

POLICE

"... on a prima facie basis, widespread corruption, (entrenched and systemic) criminal conduct ... and perjury existed within the NSW police force ..."

The Hon Justice James Wood

The Wood Royal Commission into the NSW Police Force 1994-97

The injustice, bias, incompetence and conspiracy of the New South Wales Police Force, that many of the public, most of them men and boys, are subjected to is the most serious of all groups within the State, because of the Police Force's sheer size and power:

Manpower numbering approximately 14,000, the equivalent of an Army Division;

Thousands of lethal weapons including pistols, rifles, machine-guns, shotguns and chillingly, the lawful right to use them to kill;

Transport, comprising hundreds if not thousands of motor vehicles including cars, motorcycles, 4WDs, buses, boats and aircraft;

Communications equipment comprising personal, mobile and command centre radios;

Training and drill that enable them to function as a cohesive, deadly, force;

Command centres, fixed and mobile;

Surveillance and investigation capabilities.

Most important of all the Police have the lawful right, resources and knowledge that enable them to arrest and interrogate, which then enables them to pressure, threaten, assault, torture, prosecute and subsequently have jailed, men and boys, innocent or guilty, at their discretion, which in many cases means according to their bias and prejudice, whim and fancy.

This is not to suggest, let alone state, that the police's overwhelming and unequalled size and power is abused all the time. It isn't. It is applied primarily as it was intended. To protect people, property and keep the peace by enforcing the "*rule of law.*" When applied justly, without bias and competently, police power ensures that the people and property of NSW are protected to a high level and is a major contributor to the smooth running of the State. If the police were removed, the state of NSW would rapidly descend into anarchy, as did Victoria during the police strike and Iraq in 2003 immediately after the end of the second Iraq war.

It is to state and it is an irrefutable fact, that there are many instances, some known, many unknown to the general public, when the police deliberately and intentionally abuse their size and power, from minor to the

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most serious degree, killing an innocent man and that the public cannot rely on the police for just, unbiased, competent, corruption free law enforcement.

Police abuse is carried out at all levels of rank, to all degrees of seriousness, from constables, such as Constable Fiona Shakespeare, to senior NCOs, such as Sergeant Peter Dunn, to officers, such as Superintendent Robert White, as Swan's case and countless others prove. So successful are most of the police that abuse their position in covering it up, and so difficult is it to prove police abuse, that the exact number of innocent men and boys that have been victims of the police will never known, but what is known, beyond any doubt, is that there have been many.

The NSW police are not unique in the serious abuse of their size and power. There is evidence that the Western Australian, Northern Territory and Queensland police have killed unarmed men and if the public had full knowledge of all the activities of the police forces of the other States and Territories, in all probability they would find evidence that those police have taken the law into their own hands, grossly abused their position and killed unarmed men, in addition to assaulting, verballing and framing. Indeed lying, including perjury, is an integral part of policing as was demonstrated quite clearly by Shakespeare in Swan's case.

POLICE INJUSTICE

The injustice of the police in abusing their overwhelming and unequalled power was demonstrated when they broke into Mr David Gundy's house and killed him, a completely innocent man. While an inquiry was held, because of the injustice, bias and incompetence of some of the New South Wales judiciary, the police officer responsible, then Sergeant, now Superintendent, Terry "*Shotgun*" Dawson, was not held accountable for Mr Gundy's death.

The police should have the moral and legal right to kill under some circumstances, as it is their duty and responsibility to protect people and property while enforcing the "*rule of law.*" However they do not have the moral or legal right to kill innocent men or unarmed non-violent criminals at their whim and fancy, intentionally or unintentionally.

NSW police injustice while abusing their overwhelming and unequalled power was again demonstrated when they smashed down the door and broke into the home of Mr Marcel Piat, another completely innocent man, in the dead of night, terrifying and doing irreparable psychological and emotional damage to him and his family, resulting in the destruction of his marriage and severe disruption to his life. Just as the officer that killed Mr Gundy was not held accountable, it appears the police responsible for

breaking into Mr Piat's home were also not held accountable for this gross abuse of their position and power.

NSW police injustice was again demonstrated when they covertly entered a completely innocent man's home, went through his private and personal, papers and property, then installed hidden cameras to spy on him. All without a shred of evidence of unlawful, immoral or improper conduct, but based solely on the irrational suspicions, ignorance, bias and prejudice of one member of the public and the local police. The proof that this gross violation of privacy, indeed this intellectual, psychological and emotional rape, was completely unjustified, was the fact that after 3 months of close surveillance the police did not find one shred of evidence of wrong doing. The victim received no apology or explanation for this deeply offensive, gross intrusion on his life.

POLICE BIAS

The bias of the NSW police is evident in two basic areas.

First, there is a strong anti-male, pro-female bias, demonstrated by the fact that the police are far more ready to arrest, charge and prosecute men and boys, than women and girls, which is obvious in the overwhelming number of men and boys in police and prison statistics. Australia's prison population is 93% male, 7% female.

Second, the police are far more ready to arrest, charge and prosecute the poor and powerless rather than the rich and powerful. This is clearly demonstrated by comparing the Justice David Yeldham and Mr Patrick Horan cases.

During the Wood Royal Commission into the NSW police, two transit police officers accused His Honour Justice Yeldham of improper if not unlawful conduct involving another man in a railway toilet in December 1988. No action was taken because it was alleged that he was "*on side*" with the police and that, "*it is not a good career move,*" considering Justice Yeldham's position and power.

On the other hand the police's handling of the complaint against Mr Horan, who had no position or power, was quite the opposite.

Despite the fact Mr Horan had committed no crime - unless throwing a jar of honey on the floor of his mother's house is a crime - it appeared that some of the Bathurst police, in particular Constable Paul Quinn and Sergeant - now Inspector - Ian Borland, over-reacted, grossly abusing their position by hunting him down like a wild animal with no rights whatsoever, cornering and threatening him.

Either in fear of his life and or strongly objecting to being threatened and intimidated while having done no wrong, it appears he attempted to

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defend himself, as every man has a right to do, whether from the public or police. Shots were exchanged resulting in Constable Paul Quinn being killed, Sergeant Ian Borland being wounded, and Mr Horan being wounded seven times.

His actions were subsequently misrepresented by the police who alleged that he was the aggressor, enabling them to succeed in having him sentenced to life in prison. This grossly unjust sentence was significantly reduced on appeal to 18 years when sanity and partial justice finally prevailed. Bearing in mind the fact that the Bathurst police shot Mr Horan seven times, it appears that they did their best to kill him.

This is a man who had committed no crime.

The jailing of Mr Horan, caused primarily by the Bathurst police, in particular Inspector Ian Borland, is a perfect example of the extent to which the police are able to abuse their position, manipulate the law and literally destroy an innocent man's life.

Inspector Borland's disregard, indeed, contempt for the law is further evident in a statement he made during his attempt to prevent Mr Horan being released from jail after he had served his sentence and done so in an exemplary manner, when he said:

"All cop killers should be jailed for life regardless of the circumstances."

His words, "*regardless of the circumstances*" should be particularly noted. Like many, if not most police, the evidence and the facts are of little or no interest, unless it suits them.

It appears that Inspector Borland is also a liar in that he stated:

"I think I do (feel threatened) yeah," (by Mr Horan's release)

It is highly unlikely that Borland felt the least bit threatened, bearing in mind the overwhelming manpower and firepower that he and his colleagues possess, while Mr Horan is alone, unarmed and that it was the police who hunted Mr Horan down, cornering and threatening him, while he was simply going about his lawful business.

If anyone should feel threatened, in addition to being harassed and victimised, it is Mr Horan.

The police's power to arrest, charge and prosecute a member of the public, innocent or guilty, at their discretion, or whim and fancy, and in most cases succeed in having them jailed, is more devastating than their power to kill. If an innocent man is shot dead by the police he cannot dwell on the injustice. But if an innocent man is falsely imprisoned he must live with the mental anguish, indeed, torture, of that monstrous injustice every

day of imprisonment and the rest of his life. It does great damage to, in some cases destroys his life. Best of all, from the police's perspective, is that while they are primarily responsible for him being jailed, they will not be seen to be responsible because it was a member of the judiciary that actually jailed the innocent man.

POLICE INCOMPETENCE

The incompetence of the NSW police could fill volumes, but the purpose of this book is primarily to document the injustice, bias, incompetence and conspiracy of the police's handling of Swan's case. The other few matters briefly mentioned, which are the very tip of the iceberg, are included to demonstrate that this goes on far more often than the public realises.

In addition to being thoroughly familiar with Swan's case the writer is also thoroughly familiar with the manslaughter's of Mr Andrew Bantine and 5 year old Bethany Holder and was stunned and disturbed to find that the police had not investigated and subsequently prosecuted either of these deaths thoroughly or competently.

Both were killed by women motorists. Another example of judicial and police pro-female bias.

In Mr Bantine's case only approximately a third, in Bethany's case only approximately half, of the critical details available and necessary for a member of the judiciary to fully understand the incidents, thereby enabling him to make a just decision, was collected, calculated and presented to firstly the Coroner and secondly the Magistrate, by Police Accident Investigation. A lengthy discussion the writer had with an ex-police officer that specialises in Accident Investigation confirmed that this was a common occurrence.

The writer bought the failure of Police Accident Investigation to investigate Bethany's manslaughter thoroughly to the attention of the police Commissioner K Moroney and the Minister for police, The Hon J Watkins MP. The police referred the complaint to the Ombudsman and he and they declined to investigate the matter further. The Minister agreed with this decision.

If the public were fully aware of the extent and degree of police incompetence and the indifference, if not refusal of the Ombudsman to acknowledge and address it, they would be more than justified in being deeply concerned.

One of the worst examples of police incompetence, not to mention criminal irresponsibility, was that of Probationary Constable Sheree Ann Schneider who shot, in the head and fatally wounded, Probationary

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Constable Sharon Louise Wilson, at the Leeton Police Station on 30 November 1988. Schneider was on duty with Wilson and one other police officer when she claims to have decided to clean her pistol. She is alleged to have walked from the Inquiry Office into the Sergeant's office, unloaded her pistol counting five bullets into her hand, placed them on a chair in the sergeant's office, walked back into the Inquiry Office, pointed the pistol at the head of Wilson and repeatedly pulled the trigger. On pulling the trigger a second time the pistol discharged, striking Wilson in the head. She died four hours later. Schneider was charged with manslaughter but Magistrate Barry Wooldridge dismissed the charge. This remarkable judicial decision will be dealt with in the following section headed JUDICIARY.

It should be noted that when women were first allowed to join the Police Force they were not allowed to carry firearms because it was believed they lacked the physical, mental and emotional qualities necessary to handle them safely.

It should also be noted that women enter the NSW Police Force on a lower entry level than do men, which makes them literally, second-rate police officers. That alone is cause for concern but it gets worse. The general public is unaware that because the police are desperate to get women into the police force, they lower the standards even further by allowing some women to enter despite failing to meet the already lowered entry level, making them literally, third-rate police officers. The reader can decide whether Schneider was a second or third-rate police officer.

There are a number of disturbing aspects to this incident.

Schneider claimed to have countered the bullets into her hand on unloading the pistol. This is interesting because there were only five bullets. Are we to accept that Schneider cannot count to five? Even a second or third-rate female police officer should be able to do that. The most logical explanation is that she lied in claiming to have counted the bullets. It appears that she broke open the cylinder; tipped the pistol up and let the bullets fall out into her hand; did not use the extractor; did not count the bullets; indeed did not even look at them. Because it is difficult to accept that if she did, she would not have noticed that there were only four. She then put them down on a chair, apparently still without looking at them, and walked back into the Inquiry office.

This in itself is gross irresponsibility and criminal negligence because she failed to unload her pistol according to the correct procedure and was therefore not certain that the pistol was in fact unloaded. She should have used the extractor; examined the cylinder to ensure that all chambers were empty; then finally counted the bullets, carefully. In failing to unload her

pistol correctly she is guilty of a most serious offence that alone justifies a serious penalty if not dismissal from the police force. But it gets far worse.

On her own admission, after walking back into the Inquiry Office with a pistol that she had not unloaded correctly and was therefore not certain that it was in fact unloaded, she deliberately and intentionally pointed the weapon at the head of Wilson and pulled the trigger, repeatedly.

This act in itself is one of the most criminally irresponsible, negligent and dangerous acts anyone can perform with a firearm. One of the first, if not the very first lesson taught in weapons instruction is that you never, ever, point a weapon at another person, whether loaded or unloaded, unless you intend to shoot them. This is even before pulling the trigger.

Up to this point Schneider had committed two of the most serious incompetent, irresponsible, criminally negligent acts that can be committed with a firearm. Failing to unload the weapon correctly and pointing it at someone. She then committed the third and fatal, grossly irresponsible and criminally negligent act, pulling the trigger while pointing the pistol at Wilson, killing her. It was not an accident. It was not a mistake. All three of her actions were indefensible and unforgivable. She had been professionally trained to handle, maintain and use her pistol, safely. Based on the evidence available she should have been found guilty of gross criminal negligence occasioning death and received the maximum jail sentence, ten years imprisonment. Magistrate Wooldridge's decision to dismiss the manslaughter charge and impose no penalty was another example of the failure of the NSW judiciary to enforce the "*rule of law*" and ensure justice was done.

Deaths due to the mishandling of firearms by the police are not restricted to female police officers. Male officers have killed their colleagues due to the mishandling of their pistols, although it is difficult to imagine that anyone could have behaved with the same degree of gross incompetence, irresponsibility and criminal negligence as Schneider.

Further examples of police abuse are provided in the following three newspaper articles.

1 ONE IN TEN STATE POLICE ABUSE POWER

Almost one in 10 NSW police officers had been disciplined in the past year – with 100 facing criminal charges – for abuse of power and unethical behaviour, the State ombudsman reported yesterday. The Ombudsman, Ms Irene Moss, branded the report's findings "shocking", saying 1000 of the State's 13,100 police officers had been disciplined or charged following an 12.8 per cent increase in complaints. Of those not facing criminal charges, 250 were formally disciplined and 700 were

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counseled for a variety of offences, including racist behaviour, drinking on the job and unreasonable arrest. Ms Moss said despite the police royal commission into corruption – which cost taxpayers \$100 million – police still abused their powers and lacked professionalism. ... One third of the complaints against police, which increased from 4659 to 5336, were by police. The complaints included: unreasonable arrest and detention; overt use of force; abusing the general public; engaging in racially offensive actions; disclosing confidential information; failing to act; as well as drinking on duty and even streaking. ... Ms Moss said the NSW complaints were “outstandingly higher” than other States, making it the worst police force in the country.

THE AUSTRALIAN 29/10/96

While this was written in response to the Ombudsman’s 1996 report it is nevertheless timeless evidence of police misconduct.

3 REVEALED: HOW POLICE ARE STILL LYING IN COURT

NSW police are continuing to lie and distort evidence in criminal cases, despite the practice being exposed by the Wood Royal Commission. The *Herald* has reviewed magistrates’ statements in five cases in the past year where police have been accused of colluding on evidence, telling lies under oath, making up statements, or not being objective as witnesses. In the past four weeks, magistrates have attacked the credibility of police evidence in three of those cases. The magistrate in one case criticised not only the officers involved, but also the investigation by police Internal Affairs. In four of the five cases, magistrates took the unusual step of awarding costs against the Police Service. The attack on the credibility of police evidence comes after exposure by the Wood Royal Commission of: Scrumdowns, where police conferred to refresh their memories of evidence which was often “not truthful” or existed only in their imagination’s. Verbals, where police submitted as evidence unsigned records of interview and notebook confessions. But magistrates have uncovered new methods of falsifying evidence, include “visuals” – where an arresting officer writes a statement, sends it by computer to colleagues who print out and sign their own copies, thus falsely corroborating the evidence, including non-existent police notebook entries. The result is a plethora of police who “saw” the defendant committing the crime. The magistrates have also exposed “sculpturing” – where police reject any evidence that might challenge the prosecution and falsely corroborate with “visuals” evidence that will condemn the defendant. This is not new but more prevalent since it has become difficult to use verbals. These practices

were condemned recently by magistrates in five actions against police brought by the criminal lawyer Mr Chris Murphy.

Case 1. The magistrate, Mr John Heagney, on June 19 dismissed a charge of assaulting a police officer, saying the 32-year-old defendant had been “loaded up” by police who had made a “remarkable departure” from proper procedures. He noted a “remarkable absence of contemporaneous notes” by police. The charge was laid after the defendant, who had been bitten by a police dog and had his wrist broken, lodged a complaint against police. Mr Heagney said the charge was obviously a payback or an attempt to divert an investigation by the Ombudsman. He said the Internal Affairs report on the defendant’s complaint contained “factual errors as can only be consistent with an attempt to deliberately mislead the Ombudsman”. Damages awarded against police were \$8,562.

Case 2. The magistrate, Mr Ian McDougall, on June 26 said there had been a “scrum down” by three officers against a 22 year old man charged with assaulting police and possession of an offensive implement. Dismissing the charges, he said “all three constables clearly lied to the court”. Commenting on “visuals”, Mr McDougall said “they leave a paper trail” with their computer supplied statements. Costs against police were \$3,650.

Case 3. Dismissing a charge of assaulting a police officer, the magistrate, Ms Julie Huber, said on July 15 that the alleged victim, a sergeant, gave the impression “that he was evasive ... I regard him as a totally unreliable witness”. The sergeant had made a statement only after a complaint was lodged by the 29-year-old defendant and an Internal Affairs investigation was begun. Ms Huber said: “One has to wonder at the selectiveness of investigating (officers) inquiries.” Costs awarded against the police were \$6,265.

Case 4. Charges of resisting arrest and offensive language were dismissed against a 25 year old man by the magistrate, Mr Andrew George, on February 18 after he became aware that the arresting officer had made two different statements outlining the alleged offences. Costs were not sought.

Case 5. The magistrate, Mr Michael Morahan, on November 26 dismissed two charges of assault occasioning actual bodily harm against a 24 year old man, saying “the circumstances (are) exceptional and justify making an order for costs”. The costs awarded against police were \$6,000.

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Mr Murphy said: *“until recently, it was rare for a lawyer to win costs against police. When one lawyer wins four, you have to ask, how many times is this happening?”* Concerned that in two of the cases the Ombudsman had been misled by Internal Affairs reports, Mr Murphy sought an interview with the Police Commissioner, Mr Peter Ryan. Despite an exchange of letters, no meeting has yet been arranged. In the 1996-97 financial year, when the Wood Royal Commission was daily exposing police reports, magistrates on 130 occasions rejected police evidence and criticised prosecutions, awarding costs totaling \$297,504. Sydney Morning Herald. Date unknown.

4 POLICE ‘FAILING’ THE INTERNAL AFFAIRS TEST

Internal police investigations are biased and pursued with less rigour than criminal investigations, according to the police watchdog. In its first review of the reform process prompted by the Wood Royal Commission, the Police Integrity Commission (PIC) said more than a quarter of internal inquiries into complaints against police were “unsatisfactory”. According to the report, Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations, only 7 per cent of internal investigations included checks on an officer’s history of complaints. Junior officers investigated senior officers, and the report found potential conflicts of interest where investigators looked into complaints about colleagues working in the same area. The report blamed failures on limited resources within the internal affairs unit and a reluctance to use undercover techniques or surveillance to obtain evidence. The failure of police investigations into complaints about police misconduct was at the core of the Wood Royal Commission, and the State Government subsequently appointed the Police commissioner, Mr Peter Ryan, specifically to reform the Police Service. The PIC’s special report to State Parliament said the police had not matched the requirements set down in the Wood Royal Commission in its May 1997 report. “The outcome of the audit revealed that these shortcomings and deficiencies are, to a substantial degree, still adversely affecting Police service internal investigations,” the report says. “Other shortcomings were also identified during the course of the audit. This is a disappointing result, and indicates that in this area the Police Service has some distance to travel before it can be considered to have met the standards set by the Royal Commission.” The PIC investigated the handling of 620 serious complaints against police between January 1997 and June 1998, including stealing, corruption, drinking and drug use. It found that police failed to try to “roll over” officers to crack wider

corruption nets, that in 8.8 per cent of cases penalties given to police were not commensurate with the offence, and the highest number of complaints was made against officers in northern NSW. It criticised decisions not to investigate 43.5 per cent of complaints as “unreasonable”, and was unimpressed that 22 per cent of complaints against police that were investigated did not go far enough. “The commission is of the opinion that a common underlying problem with those investigations examined during the audit was a lack of rigour by the investigation officers and their managers,” it said. “As there is no valid reason for investigators to apply such different standards of rigour, the commission is concerned that this may reflect a lack of will on the part of investigators within the Police Service to thoroughly pursue complaints of serious misconduct against their own officers.” The report recommended employing more officers in the internal affairs unit, publicising internal investigation results and encouraging police to roll over.

Sydney Morning Herald 2/5/2000

The public has great difficulty in dealing with police abuse because the four avenues available to them, Police, Ombudsman, ICAC and PIC require considerable time, effort and in some cases money to prepare and lodge a complaint. That in itself is a big deterrent which means there are many instances of police abuse that are not reported and therefore do not appear in complaint and abuse statistics.

In addition to the difficulty of lodging a complaint, more importantly is the fact that, as the SMH article above confirms, some complaints to the police are not taken seriously and investigated thoroughly and conscientiously. As Swan’s complaint against Shakespeare demonstrates.

But while the other three bodies may not possess the inherent anti-public bias of the police, regrettably and of deep concern, they cannot be relied on to effectively address complaints against the police either.

The Ombudsman is not nearly as unbiased, thorough and conscientious as he should be, as is described above in the section headed OMBUDSMAN. The Ombudsman’s failure to address the serious complaints lodged against Superintendent Robert White, set out above in chapter 19, is just one example.

The ICAC and the PIC are unable to investigate all the complaints they receive because of limited resources, all of which adds up to the fact that the regulatory bodies set up to address police abuse have limited effectiveness and cannot be relied on to address police misconduct. The police are fully aware of this, which is a major reason why the abuse continues.

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It is a doubly cruel blow to be a victim of police abuse, conspiracy and corruption and then find that in reality there is little or nothing you can do about it and makes a mockery of the claim that we are 'governed by the *rule of law*' and therefore live in a *fair and just* society.

Despite the undeniable extent and degree of police bias, abuse and corruption, in November 2003, incomprehensibly, the NSW Carr Labour Government passed legislation titled, "*Police Legislation Amendment (Civil Liability) Act 2003 No 74,*" that denies the public the legal right to sue police for false arrest, thereby allowing, indeed encouraging, police to abuse their tremendous power to deprive an innocent man of his liberty, even more than at present.

JUDICIARY

The judiciary does not have a monopoly on justice.

They have a monopoly on the interpretation and administration of the law, which as every member of the judiciary, police and legal profession knows, is neither the same as, nor a guarantee of justice.

There are basically 3 reasons why the law and justice are not the same.

First, because some laws are inherently unjust.

Second, because the absence of some laws is equally unjust.

Third, and most important, because some judicial administration of the law, whether just, unjust or lacking, is unjust, biased, incompetent and in at least in one case, conspiratorial.

The Hearing of Swan's case by Magistrate Carl Milovanovich and his subsequent attempted Appeals to District Court Judges Angela Karpin and Jennifer English is just one example.

But is it fair to argue that some laws or lack of laws in New South Wales and their judicial administration is cause for concern because examples of injustice, ranging through unfortunate, regrettable, serious to gross, can be given?

Are the number of injustices so small that it can be argued that basically the law and its administration is unbiased, competent, equitable, consistent, humane, compassionate and above all else, just. Or is this a blinkered, conventional view based on ignorance that is misleading, incorrect and if so what would be revealed if the blinkers were taken off?

Before those questions can be answered, there needs to be some definition of injustice.

Injustice extends beyond the most obvious, the jailing or execution of an innocent man. It includes, but is not limited to: