





By Brett Williams

# MR PROSECUTION

**Standout homicide detectives and STAR Group officers are the ones all other cops come to know. But one police prosecutor just retired with a reputation as big as those of the elite front-liners.**



McAvaney accepts an award from Assistant Commissioner Graeme Barton



The specialist trial prosecutor in 1982

**H**e has never sought to shun the guru and icon tags so long applied to him by his peers and superiors. Recently retired Prosecution Branch doyen Frank McAvaney, once described as strutting in court as if he were a peacock, concedes he has a “very” healthy ego.

So, for decades, he felt quite comfortable with the reverence he drew from prosecutors and front-line cops who considered him a fount of prosecutorial wisdom.

But, if his ego was what drove him through his 40 years in Prosecution, it seemed never to manifest as arrogance or snobbery. Indeed, former colleagues of the 66-year-old speak of a supportive bloke who was willing to share his vast knowledge and be the classic nurturer.

“He was always available to the most junior of prosecutors to discuss the law, or provide encouragement over a coffee,” Sgt Bryan Morden says.

To long-time prosecutor Snr Sgt Allan McDonald, McAvaney was “inspirational”. “He was the man I turned to when I needed help and guidance,” he says.

And from the moment Brevet Sgt Grant Napier first expressed an interest in working as a prosecutor, McAvaney became and remained a strong influence in his working life.

“I was able to rely upon Frank for advice,” he says. “He was always willing

to answer all my questions, no matter how simple or complex they might have been.”

These were greatly rewarding experiences for McAvaney, who served the Prosecution Branch for almost half of its 83-year existence. He loved nothing more than developing shaky young beginners into highly competent prosecutors.

Now, he reflects on his working life of almost 50 years as charmed, but it came with challenges, as did his private life.

There were two divorces; the struggle to raise his two children on his own; and a car-versus-pedestrian crash that might have killed him. And, at work, there was the recurring threat of shutting down the entire police prosecution function and handing it over to the DPP.

And, on that issue, McAvaney once wound up drawn into a secret meeting, something like the one Bob Hawke and Paul Keating would have in 1991 – the Kirribilli pact.

Two senior police bosses called him into an office, swore him to absolute secrecy and told him the handover to the DPP was actually going to happen – within 12 months. McAvaney recalls the job they gave him: to “smooth out the ripples that are going to occur”.

“I thought it was going to be disastrous,” he says of the 1983 plan. “At that stage, it was happening in other

states and, obviously, they (SA police) were looking at that. But it was all turning to shit in those other states.”

In the end, no handover of the prosecution function ever happened, but the plan re-emerged in 1991. Then newly appointed DPP Paul Rofe announced it at a meeting of prosecutors in Adelaide.

“He said he’d only run the function with lawyers,” McAvaney remembers. “That was a problem that SAPOL had to work out: what to do with all their prosecutors who wouldn’t have a job. There was a lot of angst but, again, it (the plan) came to nothing.”

McAvaney would later strike a good working relationship with Rofe and regard him well. He remembers the now former DPP as a “very approachable” man who toured suburban prosecution units and willingly attended and spoke at Prosecution Branch conferences.

And along with the Prosecution Branch OC and other senior sergeants, McAvaney had meetings with Rofe every six weeks to “discuss issues of interest”.

But he found the approach of current DPP Stephen Pallaras – with whom he never formed a working relationship – entirely different. “He doesn’t do any of those things (that Rofe did),” he says of Rofe’s successor, whom he only got to meet once in person.



Presenting the inaugural Frank McAvaney APM Award for Academic Excellence to 2010 prosecutor training course dux Rebecca Symons

McAvaney strongly disagreed with several Pallaras decisions and tried to get them overturned. The one not to charge attempted murder in the case of the Mulholland-Tran shooting shocked him the most.

"I thought that was a ridiculous decision," he says. "To me, there was a clear case of attempted murder. There's no other explanation for what he (the shooter) did, other than that he intended to kill them (police officers Nathan Mulholland and Tung Tran)."

McAvaney believed that, had the prosecution charged Daniel Vansetten with attempted murder, it would have scored a conviction. Cops and members of the public shared his view, but 40 years' prosecution experience gave the McAvaney opinion extra worth.

**H**is first exposure to the field of prosecution came in 1966, under the wing of his mentor, Bert Samuels. McAvaney was then a young Port Adelaide street cop who, along with his colleagues, had to help out the prosecutors with menial tasks from time to time.

Whenever he finished his jobs early, he went and sat in the courtroom, watched the proceedings, and found it all "fascinating". Eventually, Samuels gave him his first opportunity to stand up in a Justices Court, over which JPs presided,

and prosecute in traffic cases.

"It felt good," he says. "I always felt very comfortable in the court environment." Indeed, it was McAvaney colleague Bruce Faehrmann who, after seeing the young prosecutor for the first time, said he "actually strutted like a peacock".

"And I probably did," McAvaney concedes.

In 1969, McAvaney transferred from Port Adelaide to Burnside police station. There, with nothing more than on-the-job training behind him, he started work as an accident enquiry officer for Prosecution Services.

In 1971, he became an Adelaide-based assistant police prosecutor, handling cases in not only the Adelaide Magistrates Court but also suburban courts.

But, in 1978, McAvaney came to reflect on a plan he had conceived: to spend just four years in Prosecution and go back to front-line police work. His aim was to become a detective and, ultimately, rise to the office of commissioner.

"I was serious about going as high as I could," he remembers. "I couldn't see any reason why I couldn't be the commissioner."

He debated the move out of Prosecution with his boss, who insisted that he serve two more years. McAvaney

reluctantly agreed.

"By the end of those two years, I'd forgotten about it," he says. "I didn't want to be commissioner of police any more. I was happy to spend the rest of my career in prosecution."

In 1979, McAvaney suffered the breakdown of his first marriage, when his daughter was seven and his son just four. He won custody of both of them but found the single-father role particularly tough.

"In those days, you couldn't get any sort of government services at all," he says. "I couldn't get any financial assistance for after-school or before-school care."

Adding to his dilemma was a caustic relationship with his ex-wife and a horrific accident which virtually incapacitated him. "I walked across Goodwood Road in front of a bus and into the path of a car," he recalls. "It was doing about 60(km) when it hit me."

McAvaney had broken his collarbone and smashed his ankle, into which doctors had to insert seven screws. He figured that some people were sure to think he had attempted suicide because of the overwhelming pressures in his private life. But he had made no such attempt.

During a six-week recovery at home, life became even harder. McAvaney had to call on his ex-wife's parents to



McAvaney and colleague Murray Chirgwin investigate a shop break-in at Port Adelaide in 1969

McAvaney (right) spars with fellow cadet John Robinson as Commissioner John McKinna (centre) and Supt Eric Meldrum look on



help him run his home and care for the children.

"That was not a comfortable time," he says. "They came down and they sort of lived in the place with me."

Earlier that year, McAvaney had won a promotion to sergeant and took on the role of team supervisor and specialist prosecutor. And, in that capacity, he later seized one of his most memorable cases: the prosecution of a bikie for assault on a police officer at the showgrounds.

The day after the incident, the bikie's lawyer filed a charge on information against Doug Riach for assault occasioning actual bodily harm on his client.

As the information took precedence over the complaint on which police had charged the bikie, the Riach case had to go to court first. "I was very fired up about it," McAvaney says. "So I said: 'Right! I'm going to prosecute this case when it eventually comes (to court).'"

The case against Riach went to the District Court, where the presiding judge found no case to answer. "Then I got my opportunity," McAvaney remembers.

As the pugnacious prosecutor got his case under way, he could soon hear defence counsel making "snide comments under his breath".

McAvaney concedes that he descended into "squabbling" with his talkative adversary.

He also remembers the frustration of the magistrate, and an exchange which went:

**Magistrate:** "What's going on?"

**McAvaney:** "My friend's got something to say."

**Defence counsel:** "I've got nothing to say."

**McAvaney:** "Well, you did a minute ago, so get up and say it."

**Magistrate:** "Case is adjourned. When you two have sorted it out and decided that you are going to act ethically and like gentlemen, let my clerk know and we'll resume".

The case did soon resume, and the masterful McAvaney finally got his chance to cross-examine the bikie. He produced transcripts of evidence the defendant had given at a preliminary hearing and in the District Court.

Relishing the moment, McAvaney got him to read many long passages of the transcripts and showed that "everything that he'd said was different in each of the hearings". Victory went to the prosecution.

"I could have killed it off much earlier," McAvaney says, "but I was just enjoying it. It was a thoroughly enjoyable case.

He went down for the assault police and went to jail for it."

Until he had turned and looked back toward the spectator seating during the trial, McAvaney had not seen the "room-full of coppers" behind him. "Every STARie was there and just about every junior prosecutor was there," he recalls.

In 1983, McAvaney not only remarried but also won a promotion to senior sergeant to become the inaugural Prosecution training officer. In that role, he redesigned the prosecutors' training course, which he had never himself undertaken and still had not when he retired.

Over the ensuing 10 years, he would prosecute cases on the APY Lands, achieve an A-grade instructor designation, and take charge of Holden Hill Prosecution. Then, in 1993, McAvaney became Prosecution Services' legal research officer.

In that role, he gave advice to Prosecution bosses, reviewed court decisions – to assess the worth of appealing against them – and served as an advisor to prosecutors dealing with particularly complex cases.

He also helped operational cops with advice on legal issues connected with their investigations.

In 2005, after the Prosecution Branch



Course mates McAvaney and Peter Marshman in 1963



had undergone significant change, McAvaney began a four-year stint as Prosecutor Development Section manager.

Then, in 2009, after further changes to the branch, he became Planning and Development Section's policy and advice officer.

Many found it puzzling that, with all his knowledge and courtroom prowess, McAvaney never pursued a law degree. But, without any intention of ever acting for defendants, he simply saw no advantage in obtaining the qualification.

"The DPP would be the only place that I'd work," he says. "But why even do that? I'd be doing the same over there as I was here, just different types of cases."

**M**cAvaney surprised many with his announcement of last October: that he intended to retire five months short of completing 50 years' service. Some joked with him about thinking they would end up carrying him out in a box.

"Obviously, they think that work's all that I lived for," the grandfather of three says. "But I'm a very private person. I don't socialize with many of them."

Still, Prosecution Branch boss Bob Gray remembers McAvaney predicting that, after he retired, he would be

"forgotten quickly and replaced easily".

Says Gray: "I know that both these contentions are incorrect."

McAvaney, a former Enfield High School boy, joined SAPOL in March 1962, after turning down jobs as a copy boy and a cabinetmaker.

He also turned down a flying scholarship he had won as an air force cadet. To accept it, he would have had to "sign my life away for 12 years with the RAAF".

"I got conned by the advertising spiel that police recruiting had," he says with a laugh. "The policing sounded exciting, and I was sick of schoolwork and study."

"I wanted to get out and do something physical but, for the rest of my life (as a prosecutor), I was studying or had my head buried in books."

In his first year at Fort Largs, McAvaney joined the SAPOL boxing team and won the state novice light-welterweight title. At the same time, academy boss Eric Meldrum spotted his potential as a prosecutor and urged his parents to encourage him to become one.

Falling short of 50 years' service does not bother McAvaney, who served under the leadership of six commissioners and 12 Police Association presidents.

He chose to forgo the milestone after

a country house, of the type he had long searched for, came onto the property market. It had large rooms, tall ceilings and could accommodate his collection of antiques.

But, to buy it, he needed to retire and access his super.

McAvaney had developed a love of antiques and taken to collecting them during his 11-year marriage to his second wife.

Another reason for the timing of his retirement was that he wanted to work as a volunteer at the Australian Fauna Animal Park in Bute. Unless he took on that role almost straight away, the local council would have closed the facility.

Along with antiques and animal care, McAvaney will fill his retirement years writing a book on German shepherd dogs. He became interested in the breed in the late 1960s and wound up as president of the German Shepherd Dog Club of SA.

His book will cover the history of German shepherds in Australia, from 1899 to 1999.

But as he left policing a few weeks ago, what was the master prosecutor's final word on the justice system of today? "It's too lenient on sentencing," he insists. "But, as a justice system, it generally gets things pretty well right."