

REPORT BY THE POLICE COMPLAINTS AUTHORITY ON THE INVESTIGATION INTO THE VALIDITY OF AFFIDAVIT OF WITNESS C

Introduction

In December 1990 in the High Court at Auckland David Wayne Tamihere was found guilty by a jury of the murders of two Swedish tourists, Heidi Paakkonen and her fiance Sven Hoglin, on the Coromandel Peninsula in April 1989.

David Tamihere had pleaded not guilty to the charges and has since continued to protest his innocence.

A prosecution witness at the trial was given name suppression. He was there referred to only as Witness C. He had been in prison with David Tamihere prior to the latter's trial. At the trial of David Tamihere he gave evidence of very damaging admissions said to have been made to him by David Tamihere.

Nearly five years after the trial on 25 August 1995, while an inmate in Mt Eden Prison, Witness C swore an affidavit (hereinafter referred to as 'the affidavit') in which he sought to withdraw that evidence. The affidavit, in full, is reproduced hereafter, with only some names and signature omitted. As will be revealed there is no dispute but that Witness C swore and executed the affidavit. The form in which the affidavit was sworn is not strictly correct but for these purposes that issue is put completely to one side. Witness C now claims in the affidavit that evidence given at the trial was "*legally and morally wrong*"; before signing a statement which formed the substance of his evidence he was told by Detective Sanderson that "*a sum of money up to \$100,000 was available should I decide to give a statement helpful to the Police*"; and that the same Detective outlined for him "*things that would be beneficial to the Police*" thereby providing details which would give his evidence strength and verisimilitude. There was also the inducement of favourable support by a Police officer at an upcoming Parole Board hearing, which will be reached in due course. Later, Witness C swore, the Detective returned with a typed statement containing the substance of the details

conveyed to him by the Detective with a request that he sign it. Witness C in his affidavit said *"I refused to sign the statement and to this day do not know who did sign it."*

Despite this dramatic turnaround by the witness involving as it does revelations of Police bribery and manipulation of evidence, no use was made of this affidavit until 16 July 1996, that is nearly a year later. It was then released to the media and a copy was sent unsolicited to Mr Murray Gibson, David Tamihere's counsel. Media sources supplied a copy to Police. The delay in release of the affidavit is dealt with hereafter.

It is elementary to say the allegations made attacked Police integrity, averring as they do corruption and officers acting to pervert the course of justice in a major murder trial.

The function of the Authority is to investigate the allegations of Police misconduct and this subject is referred to again shortly. No formal complaint alleging misconduct in the Tamihere trial, as set out in the affidavit, has been made to the Authority.

As will emerge later in this Report Witness C when interviewed on 8 August 1996 withdrew all allegations of misconduct alleged in his affidavit of 25 August 1995, and this will be dealt with in detail hereafter.

Involvement of PCA

On 22 July the Commissioner wrote to the Authority. He said that the allegations constituted a very grave attack on Police and *"in the interests of maintaining public confidence in the Police I believe there should be no delay in investigating the allegations"*.

The Commissioner of Police and the Police Complaints Authority nearly two years ago signed a Memorandum of Understanding whereby evidence of internally discovered misconduct is to be referred to the Police Complaints Authority to be dealt with there. The Commissioner of Police referred the allegations of misconduct contained in the affidavit to the Authority for investigation and report and, subject to agreement by the Authority, appointed Superintendent G Cunneen, District Commander of Wellington, to the enquiry. Superintendent Cunneen had no prior involvement in the investigation and prosecution of David Tamihere for the said murders. For the Authority to have available Police officers to assist greatly facilitates the enquiry and its early disposition.

In a media release the Commissioner said:

"I have referred the matter formally to the Police Complaints Authority inviting him to exercise jurisdiction over the investigation and review of the allegations as if the matter had been laid as a formal complaint by a member of the public.

The Police Complaints Authority has since responded with advice that he exercise jurisdiction over the matter and shall oversee the investigation into the allegations."

In my role as Deputy Police Complaints Authority I took over the conduct of the investigation.

Limitation of Police Complaints Authority Investigation

It is essential that the public (for whom this Report is an important audience), and others, understand the limitations of the Police Complaints Authority's role in preparing this Report. When the contents of Witness C's affidavit were made public in mid-July, in circumstances to be described, the debate in the media was understandably wide ranging. Impliedly, and sometimes explicitly, were raised the fairness of the criminal justice system that resulted in convictions for David Tamihere in the High Court at his trial before Judge and Jury, and later the dismissal of the appeal by the Court of Appeal. The wisdom, or otherwise, of the general use of so-called secret witnesses (their identity is certainly not secret within the trial) being those who sometimes give evidence of damaging admissions made by an accused was quite extensively examined in the media. The possible procedures David Tamihere and his counsel might pursue in the future to obtain a new trial, or some other remedy were also canvassed. None of these issues, and others that emerged and are not specifically mentioned, are the subject of the Police Complaints Authority investigation. The statutory powers conferred on the Police Complaints Authority are to investigate complaints and allegations of misconduct by Police officers. The powers do not give, and cannot allow, a wide ranging review of issues that may appear to be relevant but are, in fact, outside jurisdiction. Decisions on them must be properly left to others. In short the brief of the Police Complaints Authority is to examine the affidavit and other evidence, and decide whether there is support for the allegations of gross misconduct on the part of Police officers contained in Witness C's affidavit sworn on 25 August 1995.

Method of Investigation

On 25 July I wrote to the Commissioner. I said I proposed to carry out the investigation in terms of Section 17(1)(c) of the Police Complaints Authority Act 1988. This section gives the Authority power to oversee a Police investigation of a complaint. In this same letter I said I agreed with the decision to appoint Superintendent Cunneen, and I had already met with him and with Detective Inspector Doig who would also assist in the investigation.

I further informed the Commissioner that a plan had been formulated at this meeting as to the course the investigation would take in the preliminary stages.

Scope and Independence of Investigation

In response to a perceived need by the public that the investigation not only be independent, but be seen to be independent, I personally controlled the investigation and myself interviewed (with assistance) all of the crucial witnesses, including Witness C, Detective Sergeant Sanderson, Mr John Hughes (formerly Detective Inspector but now retired, who was the Police officer with overall control of Operation Stockholm in 1989/90 as the original investigation was named), Mr John Tamihere (David's brother), and Mr Murray Gibson, David Tamihere's lawyer. Mr Kingi Ihaka and other Police officers were interviewed by Detective Inspector Doig but all interviews were recorded and the records have been made available to me. In short this has been a Police Complaints Authority independent investigation and Report, which has been assisted by Superintendent Cunneen and other Police officers. To avoid doubt all conclusions reached are those of the Police Complaints Authority.

Witness C's Affidavit

I set out in full the affidavit of Witness C. Deleted are two names. These are witnesses who gave evidence at the trial. Their names, like that of Witness C, are subject to suppression orders made at the trial. The affidavit is precisely reproduced with some obvious errors, none of which affect the sense of the affidavit.

"I, (WITNESS C), Prisoner of Mt Eden Prison, make oath and say as follows:

1. *I am the deponent of this affidavit, which I make willingly and without coercion, without favour nor inducement of reward but at my own insistence and instigation, now want matters regarding my involvement with the trial of DAVID WAYNE TAMIHERE a case commonly known as the Swiss murders clarified and hopefully rectified.*
2. *I make this affidavit knowing full well that it will have serious repercussions for persons, myself included who were involved in the trial of DAVID WAYNE TAMIHERE.*
3. *I make this affidavit as I know that acts done and accepted by me prior to now affecting DAVID WAYNE TAMIHERE were legally and morally wrong.*
4. *I am vague when it comes to specific dates but are certain of the chronology of events and the people involved which I will allude to, hoping that possibly at some later date, that specific dates may come to light either from other persons, official and/or unofficial records or any other source.*

5. *I was approached by Kingi Ihaka who I know to be a journalist employed by Television New Zealand who formerly was teaching Maori at Paremoremo Maximum Security Prison whilst I was a prisoner at said prison.*
6. *Kingi Ihaka told me that he knew of two other prisoners, and who were secret witnesses for the Police in the case against DAVID WAYNE TAMIHERE.*
7. *Kingi Ihaka told me that there were big offerings in it for and adding that if I were interested in becoming a secret witness like and I should let him know.*
8. *I informed Kingi Ihaka that I was interested. Shortly after this Kingi Ihaka introduced me to a Detective Sanderson who I think was stationed in Hamilton at the time. Sanderson visited me at Paremoremo Maximum Security Prison. The meeting took place in Ihaka's office outside normal visiting hours.*
9. *Sanderson told me that a sum of money up to \$100,000 was available should I decide ot (sic) give a statement helpful to the Police in their prosecution against DAVID WAYNE TAMIHERE.*
10. *Sanderson told me things that would be beneficial to the Police. Sanderson told me about the blood stains on the tent which DAVID WAYNE TAMIHERE had supposedly concealed in a hut or shed. I as (sic) told about sexual activities involving the female Swede after the male Swede's body was supposedly disposed of. I was told that a watch belonging to the male Swede was given by DAVID WAYNE TAMIHERE to his son. I was told about trampers coming upon DAVID WAYNE TAMIHERE and the two Swede's and that at such time the female Swede was visibly distressed. I may have been told also about a body being dumped at sea. Sanderson wanted me to say that all of this had been told to me by DAVID WAYNE TAMIHERE. Sanderson said he would return with a typed statement for me to sign he also said that the officer in charge was the former Detective John Hughes on whose behalf, he acted.*
11. *Sometime later Sanderson returned with a typed statement for me to sign. Again this visit was outside normal visiting hours. I saw him in the boardroom where parole board hearings took place. I refused to sign the statement and to this day do not know who did sign it.*
12. *I was in my last 18 months of a 11 year sentence. I had no money to come out with. It was the money I wanted. Though I didn't sign the statement I went along with the Police plan to be a secret witness. Again Sanderson emphasised the benefits for me should I assist the Police. He spoke of the money and the support Detective John Hughes was prepared to give me at my parole board hearing once I became eligible for such a hearing. Sanderson also said the same offerings were given to and*
13. *Not long after Sanderson's second visit more Police came to visit me at Paremoremo Maximum Security Prison. They were from the VIPP Squad. Their names were John Avery, Bruce Good and Craig Stevens (or Stephens). They confirmed what Sanderson had told me previously.*

14. *After DAVID WAYNE TAMIHERE was convicted as the supposed murderer of the Swedes John Hughes flew to Christchurch where I had been transferred, to support me at my parole hearing.*
15. *Prior to my parole hearing the VIPP Squad had taken me out of Paremoremo Maximum Security Prison put me in cells at Henderson Police Station for about 3 weeks. This happened shortly after the visit by the VIPP Squad. After Henderson Police Station I was taken to the Christchurch Womens Prison. There I got into some trouble and was shifted to the pound at Paparoa Prison where I spend 18 months. After that I was sent up to Wanganui City Prison. Then it was back to the pound at Kaitoki Prison. Then I was off to the Te Moenga Unit. My transfer to the Te Moenga Unit was delayed until one of the two other so called secret witnesses was himself transferred out of Te Moenga Unit to Ohura Prison. It was clearly obvious that I was not to have any contact with I was released from Prison December 14 1992.*
16. *The fact of the matter is DAVID WAYNE TAMIHERE never made any confession to me of any kind. DAVID WAYNE TAMIHERE actually always maintained his innocence.*
17. *Things went to far to get out of. After doing 11 years in prison I lost tract of things when I was released, but I always intended on doing something about the mistake I made by involving myself as a so called secret witness against DAVID WAYNE TAMIHERE. I tried to contact Wendall Archibald, one of the defence lawyers but was told he had shifted to Fiji and that he no longer practiced law in New Zealand. Eventually I got in contact with the Tamihere family.*
18. *By making this affidavit I realise that I maybe compromising my own best interests. Violent reaction from other prisoners is likely. Police and prison officers and other official persons maybe equally unforgiving. They may exert pressure on me through their contact within the justice system.*
19. *No matter what the consequences of this affidavit maybe for me personally it is the interests of DAVID WAYNE TAMIHERE that concern me most. I no longer want to be associated with the fabrication of evidence used by the Police in their case against DAVID WAYNE TAMIHERE.”*

Central Allegations Against Police Officers in Affidavit

The direct allegations of misconduct are levelled at Detective Sergeant Sanderson and to a lesser extent against other Police officers. Detective Sergeant Sanderson is the officer alleged to have offered Witness C a bribe in the form of availability of a sum of money up to \$100,000 should he “decide to give a statement helpful to Police in their prosecution against David Wayne Tamihere”. Linked to the bribe allegation is the further allegation that this officer told Witness C certain “things that would be beneficial to the Police.” seemingly intended as the basis for the statement to be produced and later signed by Witness C. They were so recorded in the statement as if he had been told them by David Tamihere. The

statement clearly was meant to be the basis for any evidence Witness C might give at the trial.

For the alleged money payment I have used the term 'bribe' advisedly. The term 'inducement' does not properly convey the true effect of such a monetary offer. 'Bribe' is defined in the Concise Oxford Dictionary as "*money etc offered to procure (often illegal or dishonest) action or decision in favour of the giver*". This in simple terms is what the affidavit alleges against Detective Sergeant Sanderson acting as a Police officer.

Witness C says in para.12 of the affidavit "*It was the money I wanted*". However there is also there reference to what might also be seen as an inducement, although falling short of bribery. Witness C says he was informed by Detective Sergeant Sanderson of "*the support Detective John Hughes was prepared to give me at my parole board hearing once I became eligible for such a hearing*".

In para.13 of the affidavit allegations are made against three other officers, then members of the VIP/Witness Protection Squad, namely: "*John Avery, Bruce Good and Craig Stevens [or Stephens]. They confirmed what Sanderson had told me previously.*" says Witness C. It is unclear whether it was the bribe part, or the improper provision of verifying detail for the statement, Witness C is referring to in the last sentence above, but it can safely be understood as overall confirmation of the allegations against Detective Sergeant Sanderson.

Procedure for Investigation of the Allegations of Misconduct

The investigation proceeded within the framework of speaking to all persons who might assist in establishing the truth, or otherwise, of the allegations of misconduct against Police officers contained in the affidavit. First, it was important to speak with Witness C as the maker of the affidavit, if he would agree to be interviewed. Next in the investigation was to interview all persons named in the affidavit to determine whether the allegations made against them were valid or not. Finally to interview any other person who might be able to provide relevant information to the investigation.

Interview with Witness C

Within a few days of the public announcement by the Commissioner of Police of his request directed to the Police Complaints Authority to investigate Witness C sought through a prison official, where he is at present serving a sentence on an unrelated matter, to see a senior Police officer and a senior officer of the Police Complaints Authority. On 29 July 1996 his request was relayed by this prison officer to Superintendent Cunneen. In short the initiative

for interview came first from Witness C, although it was always intended to seek an interview with him.

Obviously the absolute centre, or core of the alleged Police misconduct came from Witness C and was reduced by him to writing as contained in his affidavit already reproduced. As will be revealed in detail, Witness C has now retracted all allegations of misconduct originally made by him in the affidavit. In the course of the investigation and enquiries of many persons, and the exploration of any likely avenue I have failed to find any support for his original allegations. Witness C's withdrawal of the allegations changed the entire focus of the investigation but nevertheless it continued and all persons who were named by Witness C in the affidavit, and those who made public comments at the time of its disclosure in mid July 1996 were interviewed to establish if there was any other evidence relevant to Police misconduct concerned with this witness in David Tamihere's trial. In other words our investigation actively sought other evidence of the said alleged Police misconduct apart from Witness C's allegations. I now set out those steps beginning with Witness C which is dealt with in detail in view of the essential importance of his evidence.

I immediately decided that Witness C must have independent legal advice available to him before any interview of him took place. I also decided that the lawyer must be one chosen by Witness C himself, and that legal fees for that legal advice were not to be paid by Police, or the PCA. This was to ensure the complete independence of the legal advice being made available. To facilitate this I conferred with a District Court Registrar at the Court nearest the Prison where Witness C was an inmate. It was arranged that fees would be paid under a legal aid scheme. I was informed that Witness C had chosen Ms Lorraine Smith, an Auckland lawyer, to advise him. Ms Smith had acted for him in the past.

I then spoke with Ms Smith and learned that Witness C had already spoken with her. A date for interview at the Prison was arranged for the morning of 8 August to meet her availability. On that day I went to the Prison with Superintendent Cunneen and a stenographer. There we met Ms Smith.

Ms Smith spent some two hours in private consultation with Witness C before he was interviewed by Superintendent Cunneen and me in the presence of Ms Smith throughout.

At my request Ms Smith had arranged for Witness C to read and execute a statement, if he would, prepared by me, which, in fact, was executed and handed to me before our interview

commenced. When execution took place I understand the only persons present were Witness C, Ms Smith and the witness. That statement reads:

“I (Witness C) state the following:

Before commencing the interview, which I requested as set out hereunder, I have had the opportunity to consult in private with my lawyer, Ms Lorraine Smith. I confirm that I have been advised by her separately and independently about the matters I intend to raise in the interview and that when the interview commences she will remain to provide me with any assistance by way of legal advice or otherwise that I may require.

1. *It was at my request on 29 July 1996 that I had conveyed to Superintendent Cunneen by way of officers in this Prison that I wanted to speak to a senior officer of the Police Complaints Authority and a senior Police officer about the affidavit which was sworn by me on 25 August 1995. This step was taken voluntarily by me without any prompting or suggestion from any third person. In response to that request I understand that the Deputy Police Complaints Authority, Mr Ewen Robertson, and Superintendent Cunneen are to interview me.*
2. *I wish to state without qualification that I have embarked upon this course of my own free will and that I am not under the influence of threats, force or duress and that I have knowledge of the true nature of what I am about to do. I also confirm that I do so having an understanding of the possible implications of this course of action in view of my past involvement with the David Tamihere trial. I also regard myself as possessing sufficient mental capacity to understand the effect of this procedure and to make a free choice to act accordingly.*

SIGNED by me (Witness C) the 8th day of August 1996.

In the presence of: ‘A P Stokes’ ”

Then followed an interview lasting about two hours. Before the interview formally commenced Ms Smith requested me to examine two handwritten statements prepared by Witness C the day before. Because individuals are named in these statements I do not propose reproducing them here in full.

One statement refers to the receipt of two threatening letters in Prison at Auckland. These stated that Witness C must take certain steps or *“They would kill me and if they didn’t get me, they would butcher my elderly parents. I’m fully aware of how some of these gangs operate, and I took the threats seriously.”* The handwritten statement is to the effect that Witness C was required to say *“... the Police had offered me inducements and \$100,000 and that I lied at his trial, and that the Police had told me what to say in my statement...”*

Witness C then describes in some detail the steps he took to comply with the requests made of him. Again as persons are named I do not propose to relate just how this was done. Moreover, I do not consider the motivation that caused Witness C to execute the affidavit as strictly within my brief, which is whether the allegations of misconduct it contains are correct, but what is stated is for background.

In another separate statement written out by him the day before but signed before me, as set out below, he says:

"I wish to apologise for bringing into question the integrity and the credibility of the Police pertaining to this matter. At the same time I would like it noted it all came about due to a life threatening sequences of events. That still concerns me and smoulders on my memory with unspeakable anguish.

I know beyond question there was no improper conduct by Police investigators regarding myself and the evidence I gave Further, the Police did not produce me as a secret witness, I produced myself"

These statements were read aloud in full by Witness C and signed in my presence and that of his solicitor and Superintendent Cunneen.

Thereafter followed a question and answer session for some two hours. Questions were asked primarily by Superintendent Cunneen but were also asked by Ms Smith and myself. I am satisfied all matters in the affidavit requiring comment were fully and fairly put to the witness and his answers recorded.

The end result was he disavowed completely the bribery allegation levelled against Police in his affidavit, and all other allegations of misconduct directed at Detective Sergeant Sanderson and others.

I now deal with some of the more pertinent parts of the question and answer session. The session began by Superintendent Cunneen dealing with a factual matter referred to in the affidavit of August 1995. In para.11 Witness C refers to Detective Sanderson returning to the Prison with a statement prepared from notes taken at an initial interview two days earlier. The return date was in fact 10 August 1990. In his affidavit the witness says, *"I refused to sign the statement and to this day I do not know who did sign it."* This statement in fact comprises some seven pages referred to earlier as the basis for his evidence to be given at trial.

At the interview on 8 August 1996, however, Witness C said unequivocally that he did sign the statement. In the presence of his counsel he was shown the statement. Each of the seven pages had his signature which he acknowledged was his. Six of the pages were also initialled by Detective Sanderson and the final one he signed in full. At this interview the witness said:

"I would like to say here it is my signature and I signed it. It is a bit shaky because I had a fractured thumb at the time of signing it, so it is shaky from my normal signature."

The witness was also shown a second one page handwritten statement dated 10 August 1990 prepared at the Prison on the day of the second visit of Detective Sanderson. He agreed the signature on this was his signature. He also agreed the signature on the affidavit of 25 August 1995 was his.

Early in the investigation I had noted the apparent difference in signature on the affidavit of 25 August 1995 from the signatures on the statement made in August 1990. I had therefore requested the Chief Document Examiner for Police to provide a written report dealing with this apparent difference. In a report dated 5 August 1996 he expressed the opinion that all signatures were *"the genuine products of just one writer"*. This evidence simply confirmed Witness C's admissions to us.

It was put to the witness *"I understand that you now wish to retract the matters that are detailed in that affidavit?"* His response was: *"That is correct. I would like to add that I think probably 99 percent of that affidavit, which is a false affidavit, only came about through threats to myself and threats to my elderly parents to be butchered"*.

Questions were asked about Mr Kingi Ihaka, an employee at the Prison referred to in the affidavit. Mr Ihaka was the initial link with Police at the request of Witness C. Basically the claim is made in the affidavit that he approached Witness C and in effect persuaded him to give evidence in the hope of rich rewards as already offered to two others.

Questioned by Superintendent Cunneen Witness C rejected the allegations in the affidavit. He said that he approached Mr Ihaka and Mr Ihaka did not approach him. He rejected being told of big offerings being in it for the other two witnesses.

Witness C was questioned on every paragraph of this affidavit. Questions and answers were all given in the presence of his counsel and run to 16 foolscap pages. I do not propose setting out these in detail as at the conclusion a signed statement was provided by Witness C which verifies and summarises these answers.

I now reproduce the statement signed by Witness C on 8 August 1996:

“(Witness C) states:

That is my full name. I am at present an inmate at Kaitoke Prison. Today I have answered a number of questions put to me by Superintendent CUNNEEN and Mr ROBERTSON of the Police Complaints Authority concerning an affidavit dated the 25th of August 1995 and signed by me. I have also answered questions put to me by my counsel, Ms SMITH. I want to make a written statement on matters in which I have previously given answers to. Those questions and answers and the persons who asked them have been recorded separately.

I have been shown a copy of an affidavit dated the 25th August 1995 which is headed IN THE MATTER OF EVIDENCE GIVEN BY FORMER SECRET WITNESS and IN THE MATTER OF SAID EVIDENCE BEING PRODUCED IN THE MURDER TRIAL OF DAVID WAYNE TAMIHERE. That affidavit has paragraphs number 1 - 19 the affidavit shows that it was sworn by me on the 25 August 1995 before a Mr PARATA, a solicitor of the High Court of New Zealand. I have handed to Mr ROBERTSON of the Police Complaints Authority two hand-written pages with the approval of my Counsel. In those hand-written pages I retract the contents of the affidavit dated 25 August 1995. I have read every paragraph of the affidavit and I have told Mr ROBERTSON and Superintendent CUNNEEN what matters are untrue in the affidavit. The affidavit was signed by me. I have said that I signed it because of fears that I have which I have explained in my answers and have given fully to Mr ROBERTSON and Superintendent CUNNEEN.

I want to say that the affidavit is not true. I want to say that I was not offered any inducements to give false evidence by Detective Sergeant Sanderson or any other Police officer in respect of the trial of David Wayne TAMIHERE.

I have been shown a typed statement by Superintendent CUNNEEN dated the 8 August 1990. That statement was typed following a record of interview with me by Detective Sergeant SANDERSON. The contents of that statement are true. That statement was signed by me of my own free will. I was not offered any inducements to sign that statement.

I have been shown a hand-written statement by Superintendent Cunneen dated the 10 August 1990. That statement was made by me. The statement is true. I signed that statement in the presence of Detective Sergeant SANDERSON. I was not offered any inducements to make that statement. It was signed by me of my own free will.

I gave evidence in the trial of David Wayne TAMIHERE. I gave that evidence on oath. The evidence given by me in that trial was true.

In a handwritten statement that I have already given to Superintendent CUNNEEN I have said that I wish to apologise for bringing into question the integrity and the credibility of the Police pertaining to this matter. That statement was written by me and tendered to Superintendent CUNNEEN and Mr ROBERTSON today. These statements are undated but were written by me yesterday.

I have read this statement, and it is true, and correct. It is made without offer of inducement or reward. (These two sentences were in Witness C's own handwriting).

Witness C
8-8-1996”

Interview with Persons Named in the Affidavit

Earlier in this document I mentioned the focus of the enquiry altered significantly after the interview with Witness C and his unambiguous withdrawal of all allegations of misconduct against Police. However, as stated, the investigation continued to ensure all relevant witnesses were interviewed. I propose now to deal with each of these witnesses separately but summarise the interviews that took place, dealing mainly with the points each of these witnesses wished to stress to clear his name. As expected all witnesses emphatically denied allegations of misconduct, and some corrected other peripheral matters which they maintained were wrongly stated in Witness C's affidavit.

All persons named in the affidavit have been seen. Most before Witness C was interviewed. All evidence discovered supports the repudiation by Witness C of the allegations he originally made.

Mr Kingi Ihaka

The first person referred to in the affidavit is Mr Kingi Ihaka. He will be recalled as the person Witness C says approached him and was the link to Police which resulted in the visit of Detective Sergeant Sanderson.

As set out earlier, Witness C now says it was he who approached Mr Ihaka.

Mr Ihaka was interviewed by Detective Inspector Doig at Auckland on 6 August. He made a detailed written statement. He said that Witness C approached him and said that he had information which would be beneficial in the prosecution of David Wayne Tamihere. Mr Ihaka told him he should contact Prison authorities and leave it to them to handle. Witness C told Mr Ihaka he did not trust them and would prefer direct contact with a Police officer.

Mr Ihaka did not want to accept any part in Witness C's proposals because he thought if it became known his position with other inmates might be compromised, and therefore he sought to discourage Witness C from involving him. However Witness C was not to be discouraged and Mr Ihaka said that the Witness raised the issue with him at least twice a week over a period of several weeks.

At this time Mr Ihaka said that he had not long been medically discharged from the NZ Police. He finally decided to put Witness C in touch with Police. He said he cannot say exactly what

prompted him to do this. He said it may well have been a sense of the need to ensure if Witness C did have information of assistance to Police then Police should have the opportunity to consider the value of that information.

He said he assumed Detective Inspector Hughes was involved in the case, although he had not spoken with that officer since 1986 or 1987. He therefore telephoned Mr Hughes with Witness C seated opposite him. He briefly explained the position to Mr Hughes, then passed the phone to Witness C who then spoke to Mr Hughes. Mr Ihaka says that at no time prior to this, or subsequently, did Witness C and himself discuss payment for any information that Witness C might impart. He said that at no stage did he discuss such payments with Mr Hughes. He rejects all those allegations made in the affidavit. He denies that he told Witness C that he knew of two other prisoners who were secret witnesses for Police as claimed in para.6 of the affidavit. He said he did not know one of these persons, and only vaguely knew of the other. He never mentioned their names to Witness C at any time. He rejected outright too the allegations in para.7 of the affidavit and responded "*Why (Witness C). should say this is beyond me.*" He also records that because of his position at the prison he often escorted visitors, or other people from the reception centre, either to his office, or other areas where the inmates could speak privately with a visitor. One day (which would be 8 August 1990) Mr Ihaka said he was summoned to the reception area having been told there was somebody there to see him. When he arrived he recognised Detective Sergeant Sanderson. He gathered the reason for the visit, and arranged for Witness C to meet the

officer in an area put aside for inmates wanting to talk in private to their lawyers, or other people. He did not remain with them. He later escorted the Detective Sergeant out and that ended his involvement in this matter.

The evidence of Mr Ihaka accords with the evidence given by Witness C when seen by me with his solicitor. Mr Ihaka did not initiate contact with Police but he did facilitate it at the insistence of Witness C.

Detective Sergeant Colin Sanderson

As I have already pointed out, the principal target of the allegations of Police corruption is Detective Sergeant Sanderson. I personally interviewed him on 6 August. With me was Superintendent Cunneen. The interview extended over some four hours. The officer was subjected to a searching interrogation by Superintendent Cunneen, and I too questioned him on aspects of his evidence.

The officer emphatically rejected allegations that he offered any bribe or cash inducement to Witness C. He forcefully denied giving that Witness information which the Witness would be expected to set out in a statement as if he had been given it by David Tamihere. He said that he had been given very firm instructions by Mr Hughes (then Detective Inspector in charge of the investigation) before he went to see Witness C not to offer any inducements whatsoever. He acknowledged the truth of a job sheet record made by Mr Hughes in August 1990 that he was told that Witness C *“Was to be left in no doubt that there was no reward/gratuity of any kind offered out to him”*.

Detective Sergeant Sanderson said that at the initial meeting on 8 August 1990 Witness C indicated he wanted \$500 cash in return for the information he was giving. The Detective Sergeant recorded in his notebook on that day at the prison:

“Witness C appears genuine, wants \$500 cash so told him he could not be promised anything or given any privileges. Arranged to see him again on Friday, 10/8/90 at 0900hrs.”

Detective Sergeant Sanderson said that Witness C never adopted the stance “if you don’t pay over I’m not going to talk”.

The questions and answers recorded in this interview cover some 12 pages. Then at the conclusion the Detective Sergeant signed a statement summarising what had been said and I will shortly set this out. Before doing so I make this comment. This lengthy interrogation produced no evidence whatsoever to support the allegations of Police misconduct. On the

contrary it showed meticulous care was taken to ensure that any evidence given would not be vitiated by any suggestion it was prompted or motivated by Police offering bribes or inducements to the Witness.

I now set out in full the statement of Detective Sergeant Sanderson:

“Colin Roger SANDERSON states:

I am a Detective Sergeant stationed at Hamilton. I am making a statement to Superintendent CUNNEEN concerning an allegation in a Affidavit purportedly signed by (Witness C) that Police offered him inducements to make a false statement.

In August 1990 I was part of the investigation team, concerning the murder of two Swedish Tourists. Detective Inspector John HUGHES was the officer in charge of the inquiry.

On the 8th of August 1990 I went to Paremoro Prison on instructions by Detective Inspector HUGHES. I was instructed to ask for Mr Kingi IHAKA, a former Police Officer who was then an Education Officer attached to the Prison. I was to give the name of Robert JOHNSTONE of ATI and I was to see a prisoner (Witness C) who had information in relation to David Wayne TAMIHERE who had been charged with the murder of the Swedish couple. I was instructed that no promises were to be made to Witness C nor was he to be offered any form of inducement for giving evidence for the Crown against TAMIHERE. I was also instructed that I was to be the only Police officer to deal with (Witness C), that my contact with him was to remain confidential and that I was to keep Detective Inspector HUGHES fully briefed as to our meetings.

At 9.00am on the 8th of August 1990 I spoke with (Witness C) after being introduced to him by Kingi IHAKA.

Because I did not wish to be seen taking a full written statement from (Witness C) in the prison I recorded notes of our conversation on foolscap paper which I would later have typed up as a statement.

During our conversation (Witness C) indicated that he wanted \$500 cash in return for the information he was giving. He was told that he could not be promised anything, nor could he be given any privileges.

At the conclusion of the interview I arranged to return to see (Witness C) on Friday 10 August 1990 at 9.00am for him to sign the statement which I was going to have typed up.

On Friday 10 August 1990 at 9.00am I returned to Paremoro Prison and spoke to (Witness C) in the area known as the Glass House.

(Witness C) read through there (sic) statement that I had got typed up and he signed each page of that statement. I witnessed his signature and also initialled each page.

At that same time I also obtained from (Witness C) a short handwritten statement which again (Witness C) signed in my presence and I witnessed.

I have been advised that the prisoner (Witness C) has alleged in an affidavit that I gave him information privy to the Police inquiry and that I offered him a cash

inducement of \$100,000 and other privileges to give evidence beneficial to the Police case.

At no stage did I give (Witness C) the information in relation to the Police investigation which is contained in his allegations in the affidavit, nor did I offer him any cash inducements or other privileges to give evidence for the Police.

I am aware that there is a claim that I told (Witness C) support would be given for him at a Parole Board hearing. While I cannot specifically recall making such a statement, I am aware that it is not uncommon for support to be given at Parole Board hearings where prisoners have been helpful to the Police.

On Thursday the 30th of August 1990 I again spoke to (Witness C) at Paremoremo Prison to advise him of plans to have him moved from the prison prior to his giving evidence at a pre-trial hearing.

On 25 October 1990 I visited (Witness C) at the Christchurch Prison as part of the briefing process prior to the commencement of the trial of David Wayne TAMIHERE.

At no time during either of those last two visits, did I offer (Witness C) any form of inducement or make him any promises to have him give evidence for the Crown.

At no time during any of my contacts with (Witness C) did he say he wished to withdraw any of the statements that he had made or that he did not want to give evidence.

I have read this statement and it is true. (Written by Detective Sergeant Sanderson)

*C Sanderson
6-8-96. "*

Mr J R Hughes (formerly Detective Inspector Hughes O/C Operation Stockholm)

Next I turn to consider the evidence of Mr J R Hughes who I met in Auckland on 16 August 1996. I was again accompanied by Superintendent Cunneen. Mr Hughes confirmed the instructions given to Detective Sergeant Sanderson, which I have cited earlier. Mr Hughes was questioned at some length and the questions and answers were recorded in a signed statement running to six pages.

Mr Hughes said he spoke only once to Witness C. That was when he was introduced to him on the telephone by Mr Ihaka.

He said:

"After introductions I told him that I appreciated what he was doing, but more than that there was nothing I could offer him by way of any reward, gratuity, etc. He told me he understood that".

Asked to comment on the claim that Police told Witness C a sum of money up to \$100,000 was available should he give a statement helpful to Police he said:

"It's absolute rubbish".

Mr Hughes was also asked to comment on the claim that Detective Sergeant Sanderson fed Witness C information to make a credible statement by claiming he was given this information by David Tamihere. Mr Hughes response was this:

"Once again, it is absolute nonsense. Up until now, and despite (Witness C's) background, I believed that he was sincere for his motive for coming forward. He didn't ask for anything special at the time. He placed himself in jeopardy. I know that he was held in the cells for 20-22 hours a day, but when he came to give evidence he just came across very sincere. He was respectful to the Crown, Defence Counsel and everyone and explained why he was there. He was sick of listening to TAMIHERE quoting about what he had done."

It is convenient while dealing with Mr Hughes' evidence to consider the claim (now disavowed) by Witness C in para.12 of his affidavit that Detective Sergeant Sanderson told him of the support *"Detective John Hughes was prepared to give me at my parole board hearing once I became eligible for such a hearing."*

Clearly this was advanced in the affidavit as constituting an inducement to give false evidence.

Detective Sergeant Sanderson said he could not specifically recall making such a statement as alleged in the affidavit, but he could not say definitely he did not refer to the Parole Board.

Asked about his involvement with the Parole Board, Mr Hughes said:

Certainly, after the trial and before the Parole Board hearing I got a call from Lorraine SMITH. I had no connection with him even after the trial. I shook his hand, that was all. She asked me if I would be prepared to go to Christchurch to give evidence for a Parole hearing. I said I would. I attended, and from memory I think it may have been Judge THORPE, and my evidence was that I was the officer in charge of the STOCKHOLM enquiry, that (Witness C) had come forward and offered to testify, and that he came forward and gave evidence, nothing more. I recall Judge THORPE quoting from the Court of Appeal's decision with regards to TAMIHERE's appeal, words to the effect that the evidence of the three prisoners was not pivotal to the outcome of the trial."

Mr Hughes was asked if Witness C was released after the Parole Board hearing and he said that hearing proved unsuccessful and he wasn't asked to give evidence in any subsequent applications.

At my request Superintendent Cunneen has carried out enquiries concerning these Parole Board hearings. He has ascertained that the date of the Parole Board hearing attended by Mr Hughes was 4 March 1992. It was held at the Christchurch Prison.

On that day the Parole Board postponed further consideration of a release date until another hearing. This took place at Wanganui Prison on 17 September 1992. At that time the Board recommended release on 13 December 1992.

Other Officers Mentioned in the Affidavit

I have already noted that other Police officers mentioned in the affidavit were also involved at times with Witness C. They were members of the VIP/Witness Protection Squad. They were involved with the removal of Witness C from Paremoremo and his placement in protective custody before giving evidence at a special pre-trial deposition hearing. He was removed from Paremoremo on 31 August 1990 and held at Henderson Police Station until he gave his evidence on 5 September 1990. He was then flown to Christchurch where he was held in Prison custody until 13 November 1990. On that day he was returned to Henderson Police Station where he was held until he gave his evidence at the trial on 22nd November. He was then returned to Christchurch.

I have already referred to para.13 of the affidavit where Witness C names three officers of the VIP/Witness Protection Squad. These were John Avery, Bruce Good and Craig Stevens (or Stephens). He says, as I have already mentioned, that these persons confirmed what Detective Sergeant Sanderson had told him previously.

All these officers have been interviewed at some length by Detective Inspector Quentin Doig in Auckland. I have read their statements and all totally reject any suggestion they offered or confirmed the offer of any inducements to Witness C. As Witness C has now retracted this allegation I do not propose to deal with the evidence of these persons at any length.

Mr John Avery (a former Detective Sergeant) has now disengaged from Police. He was in charge of the Witness Protection scheme for Witness C. He described the claim made in the affidavit as "*an absolute lie*".

Constable Stephen said at no time did Witness C say he had been offered a sum of money or any other form of payment to give evidence against David Tamihere.

Senior Sergeant Good, the third officer named in the affidavit, says he believed he only saw Witness C once and cannot even recall talking to him. He was responsible for the protection of another witness. His response to the allegation made against him in the affidavit was "*He's lying*". He said he could give no explanation as to why Witness C should lie and

commented that only Witness C would know the reason and that hopefully this investigation would reveal that reason.

All persons named in the affidavit then have been interviewed and the evidence from them accords with the repudiation by Witness C of the original allegations he made in the affidavit.

Other Persons Not Mentioned in the Affidavit but Interviewed

Constable Barry Gallagher is not named in the affidavit but the investigation revealed he had had relevant involvement with Witness C in this period. He was one of the three officers who uplifted Witness C from Paremoremo on 31 August 1990. He was seen by Detective Inspector Doig on 6 August in Auckland. I have read his signed statement. He too rejects any claim that there was any reference to providing financial rewards or other incentives. He saw Witness C also in November 1990 when he returned to Auckland to give evidence. He said he had only limited contact at this time but again there was no reference by him of being paid for giving evidence.

With an investigator from the Authority (but with no Police officers present) I also interviewed in Auckland Mr Murray Gibson, presently counsel for David Tamihere, and also Mr John Tamihere, brother of David Tamihere. I am grateful to them both for making themselves available for interview.

I met with Mr Gibson on 16 August 1996 at his chambers. He willingly provided a photocopy of the original affidavit. At that time all I had was a photocopy of the document which had been faxed to the media, passed to the Police and made available to me. Mr Gibson said that he was unaware of the existence of the affidavit until it reached him, it seems on 16 July. He did not release it to the media. He was co-operative and helpful in the interview, but could not advance the investigation as to the truth or otherwise of the allegations of Police misconduct made in the affidavit. He was given the opportunity to provide any other evidence to advance our enquiry, and he said he did not wish to add anything. He appreciated the limited ambit of this enquiry, as it was explained to him by me, relative to any other action he might consider as counsel for David Tamihere.

On 23 August I again travelled back to Auckland with an investigator from the Authority, and met Mr John Tamihere. He too was co-operative. He said Witness C telephoned him from prison three times in June or July 1995 before he agreed to arrange for somebody to see him at the prison. He said as a result an affidavit was prepared and sworn before a solicitor whom he named. He told us however that he thought this document was "too rough" and so

he arranged for a Barrister, Mr Hyrum Parata, to see Witness C at the prison to tidy it up. This was done and the affidavit sworn on 25 August 1995 was the result.

I asked Mr Tamihere why this affidavit was not revealed until nearly a year later on 16 July 1996. Mr Tamihere said frankly that he took full responsibility for this. He was responsible for its release to the media. He gave two reasons explaining the delay. First he wished to make enquiries to see if corroboration for the claims made in the affidavit could be found. He did not inform us that any such evidence had been found but he made it clear that enquiries were continuing and would continue beyond the release date of the Report.

The second reason for choosing 16 July as the release date was this. It was deliberately chosen, being two days before the release of a TV3 documentary on the Tamihere trial. In short the release date was chosen to achieve maximum re-awakening of interest in the Tamihere case by the combined effects of the affidavit and the documentary. Mr Tamihere said that he would arrange for Mr Parata (barrister before whom the affidavit was sworn) to telephone me that day after I returned to Wellington. For whatever reason I have not heard from him.

In response to a general query as to whether Mr John Tamihere wished to add anything further, he said he did not.

For the sake of completeness I also note that two other Police officers, and a civilian, were interviewed by Detective Inspector Doig. Their statements did not however, in my view, assist this investigation.

Peripheral Matters Which Emerged in Investigation

In the course of this enquiry other peripheral matters emerged which ought to be mentioned in this Report, and I now turn to deal with these.

The first matter relates to an interview with Witness C by Mr Parata at Kaitoke Prison on 16 July 1996. Mr Parata visited Witness C at the Prison, arriving at about 1.40pm. It seems that Witness C may not have been aware of the coming visit. At this visit, according to Witness C, Mr Parata requested him to read the affidavit aloud and he recorded the reading on tape. It appears also that Witness C at that time alleged further inducements which were never mentioned in the original affidavit. In this interview on 16 July 1996 apparently he did not demur from any allegation of misconduct he had made in his affidavit of 25 August 1995.

I have listened to part of that tape broadcast on the 6.00pm news on TV1 on 17 July. Speaking of what happened at the Police Station at Henderson Witness C said he was given *"lots of different foods I have been deprived of over the years and alcohol - those were the main things. They supplied a video, a tv set and a stereo"*.

It is clear then that when Witness C saw Mr Parata on 16 July 1996 he was prepared to read out the original affidavit knowing this reading was being taped. I have a tape also of the Holmes Show on 17 July where Witness C maintains his original allegations. I have broadened the brief outside of the allegations contained in the affidavit to consider whether any other inducements were offered to Witness C while he was in the Witness Protection Programme before he gave evidence as some of these issues were raised in the 16 July 1996 interview referred to above.

According to the NZ Herald of 19 July Witness C said on his arrival at Henderson Police Station *"They (the Police) informed me then that would leave an open account there for me where I could purchase any food I wanted - including alcohol"*. The report says that Witness C then made good use of this account and ordered food he had been deprived of for years, including crayfish and alcohol.

Witness C now categorically rejects his statement that he was given any such favours. It appears these further allegations were made to gild the lily of the original allegations. He now resiles from them completely and says of the suggestion Police provided him with alcohol *"that is just absolutely ridiculous"*. As to being given crayfish he said that that is quite incorrect and he was simply given normal meals that are provided in any Police Station.

It perhaps should be made clear that once Witness C had agreed to give evidence in the Tamihere trial he could no longer be kept in safety at Paremoremo and that was the reason he was removed to Henderson Police Station two days before he attended the deposition hearing.

All officers of the Witness Protection Scheme unequivocally reject the claim of extravagant extras.

Constable Craig Stephen has reviewed the file dealing with the time Witness C was in the protection programme. Speaking of the time spent at Henderson Police Station after removal from Paremoremo on 31 August 1990 he states:

"... we gave a sum of money to the Watchhouse Senior Sergeant to enable them to purchase meals for the prisoner while he was in their custody."

Instructions were given that these meal purchases were to be reasonable but by no means extravagant. They were also told that the usual conditions relating to the custody of prisoners applied, which included no alcohol being given."

Later in the interview he says:

"I have today reviewed the file which relates to the protection operations regarding (Witness C). This file includes the receipts and account record showing the expenditure with regard to this operation. During the period 31 August 1990 to 5 September 1990 a total of \$276.46 was expended on various items including meals, hire of video tapes, tobacco products and toiletries. The video monitor that was installed in his cell was loaned from the Auckland Police Photography Section for him to watch videos whilst in custody as there was no television facilities in the Henderson cells. I believe we also would have taken a radio cassette player from our office out to the cells also. When the prisoner was transferred to Christchurch these two bits of equipment remained in Auckland. The provision of a television monitor and stereo ensured that (Witness C) was given similar treatment to that which he had been receiving while in custody at Paremoremo.

At no stage during this time was the prisoner supplied any alcoholic liquor.

The meal receipts on the file would indicate that no extravagant expenditure was spent on meals."

Constable Stephen later travelled to Christchurch on 13 November 1990 and uplifted Witness C and brought him back to Auckland to give evidence at the trial. On 13 November he was again accommodated at the Henderson Police cells. The Witness says:

"Again the Senior Sergeant was given a cash float with which to purchase meals for (Witness C) whilst in their custody. Instructions were again left with them that meals were to be reasonable and not extravagant. Once again the same conditions applied as far as him being a prisoner and that alcohol was not to be supplied."

Witness C gave evidence at the trial on 21 November 1990. On 22 November he was returned to Christchurch.

Constable Stephen again has checked the accounts for the period from 13 November 1990 to 22 November 1990 when Witness C was held at Henderson Police Station. He said the total expenditure was \$322.10. He said that having gone through the accounts "... there again seems to be nothing that is extravagant as far as meals go".

Detective Inspector Doig has also checked the accounts and he says all food purchases were of a takeaway type which is normal practice.

Constable Stephen also notes that while Witness C was in Prison at Christchurch the Protection Squad arranged for him to have a 14 inch television. This was purchased by Police and given to him under a signed contract that it remained Police property and would be returned to Police upon his release from prison. He said that prisoners in custody normally have access to television viewing but because Witness C was held in protective custody he did not have that access and had requested that he be provided with the use of a television to improve his custodial conditions.

Constable Gallagher has also looked at the Witness Protection file. He said that when Witness C was left at Henderson Police Station they were told they were required to log down expenses incurred for Witness C's meals. He said:

"We left a float of money. I have today been given the opportunity of looking at the Witness Protection file which includes the record of expenditure for his meals and other incidentals. I am able to say that money was spent on meals, hire of video tapes, tobacco products and toiletries. At no stage would (Witness C) have been supplied with alcohol as that was completely against policy.

He was given a tv and video and supplied with videos to view in the prison cells. He was given these by us because there were no facilities in the cells for tv because these cells were not used for accommodating prisoners on a full-time basis. He had come from prison and was entitled to access to that type of entertainment as a long term prisoner.

The meal receipts do not indicate any extravagant expenditure. I have been made aware by Detective Inspector Doig that (Witness C) has claimed in the media that he was given crayfish in our protective custody. I have no knowledge of this and the meal receipts do not indicate that this type of expensive food was ever purchased. He may have been given crab sticks and chips as one of his takeaway purchases."

Witness C no longer chooses to make these claims to embellish what was said in the original affidavit so I need not labour the point that all officers reject the claims completely.

Mr Kingi Ihaka in his statement also confirms that televisions, video players and personal stereo equipment are freely available to all inmates at Paremoremo and he said if Witness C had access to these facilities it would not have been out of the ordinary.

Conclusion

This has been an extensive investigation. It was demanded by the nature of the allegations made in the affidavit of Witness C. These allegations have now been unequivocally withdrawn. As will be seen however, the enquiry has ranged beyond simply speaking with Witness C and receiving his withdrawal. A critical review of all evidence discovered reveals nothing to substantiate claims of Police misconduct originally made by Witness C.

Accordingly on the evidence before me my finding is that the allegations of misconduct have no validity whatsoever.

Superintendent Cunneen and Detective Inspector Doig have read this Report and agree with its contents.

E B Robertson
Deputy Police Complaints Authority
3 September 1996