. *The Runner* was said to be close to Carl Williams.

[iv] Anderson Paul, op.cit; p.4 writes of the "code of silence" from an historical perspective. In February 1958 when Homicide Squad chief, Detective Inspector Charlie Petty was giving evidence at the inquest of painter and docker Fred Harrison, shot to death in the presence of workmate Bobby Hayes, he said, 'At least a dozen witnesses have said they were in the toilet when Harrison was killed. Your Honour, it is a two man toilet;' *The Australian,* 13 September, 2008 where *Purana* took took court action to seize $15 million in shares placed with the clean-coal energy company, Linc-Energy. The shares allegedly were owned by a member of a Melbourne crime family; Anderson, Paul, op.cit; p. 295 for politicisation of the ACC powers.

[v] Killed between January 1998 and February 2006 were: Alphonse Gangitano, 16/01/1998; John Furlan, 3/08/1998; Charles 'Mad Charlie' Hegyalji, 23/11/1998; Vince Mannella, 9/01/1999; Joseph Quadara, 28/05/1999; Dimitrios Belias, 9/09/1999; Gerardo Mannella, 20/10/1999; Francesco Benvenuto, 8/05/2000; Richard Mladenich, 16/05/2000; Mark Moran, 15/06/2000; Dino Dibra, 14/10/2000; Victor Pierce, 1/05/2002; Paul Kallipolitas, 15/10/2002; Nikolai Radev, 15/04/2003; Jason Moran,, 21/06/2003; Pasquale Barbaro, 21/06/2003; Willy Thompson, 21/07/2003; Mark Mallia, 18/08/2003; Housam Zayat, 11/09/2003; Michael Marshall, 25/10/2003; Graham Kinniburgh, 13/12/2003; Andrew 'Benji' Veniamin, 21/03/2004; Lewis Moran, 31/03/2004; Lewis Caine, 8/05/2004; Terence Hodson, 16/05/2004; Christine Hodson, 16/05/2004; Mario Rocco Condello, 6/02/2006. See: Shand, Adam, Big Shots, Penguin Group, Camberwell, 2007, pp. 401 – 403.

[vi] *Police Life,* 1 June, 2007, p.5, reports that with the arrest of Tony Mokbel in Greece on June 5, 2007, *Purana's* results could be summarised as: 157 offenders charged with 485 offences; 14 offenders charged with 25 counts of murder; 10 offenders charged with incitement or attempted murder; 292 serious drug charges and restrained assets valued at almost $2 million; for Overland's indignation about the gangland killings and why he was so public in his condemnation, *The Australian,* 28 March, 2004 and 2 March, 2009 where he said, 'The first duty of a police officer is to preserve life and property and central to our system of government is application of the rule of law. That includes absolute respect for and equal valuing of life. Implicit in the suggestion that we don't investigate organised crime murders with rigour is the assumption that we do not, or ought not, have regard for the value and equality of life. That assumption is wrong. In short, murder is wrong. There are also public safety reasons why we must investigate these murders thoroughly. We have great resources focused on this investigation and we have formed partnerships with other law enforcement agencies. Our frequent difficulty is meeting the need for confidentiality with respect to our enquiries and legitimate interest in matters of public concern. There is much I would like to say, but cannot, and I have been available to answer questions about Operation Purana because of the high level of public disquiet.' Comments like these on various occasions would earn him a reputation for being 'the face of *Purana Taskforce*;' for his diversion of attention from *Purana, The Age,* 8 November, 2008.

[vii] Anderson, Paul, op.cit; pp. 296–300 for comments regarding public safety, additional resources and pressure on *Purana* – Regarding the last Overland said, 'Every death harms our investigation. It adds to the complexity of what we're trying to deal with. It fuels the cycle of violence. It's most unhelpful. But we won't give up on this.'

[viii] Office of Police Integrity, *Ceja Task Force Drug Related Corruption – Final Report,* (hereafter OPI *Ceja Report No. 3*) Victorian Government Printer, (VGP) Melbourne, 2007, p.3 and OPI Report, *Past Patterns Future Directions – The Problems of Corruption and Serious Misconduct,* VGP, Melbourne, 2007, pp. 88–93; for misconduct and mismanagement at the Drug Squad, which also counselled police supervisors and leaders to pay adequate attention to "high flyers" whose good results and reputation camouflage corrupt conduct.

[ix] OPI *Ceja Report No. 3, op.cit., p.4 for Operation Hemi* and pp.24–25 regarding arrest and penalties; for calls of a Royal Commission, The ABC, *The World Today,* news transcription, 26 March, 2004, *Sydney Morning Herald,* 26 March, 2004, *The Age,* 21 and 22 May, 2004, The ABC Online, news transcription, 21 May, 2004; for car registration details in criminal hands, The ABC Online, news transcription, 26 August, 2004; for lack of connection between *Purana* and *Ceja Taskforces,* The ABC, *The World Today*, news transcription, 26 March, 2004; for Deputy Commissioner Nancarrow's statement, The ABC Online, news transcription 21 May, 2004; for people trafficking drugs and the consequences, *The Herald Sun,* 29 July, 2014. Most prominent among these was former detective Paul Dale and alleged hit-man, Rodney Charles Collins. Both were charged with the murders of Terence and Christine Hodson at Kew in May 2004. Hodson and former policeman, David Miechal, targeted a drug dealer for a "rip off" – theft of money and/or drugs. The dealer still claims that $700,000 and 135,000 ecstasy tablets went missing. Subsequently, Hodson decided to give evidence against corrupt police. Much later, Carl Williams told police that in return for the reward posted in regard to the Hodson deaths, he would give evidence about how he commissioned Dale and Collins to kill the Hodsons, however, before he could give his evidence or collect the $1million reward he was murdered in Barwon Prison on 19 April, 2010.

[x] For blowback on *Ceja* members, *The Age*, 21 May, 2004 and the *SOI Review* generally.

Attachment 2

Submission

Victorian Royal Commission:

The Management of Police Informants

Extract from a review of the Victoria Police School of Investigation encompassing training considerations for the future.

W.H.Robertson

March, 2019

5. Conclusion

This Review was born of allegations by two instructors at the School of Investigations that they were bullied and isolated by their fellow instructors.

In conducting the enquiry more than 100 people were consulted, most of whom were police. What those discussions revealed were shortcomings in the functionality of detective training and a clear need for change. Apart from finding the allegations confirmed, the Review discovered that informal leaders run the course around their appointed Manager, there is clear evidence of a strong negative culture within the School. This appears focussed inwards on instructors resulting, at times, in harsh words, unprofessional conduct towards female instructors, baiting, a lack of respect and deference towards colleagues and ultimately, a stifling of the School's professional evolution.

Within this culture, or as part of it, camaraderie is said to be strong, there is mutual support for each other and people generally find SOI a "good place to work." Constant short staffing has added pressure to the preparation of lectures and practical exercises and, in the absence of a quality framework[1] - even though instructors work extremely hard on upgrading lectures and notes - there is no formal mechanism to ensure course content is set to, and attains, a consistent standard, or that it matches organisational imperatives. Nor is there any mechanism for ensuring regular contact with stakeholders to guarantee material is contemporary. The School is perceived by some of those stakeholders to have slipped in status, to be "stuck," in "need of questioning" and "benefiting from a full-scale appraisal of content." Indeed, one of the School's major stakeholders, the Crime Department, considers there has been a disconnect between the two groups which has not made their professional relationship easy. Despite these difficulties, SOI continues to pump students through its portals and, by and large, to keep them happy. Whether the product is what the Force wants is another question altogether.

There are clear structural flaws in the way the School operates and it could not be said with any confidence that in terms of behavioural wellbeing, it has a safe working environment. This conclusion is a sad reflection on a Unit that has a long and proud history, a Unit renowned in the past for its standard of excellence.

The recommendations below are designed to help remedy the identified structural flaws.

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[1] I have made this comment several times throughout this Report. I am not speaking of compliance within the framework of the Advanced Diploma of Public Safety but compliance within a framework of **quality** to see that innovation, research, notes, lectures, strategy and philosophy are all pitched at the same standard of quality to ensure integration and co-ordination of content and focus in line with Force direction, government direction and the imperatives of the law and Courts.

Termination

I would be remiss in failing to record that termination of this Review was officially communicated to me on 21/12/07 through a direction from the Executive Management Group. For that reason, the second main pillar of this task, examining the educational capability and services of SOI, will not be completed. The explanation for termination was that a larger, more comprehensive Review of the entire Education Department and its services is planned.

In that context, I provide these brief thoughts about SOI education and training for the future.

Training

As indicated to the EMG briefing on 10/12/07 (Appendix "C"), the culture responsible for the bastardisation of the CEJA members is also responsible for holding back development of SOI as a professional entity. Staff shortages too have a bearing on this.

I cannot know what SOI might look like after a larger Review, but I believe the time has come where police detective instructors cannot continue to be all things to all people. The complexity of life has changed significantly, its pace has quickened and laws are becoming ever more complicated. Additionally, there are new legal horizons looming with global warming, terrorism[2], the State Charter of Rights, the Australian Innocence Network[3], a potential growth for religio-ethnic conflict,[4] not to mention new directions in organised crime at global levels. Dealing with current demands and these potential future challenges will require the very best training and tuition from highly skilled professionals. For that reason, I endorse the induction of professional educationists *and* support staff to help police and civilian instructors build and deliver such training. Using professional educators and support staff in this manner will also help break down the negative SOI culture. .

I also support the "Schools" concept in which there is consistency of style, knowledge, instruction, direction, focus and strategy. There should also be a consultative mechanism in place to centrally guide and prioritise training in line with Force needs and strategies. However, there has to be a massive reversal of thinking so that Regions and Departments **cease** viewing education as an expense and begin looking at it as an investment and adopt the principles necessary to become a *learning organisation*. In

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[2] Herald Sun, December 6, 2007, p. 2, *Terror here to stay;* Herald Sun January 1, 2008, p. 12, *Terrorists raised their ugly heads.*

[3] www.griffith.edu.au/school/law/innocence/network/network.html This is a Project run from the Griffith Law School in Queensland and has, as one of its objectives, a desire to *prevent, expose, correct and educate the public on wrongful convictions and other types of injustice within the criminal justice system.* Their aim is to perform work similar to the Criminal Cases Review Commission in the United Kingdom where statute governs co-operation of police in providing information to the Commission about cases under review.

[4] The Age, November 30, 2007, p. 6, *Accord threatened as refugees struggle with police.*

that vein, those same Regions and Departments must accept they bear approximately 80% of the responsibility for ensuring their people are fully developed after training. Training is only 20% of the equation. In turn, that means providing a more comprehensive approach to leadership, supervision, coaching, mentoring and the delivery of those skills to enable members in the field to perform those activities optimally. The following comment puts this perspective into context.

> "*Learning is variously defined in individual or organisational terms. Generations of psychologists and educators have researched various aspects of human learning and how it manifests itself. The Committee's* Report on High Impact Learning Methodologies *briefly outlines some of the current thought on Adult Learning theory in particular. The following definitions are offered.*
>
> To most classical learning theorists [for example, Pavlov (1960), Thorndike (1935), and Skinner (1953)] as well as to more contemporary contributors such as Mezirow (1978), Lovell (1980) and Schon (1971), learning is basically a verb. It is an action, a process. These scientists are less concerned with the outcomes of learning than with the way learning is accomplished. (Thomas, 1991)
>
> Real learning gets to the heart of what it means to be human. Through learning we re-create ourselves. Through learning we become able to do something we never were able to do. Through learning we extend our capacity to create, to be part of the generative process of life. There is within each of us a deep hunger for this type of learning. (Senge, 1990)
>
> *In contrast, many educators perceive learning as a primary objective in itself. As Thomas (1991) points out: "To people with this view, learning is primarily a noun, as in 'He is a man of much learning.' Learning is a sort of intangible possession that people work to acquire." This philosophy is at the centre of "traditional" or objective-based education and training activity. It operates on the assumption that the teacher (or curriculum designer) knows best and contrasts sharply with more recent attempts to become more "learner focussed." In fact, the importance or relevance of the learning objective varies as much as individual learners and their personal origins. The Committee has adopted the concept of learning as a verb and a process.'*[6]

Victoria Police should also be adopting the concept of learning as a verb and process.

Professional training and education must not only keep abreast of new developments and change to current practice, but assess how well the training is working - effectiveness. Thus, it is important to gather comprehensive data as to the Return on Investment through monitoring and measuring systems implemented by skilled field

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[5] **Committee On Police Training,** op. cit., p.126.

supervisors. This is new territory; it will be difficult and at times confronting, there will be mistakes but eventually, there should be progress. The United Kingdom has developed national guidelines for this process.

There is a need to revisit the competency model of training. I was besieged by complaints from a range of contributors that it inhibits progress, panders to the lowest common denominator and stands in the way of creating new specialist courses born of altered conditions. *I don't know if that is true but complaints about competency training are so wide-spread they ought not be ignored.* - Additionally, there remains a need to forge a partnership with a University to aid the development of police professionalism, a move that, in itself, may help change SOI culture. Such a partnership may also assist in developing investigator training along the lines of the FBI model and facilitate the attendance of overseas experts as Visiting Fellows. Interstate and overseas instructor exchange should also become integral to the professional development of SOI instructors.

In any new education model for SOI it is accepted that it would use higher education principles, such as, for example, Bloom's taxonomy and Kirkpatrick's levels for assessing training effectiveness. It would also embrace concepts of continuous improvement, environmental scanning and seek regular stakeholder input from inside and outside the Force. The model would also deliver refresher training on a variety of topics, take or facilitate regular investigator training to Regions and establish a new, high level management course pitched at Officers managing one or more CIU's. This course would incorporate recent developments in crime pattern analysis, geographical profiling, forensic science, technology, I/T, financial management, tendering, and appropriate principles lifted from the MOSSC Course and other matters of relevance. And finally, a restructured SOI should, as part of that restructuring, consider the type of training offered to Scottish detectives at Tulliallan and content from a variety of Home Office papers in England dealing with police training, national evaluation standards (Home Office Circular 7/2005 and 44/2005), reducing the impact of police training on availability for ordinary duty and the qualities and attributes required of effective Senior Investigating Officers. Canada and Europe too have interesting insights to professional police and detective training.

The marketing of investigator training should be slick, professional and comprehensive - targeting police, as well as people outside the Force, including overseas interests. There should be no impediment to evening or weekend courses and while the pursuit and growth of training for delivery to financial streams from the corporate sector might be useful, that focus should *never* overtake core business: training police to become excellent investigators.