



# Preventing Corruption in Drug Law Enforcement

*Justice James Wood AO*

*On Friday, 2 November 2001, the Bureau of Crime Statistics held a national seminar in Sydney on drug law enforcement and harm reduction. As police corruption is a serious risk in drug law enforcement Justice Wood, Chief Judge at Common Law in the New South Wales Supreme Court, was invited to give a lunch-time address on how corruption in drug law enforcement might be prevented. Justice Wood is uniquely qualified for this task, having conducted the Royal Commission into Police Corruption in New South Wales. His views on what fosters corruption in drug law enforcement and how it might be prevented are invaluable reading for anyone concerned to maximise the contribution which drug law enforcement can make to harm reduction. This bulletin is the edited text of Justice Wood's speech.*

## INTRODUCTION

The theme for this article could well be:

'Those who cannot remember the past are condemned to repeat it.'

That is the message which strikes home to me each day, when I see a new set of front line detectives and supervisors, repeat in the Police Integrity Commission, the same story which we heard time and again during my Royal Commission into Corruption within the New South Wales Police Service. The profile of the officer involved, the initial crossing of the line, the descent into malignant failure, the powerlessness to step back, and the utter futility of the entire exercise, remain unchanged. There is nothing new about this. It is what has been uncovered elsewhere — for example by the Mollen Inquiry into the New York Police Department (NYPD). I suspect that it is repeated around the world, to varying degrees, in other police services and particularly in those areas of policing involving drug law enforcement.

The problem of police corruption is obviously not confined to drug law

enforcement. In order to deal with the problem, however, it is necessary first to resort to history, in order to understand what face corruption takes, and how and why it emerges. It is only with such understanding that one can begin to develop possible solutions. This article begins with an examination of some of the key factors which foster police corruption in drug law enforcement and then proposes ways in which we might seek to prevent or minimise corruption in drug law enforcement.

## REFLECTIONS ON THE PAST

It is interesting to recall, in this context, the manner in which, and the time over which, the drug endemic slowly emerged and then swamped us. It's also salutary to recall the ease with which corruption of law enforcement moved to drugs from the traditional areas of vice and gaming, and the other areas of victimless crimes such as sly grog, starting price (SP) betting, and abortion services (which were once the staple diet of organised crime).

In fact, we had a history of cocaine and opium abuse dating back to the 19<sup>th</sup>

century, when these substances were freely available through chemists and patent medicine suppliers as remedies for all manner of ills, and were used by gangsters, prostitutes and pimps in the days of the razor gangs, in the 1920s and early 1930s. Their free availability came to be suppressed by strong police activity involving use of the consorting laws, particularly under the leadership of Commissioner MacKay, during the 1930s. There was, thereafter, something of an informal arrangement that, so long as organised crime kept out of drugs, and so long as violence was controlled, police would not be too concerned about vice, gaming, SP betting and sly-grogging. Provided, of course, that any favours in this regard were returned. So there was only a limited usage of drugs thereafter until the flower power era, during which the youth of many countries, turned on, tuned in and dropped out via cannabis, and mind-altering substances such as LSD and mescaline.

Exploiting contacts with foreign criminal organizations, largely created through gaming connections and encouraged by the obvious interest of the young in

drugs, the Sydney criminal syndicates began importing and distributing large quantities of cannabis and amphetamines. At the same time as cannabis became freely available, there were others expanding into the heroin and, later, the cocaine trades, following the invasion of Sydney by US servicemen on rest and recreation from Vietnam.

The rapidity of this move can be seen from the fact that, in 1963, the Australian Customs Service proudly reported a record seizure of 70 ounces of heroin. Within two years, headlines were made when 5 kilograms were seized from the freighter *Straat Lombok*. Such an event would go unannounced today. When seizures of heroin by Customs began to rise, an ill-fated decision was made to form the Australian Bureau of Narcotics. Within a relatively short time it became seriously compromised and saw a number of its officers tempted into seriously corrupt practices. It was ultimately disbanded following serious criticism of it in the Williams Royal Commission into Drug Trafficking. In that respect, it suffered the same fate as the New York Office of the US Bureau of Narcotics, and provided a pattern which has come to be repeated in other drug law enforcement agencies across the world.

The 1970s, in particular, was the era of cannabis plantations, established so as to feed the surging demand for marijuana – a business opportunity potentially far more lucrative than the gaming and liquor opportunities. It was also a time when the use of drugs became fashionable among the trend setters, whose successors sadly play out the same routine today in clubs of the kind that were the subject of recent police activity in Sydney. As organised crime moved more deeply into this area, so they took with them the corrupt police and political contacts which they had established in relation to more traditional areas of criminal activity.

One needs only recall some of the importations and operations of this era, and to mention the names which it throws up, to envisage the magnitude of this new business, and the potential opportunities for corruption which developed. This was also the time of the first Australian political murder, arranged by organised crime in defence of its drug

interests. That murder was also the genesis of several Commissions of Inquiry into the drug trade, and its nefarious potential for corrupting the political and policing process.

It is true that strong anti-drug campaigns were mounted in the late 1970s, particularly against cannabis plantations and the importation of the Thai Buddha sticks and Lebanese 'green' which had become popular. While this led to a significant dwindling in marijuana supplies, it also encouraged an increase in the attention given to the harder drugs which did not need to be moved or stored in such bulk, which were immune from satellite detection, and which promised far greater economic returns. It was from this point that the trade in heroin and cocaine escalated to the point where, today, it involves vast sums of money, keeps active a veritable army of people who are involved at various levels of the import/distribution chain, and calls for the dedication of enormous human and financial resources from the law enforcement side.

## THE PATH TO PERFDY

So far we have examined some of the historical developments which render police organizations vulnerable to corruption. Let us now turn to the hypothetical drug law enforcement officer who is a composite of the detectives we turned up, and upon whom the spotlight is being so excruciatingly and embarrassingly focused at the moment.

The progression has typically been as follows. As a relatively young person, an officer joins the Service with a clean prior record, and with ambitions to do the job in a competent, honest and law-abiding way. He or she listens carefully and agrees with everything, or at least most of that which is taught at the Academy, in relation to ethics and integrity. This is followed by early assignment to an inner city station, where the Service expects that he or she will gain practical experience fairly rapidly in a variety of situations under the supervision of experienced police.

A first exposure to corruption occurs when a small share of money during a search, or money 'taxed' from a drug target, is passed to him or her, as part of

'the team' into which the officer is welcomed. That money is reluctantly accepted, in order to avoid giving the impression of being a 'square peg'. Invitation follows to join other corrupt detectives, in their social activities which tend to revolve around sporting or social clubs, where there is a good deal of drinking, long lunches, and playing of poker machines. In the course of this the officer comes to meet local criminals and drug dealers – initially because of the need to recognise 'the players' as persons to watch, later as potentially useful informants and, subsequently, as persons who can be the subject of rip-offs or who can be co-opted as partners to be given a green light – depending upon their reliability, reputation and influence.

Exposure to phase two of the process occurs when, after a time in the Service performing more mundane duties as a uniformed officer, for the most part honestly and effectively, the officer is encouraged to train for and become a plain clothes officer or detective. At this stage, things become a little more serious. After seeing and experiencing the frustration involved in trying to secure the evidence needed to convict persons known to be drug dealers, the decision is made, with the encouragement of others, to help things along by fabricating evidence or planting exhibits – 'doing God's work when he has gone missing', as one officer once put it.

In the mind of an officer who may otherwise have some scruples or lingering doubts or remorse about accepting money or stealing from drug offenders this kind of conduct may seem justified. But, so far as it leads to the punishing of criminals who would otherwise escape the justice system, it reinforces a habit of lying and cheating which inevitably blurs the decision-making process and blunts any residual ethics or integrity disproportionate possessed by the officer. The next stage (and I do not suggest that each is sharply distinguished) comes when the opportunity for selective policing arrives. This can take the form of giving a green light to those who are prepared to pay a retainer for a free run, providing information for use against their opponents or coming down hard on their opponents (either by legitimate operations or through one of the avenues of 'noble cause' corruption which exist).

Inevitably this leads on to the stealing of drugs and money found during searches, the corrupt downgrading of charges, the deliberate loss of exhibits, the shredding of briefs (i.e. materials prepared to help prosecute a person), the provision of letters of comfort in return for an offender's silence and the aggressive standing over of persons known to be dealing drugs on an ongoing basis. Then, as greed grows, it leads on to the identification of potential targets for robberies or rip-offs by drug associates. An allied step in this progression of betrayal is the leaking of information about operations planned against favoured dealers, or internal investigations and integrity tests. This behaviour is likely to place other honest officers at personal risk of harm.

The final step in the progression comes when, sometimes reluctantly, but often with a feeling of relief, the officer rises to a supervisory position, or to some other office, away from the front line and from the area of greatest risk of exposure. This often happens because he or she has been able to show positive results in drug law enforcement through 'noble cause' corruption activities, or the targeting of interests opposed to 'green light' offenders.

In some instances that is the end of the actual receipt of corrupt monies. In others the rewards continue, although at a lower rate, as the price for turning a blind eye or for being ready to issue a 'whale in the bay' call, when the signs of an internal investigation are detected. No matter which way the officer goes at this stage, he or she is compromised for all time. His or her status is inevitably known to a sufficiently wide group of like-minded individuals, so that the risks of blackmail and the pressures to remain silent attributable to group loyalty and fear of exposure are significant. As a consequence, his or her efforts to introduce or to enforce integrity measures are likely to be fruitless, and even regarded as an exercise in cynical hypocrisy.

What purpose does this descent into malignancy and betrayal of all the other decent law enforcement officers serve? By the time the typical officer has passed through it, he or she will almost certainly have a problem with alcohol if not other substances, and with gambling. He or she will be in constant

fear of being unmasked and tipped into the distinctly hostile environment of prison, to say nothing of the loss of self esteem and motivation to advance much further in the career upon which he or she embarked. There will be little to be seen or enjoyed in the way of tangible assets derived from these activities, since it is too dangerous to show signs of expenditure on property or travel beyond the salary of the office, without attracting the attention of the Service or of the Taxation Office, or of Austrac.

Ultimately one's own reputation, along with that of the rest of the Service, is dragged down, resulting in public cynicism, loss of support and respect, and concomitant resistance on the part of the community to support better conditions of service. Even after retirement, there can be no time for relaxation – there will forever be a need to look over one's shoulder, since if one thing has been learned from my Royal Commission and from the current Inquiry, the 'thin blue line' is neither as strong or as elastic as it once was. Under pressure, and to save their skins, corrupt police will roll over and inculcate others. That there ever should have been any other view is perhaps surprising, and possibly due to a misplaced assumption that Internal Affairs inquiries would be incompetent or less than committed. The fact is that treachery is just that. To expect an officer guilty of corruption to hold fast and to protect his companions, is simply naïve.

When brought to book, these officers somewhat pitifully, say that they had no choice, that they are very sorry for what they have done, that they did not mean to embark on the venture which followed, and, in most cases, that they cannot explain in any rational way the course which their careers took. In the meantime, the trade in drugs proliferates. The importers, manufacturers and dealers get rich. Our children steal, fail school and university, and die through drug abuse. Our budgets for law enforcement, prisons and health burgeon. All the while, the environment remains ripe for new officers who have not had the opportunity of experiencing, at first hand, the slide into degradation, disillusion and despair which I have chronicled. That, then, is to state the problem in terms which may seem stark, but which I do not believe are excessive.

## ANTI-CORRUPTION STRATEGIES

I now turn to the \$64 million question of how to combat corruption in this area of drug law enforcement. In order to deal with the problem, the Service must first recognise and accept the reality of the risks of exposure to temptation and corruption, and then it must develop a comprehensive strategy.

As to the first, the approach which was formally taken by many Police Services of denial, accompanied by vengeful reaction when a problem was discovered, is totally inappropriate. Senior Command has to recognise the fact that young police will have been exposed to recreational drug use in their teenage years, and that they will have friends and peers who dabble. They must also recognise that, for many officers, the lifestyle and ready access to money of the dealers, with whom they will inevitably have contact either as informants or targets, will be attractive. Moreover, there are substantial and particular dangers in undercover work, since in order to gain credibility, the operative has to assume the dress, manner, language and lifestyle of the dealer/user. Once that cloak is worn for any length of time, as convincingly as it must be in order to avoid disclosure, it is not easy to shuck it off.

Experience in this area suggests that corruption prevention has to be multi-faceted, beginning with recruitment/training, working through operational procedures and safeguards, as well as career development, and ending up with a detection safety net which can target corrupt conduct and provide a basis for prosecution and/or swift severance from the Service. Perhaps we can now look at these elements, in a necessarily brief way, as each in fact deserves a lengthy chapter of its own.

## SELECTION FOR DRUG LAW ENFORCEMENT

A good deal of care should be taken in the selection, vetting and training of those who are to work, in any sustained way, in drug law enforcement. Some opportunity for this exists because, from their earliest days on the job, police will have direct contact with street dealers and with users who commit

robberies and property offences. Their performance, and their aptitude and approach to those people can be monitored and recorded by suitably trained and diligent supervisors.

This means that more attention should be given to the keeping of personnel files, and to the development of an early warning system. This system would identify the existence, in relation to any officer, of matters such as:

- disproportionate numbers of citizen complaints and disproportionate use of force;
- a history for reprimands, neglect of duty and absences, which indicate a lack of discipline;
- a record of damage to Service property, which similarly indicates a lack of responsibility, and a lack of discipline; and
- associations with police suspected of corruption and with former police who left the Service under a cloud.

It would also need to identify and record positive aspects of service, such as:

- job commitment;
- record for disclosure of, or resistance to corrupt conduct; and
- capacity for independent and intelligent policing.

This needs to be part of a Police Service ethos, which emphasises that specialist drug law enforcement, particularly that of a covert kind directed at those above the level of street dealers, is valuable work and of a status comparable to homicide investigation (which has been noticeably corruption free). This approach, and the necessity to demonstrate high levels of skills and integrity, should be emphasised in the course of detective training and in advance of any lengthy assignment to the work. The training will also need to be supplemented by reminders of the fate of those who have let the side down and who have been paraded through inquiries of Royal Commissioners and the Police Integrity Commission.

The vetting and supervision cannot stop once an officer qualifies for and is assigned to this kind of work on any sustained basis. Supervisors need to be on the lookout for additional warning signs of the kind which have particular relevance, such as:

- imperfect adherence to informant reporting requirements;
- briefs which appear to be broken down by reason of imperfect witness or exhibit handling;
- patterns of expenditure, particularly in relation to holidays and lifestyle activities, which have changed or which otherwise are suspicious;
- association with investigations compromised through possible leakage of intelligence or operational information;
- partnerships, which appear to involve more than a healthy professional relationship;
- regular associations with disgraced former police, particularly those working in the private inquiry field;
- evidence of substance abuse, and of gambling; and
- evidence of financial problems, particularly those following an over-commitment to personal debt and that associated with marital breakdown.

While every officer is entitled to the support of the Police Service, and of its managers, it must be understood that no one is immune from this kind of supervision, or from internal investigation through integrity testing, drug and alcohol testing, and financial analysis. However, as a price for such intrusion into the personal lives of police, the Service must have, and be seen to be committed to, a viable system for the support of its officers in two critical areas:

- the protection of internal informants; and
- the assistance of officers who run into personal problems.

In each case the Service must respect and accept that every trained officer is a valuable asset into whom a considerable sum of money has been invested. Similarly, it must accept that it is very often the nature of the work, particularly that involved in drug law enforcement, which has created the problems for the individual officer. As such, it has a duty to do what it can to preserve that career or, if that is not possible, then to sever the connection swiftly and fairly. The importance in concentrating on each individual officer arises from the fact that severe goal

penalties, fierce competition, asset confiscation powers, and the aggressive targeting of drug dealing by State and Federal Agencies, all make the corrupt officer a valuable asset to drug dealers. The information which they have, or can access, is a commodity of great worth but it can also be an Achilles heel. Those investigating police corruption can provide false information to an officer for the express purpose of finding out (via surveillance) whether the officer passes it on to criminals.

## MANAGING POLICE OPERATIONS

This area requires the attention and presence of ethical front-line supervisors who understand the pitfalls. Much of the machinery is in place, but it has to be *used*. Often an assumption is made that it is enough to develop and introduce a system, such as the use of video recording of operations, or of informant contact registration, or of controlled operations, without ensuring that it is properly implemented and supervised. That is only to create a false sense of security which is often worse than no system because it means that those who should be on the lookout, are not.

### Covert operations

Supervisors should not give approval for controlled operations without properly checking what is proposed and ensuring that:

- appropriate officers are involved;
- the available physical and electronic surveillance is used; and
- corruption risks are assessed and catered for.

In an operation which involves a person with known corrupt associates or tendencies, or one where potentially large hauls of money or drugs might be expected, extra resources and independent supervisors should be brought in. Otherwise, senior officers need to be prepared to go out on operations themselves, on a regular basis, to act as a deterrent and to detect lax practices. It is wrong to confine them to management tasks which could just as fruitfully be carried out by qualified civil servants. Their policing skills and experience should be available for the work they know best. There should also

be an insistence on the entirety of the operation being video-recorded. Where the quantity of drugs or moneys recovered, or arrests, falls short of that which intelligence predicted, there should be a post-operation review of the reason(s) for the discrepancy.

### Rotation and supervision

Rotation of officers is also important so that officers do not become accustomed to working in partnerships which are too close or too regular – as seems to have been the case recently in the Manly Local Area Command in Sydney. Moreover, supervisors have to listen to and respond to complaints of corrupt conduct. This seems not to have happened in Manly. It is very easy for a supervisor to assume that complaints of corruption are mischievous or involve a pay back or to conclude that a demonstration of solidarity and of support for the troops is more important, and to place friendship or the reputation of the Service or squad or station above all else. But this, again, is a recipe for disaster. There is only one proper response to internal and external complaints – treat them seriously and refer them to the integrity network whose job it is to assess and investigate them. For all the supervisor knows, there may be an operation already on foot, and this may be a critical piece of information.

There can be no question other than that Local Area Commanders and leaders of drug units must be removed from office, if they fail to effectively supervise this area of work, or if they fail to set a proper role model. This is so whether such an officer is personally involved in corruption or not. The buck stops with them. The role of the Custody Manager is also important in this. That position is not a formality. It is a means of independently detecting signs of something which has gone wrong. It is not a matter of reading, in a routine and bored fashion, the rights of a suspect from a pro forma. Similarly, the adoption of an ERISP (electronically recorded interview with a suspected person) should involve more than the rote reading out of a series of set questions. There is a need to appoint as Custody Managers those officers who understand their role and who have a proper commitment to policing.

### Undercover operatives

Undercover operatives require special mention. If they are left in the field too long, or if they are selected without the right personality profile and the personal strength or commitment needed, they run the risk of adopting the mantle of the role which they have had to assume. Careful pre-selection vetting and continuous monitoring and support are needed because of the temptations, the stresses and dangers involved. Once battle-weary, they need to be taken out of the field and their personal lifestyles need to be constantly watched. They also need proper training in the pitfalls and consequences of their work. Their supervisors or controllers have to be particularly alert to problem signs, which can range from personal substance abuse to disillusionment with what they are doing. Considerable care is also required with their reintegration into mainstream policing.

### Informant management

The proper procedures for informant management are well known and they are adequate if respected to the letter. When they are not this is an area for potential disaster since apparently legitimate contact can all too easily and quickly be used to the advantage of a drug dealer. The informant will inevitably expect something in return, which might be payment, or a reverse flow of information. All informant contact must be closely monitored and officers trained in what is expected and what they might confront.

### LEADERSHIP AND PROFESSIONALISM

The most important corruption prevention element in an operational sense is leadership and the involvement of supervisors selected for integrity and dedication. Years in the job may not be sufficient to qualify an officer for such a position, particularly if they have been compromised at an earlier stage of their career, have a problem with gambling, liquor, or their finances, have a cynical attitude towards drug law enforcement or regard drug users as not worth worrying about.

Similarly, they need to be excluded if they adopt, as a regular habit, the manner of speech and of unprofessional

behaviour which has become such a telling feature of the (telephone) intercepts obtained in undercover operations. No one suggests that policing should be a gentle affair or that its proponents need to converse Oxbridge style. But there comes a point when attitudes of this kind undermine the professionalism of all concerned. An attitude of cynicism or of lack of professionalism is quickly passed on to the front line officers, who will then see little harm in taxing offenders, or in sharing the rich spoils available, confident that no one will complain. In fact they may even see a measure of street justice in this, as well as some benefit in not being tied up in the court process.

In targeting suspect police all lawful gloves need to be taken off, and innovative strategies and techniques employed. It has to be remembered that we are here concerned with officers who are aware, more than most, of the advanced investigative methodologies and forms of surveillance which are available. They are trained to use and to change individual mobile phones, to arrange meetings in areas where surveillance is difficult, to detect listening devices and to access and use intelligence systems. Moreover, they are likely to be highly sensitive to changes in their work environment.

### COMPREHENSIVE NETWORK FOR INTEGRITY OVERSIGHT

This is an area where, contrary to the ignorant views expressed by some politicians and some elements of the media there is considerable room for satisfaction with recent revelations.

Considerable time was always going to be needed after the Royal Commission into Police Corruption to turn the ship around, to identify and pursue remaining corrupt officers and practices, to remove those officers, and managers who were not committed, and to overcome the view that, once the Royal Commission went away, it would be business as usual. It was, for this reason, that the Royal Commission recommendations covered such a broad field, including raising recruitment standards, pushing promotion on the basis of ability, fast-tracking severance of the inept as well as the corrupt, and providing a comprehensive integrity oversight network.

It is disappointing to observe that, in some respects, traditional and conservative practices unsuitable for a profession of policing, have held sway, and that some sections of law enforcement have resisted or not wholly embraced the necessary changes. It is of great importance that there is in place a permanent and comprehensive network in New South Wales capable of detecting and dealing with corruption, particularly that involved in drug law. It has four arms:

- the Ombudsman who is well placed to deal with reactive service and minor conduct complaints;
- the Special Crime and Police Internal Affairs Unit which is now a well resourced and well staffed unit employing the full armoury of covert operations, surveillance, and financial and intelligence analysis, integrity testing, probity assessment, strategic assessment, and systems investigation;
- the Crime Commission of New South Wales, with its significant coercive powers and electronic and physical surveillance capacity; and
- the Police Integrity Commission (PIC), with its similarly significant coercive powers, investigative and surveillance capacity, ability to expose and to denounce publicly those who are caught out in corruption, and its ability to recommend procedural and systems change.

Together these bodies provide a powerful network for intelligence gathering, investigation, prosecution and exposure. They do work well together, and any corrupt officer who elects to chance his arm really is very foolish. I made the observation in my final report on corruption in the NSW Police Service that there needed to be this network, including the permanent establishment of the PIC in my place, and with my powers. There have been operations since its establishment, in which police have been exposed using drugs, developing inappropriate associations with dealers, resorting to bribery and green lighting and directing criminal activities, such as theft and supply of prohibited substances.

The techniques and opportunities available to expose these activities are significant, since the joint armoury of weapons available include:

- targeted integrity testing;
- random and targeted drug and alcohol testing, the latter following matters such as death in custody;
- financial analysis which includes profiling assets betterment, as well as changes in spending/payment patterns and practices;
- enhanced internal informant support;
- the exercise of coercive powers for the supply of information pursuant to notice and/or hearings (either in public or in private) and in respect of which traditional privileges are suspended or qualified; and
- counter-intelligence to detect internal resistance and to counter negative and untrue stories that can destabilise the Service— an insidious and troubling practice which was very much alive in the past and which still cannot be ignored.

The existence of this network should leave all corrupt police (particularly those who have been working in drug law enforcement) very nervous. Some will be contemplating how they can best get out of the Service. Some, inevitably, will end up in prison and this will help to ram home to others the risks involved in corrupt activity. The writing is very much on the wall, and I believe that drug law enforcement in the future will be all the better for it. Intensive policing activity over the last few weeks aimed at drug houses and clubs, confirms this is the case.

The two Police Associations have to get behind the reform process, and cast adrift the corrupt. There is no longer any reason for them to come to their defence, as the Legal Representation Office in New South Wales is available for that purpose. For the sake of every decent law enforcement officer, for the reputation of the Service, for the safety of its members, and for the promotion of policing as a profession, the Associations and Senior Command must get right

behind ethical policing. They must also pay very close attention to the obvious hot spot of drug law enforcement.

We may well have arrived at a cross roads. Which way we go turns upon some of the matters I have discussed in this article and upon whether plans and systems are matched with committed action. Otherwise we will only see the truth of the old maxim 'words like feathers fly away with the wind', and we will need to reserve seats for a long time to come in the hearing rooms of the Crime Commission or the Police Integrity Commission, or of similar Commissions of Inquiry.